CAN A GOVERNMENT THAT CAME BY WAY OF *COUP D'ÉTAT* BE LEGITIMATE? *

Abstract
Law represents the rules and regulations by which everything in a State or the Society must be done and legitimacy is conformity with the Law. When an act is done in accordance with the law the action is said to be legitimate. Compliance with the rules of law will confer legitimacy on our actions otherwise one is bound to face criticisms and disagreements. The present situation with the change of government in the republic of Niger has given ECOWAS and other nations around the world the opportunity to criticize and rise against the coup leaders with the demand that the action should reversed and restore the legitimate government back to power. No one is looking at ECOWAS, AU, UNO and other antagonist States as interfering in the internal affairs of the Republic of Niger. The issue of the legality, legitimacy or otherwise vis-a-vis the elected and the revolutionary regimes in Niger Republic is the focus of this paper. The analysis of these issues will lead us a logical conclusion on the way forward.

Keywords: Law and legitimacy, conformity with law, change of government, Niger Republic.

I. Introduction.

Law and legitimacy are interrelated or at times fused terms that accommodate many definitions without any generally accepted one for any of the terms. The essence of this paper is to elucidate the meaning of these terms in their ordinary and technical senses and analyse them in their interrelationship within the Nigerian legal system and jurisprudence. Law in the most general sense of that word is a central problem of legal philosophy or theory. Numerous attempts have been made at verbal definition but probably no definition is satisfactory or would secure universal acceptance[1]. In its general and abstract sense, law is used as designating generalizations explaining the instances of observed invariable phenomena, stating what in certain circumstances always happens e.g. the law of gravity, the law of demand and supply, the law of thermodynamics, law of nature, and the like[2]. Despite this established usage, the significant difference is that these statements are descriptive of natural happenings and not like laws of political societies prescriptive of human conduct. In its technical meaning particular to human society, law is the written and the unwritten body of rules largely derived from custom and formal enactment which are recognised as binding among those persons who constitute a community or state, so that they will be imposed upon and enforced among those persons by appropriate sanctions[3]. The detailed content of a particular system or body of laws will vary from one society to another being influenced by the history and religious, social, moral, political, economic, and other philosophy, predominant in the society at the time of the development or reformation of particular rules. The existence of this diversity gives rise to the study of comparative law and to the problems between municipal and international law and law reform.

2. The Features of Law

In its technical meaning, law has some characteristic features by which it can be recognised. These features include the following:[4]

i) It is an attribute of human beings and found only when groups of such beings have associated and organised themselves into a political society, that is, one for governing themselves. Thus, law cannot be regarded as God given in the sense of the Ten Commandments contained in the Holy Bible[5] or Koranic rules and injunctions. The above statement however does not deny or minimise the importance of religious beliefs and values in motivating societies to adopt particular rules of law. The need for manmade law arose as a result of scarce food and other material things needed for human survival. As such law is a body of different rules. Since law is man-made, man has the responsibility to determine to a large extent the content of the law of his society and take responsibility for it as 1-ic cannot blame God or nature for the effectiveness or otherwise of the law.

*By Rufus Olu OLAOLUWA, LLM, PhD, Associate Professor, Department of Jurisprudence and International Law, Faculty of Law, Lagos State University, Lagos, Nigeria; Solicitor and Advocate of the Supreme Court of Nigeria; Former Secretary-General, Nigerian Society of International Law. E-mail: rufus.olaoluwa@lasu.edu.ng.

[1]Nnabue U.S.F; *Law and Legal Process*, Bons International Book Centre, Abuja. Nigeria; David Walker: *The Oxford Companion to Law*: Clarendon Press, Oxford, 1980, p. 716

[2]David Walker, Ibid. Also see A Getmanova, M. Panov and V. Petrov: *Logic Made Simple Dictionary*, Progress Publishers, Moscow, 1990, P. 181.

[3]F. Adaramola: *Basic Jurisprudence* 1992, pp. 5-7. Also see L.B Curzon p Macdonald & Evans l983, p. 211

[4]O.A Sanni (ed.) *Introduction to Nigerian Legal Method*, Kuntel Publishing House, Ile-Ife, Nigeria 1999, p: 2-3. Also See David Walker, Ibid.

