

THE RULE OF LAW, HUMAN AND PEOPLES'
RIGHTS AND COMPLIANCE/NON-COMPLIANCE
WITH REGIONAL AND INTERNATIONAL
AGREEMENTS AND STANDARDS BY AFRICAN
STATES

BY PROFESSOR SHADRACK B. O. GUTTO

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University of the Witwatersrand

Johannesburg

Republic of South Africa.

guttos@law.wits.ac.za

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THE RULE OF LAW, HUMAN AND PEOPLES' RIGHTS AND COMPLIANCE/NON-COMPLIANCE WITH REGIONAL AND INTERNATIONAL AGREEMENTS AND STANDARDS BY AFRICAN STATES¹

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Abstract

The paper interrogates the weak and uneven rate of compliance with regional and international agreements by African States. It is argued that the culture of lack of, and disregard for, the doctrine of rule of law and basic human rights norms and standards that is manifest in non-compliance with regional and international agreements resides in certain objective and subjective factors characteristic of a significant number of African States. These factors are identified and explained. The rule of law and human and peoples' rights are interpreted as dynamic concepts that develop and evolve with time. In particular, human and peoples' rights contain universal values, principles and standards as well as contextual national and regional specifics. It is argued that the weak development of rule of law, especially with regards to compliance with norms and standards of basic international and regional human and peoples' rights norms and standards, contributes significantly to the endemic social and political instability in many African countries. In turn, this impacts negatively on social and political stability and progress. If this is allowed to continue, it will certainly impact negatively on the ideals and objectives of the New Partnership for Africa's Development (NEPAD) and the progress towards transforming the Organisation African Unity (OAU) into the African Union (AU). The AU is supposed to be a more robust regional system for political, economic and social progress as well as for social justice for all. NEPAD and the AU place emphases on good governance, the rule of law and human and peoples' rights. This creates a historic opportunity

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and challenge for strengthening the development of political, economic and corporate governance based on the rule of law and human and peoples' rights at national, sub-regional and regional levels on the African continent. The responsibility for making success of this historic space, it is suggested, depends equally on the shoulders and brains of those who manage the affairs of the African States and all the progressive sectors of civil society in Africa, including organised structures among the masses, the intelligentsia and private business.

1. African States and International Agreements

The paper starts with the proposition that the principle of “sovereign equality” of states is mainly legal or formal². The principle has no sociological validity, except in the regional and international forums where all States have equal voting rights and in the very rare occasions when they exercise that right “freely”. Put another way, in real life, states are vastly unequal in terms of economic, political and military power. It is also a fact that in the harsh globalised world, single states are universally weak or ineffectual. From this perspective, the phenomenon of regional or international groupings or association by States is a tacit admission that States are not only unequal, in order for them to continue to exist and perform State functions they are compelled to seek alliances and partnerships, for good or bad.

The conclusion of agreements³ by states or where agreements bind States, irrespective of whether or not they are States parties to such agreements⁴, is the legal expression of entering into groupings or associations not only to further narrow self-interest but to express or enhance statehood⁵. This is the case even in situations where it might appear that there is “surrender of

² The principle of sovereign equality of States is enshrined in Article 2(1) of the **Charter of the United Nations** (UN) (1945); in Articles III(1) and V of the **Charter of the Organisation of African States** (OAU) (1963); and in Article 4(a) of the **Constitutive Act of the African Union** (AU)(2000).

³ In modern international law parlance, an agreement concluded between States are called “treaty” even though it may assume many forms such as “charter”, “covenant”, “convention” or simply “agreement”. See Article 2(1)(a) of the **Vienna Convention on the Law of Treaties**, adopted on May 22, 1969, entered into force on January 1, 1980.

⁴ A State may be bound by a customary rule of international law set forth in a treaty to which it is not a State Party – **Vienna Convention**, supra., Article 37.

⁵ The capacity and ability to enter into relations with other states (recognition) is considered by the declaratory theory of international law as one of the principal legal attributes of statehood. See, J Dugard, **International Law: A South African Perspective**, 2nd Ed. (Juta, Cape Town, 2000) 74 -77; D.J.Harris, **Cases and Materials on International Law**, 5th Ed., (Sweet & Maxwell, London, 1998) 144 – 162.

sovereignty”, provided, of course, that the State is not coerced, defrauded or corrupted in the process of concluding an agreement⁶.

