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## The ECOWAS State: Principal-Agent Theory and De Facto Governments in a Time of Democratic Crisis

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### **Abstract**

In a time when democracy is under attack through a proliferation of military regimes, it is essential to resolve the legal problem of representation between the ECOWAS state as a legal entity and de facto regimes who acquire the capacity to act on behalf of the state. Using the principal-agent theory and case studies, this article will attempt to resolve problems with representation of a state by a de facto government. It will argue that de facto governments should not be seen as authentic agents of the state and cannot act on its behalf, especially in the context of multilateralism. This is because the sovereignty costs incurred under a multilateral obligation such as The ECOWAS Protocol on Democracy and Good Governance allow for state accountability towards democratic governance. The article concluded that there are great implications for the state as a legal entity when a de facto government is in power, however, that popular support of such a government can ratify its lack of legitimacy.

**Keywords:** *de facto government, democracy, ECOWAS, principal-agent theory*

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## Introduction

Essen defines a de facto government as an entity that holds actual control over an entire state's territory but lacks recognition as the official government by the international community. In contrast, a de facto regime may not exercise control over the entire state's territory; its influence can be less extensive. The level of control of a de facto regime can vary, ranging from partial control over parts of the state to complete dominance over the entire territory, at which point it can also be designated as a de facto government. The key distinguishing factor lies in the extent of effective control over the state's territory (Essen, 2012). Essen's definition raises concerns about de facto governments, such as their lack of recognition as an official government. However, de facto governments have often acted on behalf of the states they control and their actions have implications that are extensive for the state. For the purpose of this study, a de facto government will be a government that have either unconstitutionally attained the control of the state or has usurped illegally, the mandate of administration of a state. What prior studies failed to take into cognizance, is the legitimacy of the government in a state especially in the context of ECOWAS, seeing that the government is required to achieve legitimacy through the voluntarily donated will of the people thereby creating a situation akin to the doctrine of agency where the government is the agent of the people.

This study will examine the question of legitimacy of government and its impact on the state, especially in the context of the ECOWAS, and how legitimacy can be acquired by a government that was erstwhile illegitimate. As one useful methodological framework to explain how governmental legitimacy affects states, the principal-agent theory describes the relation between those who govern (agents) and those who are governed (principal). In this framework, citizens are seen to be the principals who delegate authority to government officials (agents) to act on their behalf, normally through various democratic processes (elections). The government's legitimacy derives from its ability to meet expectations and interests of its principals and its actions to convey confidence in its capability are the aspirations of governance.

We argue that the absence of "agency" between the de facto government and the people thereby robs the government of legitimacy and further denies it of the power to act on behalf of the people and bind the people by any of its illegitimate acts. However, we further argue that despite the status of illegitimacy, a de facto government can earn legitimacy by popular support. The first part of the study will consider the crisis of democracy in African states, with a focus on West Africa, and the causes of this

crisis, especially since democracy is the most standard for governmental legitimacy. The second part of the study will engage the issue of de facto governments in Africa, since there is a decline of democracy to the benefit of de facto governments. The third part of the study will consider how de facto governments in West Africa deal with sovereignty costs, especially in the democratic order imposed by the multilateral platform of ECOWAS. The fourth part of the study will examine how the agency of the state is determined by governmental legitimacy, to assess the impact of de facto governments using the theory of the Principal-Agent Dynamics. Finally, the impact of de facto governments on the West African state will be examined, and it will be concluded that governmental legitimacy in West Africa can be resolved through popular support.

## **1. Governmental Legitimacy, Democracy, and Ecowas**

In international law, a capable government has always been one of the prerequisites for statehood (McCorquodale, 2020). In fact, the distinction of capability of such government needed for complete statehood is legitimacy. Only a legitimate government can be capable in the navigation of the complexity of statehood. This governmental consideration that international law provides for statehood shows the interaction between the legality of the state and legitimacy in government. From the establishment of the United Nations (UN) on the 24th of October, 1945, international law has a preference for democracy as a system of government that allows for an objective assessment of legitimacy through elections as its mechanism of vertical accountability (Democracy Reporting International & the Carter Center, 2021). The UN has often promoted democracy and championed its cause in Africa, even as the region fought free its agency from the shackles of colonialism. This is because for the UN, democracy is a core value and a guarantee for the protection of human rights, peace and security. There have also been scholarly claims that democracy makes diplomacy easier (Newman & Rich, 2004). Furthermore, democracy has often been discussed with human rights with the suggestion that democracy offers human rights a political ecosystem to thrive.