[5] Exodus 20 verses 3-17

ii) Law is not descriptive of happenings like the so-called laws of the natural sciences, but prescriptive of human conduct or normative. It is concerned not with the *Is* but with *ought*[6] i.e. with what a man should or must not do in particular circumstances and with what is to happen if he deviates beyond permitted limits of conduct. It is a principle of order, rule and measure of human acts and relations.

iii) Law has element of sanction or coercion enforced by the institutions of law enforcement like the Police Force, Tribunals, Law Courts, and Prisons *et cetera* when and where there is a breach of the law. Legal sanction is the main distinguishing factor between legal rules and moral, ethical or scientific rules which are always left to the vagaries of contending non-legal enforcement processes.

iv) Law has territorial application. Law is usually made to guide human conduct in a particular country and is binding on the persons and properties within that country. For instance, while the Land Use Act 1978 as amended regulate the land tenure system in Nigeria, the Criminal Code and the Criminal Procedure Act apply in Southern Nigeria and the penal code and the criminal procedure code apply in Northern Nigeria. But the universality of international law make it to apply to two or more countries equally despite the fact that there are marked objective differences depending on their respective needs in socio-economic, cultural, religious and other values. For instance, the Vienna Convention on Diplomatic relations[7] applies equally to all sovereign states. In this case, there is no territorial limitation as we have in municipal laws.

v) Law is not static but dynamic. Since law is meant to regulate the behaviour of man in society, the content of law of each society usually changes as the social-economic base and the political structure built on its changes.
Law as a legal concept cannot exist alone without being complemented by some other legal concepts like order, justice, freedom and sovereignty based on conformity or regularity with the law. This brings us to the topic of this paper which is 'law and legitimacy'. Legitimacy is a relative jural legal concept that cannot stand alone without law. For law to be legitimate, it has to conform to certain rules which are partly legal and partly political in nature.

3. Legitimacy

Legitimacy is a legal concept which is not susceptible to only one definition. Legitimacy has been defined as the status of a person born to parents who are lawfully married[8]. A child born to a married woman is presumed begotten by her husband and accordingly legitimate though the contrary may be proved[9]. The same presumption arises where the child is born within a possible period of gestation after the death of the husband or dissolution of the marriage. If the paternity of such a child is otherwise given to another person not being a biological father, it will fail the repugnancy test[10]. Repugnancy rule or test is the gauge through which customary law must pass before they can be enforced[11]. For all rules of customary la are subject to certain general rules (test) of validity before they can be enforced. Thus, section 24(1) of the magistrate's court law[12]. Laws of Lagos State direct magistrates to 'observe and enforce the observance of every customary law which is applicable and is not repugnant to natural justice, equity, and good conscience or incomparable either directly or by implication with any law for the time being in force'. The phrase 'Repugnancy to natural justice, equity and good conscience' is to be considered as a whole and having a single meaning. In *Laoye v. Oyetunde*[13], Lord Wright was of the opinion that the effect of the phrase was to invalidate customs which were '*Barbarous*'[14] but the courts have very sensibly refrained from going further and indulging in philosophical discussions on the matter. They have simply been content to state their conclusion on any particular rule whose validity is challenged on this ground, without attempting to give lengthy expositions of their reasons for that conclusion[15].
The application of this principle in practice has been illustrated by many Nigerian cases. In *Edet v. Essien*[16] the appellant had paid a dowry in respect of a woman when she was a child. Later the respondent paid dowry in respect of the same woman to her parents and took her as wife. The appellant claimed custody and paternity of

[6] F. Adaramola Op. Cit, p. 7
[7] Done at Vienna April 18, 196 1 and entered into force April 24, 1964.
[8] David Walker, Ibid, p. 756
[9] Ibid
[10]Olawale Ajai: Legitimacy, Paternity and Custody of Children Under Customary Law Re-examined *Rights of Women and Children in Divorce*, Olawale Ajai & Toyin Ipaye (Mrs.) (Ed Friedrich Ebert Foundation 1997, p. 85.
[11] Park: *The Sources of Nigerian Law*, London 1963.
[12]CAP. 127.
[13] (1994) A.C 170
[14](1944) AL 170; Park. The Sources of Nigerian Law, London: Sweet & Maxwell 1963, p 70-71,
[15]*Eshugbayi Eleko v. Officer Administering the Government of Nigeria* per Lord Atkin (1931) AC 662 at p. 673, Also see Obilade, *Nigerian Legal System*, Spectrum Publishers, 1979, p.
[16]Ibid.