2. Factors likely to affect compliance with international agreements

Diligence in complying with international agreements is, or ought to be, an important indicator of a State that respects the Rule of Law. It is an elementary principle of, and requirement in, international law that agreements/treaties are binding upon States Parties “and must be performed by them in good faith”⁷. As a matter of fact, membership in most multilateral bodies is predicated on the willingness and ability of States Parties to *accept the obligations* arising from the constitutions of such bodies and to *carry them out*⁸.

Notwithstanding the clear theoretical position, it is a fact of life that States, like individual human beings, do not always play by the rules. It is therefore of supreme importance that we understand, or at least try to explain, the main reasons why particular States may not and do not comply with certain agreements. In my observation, it appears that States may not comply with a few or many agreements that they have “freely” enter into because of one or a combination of the following eight internal and external factors:

1. Exclusion or marginalisation of the State in the arena of political or economic spheres of policy and decision making as a consequence of inequality among states;
2. Lack of capacity in the political, legal/technical or economic sense on the part of a State, thus leading to impossibility to comply⁹;
3. Deliberate breach, often informed by a calculated risk of not being “caught” or “punished”;

⁶ Under Articles 49, 50, 51 and 52 of the **Vienna Convention** (supra., note 3), a treaty becomes void for a State if fraudulent means, corruption of officials or coercion is used to compel or induce State functionaries to ratify or accede to a treaty on behalf of the State. If the machinations that the present author witnessed at the UN World Conference Against Racism in Durban in August/September 2001 is anything go by, it would constitute a necessary and useful study to critically examine the actual exercise of sovereignty by most African States in international negotiations where the stakes are high for the powerful Northern States.

⁷ **Vienna Convention**, above, Article 26.

⁸ For example, see **UN Charter** (1945), Article 4(1).

⁹ This could happen because of genuine reasons, such as small population base or poor development of productive resources, or because of general neglect and mismanagement of public affairs. It could also be a consequence of internal instability and crises or tensions in society.

4. Conscious decision making not to comply because of real or perceived unreasonableness or unfairness of the agreement/treaty;
5. Irresponsibility by the political leadership and other managers of State affairs because of corruption, negligence, lack of patriotism and the presence of a culture of lawlessness;
6. Weak incorporation of international agreements in the domestic legal system and/or national popular political space;
7. Lack of knowledge, and hence lack of ownership and oversight, by the general public about agreements entered into by the States; and
8. The lack of existence and/or efficacy of external enforcement mechanisms and effective sanctions

3. The Rule of law and the Conflation of the State and Governments in Many African countries

The rule of law is a broad and complex historical doctrine that certainly includes, but is not limited to, compliance with agreements or legally binding standards and obligations at national, regional and international level. The key elements of the rule of law, as a living, evolving and dynamic concept¹⁰, are:

1. The making or existence of laws (or agreements), including human rights laws and agreements, that are relevant to the social needs and aspirations of society and that are reasonable and fair to all sectors and groups in society at the national¹¹, regional and international levels;
2. Reasonable degrees of understanding and general commitment in the society as a whole to the principle of governance in accordance with the law and agreements at the national, regional and international levels;

¹⁰ At least two of the major international conferences on the Rule of Law that have been organised in Africa by the International Commission of Jurists demonstrate the historical dynamism of the doctrine: See, ICJ, **African Conference on the Rule of Law**, Lagos, Nigeria, January 3-7, 1961 (ICJ, Geneva, 1961) and Conference on the Rule of Law in a Changing World, Cape Town, South Africa, 20-22 July 1998. The "Cape Town Commitment" is published in "**Globalization, Human Rights and the Rule of Law**", *The Review, International Commission of Jurists*, No. 61, 1999, at 109-112.

¹¹ See our comment on the Zimbabwean elections crisis and the land question - Shadrack Gutto and Theunis Roux, "Land reform and the rule of law", **Business Day** (Johannesburg) April 18, 2000.

3. Presence of institutions for law enforcement that have the capacity to enforce the laws/agreements and that are independent and impartial at the national, regional and international levels;
4. The presence of a critical mass of professionals in the various organs of the institutions for law/agreements enforcement such as the police, the prosecution authorities, the courts, including administrative tribunals and prisons (correctional services) who have the capacity to enforce the laws and who are reasonable, fair, independent and impartial;
5. The existence of organised and active formations in civil society, especially in the professions and among academics, women, youth, workers, employers (capitalists), peasants, artists, the media, etc, who are conscious and committed to human rights, social justice and the rule of law; and
6. Reasonable degrees of understanding and commitment in society as a whole to the need for continual reform and improvement in the laws/agreements and the enforcement mechanisms at the national, regional and international levels.