With the collaboration of the West, despotism was contended in Africa, and the strongmen that emerged with the independence of African states were pressured to allow the political transition of their states towards democratic governance. This pressure for democratization of African states saw a frenzy of governmental transition towards democracy in the 1990s (Taylor, 2018). However, Cowan has noted that the prescriptions of

Western democracy, which was expected to be administered to African governance after colonialism does not always correspond to the needs of the African state (Cowan, 1960). This might explain the epidemic of failure in governance across Africa since the transition to democracy. Furthermore, there is the consistent judgment of governmental legitimacy through democratic standards in Africa by the West, and this has necessitated the need for this study on governmental legitimacy and its manifestations. In West Africa, just like other parts of Africa, democracy had been on the rise from the early 2000s. With Ghana being the model for a West African democracy (Ochefu, 2007). Whilst in the West, the idea that democracy confers legitimacy on governments helps set the standard for legitimacy and create a framework through which international relations is navigated. With the UN's preference for democracy, even though the UN Charter does not mention democracy. The UN's inclination towards democracy is amplified by the argument that the "We the people," of the preamble in the UN Charter reflects democratic principles and suggests that the general will of the people imply democratic acceptance (United Nations Information Service Vienna, 2008). However, the argument presented as it is, fails to acknowledge that a popular government does not necessarily have to be a democratically elected one.

The ECOWAS Protocol on Democracy and Good Governance has demonstrated that the multilateral platform of ECOWAS aligns with the UN position on democracy as far back as its adoption in 2001. And perhaps was responsible for the single-minded approach with which ECOWAS sought to protect governmental legitimacy and security in the sub-region. However, democracy has not always been a core focus for West African bloc ECOWAS since it was founded in 1975. The organization was first formed to foster economic integration among its member states. However, ECOWAS later broadened its mandate to include support of governance and democracy particularly in the wake of major political events in the region. The 1993 revised ECOWAS treaty and 2001 Supplementary Protocol on Democracy and Good Governance deepened this focus on democracy. These frameworks represented a turning point, codifying such values and principles as the separation of powers, rule of law and electoral integrity into the organization's agenda. ECOWAS also implemented a policy of "zero tolerance" toward unconstitutional changes of power, indicating it was serious about democratic governance over the region. Yet, ECOWAS has struggled to maintain its commitment to democratic values. There have been several military coups and political crises in the area, and it has worsened in the last few decades. Democratic reversals have taken hold in countries such as Mali, Guinea, Burkina Faso and Niger, where military

juntas have pointed to problems like corruption and insecurity to justify their actions. ECOWAS has imposed sanctions and led mediation efforts to reinstate constitutional order, but these have had mixed success in deterring coups or forcefully restoring constitutional order.

Because democracy has been the most preferred form of government in international law, it has become easy to create a distinction between legitimate governments and *de facto* governments. In theory, a *de facto* government gains or retains power through methods not outlined in the country's constitution, such as a *coup d'état*, revolution, usurpation, or the abrogation or suspension of the constitution (World Bank Group, 2025). However, a government with a *de facto* status might not always be illegitimate. This is because popular support is something that can legitimise a government. In navigating governmental legitimacy, it is necessary to examine the connection between a state and its government, and how governmental legitimacy affects the agency of the state.

It is reasonable to presume that for the sake of vicarious liability, there should be a congruence in the principal agent-relationship between the state and its government, such that expectations between the state and its government are well-balanced. But in the imperfections of the political realities of the African states, it most often happens that governments fall short of the expectations of their people and become quickly unpopular, but this does not wane their legal capacities until they are sanctioned through horizontal accountability mechanisms like parliaments or the vertical accountability mechanism of elections. Posner and Sykes argue that the principles guiding state responsibility is similar to the idea of vicarious liability found in domestic legal systems (Posner & Sykes, 2007). This is because just as in vicarious liability where a party can be responsible for another's actions, state responsibility involves a third party's commitment to the interest of the represented (Posner & Sykes, 2007). Following this, a legitimate government has legal capacity to execute the general interest of its people while a *de facto* government is unmandated to do so. In the consideration of *de facto* governments under international law, Frowein argues that the position of state practice, especially as regards the United Nations, is that relations with *de facto* states are not outrightly avoided, but they are approached with caution and are below the standard legal engagement (Frowein, 1987). This might be because the risk of non-compliance by such *de facto* governments with international law norms is very high (Frowein, 1987).