the two children of the marriage on the grounds that under customary law, he was the husband of the woman since the dowry he paid had not been repaid to him. The court held that even if it was established, it was the opinion of the court that such a custom was repugnant to natural justice, equity and good conscience. In order words, the court said that that claim was not legitimate. In *Ejanor v Okenome*[17]. This action was brought for the return of the plaintiff's daughter then in the custody of the defendants. The plaintiff claimed that he married the defendant according to Ishan customary law but that when she was three months pregnancy, she deserted him to live with his father-in-law. The father-in-law testified that the defendant became pregnant in his house and not in the plaintiff's house, because she spent nine months in his house before becoming pregnant. But the father-in-law stated that according to Ishan customary law, the child belonged to the plaintiff because the marriage still subsisted. The court upheld the Ishan customary law by awarding custody and paternity of the child to the plaintiff. The defendant appealed on the ground that the trial court was wrong in law to grant paternity of the defendant's child to a complete stranger (i.e. the plaintiff). The appellant court dismissed the argument of the counsel for the defendant who relied on the old section 147 of the Evidence Act[18] that since there was evidence of non-access to the defendant by the plaintiff, he should not have been awarded the paternity of the child. In doing this, the court found support in section 115(3) of the Matrimonial Cases Decree[19] (i.e. the current section 148 of the Evidence Act[20]) which in his view lent support to the Ishan customary law. The appellant court also distinguished *Edet v Essien* on the ground that the suitor-claimant in that case was not married to the woman.
Finally, the appellant court held that the Ishan customary court was not repugnant to natural justice, equity and good conscience. The court concluded its ruling by saying that:

> the custom seems to say that A cannot spend his money to marry a wife and then B seduces her and g a child through her when the bride price paid by A has not been refunded and the marriage dissolved. I think there is justice in their reasoning and it is very useful in its practical application in the society and dismiss the appeal[21].

In the case of *Ogbole v Onah*[22] it was for the fact of non-access that the court refused to enforce the rule of Idoma native law and custom regarding the paternity that would have awarded paternity and custody of the child to the deceased husband of the woman, It has been stated by a legal expert that this evidence of non -access surely rebutted the presumption of legitimacy imposed by section 148 of the Evidence Act[23]. Apart from defining legitimacy as a status of a person born to parents who are lawfully married,[24]legitimacy according to its Latin origin means conforming to law or legality.[25] However, it has since acquired a more extended meaning which covers not only conformity with valid reasoning but also the possession of some extra quality of authenticity or genuineness. In the early period of a legal system, legitimacy may be based on charismatic qualities of particular rulers or judges. Later it may rest on the sanctity of immemorial tradition. Later still, this may be in terms of the impersonal rational authority of the law (the rule of law not men) accepted both by those who administer the political system and by the population[26]. Legality or the rule of law which developed with legislation is generated by the judicial form of social relations but immediately received a clearly expressed political colour[27]. As a purely legal factor guaranteeing the link between the rules of law and their embodiment in legal relations, legality is inherent in every normally functioning legal system in any social formation. The rule of law may therefore be of different types and each type serving the interests of certain ruling classes, an ultimately expresses the objective needs of the prevailing mode of production in legal order[28]. It is therefore part of the functions of law to prescribe the lawful and regular ways of exercising powers and functions of the state. For instance the constitution of the federal republic of Nigeria declared its supremacy and its binding force on all authorities and persons throughout the Federal Republic of Nigeria[29]. It further provides that[30] 'the Federal Republic of Nigeria shall not be governed nor shall any person or group of persons take control of the government of Nigeria or any part thereof except in accordance with the provisions of the constitution'. It