The rule of law doctrine has been in usage for well over a century and is fairly well recognised at the formal level. It is even prescribed by those who least practice it in their real life dealings, such as the World Bank¹². There are, however, divergent opinions informed by interests regarding its essential minimum content and role in society¹³. The six basic elements presented above are therefore the interpretation and construction that the present author ascribes to it.

Although not a uniquely African phenomenon, in many African States there is manifest a conflation of the State and Government. This leads to the blurring of roles and responsibilities and lack of accountability by those charged with “formal responsibility”, thus leading to none or selective and arbitrary compliance by the State/Government to the Rule of Law, including regional and international agreements.

In the conflated State/Government scenario, the incumbent political authorities permeate every aspect of the State. Whether or not there exists formal “separation of powers”, in reality all the branches are weak or are weakened. In most cases, the executive State

¹² IBRD/World Bank, *Can Africa Claim the 21st Century?*, (Washington, D.C., IBRD/World Bank, 2000) 64, 69-71, 80.

¹³ See generally, B Fine, *Democracy and the Rule of Law: Liberal Ideals and Marxist critiques* (London, Pluto Press, 1984).

institutions¹⁴ are either weak and/or lack reasonable degrees of constitutionally entrenched independence, let alone possessing the assumed qualities of personal competence and integrity of those occupying positions in these institutions. The same goes for the judiciaries or dispute resolution institutions and the legislatures, whatever form they may assume. The latter two do not end up even close to meeting the minimum international standards developed with the “participation” by significant numbers of African States and intellectuals¹⁵.

4. African States and Compliance with Regional and International Human and Peoples’ Rights Obligations

In the tradition of the Universal Declaration of Human Rights (UDHR) of 1948, modern human rights, as recognised in agreements at regional and international level, extend beyond civil and political rights. They incorporate economic, social and cultural rights in general¹⁶ as well as specialised thematic and group or collective areas including rights, freedoms and responsibilities pertaining to women¹⁷, children¹⁸, migrant workers¹⁹, refugees²⁰, indigenous peoples²¹, racism and racial discrimination²², peace and security²³, development²⁴, the environmental²⁵, the principal of solidarity²⁶, and humanitarian affairs²⁷, to name but a few.

¹⁴ Public/civil servants, immigration and customs services, financial institutions, electoral bodies, the police and prosecution authorities, etc.

¹⁵ See especially, the **Basic Principles on the Independence of the Judiciary**, UNGA Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985 and the “Latimer House Guidelines for the Commonwealth” 19 June 1998, in J Hatchard and P Slinn (eds.) **Parliamentary Supremacy and Judicial Independence: A Commonwealth Approach** (London, Cavendish Publishing Ltd, 1999), Chapter 2.

¹⁶ **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, UNGA Res. 2200 A (XXI) of 16 December 1966, entry into force on 3 January 1976.

¹⁷ **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**, (1979), UNTS, Vol. 1249, p. 13. Entered into force on 3 September 1981.

¹⁸ **Convention on the Rights of the Child**, (1989), A/RES/44/25, entered into force on 2 September 1990; **African Charter on the Rights and Welfare of the Child**, adopted in Addis Ababa, Ethiopia, in July 1990 at the Twenty-sixth Ordinary Session of the Assembly of Heads of State and Government of the OAU.

¹⁹ **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families** (1990), A/RES/45/158. (Not entered into force).

²⁰ UN: **(Geneva) Convention Relating to the Status of Refugees**, 28 July 1951, *entry into force on 22 April 1954*; UN: **Protocol Relating to the Status of Refugees**, 16 December 1966, *entry into force on 4 October 1967*; and **OAU Convention Governing Specific Aspects of refugee Problems in Africa**, 10 September 1969, *entry into force on 20 June 1974*.

²¹ **ILO Revised Convention (No. 169) Concerning Indigenous and Tribal People in Independent Countries** (1989), *ILO, Official Bulletin*, Vol. LXX II (1989) Ser. A, No. 2. Entered into force on 5 September 1991.