Fukuyama has expressed that *de facto* governments are often seen as illegitimate because they lack popular support and not because of their mode of emergence. He went further to use effectiveness and commitment to human

rights as a yardstick for legitimacy (Fukuyama, 2014). However, illegitimacy occurs not only because of a lack of popular acceptance, but also as a result of its extra-legal nature. Levitsky and Ziblatt in their more pragmatic view asserted that de facto governments are a significant danger to democracy because they are regimes that hold effective control over a territory but fail to adhere to the fundamental principles of democracy (Levitsky & Ziblatt, 2019). The risk to democracy is further presented because of the tendency to circumvent democratic institutions. Mounk (2018) while attempting to deconstruct the concept of de facto governments and the issue of legitimacy argued that they are a sign of a more fundamental problem with democracy. He argued that people are losing faith in democratic institutions. He further expressed that there should be ways to restore public trust in these institutions if democracy would be saved (Mounk, 2018). Mounk's position is especially a reflection of the political despondency in Africa, and in West Africa where coups have made a rebound on the political landscape.

On the other hand, Giorgio Agamben classified de facto governments as a form of state of exception where the law is suspended and the government is not bound by the usual rules (Agamben, 2005). This was usually the case with military governments in Africa who would rule outside the limits of the law, engaging state bureaucracy through the mechanisms of decrees and martial declarations. Schmitt erroneously attributed legitimacy to de facto governments as long as they are successful at maintaining order and stability without any consideration accorded other factors (Schmitt, 2003). This resonates with a functionalist description of government that negates systematic processes needed to define the institutional essence of government. Schmitt's position further undermines the point of legitimacy, such that if it were a mere question of functional essence, then a repressive approach, no matter how brutish, will qualify as legal in as much as it achieves public order.

## **2. Democratic Crisis in African States**

### **Definition and Nature**

A considerable number of scholarly works inquiring into the subject of democratic governance in Africa agree that the concept of democracy originated in ancient Greece as the philosophy of popular sovereignty in Greek city-states (Ibrahim & Cheri, 2013; Glassman, 2017; Rascao, 2023). However, the foregoing cannot be said about what democracy means, as scholars have divergent views on its definition. As a working definition, therefore, this study adopts the definition of democracy as 'a government

in which the supreme power is vested in the people and exercised by them directly or indirectly through a system of representation usually involving periodically held free elections (Abur, 2018).’ With this in mind, defining democratic crises appears unproblematic. The term ‘democratic crisis in African states’ connotes the idea that (a) the practice of vesting of power in the people, (b) the practice of exercising this power by the people, and (c) the means by which the people exercise this power, i.e., through a system of representation usually involving periodically held free elections in African states are all going through a time of intense difficulty or danger.

## **2.1. Primary Cause of Democratic Crisis**

Although some variants of democracy existed in Africa before the emergence of European invasion and colonialism, it was not until 1957 that Ghana declared independence from Britain and became the first country to attain modern-day democratic self-government on the continent of Africa. Ever since then, democratic governance has become the norm in the majority of African states. Regrettably, despite the progress made in terms of bringing imperial rule to an end and entrenching electoral democracy in Africa, the continent has since been embroiled in all kinds of democratic crises known in today’s world. There are many causes of these crises; One is a political system that contradicts with the political aspirations of a state, as it is evident in Nigeria today, where the federalism being practiced does not justify its purpose of allowing for autonomous governance at the grassroots (Lalude, 2020). Another issue which Udombana (2024) has identified is that, despite that many African states, have constitutions, they rarely practice constitutionalism (Udombana, 2024).