[17] (1976) U.I.L.R pt. 3 at p. 380
[18] Cap 62 Laws of the Federation and Lagos 1958
[19] No. 18 of 1970
[20] Cap 112 Laws of the Federation 1990
[21](1932) II NLR 47
[22] (1990) INWLR (pt. 126) 357 at 367
[23]Olawale Ajai: Legitimacy, Paternity and Custody of Children Under Customary Law Re-examined //*Rights of Women and Children in Divorce*, Edited by Olawale Ajai & Toyin Ipaye (Mrs.) Friedrich Ebert Foundation 1997, p. 89
[24] See Citation 9
[25] Farrar and Dugdale: Introduction to Legal Method, London (Sweet & Maxwell) 1999, p. 11.
[26] Ibid
[27] L.S Jawitsch: The General Theory of Law Progress Publishers, Moscow, 1981, P. 240
[28] Ibid
[29] Constitution of the Federal Republic of Nigeria 1999, S.1 (1)
[30] Ibid., S.1(2)

further still provided that[31] 'if any other law is inconsistent with the provision of this constitution, this constitution shall prevail and that other law shall to the extent of the inconsistency be void' (i.e. that other law shall not be a legitimate one)[32]. The above provisions clearly show that the constitution is the most supreme of all the sources of Nigerian law. Accordingly, all other laws whether by way of common law, doctrines of equity, imperial statutes, acts of the National Assembly, laws of States Houses of Assembly as well as edicts of state governments and bye-laws of local government councils must all be in conformity with the provisions of the constitution in order to be valid and legitimate. In the case of *Adediran v Interland Transport Ltd*[33] the court was faced with a resolution of a conflict between a rule of common law and the specific provisions of S.6(6) of the 1979 constitution.

Under the common law rule of public nuisance, a plaintiff could only institute an action through or with the consent of the Attorney-General of a state or of the federation, whereas S.6 (6) of the constitution gives unlimited access to court to every Nigerian for the determination of his civil rights. The Supreme Court had no difficulty in holding that the common law requirement to public nuisance conflicted with the right of access to court enshrined in the constitution. Accordingly, the court held that the common law rule was null and void for reasons of being inconsistent with the constitution. In the popular case of *Williams v Majekodunmi*[34] the appellant's movement had been restricted or curtailed by the respondent to a 3 miles radius in an area of Abeokuta. The curtailment was done through an order. The appellant argued that the restriction order violated the provision of the 1960 constitution dealing with personal liberty and freedom of movement. The court found that the order for restriction was unjustifiable. Consequently, the court nullified the order because of inconsistency with the right guaranteed under the constitution. Furthermore, in the case of the *Military Governor of Ondo State v Adewunmi*[35] the respondent had sued the Military Governor of Ondo State challenging the validity of the election to the stool of the Ewi of Ado-Ekiti. During the pendency of the case, the Governor promulgated an Edict No. 11 of 1984 which ousted the jurisdiction of the court. Adewunmi challenged the Edict as illegal, unconstitutional, null and void. The court granted the respondent the relief sought and the Governor appealed against the decision and the appeal was dismissed. In dismissing the appeal the court per JSC ESO reasoned that 'in a federation like ours where in the constitution, the powers of such organ i.e. the executive, legislative and judiciary have been so expressly stated, recourse could only be made to preserve the federation by an observance of the provisions of the constitution'.

Under the military regimes, the issue of supremacy of the constitution (the unsuspended part) over decrees and vice versa was highly contested through the Nigeria courts. One of the most contentions of these cases is the case of *Lakanmi v. Attorney General of Western Region*[36]. In that case the court was faced with how to reconcile provisions of the constitutions with the provisions of the forfeiture of assets of public officers' validation decree No. 45 of 1968. The appellants were among other persons whose assets were investigated by a tribunal of enquiry set up under an edict by the western regional government. Some provisions of the edict and the orders made, by the presiding judge were in conflict with the unsuspended part of the 1963 constitution. The appellant challenged the provisions of the edict on the ground of inconsistency on the orders made there under. The appellant's claim was dismissed by the high court and the western state court of appeal. The appellant therefore appealed to the Supreme Court. In the interim, the Federal Military Government passed the following decrees: a) Investigation of Assets of Public Officers and Other Persons Decree No 37 of 1968; b) Investigation of Assets of Public Officers and Other Persons Amendment Decree No. 43 of 1968, and; c) Forfeiture of Assets of Public Officers' Validation Decree No. 45 of 1968. The decrees were without any doubt specifically directed against the appellants and their pending appeal. The decrees also aimed at rescuing the western regional government from its manifestly inconsistent edicts. Decree No. 45 for example validated all orders made pursuant to any enactment. The decree also removed the jurisdiction of the court from questioning the validity of any decree or anything done under any decree. Furthermore, the decree also excluded the application of fundamental rights provision in the constitution. Finally, the decree terminated all actions and- appeals pending in various courts.