As far as compliance is concerned, regional and international agreements pertaining to human and peoples' rights, freedoms and duties first and foremost require implementation by States at the national (domestic) sphere where people are and where the States exercise jurisdiction²⁸. This is the whole basis for the international law doctrine of exhaustion of domestic remedies (EDR), that require recourse for redress at the national level before one may be allowed to seek redress at regional or international level. Luckily, this rule is rightfully, in my view, subject to the qualification that EDR does not apply where such remedies do not exist or are fundamentally defective or may cause undue delay to accessing justice²⁹. It should, however, be pointed out that compliance with international and regional human rights norms, standards and obligations is not only for States. Individuals, both natural and juristic, are enjoined to uphold the norms, standards and obligations in their relationship with each other³⁰.

Quite often, the problem of non-compliance lies in the "reservations" that States are allowed to make when they enter into agreements or ratify treaties dealing with human and peoples' rights. The general rule of international law that reservations may not negate the core or essential content or purposes of a treaty³¹ is frequently ignored. This undermines the efficacy

²² **International Convention on the Elimination of All Forms of Racial Discrimination** (1965), UNTS Vol. 660, p. 195. Entered into force on 4 January 1969.

²³ **African Charter on Human and Peoples' Rights** (1981), (entered into force on 21 October 1986), Article 23

²⁴ *Ibid.*, Article 22; **Declaration on the Right to Development**, UNGA Res. 41/128 of 4 December 1986.

²⁵ **African Charter**, above, Article 24

²⁶ *Ibid.*, Article 29(4).

²⁷ The 4 Geneva Conventions and the 2 Protocols:

- **Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field**, adopted 12/8/1949, *entry into force on 21 October 1950, Chapters I&IX*
- **Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea**, adopted 12/8/1949, *entry into force on 21 October 1950, Articles 50&51*
- **Geneva Convention relative to the Treatment of Prisoners of War**, adopted 12/8/1949, *entry into force on 21 October 1950, Articles 105-108, rights of prisoners; Articles 129, 130 penal sanctions for non-compliance*
- **Geneva Convention relative to the Treatment of Civilian Persons in Time of War**, adopted 12/8/1949, *entry into force on 21 October 1950, Articles 146-147*
- (Protocol I) **Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts**, adopted on 8 June 1977, *entry into force on 7 December 1978, Articles 1,11, 75, 85-90.*
- (Protocol II) **Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-international Armed Conflicts**, adopted on 8 June 1977, *entry into force on 7 December 1978, articles 1&6.*

²⁸ For example, common Article 2 of the **International Covenant on Economic, Social and Cultural Rights**, note 16, above, and the **International Covenant on Civil and Political Rights**, (1966), UNTS, Vol. 999, p. 171. Entered into force on 23 March 1976.

²⁹ **African Charter**, above, Articles 50 and 56(5) read with Rule 104(1)(f) of the **Rules of Procedure of the Commission**.

³⁰ See, for example, Article 30 of the **Universal Declaration of Human Rights**, UNGA Res. 217 A (III) of 10 December 1948 and the African Charter, Article 27.

³¹ **Vienna Convention on the Law of Treaties**, above, Article 19(c).

of the agreements or treaties and allows States to make empty claims that they adhere to basic regional and international norms and standards.

Forms of legal incorporation to permit domestic application/compliance:

1. Where agreements in the form of treaties have automatic domestic enforcement;
2. Where the agreements in the form of treaties are specifically incorporated by legislative acts;
3. Where the essential elements of the agreements in the form of treaties are incorporated in domestic legislation;
4. Where rules in the treaties constitute rules of customary international law;
5. Judicial incorporation by using the agreements, treaties and authoritative decisions of dispute resolution as “tools/instruments of interpretation” of national laws and their application.

At the recent African Development Forum III held in Addis Ababa, Ethiopia, the problem of lack of effective incorporation of regional and international human rights agreements/treaties in the national legal systems was considered and condemned. It was recommended that African States should make it a priority to effect meaningful incorporation³².

In addition to the domestic sphere, regional and international human and peoples’ rights agreements establish their own enforcement mechanisms at the regional or international plane, respectively. The key elements of monitoring and enforcing compliance include judicial organs or quasi-judicial commissions/committees that allow for either inter-state complaints³³ (which are very, very rare indeed) and/or individual/group complaints³⁴. The other mechanism include: regular periodic written reports by States³⁵, usually interrogated against the unofficial “shadow reports” submitted by individuals or organised civil society; work by special rapporteurs or

³² ECA/OAU, Africa Development Forum III, “Defining Priorities for Regional Integration” – **Consensus Statement and the Way Forward**, March 8, 2002, paragraph 66.

³³ For example, Articles 47 and 49 of the **African Charter**.

³⁴ For example, Articles 55-57 of the **African Charter**, read with the provisions under Chapter XVII of the **Rules of Procedure of the Commission**.