However, by virtue of hindsight of historical developments, it has become evident that the major obstacle to democracy in Africa is the political rulers’ penchant for centralization and personalization of power (Kpundeh, 1992). This habit of personalizing of political power has led to dictatorship, lack of transparency and accountability by the rulers, all kinds of social and economic injustices, and inequality, and in many instances personalization of power by the political rulers have led to political instability and extremely bitter civil wars along ethnic and religious line. In Africa, public institutions are largely fragile because the rulers deliberately made it so to achieve their aim of being powerful to the extent of literally being above the law (Cassidi Beck, 2020). Unfortunately, accountability mechanism like international law is failing to apprehend these trend (Lalude, 2021).

Also, Africa plays host to a number of de facto governments. These unconstitutional governments have been a major impediment to the



promotion of democracy and human rights across the continent (Slavov, 2013). These regimes are characterised by leaders who come into power through unconstitutional means or maintain their grip on power through undemocratic practices, effectively undermining the rule of law. As a result, citizens in many African countries are denied their fundamental rights to free and fair elections, freedom of speech, and access to justice. In addition, corruption is often rampant under these regimes, with those in power using their positions for personal gain at the expense of the people they are supposed to serve. They perpetuate a culture of impunity that undermines accountability, transparency, and good governance, which in turn have far-reaching consequences for the social, economic, and political development of African countries.

## **2.2. Other Causes**

The other causes of democratic crises in Africa include factors such as economic inequality, political polarization, corruption, and a lack of trust in institutions. In many states in Africa, there is a large wealth gap between different groups in society, and this often leads to tensions and resentment that undermine support for democratic values. Similarly, most of the politicians are highly divided along partisan lines and unwilling to work together on common goals; this also make it difficult for governments to function effectively. Corruption also erodes public trust in government institutions and further undermine democracy. It is therefore imperative that policies aimed at reducing economic inequality or promoting cross-party cooperation should be put in place to help strengthen democracies in Africa (Gyimah-Boadi, 2021).

## **3. De Facto Governments in Africa**

In a general sense, a de facto government refers to a government that comes to power or remains in power by means other than the ones provided for in the constitution of the country affected. Such means by which de facto governments usually launch themselves to power, more often than not, include coup d' etat, revolution, insurrection, abrogation, or suspension of the constitution. In 1952, the first coup d' etat took place on the continent of Africa when King Faruq of Egypt was deposed by the Free Officers Movement (Selma, 1986). Ever since then, Africa has continued to experience a series of insurrections, military revolts, and civil wars that have, time and time again, instigated unconstitutional change in the governments of a majority of African states. In contemporary times, there has been a resurgence of

military coups sweeping across Africa. For instance, on the 30th of August 2023, the central African nation of Gabon became the sixth African country to experience a military coup in the past three years, following coups in Niger, Burkina Faso, Sudan, Chad, Guinea and Mali.

### **3.1. Obligations of De Facto Governments**

Clearly enough, international law places these de facto governments (DFGs) in an indeterminate position. However, the same international law does, in different forms, vest legal rights and obligations upon them. This is more because the actions of these DFGs have enormous and far-reaching social, economic, political, and human rights implications for the people within their territories and the international community at large. To start with, the rules of international humanitarian law, particularly Common Article 3 of the Geneva Convention, which preeminently governs internal armed conflicts, impose certain obligations on the DFGs. This article dictates that during armed conflict, combatants are obligated to make a distinction between those who take an active part in hostilities and those who do not. Accordingly, civilians who are not taking part in hostilities are protected against any form of deliberate targeting and acts that constitute grave violations of human dignity.

As with international humanitarian law, certain provisions of international criminal law (ICL) also impose obligations on DFGs. For instance, by virtue of Article 5 of the Rome Statute, all individuals of sovereign states, as well as those who are part of DFGs, are prohibited from committing genocide or war crimes. The unique attribute of ICL is that it primarily applies to individuals. Thus, with regard to the issue of criminal responsibility under ICL, the questions around the international legal personality of DFGs do not matter. Where war crimes, genocide, and crimes against humanity are committed, these crimes will be prosecuted at the individual level, and as such, all individuals involved would be criminally responsible regardless of whether or not the state is recognised. During the 2011 post-election violence in Cote d'Ivoire, the combatants loyal to Quattara during their campaign against the seated government of Former President Gbagbo were prohibited from, among other things, taking hostages or torturing as these actions would contravene the provisions of the Rome Statute (Rome Statute of the International Criminal Court, 1998).

