RULE OF LAW IN ENGLISH SPEAKING AFRICAN COUNTRIES:
THE CASE OF NIGERIA AND SOUTH AFRICA

by

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DECLARATION

I, Funmilola Tolulope Abioye, declare that: The Rule of Law in English Speaking African Countries: The Case of Nigeria and South Africa is my own work and that all sources that I have used or quoted have been indicated and acknowledged by means of complete and proper references.

_________________________________________  _______
FUNMILOLA TOLULOPE ABIOYE       DATE
DEDICATION

In loving memory of my father, Mr. J.O. Soyinka, who instilled in me from an early age, the value of hard work and diligence, and who taught me to persevere.
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SUMMARY

Over the past years, Africa has increasingly been in international news, be it in relation to poverty; malnutrition; incessant and sporadic conflicts; ineffective and self-seeking leadership; or in relation to the failure to develop in spite of the vast natural resources or manpower with which the continent is endowed. The failure of good governance in Africa epitomises the plight of the continent and has led to the inability of the continent to develop. This failure has been brought about by many factors, including diverse ethnic divisions across the continent; inequitable wealth distribution; poor capacities in governance; the imposition of foreign systems through colonialisation and many other factors. One of the factors identified by this thesis for Africa’s continued failure is the challenge to the enthronement of the rule of law on the continent.

The study of the rule of law in Africa is of crucial importance in understanding Africa’s problems. In order for the rule of law to reign within a particular society, the law first has to be an integral part of that society. It has to be legitimate, respected, owned and internalised by the society. This is concretised through the law-making process within the society. For laws and the law-making processes to be legitimate, there needs to be the consent and participation of the people of the society which the law seeks to bind. This is not so in the case of most African countries where laws are many times vestiges of the colonial era (or apartheid era as the case may be), or a mutation of colonial and indigenous legal systems; and where the post-colonial law-making mechanisms as depicted in the constitution-making processes have not induced confidence. This had led to a deficit in the legitimacy of the law in Africa, and in the ability of such laws to order, control, bind and govern the nations of Africa. This is because the people who the laws are meant to bind and order, have more often than not been excluded from the law-making process, nor given their consent to be bound by the laws in force.

The resultant effect of these realities is that the laws generally lack legitimacy; and are usually adhered to only when sanctions are attached and when there is the possibility of those sanctions being enforced against the individual. This thesis seeks to draw a nexus between the lack of legitimacy of laws in Africa (as evidenced in the constitution making processes) and the problems and challenges faced by the rule of law on the continent, using the cases of Nigeria and South Africa. In doing this, the extent to which international law has been able to govern will also be examined.
Key words and phrases

Rule of law, Africa, South Africa, Nigeria, legitimacy, social contract, consent, will, constitution, military regimes, APRM, international law, treaties, customary international law.
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For in reason, all government without the consent of the governed is the very definition of slavery

- Jonathan Swift (Drapier’s Letters iv, 13 October 1724, written while he was Dean of St Particks Cathedral, Dublin)

The clearest way to show what the rule of law means to us in everyday life is to recall what has happened when there is no rule of law

- Dwight David Eisenhower (1890-1969), 34th US President