At the hearing of the appeal, the appellant argued before the Supreme Court that decree No. 45 of 1968 was inconsistent with the principles of separation of powers enshrined in the constitution. The appellant further argued that the decree amounted to a legislative judgment. He also argued that it was an unnecessary executive incursion into the domain reserved for the judiciary. In response the respondent argued that there was nothing in the 1963 constitution which was capable of rendering a decree void for reason of inconsistency with that

[31]Ibid S.1 (3)
[32] Emphasis Mine
[33] (1991) 9NWLR (pt. 214) p. 155
[34] (1962)1 AII NLR, p. 413
[35] (1988) 3 NWLR (pt. 82) p. 280
[36] (1971) UNIFE L.R, p. 201 and (1974) ESCLR, p. 713

constitution. It was further argued by the respondents that the military government came into power in violation of the constitution. Accordingly, it was a revolutionary regime (although without- revolutionary agenda) which was not bound by the provisions of the constitution. The Supreme Court held that decree No. 45 of 1968 was a legislative judgment and therefore null and void. The Supreme Court further reasoned in its decision that the federal military government was not a revolutionary government but was an interim military government necessitated by the events of January 15, 1966 when the civilian government had invited the military to take over government and restore normalcy in the federation and thereafter return power to the civilians. On the issue of whether a change of government as a result of a successful coup d'état is a revolution or not, the Pakistani Supreme Court had this to say in the case of *State v Dosso*[37]. The court said that 'a change is in law a revolution if it annuls the constitution and the annulment is effective. If the attempt to break the con fails, those who sponsor or organise it are judged by the existing constitution as guilty of the crime of treason but if the revolution is victorious in the sense that the person assuming power under the change can successfully require the inhabitants of the country to conform to the new regime, then the revolution itself becomes a law creating fact because thereafter, its own legality is judged not by reference to the annulled constitution but by reference to its own success'. The Supreme Court's decision in the *Lakanmi's* case[38] clearly challenged the legitimacy of the federal military government and it was also an affront to its law making powers. Not surprisingly therefore, the federal military government quickly reacted by promulgating a decree which effectively abrogated the negative impact of the court's decision[39].

4. Legitimacy of *Coup d'Etat*

Coup d'état is a change of government by means not recognized by the current legal order. There are always laid down procedures in every State showing the term of a government and when it will expire and acceptable procedure on how to fill that vacuum. It is usually provided for by the Constitution and the procedure is usually by general election. **C**oup d'état will always occur where the set rules have become rigid to the extent that the suffering and inequality in such a State have reached unbearable level and the set mode by which there can be a change of a government cannot help to make such a change. That is why a coup d'état usually comes abruptly and by top secret and if it succeeds, it becomes the new government but if it fails the perpetrators become criminals who have committed treasonable felony which in most cases is punishable with death sentence.

According to Elias[40], customary international law recognises a coup d'état as a proper and effective legal means of changing a government provided that certain basic requirements are fulfilled. These, according to him, are:

a) there must have been an abrupt political change, i.e. a coup d'état or a revolution. It does not matter whether the change has been effected by a military junta or a civilian or group of civilians, subverting the existing legal order with or without the aid of the military. There can be a coup without the use of armed force.

b) the change must not have been within the contemplation of an existing constitution. If it were, then the change would be merely evolutionary i.e. constitutional; it would not have been revolutionary.

c) the change must destroy the entire legal order except what is preserved. In order for the coup d'état to be complete, the new regime need not have abrogated the entire existing constitution. It is sufficient that what remains of it has been permitted by the revolutionary regime; and

d) the new constitution and government must be effective. There must not be a concurrent rival regime or authority functioning within or in respect of the same territory.