Another crucial means available for determining the legal rights and obligations of DFGs is the doctrine of "continuity of states." The doctrine establishes that once a state comes into being as a member of the society of nations, except in case it ceases to be a state, the existence and the legal

rights and duties of such states remain continuous and unbroken even in times of internal political and governmental changes, whether constitutional or unconstitutional (Yejoon, 2021). In *Keith v Clark* (*Keith v, Clark, 1878*), the Supreme Court of the United States held: “No change of its internal polity, no modification of its organization or system of government, nor any change in its external relation short of entire absorption in another state can deprive it of its existence or destroy its identity.” In the same vein, in the *Republic of Peru v Dreyus*, the Chancery Division of the British High Court of Justice held that, ‘Territorial or governmental changes do not release a state from its contracts or treaty obligations (*Republic of Peru v. Dreyus*).’

#### **4. The West African State and Sovereignty Costs**

Sovereignty costs result from state engagement with multilateral platforms. According to Hafner-Burton and others states incur what are frequently designated as “sovereignty costs” when they relinquish their autonomy in shaping domestic policies in order to conform to the regulations established by an international organization (Hafner-Burton, Mansfield, & Pevehouse, 2015). These sovereignty costs have redefined the concept of state sovereignty, giving rights to parties external to the state to interfere in internal affairs to some degree. An instance was the Economic Community of West African States (ECOWAS) attempt to forcefully oust former President Yahya Jammeh of Gambia when he lost the election. In an announcement made by Marcel de Souza, a former Chairman of the Economic Community of West African States (ECOWAS) Commission, it was declared that ECOWAS military forces would potentially remove the incumbent Gambian president if he refuses to step down upon the conclusion of his term in January.

De Souza emphasised the possibility of a peaceful negotiated exit should President Yahya Jammeh demonstrate a genuine concern for the welfare of his citizens; however, he underscored that Senegal would take the lead in executing the military intervention should President Jammeh opt for a confrontational stance. This directive from ECOWAS emerges in the backdrop of an intricate political situation in The Gambia, where Jammeh, who held power for 22 years, initially accepted his defeat in the recent presidential election to Adama Barrow, a former real estate agent. Subsequently, Jammeh reversed his acceptance of the election outcome and has signified his intent to contest it through legal channels (Maclean, 2016).

In response to Jammeh’s defiant televised address, in which he strongly criticised the United Nations, the United States, the Commonwealth,

and the European Union, while challenging ECOWAS to take action, De Souza conveyed that the organization had already placed military forces on standby. He emphasised that the standby forces were poised for action in the event that Jammeh persists in his refusal to relinquish power, with the objective of reinstating the expressed will of the Gambian people. De Souza specified that Senegal had been designated by its peers to lead potential military operations, yet he maintained a preference for a peaceful resolution and urged Jammeh to engage in negotiations for a peaceful exit. De Souza further noted that in the absence of such negotiations, more forceful measures could be employed (Maclean, 2016).

The problem with the leadership in many West African states, is that they often undermine the effect of multilateralism on their sovereignty. The attempt of ECOWAS to control the political narratives in West Africa is often seen as an attempt to interfere in state affairs in the sub-region. However, the ECOWAS Protocol on Democracy and Good Governance gives the right to ECOWAS to secure the legal obligation resulting from the Protocol. The Protocol provides that each assumption of authority in the state should be achieved through elections that are characterised by freedom, fairness, and transparency. Furthermore, any acquisition or retention of power through unconstitutional methods should not be tolerated (ECOWAS Protocol on Democracy and Good Governance). Article 1 of the Protocol empowers ECOWAS to take decisive action concerning de facto governments. The proliferation of de facto governments in the sub-region threatens the political progress of ECOWAS. This explains the aggression through which the institution attempts to apprehend this trend.

