STATE SUCCESSION AND GOVERNMENTAL CONTRACTS IN AFRICAN STATES

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In a general parlance, succession to contractual rights and obligations relates in the main to the private law obligations of the predecessor States. The imperative theory which is negativist in character posits that the successor State can not be subrogated to the contractual rights and obligations of its predecessor. This was amplified in the case of *West Rand Central Gold Mining Co. v. The king*[1] where the court pronounced that;

> ...the conquering sovereign can make any conditions he thinks fit re specting the financial obligations of the conquered country, and it is entirely at his option to what extent he will adopt them.

On the other hand, the universal succession theory contends that there will be total subrogation. Our research reveals the inadequacies inherent in the two theories, as subsequent discussions will unfold.

It is our earnest observation that State responsibilities that are attached to more State contracts dictate the pattern of succession. To clarify this assertion, it is worthwhile to make a cursory reference to the statement of Mr. Justice Daniel of the United States, in the case of *The West River Bridge Co. v. Dix*. There he observed that;

> But into all contracts, whether made between States and individuals or between individuals only, there enter conditions which arise not out of the literal terms of the contract itself; they are superinduced by the pre existing and higher authority of the laws of nature, of nations or of the community to which the parties belong; they are always presumed, and must be presumed to be known and recognized by all, are binding upon

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1. (1905)2 K.B. 391.
2. 6 How. 507 (1848).