³⁵ Examples include: the **African Charter**, Article 62; ICCPR, Article 40; ICESCR, Articles 16-17; and CEDAW, Article 18.

independent experts³⁶; missions of inquiry or verification; peace keeping and peace building missions, etc.

The record of most African States in or before the above regional and international implementation and enforcement mechanisms/forums where compliance is recorded is, to use an understatement, appalling and shameful in the eyes of most right thinking African peoples. What this means is that the branches and institutions of State that ought to check and balance each other are ineffectual. Part of the blame does, of course, lie with the compliant, “inactive” and disorganised civil societies, including the intelligentsia and big business, where they exist³⁷.

5. NEPAD and AU: Possible Corrective Mechanisms

The present author starts from the premise that NEPAD³⁸ and the AU provides all Africans the opportunity to participate and influence the making of our own history. Otherwise, we shall remain spectators and interpreters of the making of our history by only a few of us or, worse still, the others who have historically been our oppressors and do not in most cases represent Africa’s collective interests. Whatever its weaknesses and the different takes we may have on NEPAD³⁹, at appears at the very minimum that NEPAD is a product and expression of historical contestation and balance between the forces of modern capitalist expansion and reconstruction, also known as “globalisation”, on the one hand, and pressures from below by the African masses who have never ceased to demand justice and social progress, on the other. The transformation of the OAU and its imminent supersession by the AU, however, simply expresses the fact that the OAU has carried out its historic mission, although with considerable imperfections, and the time has come for a new instrument and vehicle more capable of meeting the challenges facing Africa and Africans in the New Millennium.

³⁶ For example, the African Commission on Human and Peoples’ Rights has so far established three Special Rapporteurs on (i) Summary, Arbitrary and Extrajudicial Executions (1994); (ii) Prisons and Conditions of Detention in Africa (1996); and Women’s Rights in Africa (1999).

³⁷ Inactivity and disorganisation can exist despite the fact that there are often numerous NGOs, CBOs and even “popular movements” that occupy public space and make lots of noises.

³⁸ The New Partnership for Africa’s Development (NEPAD) is the name that was adopted by the inaugural meeting of the **Implementing Committee** as a replacement for the New African Initiative (NAI) in Abuja, Nigeria, on 23 October 2001. See **“Communique Issued at the end of the Meeting of the Implementing Committee of the Heads of State and Government on the New Partnership for African Development, Abuja, 23 October 2001”**.

³⁹ These have been identified in, among other forums and documents, the ADF III, see note 32, above and the UN Office of the High Commissioner for Human Rights, Geneva, **African Regional Dialogue 1 on Human Rights, the African Union and the New Partnership for Africa’s Development: General Report**, 13 November 2001.

NEPAD formally commits Africa and Africans to renewed commitment to good governance, rule of law and human rights in at least seven paragraphs out of a total of the two hundred and seven paragraphs⁴⁰. This is not insignificant if compared to the near silence on the issues of good governance, rule of law and human rights in the Abuja Treaty Establishing the African Economic Community⁴¹ that is to be incorporated into the AU⁴².

Since its adoption, NEPAD has gone beyond the formal articulation and recognition of good governance, rule of law and human rights. NEPAD Secretariat has been established⁴³ and

⁴⁰ NEPAD paragraphs:

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

43 The new phase of globalisation coincided with the reshaping of international relations in the aftermath of the Cold War. This is associated with the emergence of new concepts of security and self-interest, which encompass the right to develop and the eradication of poverty. Democracy and state legitimacy have been redefined to include accountable government, a culture of human rights and popular participation as central elements.

49 To achieve these objectives, African leaders will take joint responsibility for the following:

- Promoting and protecting democracy and human rights in their respective countries and regions, by developing clear standards of accountability, transparency and participatory governance at the national and sub-national levels;
- Instituting transparent legal and regulatory frameworks for financial markets and auditing of private companies and the public sector;
- Promoting the role of women in social and economic development by reinforcing their capacity in the domains of education and training; by the development of revenue-generating activities through facilitating access to credit; and by assuring their participation in the political and economic life of African countries.

71 The Peace, Security, Democracy, and Political Governance Initiative

African leaders have learnt from own experiences that peace, security, democracy, good governance, human rights and sound economic management are conditions for sustainable development. They are making a pledge to work, both individually and collectively, to promote these principals in their countries, sub-regions and the continent.