It would seem that, in connection with the first requirement, the abrupt change in government must have taken place in a political independent sovereign state[41]. On the last requirement, the issue is not one of legitimacy of the authority assumed by the leaders of the coup, but of the efficacy of the new government under the new constitution. In Nigeria, military regimes did not only attempt to hijack legitimacy from the constitution but tried to assert that decrees are indeed higher than the constitution by claiming supremacy of the decrees over the constitution. This position was supported in the case of *Labiyi v Anretiola*[42] where the court held that decrees of the federal military government are superior to the unsuspended sections of the constitution. The court went further to say that it does not matter that those decrees are now called Acts, they are still the enactments of the federal military government and had been enacted to supersede the provisions of the 1979 constitution. The same spirit and position was pronounced by the court in the case of *Commissioner of Local Government v Ezemonkwe*[43]. The military regimes and their decrees cannot be legitimate as it used force with legal arm-

[37](1958) 2 Pakistan Supreme Court Reports, p. 180

[38](1971) UNIFE L.R, p. 201 and (1974) ECSLR, p. 713

[39]See The Federal Government Supremacy and Enforcement Decree No. 28 of 1970. The Decree made it clear that the event of January 1966 was a Revolution

[40] T.O Elias: *Africa and the Development of International Law*, Martinus Nijhoff Publishers 1988, p. 106-117.

[41] This is the *raison d'etre* of the Madzimbarnuto's case 1938 WLR 1129

[42] (1992) 8 NWLR (pt. 258), p. 139

[43](1991) 3 NWLR (pt. l91) p. 615 at 640

twisting mechanism to subjugate the people to obedience. To placate its face, military regimes usually derive their lifeline from a promise that the civilian legitimate regime will soon be restored. The restoration of democracy is usually wrapped in a programme that is destined to fail *ab initio* by the very people putting forth the programme. A legitimate law is one which is made with the peoples' will and acceptance as such law must have taken into account the peoples' custom, history, values and economic development potentials. According to Savigny, the German legal philosopher, a legal system of necessity develops in response to the people's national spirit which he called '*Volkgeist'* which is a unique, ultimate and often mystical reality and is inseparably linked to the biological trait of a people[44]. Savigny is of the view that law is born with the nation or state, grows and matures with it and automatically dies with the state or nation[45]. Although the current Nigerian constitution of 1999 is still fraught with a lot of incompleteness, incorrect approach or total silence on some vital national issues, it is in the interim, the *ground norm* of the Nigeria legal corpus. It now depends on Nigerians and its government to agree to have a national discuss in a national conference to address all the issues affecting the well-being and socio-economic development of Nigeria. B so doing, the constitution will be blessed with full legitimacy and all the problems militating against the constitution, unity, peace, progress and national development will be permanently solved in Nigeria.

5. The *Coup d'Etat* in Niger Republic

In the case of recent change of government as a result of coup d'état in Niger Republic, the argument is not whether the coup d'état in that land locked country is successful, a complete revolution or lacked any capacity to carry on as a new regime, the argument here is that the change of government by way of coup d'état is not democratic, not fashionable and no more acceptable especially in Africa and particularly in West Africa [Economic Community of West African States (ECOWAS)], African Union (AU), the United Nations Organisation (UNO) with the particular backing of France and United States of America (USA) have all risen up in defence of and restoration of the ousted regime. It is on record that on 26 July 2023, a coup d'état occurred in the Republic of Niger when the country's presidential guards detained President Mohamed Bazoum and presidential guards commander General Abdourahamane Tchiani proclaimed himself the leader of a new military junta shortly after confirming the coup a success[46]. This was the fifth military coup d'état since the country gained independence from France in 1960, and the first since 2010[47] The coup was widely condemned by the United States and the country's former colonial master France, and by the West African regional bloc ECOWAS, the latter of which threatened military intervention against the junta.