There is a crisis of democracy in West Africa, and this was affirmed by Ajala, when he stated that in the recent past, the West African and Sahel regions have experienced a sustained and notable threat to democratic governance. Over the period since 2020, there have been seven coup d'états within these areas, with four of them resulting in the successful overthrow of established governments. The most recent coup, occurring in Niger in July 2023, follows closely after coups in Guinea, Burkina Faso, and Mali. (It is worth noting that there was also a successful coup in Gabon; however, this falls outside the scope of the regions under consideration in this scholarly discourse.) It is noteworthy that, in all four cases where coups were successful, the military juntas cited similar justifications for their actions, particularly emphasizing economic stagnation and persistent insecurity as the primary motivating factors. Additionally, a significant observation is that these coups garnered a relatively positive reception among substantial segments of the populace in the four affected countries (Ajala, 2023).

The regions of West Africa and the Sahel are currently navigating a period marked by political instability and the erosion of democratic principles. Adefisoye and Braimah (2023) have argued that ECOWAS should meticulously evaluate the political, economic, and security factors when contemplating the use of military force to reinstate civilian rule in a highly volatile sub-region grappling with significant security issues. They further argued that opting for a military intervention could exacerbate regional instability and lead to unforeseeable security and economic hardships. They advised that the diplomatic approach be favoured, coupled with the imposition of economic sanctions on military juntas (Adefisoye & Braimah, 2023). The problem with the diplomatic approach is often that it speaks weakness and creates a precedence of ineffectuality. This is because ECOWAS diplomatic engagement with de facto governments in the past have not always yielded the level of success that military engagement has.

While entities such as ECOWAS and the AU prioritise the promotion of democratization, the mere deployment of election observers to oversee electoral processes proves insufficient. He argued that it is imperative to bolster the foundational structures that facilitate the establishment and perpetuation of robust democratic systems, an endeavor that is currently lacking. Furthermore, regional and continental organizations should adopt a resolute stance against attempts by incumbent presidents to manipulate constitutional norms, ensuring that democracies translate into tangible benefits for the populace (Adefisoye & Braimah, 2023).

It is essential, therefore, to initiate measures aimed at expediting the return to democratic governance in these four states, with the objective of preventing the spread of this destabilizing phenomenon throughout these regions and, by extension, the entire continent (Adefisoye & Braimah, 2023). From the previous position, it is obvious that the ECOWAS states are breaking out in a trend seeing the proliferation of de facto governments and this is a result of the realities of democracy and the despondency created by failed democratic institutions and their complicity in delivering governments that are not responsive to the will of their people. The resurgence of de facto governments in the ECOWAS sub-region indicates a failing with ECOWAS as an organization, since the organization has the capacity for horizontal accountability, if it can integrate systems that can monitor political progress in its member-states. One way to implement accountability measures for the monitoring of political progress is to ensure organizational networks with civil society in member-states. The essence of this network is to carry out political audits on governments of member-states in an atmosphere devoid of information asymmetry.

## 5. Principal-Agent Dynamics in ECOWAS States

The relationship between the state and its government is that of a principal and agent, as the government acts on, and preserves the interest of the state. The concept of the state and that of government in political science is often conflated but clearly defined in international law. As Robinson observed, in the world of politics, the terms “state” and “government” are used interchangeably, but it is essential to recognise that they can actually refer to quite different things. Interestingly, in the field of political geography, this distinction is not always clearly defined or emphasised. It is noteworthy that political geographers tend to draw on the meanings of these terms from anthropology and sociology, while the clearest differentiation between state and government can be found in international legal studies (Robinson, 2013).

Robinson’s suggested that states should be understood as legal entities within the international legal framework, while governments are the organizations with exclusive legal authority to make and enforce specific decisions for a group. This clarity in terminology, it is contended, could help advance the field of state theory, making it less ambiguous and offering a better understanding of what the “theory of the state” aims to elucidate (Robinson, 2013). Having clarified the difference between the state and its agent which is its government. The principal-agent theory has been engaged in other academic fields and it captures well, the dynamics of representation and the use of delegated agency. The contract of representation, in the context of democracy, between the state and the government takes place at the polls. The purpose of this representation is clear, and it is to represent the will of the people.