79 It is now generally acknowledged that development is impossible in the absence of true democracy, respect for human rights, peace and good governance. With the *New Partnership For Africa's Development*, Africa undertakes to respect the global standards of democracy, which core components include political pluralism, allowing for the existence of several political parties and workers' unions, fair, open, free and democratic elections periodically organized to enable the populace choose their leaders freely.

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

183 The *New Partnership For Africa's Development* has, as one of its foundations, the expansion of democratic frontiers and the deepening of culture of human rights. A democratic Africa will become one of the pillars of world democracy, human rights and tolerance. The resources of the world currently dedicated to resolving civil and interstate conflict could therefore be freed for more rewarding endeavours.

⁴¹ Adopted in Abuja, Nigeria, on 3 June 1991. Formally entered into force on 12 May 1994.

⁴² **Constitutive Act of the AU**, Preamble, and paragraphs 7(b) and 10 of the **Decision of the Assembly of Heads of State and Government on the Implementation of the Sirte Summit Decision on the African Union**, Lusaka, Zambia, July 2001, AHG/Dec. 160 (XXXVII).

⁴³ Currently operating from the premises of the Development Bank of Southern Africa, Midrand, Johannesburg, South Africa.

the Implementing Committee has been constituted as required⁴⁴. The latter has moved quickly to resolve that a “peer review mechanisms” and codes of good conduct with measurable criteria be put in place⁴⁵. The codes of good conduct are not only for *political* governance but for *economic* and *corporate* governance as well⁴⁶. There is therefore real evidence to demonstrate that the good governance, the rule of law and human rights are not merely mentioned in the NEPAD agreements and initiative, compliance is being prioritised.

It has been argued elsewhere that careful textual analysis of the Constitutive Act of the AU, including the subsequent decisions taken in Lusaka in July 2001, reveals that the Constitutive Act falls short of consolidating and incorporating the African regional human and peoples’ rights system into the central constitutional organs of the AU⁴⁷. Despite this critical weakness, which ought to be corrected timeously, the Constitutive Act expresses Africa’s commitment to human rights and rule of law much more robustly than the Charter of the OAU⁴⁸. This provides a historic space for all sectors within societies in Africa to make their inputs and to ensure that the new ideals are not left to the States alone to champion and translate into realities.

6. Tentative Conclusion

Adherence in theory and practice to good governance, the rule of law, human and peoples’ rights, freedoms and obligations are essential to the renewal and regeneration of Africa’s desire and efforts to occupy and play a meaningful role in the world for the benefit of its peoples. For this to happen, it is imperative that we make positive inputs into these doctrines, principles, ideas and institutional demands from the African perspective and with African interests at the centre. More importantly, we have the duty and responsibility to realise them in practice. Improved levels of compliance will be the test of whether or not we are equal to the

⁴⁴ NEPAD, paragraph 202.

⁴⁵ The **Abuja Communiqué**, note 38 above, paragraph 6.

⁴⁶ **Draft Rapporteur’s Report**, NEPAD Work in Progress Review Workshop, Benoni, South Africa, 24-27 January 2002, pp 9, 17-18 and 22-23.

⁴⁷ S Gutto, “The reform and renewal of the African regional human and peoples’ rights system”, (2001) 1 **African Human Rights Law Journal** 175-184. See also the **ADF III Consensus Statement**, note 32 and the **General Report** of the OHCHR’s **First African Dialogue**, note 39 above.

⁴⁸ This is reflected in many provisions in the Constitutive Act of the AU, among these being the express commitment to forging partnerships between governments and civil society (Preamble and the envisaged composition of the Economic, Social and Cultural Council) as well as the Objectives (Article 3) and Principles.

tough challenges that face Africa. Governments and civil society in Africa must assume equal responsibility in ensuring that the impetus for positioning Africa to regain its glory after centuries of slavery, slave trade, colonialism and neocolonialism is not lost. As imperfect as they may be, NEPAD and the AU currently represent the emerging new African spirit and minimum standards. Nevertheless, it is also important to point out that no amount of good governance, rule of law and human rights alone are sufficient to pull the African continent out of the historical quagmire that Africa finds itself. Conducive external conditions and environment to supplement and support Africa's efforts is equally important. It is to this end that broad and progressive understanding of the basic contents of good governance, rule of law and human rights at the national, regional and international levels is called for. NEPAD and the AU, in particular their emphases on regional and sub-regional cooperation and partnerships as opposed to narrow chauvinistic nationalism and sovereignty, offer us the opportunity to meet part of the bargain.