All the conditions enumerated by Elias[48] and the decision of the Pakistani Supreme Court in the case of *State v Dosso*[49]were all fulfilled in and by that *coup d'état* in Niger Republic. ECOWAS has adopted different sanctions against Niger Republic and AU has suspended Niger Republic as a member of the African Union.[50] Nigeria has taken the effort and campaign for restoration of the deposed regime as a victim of the *coup d'état* in Niger Republic and has closed all borders between Niger Republic and Nigeria, severed all relations with Niger Republic and has switched off electric power supply to Niger Republic. It has tried in conjunction with ECOWAS other member States to use military force to restore democracy in Niger Republic but public opinion in Nigeria is opposed to the use of military force. The general opinion in Nigeria is that it should adopt diplomatic approach in its efforts to achieve restoration of democracy in Niger Republic. This public opinion was fully backed up by the Nigerian Upper Legislative House (The Senate) by refusing to approve the request of the government of Nigeria to approve its request to deploy the Nigerian Military for the use of force in a foreign country. It should be noted that there is no unanimity in the military approach being proposed by ECOWAS as Mali Republic and the Republic of Burkina Faso that are members of ECOWAS and equally sharing borders with Niger Republic are openly supporting the new Military government and getting ready to defend the new regime in Niger Republic should ECOWAS decide to use force by using the joint military force of the Countries supporting the action of ECOWAS. The situation immediately after the 24th of July 2023 when the coup d'état took place in Niger Republic, the threat of ECOWAS to use force to flush out those who carried out the coup d'état attracted international interests. While the ECOWAS, AU, France and USA were condemning the coup and demanding for unconditional restoration of the democratic regime and for the release of the deposed President who was put under house arrest at the Presidential Palace on one side, Burkina Faso, Mali, Egypt and Algiers supported by Russia and the notorious Wagner group of mercenaries were on the other side supporting the coup leaders. It should be noted that the countries of Mali and Burkina Faso were still living in the euphoria

[44]Adaramola, *Basic Jurisprudence*, 1992, p. 242
[45]Ibid
[46]Available at https://en.wikipedia.org/wiki/2023_Nigerien_coup_d%27%C3%A9tat_note-12 Accessed on 24th August 2023
[47]ibid
[48] See note 40.
[49] See note 37
[50] Channels Television broadcast on 23rd August 2023 at 12mid night News.

of their own successful coup d'états not long ago which were tagged 'Revolution against France'. It was exactly the same approach that was adopted in Niger Republic. The slogan among the people in support of the coup is 'to hell with France'. The coup leaders were seen as deliverers from the neocolonialism of France. The efforts of ECOWAS, AU, UN, USA and France were seen as conspiracy to take Niger Republic and its people back to slavery of France after they have chosen their own part to new national life.

Niger Republic is the third most endowed country in Uranium in the world and France is the beneficiary of the national resource. The military coup in Niger has raised concerns about uranium mining in the country by the French group Orano, and the consequences for France's energy independence[51]. In France, fears are particularly focused on the exploitation of uranium from Niger, and the possible consequences of this energy independence. A natural resource essential to the operation of French nuclear power plants, uranium mined in Niger has been exploited for over four decades by the French nuclear fuel cycle group Orano (formerly Areva). The multinational, which is 90%, owned by the French state, operates three mines in Niger, only one of which is currently in production:

i. The ***Aïr mines***, whose operating company Somair is 63.4% owned by Orano, are based near the town of Arlit, in the desert to the north of Niger. Although the mine is nearing depletion, its operation has been extended until 2040.
ii. The ***Akokan mining site***, around ten kilometers from Arlit, has been closed since the end of March 2021. With reserves exhausted after four decades of mining, Compagnie minière d'Akouta, 59%-owned by Orano, is now working on a project to redevelop its sites.
iii. Finally, Orano holds a 63.52% stake in ***the Imouraren mine***, located 80 kilometers south of Arlit, which is considered to be one of the world's largest uranium deposits. However, after an operating permit was issued in 2009, production at the site was suspended due to a lack of favorable market conditions.[52]