It is understood that democracy is not the only legitimizing process for governments, as this would delegitimise monarchies, but the argument has been that the processes for a de jure government, that is, a legitimate government, is typical to the state itself and the system of government that its law recognises. And more so that democracy allows for a universalist assessment of human rights, as the West believes that the universalist notion has a better operational value (Lalude & Udombana, 2022). In the context of ECOWAS states, democracy confers legitimacy, and Article 1 of the Protocol is clear on what would be regarded as a de jure government. As the Protocol has provided, the government of ECOWAS states are to be elected, and this would create a valid political contract between the state and the government. However, decades of the experiment with democracy have shown that in Africa, the lack of sound institutions only produce governments that cannot be sanctioned and checked through democratic means.

Democracy in West Africa is an endangered concept because of the problems of bad governance. After the COVID-19 pandemic that rocked and disrupted systems across the world. Economies teetered on the brink of collapse, with rising inflation and climbing debt profiles, especially in developing countries. In West Africa, with declining currency value and stagnated economies, the demand for good governance has accelerated, however there is a failed hope in democracy delivering good governance. The problem with democracy is the lack of strong institutions that would have allowed for accountability and the credible commitment of horizontal checks. The reality that African states with poorly developed institutions have not been able to benefit from democracy reflects Paul Collier's finding that democracy thrives better in developed states (Collier, 2009).

Without any consideration for the political intentions of ECOWAS in its drive towards securing democracy, the legal implications for the state are significant when dealing with the actions of de facto governments. The importance of the democratic social contract between the state and the government is well captured in Grotius's statement that a people can give itself to a king as a gift (Jaques-Rousseau, 2013). The distinction between the state and the government is further emphasised that a people are a people even before they give themselves to a king (Collier, 2009). There is no legal logic to the relationship between a de facto government and a state. This is because a de facto government is an unprecedented accident in the course of a state's political history. With a de facto government, the consent of the people is never sought, and governmental actions rarely go through any review mechanisms, because horizontal accountability, which would have been available in the institution of parliament or judiciary is not capable of providing political and legal restraint on the government.

## **6. Implications of De Facto Governments for the State**

In the West African region, military coups were the responses to political crisis in the 1960s, and they were a significant challenge to the democratization process (Taruinga, 2023). There have been six significant instances of successful coups and two recorded coup attempts since the year 2020 began. There was a hiatus in which the trend declined, the incidence of coups in states like Guinea, Sudan and Burkina Faso show that the trend of military governments is back on track. The ECOWAS sub-region and the Sahel have suffered more coups (Taruinga, 2023). Furthermore, the emergence of the de facto governments of Ibrahim Traore in Burkina Faso and others who

have formed the Sahel Alliance show that the lack of good governance in the ECOWAS sub-region might spur more de facto governments in the future.

A comprehensive research study that was conducted by American scholars, Jonathan Powell and Clayton Thyne (2011) showed a discernible decline in the frequency of coup d'états across the continent of Africa since the year 2000 (Powell & Thyne, 2011). This incidence contrasts with the proliferation of such political upheavals observed in the latter half of the preceding century, particularly during the post-colonial era when numerous African states were gaining autonomy from colonial powers. Nevertheless, it is noteworthy that there has been an observable resurgence in coup activities during the recent years, indicating a departure from the earlier trend (Brooke-Holland, 2023). The resurgence in coups has made necessary, the inquiry on the implications that de facto governments, which in the context of this study are military governments which promise change from the corruption and economic decadence that democratically elected governments in West Africa represent.

De facto governments although not legitimate government, possess actual authority and wield control over the state (Jikia, 2021). Because the state as a legal entity should be represented by agents whose actions would be regarded as in alignment with state interest, de facto governments are an anomaly which should be categorised according to their unusual connection to the state. However, Roth has argued that the traditional conception of the reach of sovereignty considers that once a state has been accepted within the international community, whatever mechanism of governance effectively commands the 'habitual obedience' of the state is deemed legally capable and questioning such apparatus would mean interference in internal affairs of that state. He further concluded that, it is also the position under international law that although other states might decide to withhold recognition of governments that they do not approve, yet it does not affect the legal duties of the de facto government to the state (Roth, 2000). This traditional conception under international law fails to demonstrate the principal-agent relationship that would often characterise legal relationship of representation.