For the time being, Orano has announced that it will continue its mining activities, despite the putsch in Niger. 'To date, activities at the operational sites in Arlit and at the headquarters in Niamey are continuing with an adapted organization in the context of the curfew in place throughout Niger,' the group announced on its website on Thursday, August 3[53]. Over the last ten years, the 88,200 tonnes of natural uranium imported into France came mainly from three countries: Kazakhstan (27%), Niger (20%), and Uzbekistan (19%)[54]. These are the challenges and the hurdles ECOWAS and AU will have to resolve in its negotiation with the new military leaders in the saddle now in Niger Republic. The ECOMOG (Economic Community of West African States Monitoring Group) under the leadership of Nigerian strong man General Sanni Abacha has a record of restoration of a democratic regime when President Ahmed Tejan Kabbah who was democratically elected as President in March 1996 in the first multi-party elections for nearly three decades in Sierra Leone, was overthrown by a group of soldiers from the Sierra Leone Army on the 25th May 1997 lead by Major Jonny Paul Koroma and formed the Armed Forces Revolutionary council[55]. The ECOMOG made a successful effort which led to the restoration of democratic regime then in Sierra Leone. The leader of the coup and head of the newly formed AFRC, Johnny Paul Koroma, had been among nine soldiers charged with attempting to overthrow the government in September 1996. The armed forces were joined by the rebel Revolutionary United Front (RUF) and formed what became known as the People's Army. In effect, AFRC soldiers (formerly SLA soldiers) and rebel RUF soldiers jointly ruled Sierra Leone until February 1998 when ECOMOG (Economic Community of West African States Monitoring Group) troops stormed Freetown and returned President Kabbah to power. The RUF and AFRC, including members of the SLA, retreated to the country side[56]. The nine months of AFRC/RUF rule of Sierra Leone, from 25 May 1997 to 13 February 1998, was characterized by serious human rights violations, human rights abuses and a complete breakdown of the rule of law. Immediately after the 1997 coup, Nigerian ECOMOG forces already present in Sierra Leone were significantly reinforced by additional troops from Nigeria, Guinea and Ghana. On 13 February 1998, ECOMOG forces ousted the AFRC/RUF junta[57]. On 19 October 1998, twenty-four (24) army officers were executed by firing squad after having been convicted of participation in the 1997 coup d'état. Ten (10) officers convicted of the same charges had their sentences

[51]Available at https://www.lemonde.fr/en/les-decodeurs/article/2023/08/04/how-dependent-is-france-on-niger-s-uranium_6080772_8.html Accessed on 24th August 2023.
[52]Assma Maad, available at file://c:/en/signitaures/assma-maad. Accessed on 24th August 2023
[53] Ibid.
[54] Ibid.
[55] See JSTOR, Available at https://www.jstor.or>stable. Also https://www.blackpast Accessed on 24th August 2023.
[56]UK, Apr. 2000, 5; HRW, July 1998, 4; UN OCHA-IRIN, 29 Dec. 2000. Available at https://www.refworld.org/docid/3df0dba62.html accessed 24th August 2023.
[57] Ibid.

commuted to life in prison[58]. But the situation and the circumstances prevalent in ECOWAS and Sierra Leone then are not the ones prevailing in ECOAWS and Niger Republic today, these situations have changed and not the same. General Sanni Abacha then had no problem of Senate Permission. Public opinion was not strong then as it is now in Nigeria being a country under a Military regime then and there were no countries supporting the coup leaders in Sierra Leone then. It is our hope that the problems in Niger Republic will be resolved quickly as the people of Nigeria and Niger Republic not to talk about other nations are feeling the economic heat badly. Exchange of goods and services has been put on hold and issue of refugees is already being felt in Nigeria amongst other issues. The issue of legitimacy has moved from being an internal issue in Niger Republic to that of International problems to tackle. It thus means that the issue of legitimacy has taken another dimension. International Law and International politics will have to be consulted to decide the issue of legitimacy.

6. Conclusion

Law and legitimacy may not be able to exist one without the other. This is because Law will always provide for the general rule and strict compliance with it will always guarantee legitimacy. But there can be other rout by way of revolution if it will be effective and can be able to change the whole legal other without any encumbrance. The situation in Niger republic seems to have met all the requirements of a successful revolution but external forces looking at the situation are denying the new regime legitimacy. It seems that a new theory has arisen which has provided for two hurdles instead of one to overcome. The first one is that a new regime must satisfy internal legitimacy and the second is that it must also satisfy other nations for its legitimacy to be tangible and accepted. Therefore, for Law and Legitimacy to shake hands there must be a successful revolution within the internal legal order and this must be recognized and supported by other Sates and major international institutions.

[58] The executions were condemned by Amnesty International, Human Rights Watch, the British government, the European Union (EU) and the then UN Secretary-General Kofi Annan (AFP, 23 Oct. 1998; AFP, 20 Oct. 1998; AI, 20 Oct. 1998; Roy-Macaulay, 19 Oct. 1998; HRW, 19 Oct. 1998). Ibid.