Asamoah accurately frames the description of the principal-agent theory in the arrangement of state and governmental obligations and argued that elected political officials are regarded as representatives responsible for state governance, whereas the voters, and by extension, the entire populace, are perceived as the primary decision-makers within the state (Asamoah, 2018). This conception of the principal-agent theory drives the legal argument that if the relationship between the state and government is that of a principal and an agent, then the de facto government must be defined within its actual legal



means to lessen the risks of unmandated actions by the de facto government on the state. From the many instances of the usurpation of political power by de facto governments in West Africa, the mechanism through which they have often sought legitimacy is by becoming a populist government. Bienen (1985) defined populist governments as ones in which leaders often try to reach followers, 'unmediated through established institutions (Bienen, 1985).

In examining the strategy through which de facto governments attempt to legitimise their government through popular acceptance of such a government, Emiljanowicz and Ibhawoh (2021) have argued that, during Jerry Rawlings regime in Ghana, the military government led by Rawlings, known as the Provisional National Defence Council (PNDC), used liberal discourse on participatory democracy to engender legitimacy and to surmount political and economic challenges. The People's Defence Committees (PDCs) and Workers' Defence Committees (WDCs), which were instituted in 1981 and disbanded in 1984, were presented by the PNDC as innovative initiatives designed to foster citizen participation, representing the epitome of democratic ideals. However, these reforms were introduced during a period when the PNDC grappled with significant issues related to its legitimacy, administrative effectiveness, and public resistance to austerity measures associated with structural adjustment programs (SAPs). Emiljanowicz and Ibhawoh have further argued that on one hand, liberal discourse on participatory democracy was used to forcefully consolidate state authority, dampen alternative political expressions, and fabricate legitimacy to address political and economic crises, at the same time, they also acted as a conduit for delegitimization by providing limited opportunities for personal favouritism, grassroots mobilization, and asserting claims against the state (Emiljanowicz & Ibhawoh, 2021).

In the Upper Volta, there was also the de facto government of Thomas Sankara, who had renamed his country Burkina Faso in 1984 (Bienen, 1985). The popularity of Sankara's de facto government achieved the effect of legitimizing his unmandated representation of the state. This was achieved not only through populism but also by attempting to create an ideological legacy. Leshoele (2019) implied that the significance of Sankara's 1983 revolution highlighted that true governance from a de facto government can accrue into legitimacy (Leshoele, 2019). It would seem that legitimization of a de facto government can be carried out through a popular acceptance of such a government, without recourse to the normalization of such government through the instrumentality of the law. For instance, that a government that came to power through a coup did not remedy its lack of legitimacy through means recommended by the constitution, such as an election, does not mean that legitimacy cannot be remedied. Appealing

to popular support can remedy such lack of legitimacy. This can occur in the sense that popular support of a de facto government equals the act of ratifying the principal-agent relationship of the state that had erstwhile been disrupted by an unmandated regime.

The history of de facto governments within the ECOWAS sub-region is fraught with instances of governmental recklessness. There have been many de facto governments that have violated the rules of international law in West Africa. The regime of General Sani Abacha embodied such governmental recklessness and lack of regard for international law rules. Abacha's regime was a prime example of what de facto governments represent for the state, and the atrocities his regime perpetrated, signify the challenges that a government illegally representing the interest of the state pose to international law. The negative inclination of the Abacha regime towards human rights and the response of the international community which seemed to bolster the confidence of the regime, because of the half-hearted sanctions trailing interests in oil in the Nigerian state is a good instance on how de facto states can acquire validation externally (Onoja, 2005).

## **Conclusion**

The obligation towards democracy in West Africa is contained in the ECOWAS Protocol on Democracy and Good Governance, and it provides that there will be no tolerance for any governmental mechanisms outside democracy. However, the political instability in Francophone West African has re-awakened a conversation about governmental legitimacy that could be affected in the event of a de facto government, such as a military junta, attaining governmental power in the state. The argument that the principal-agent theory should be able to explain the legal connection of a government with the state is coherent through the analogy of representative capacity, and it was established that since the Protocol provided that legitimacy can only be conferred through elections, de facto governments are illegitimate and should be regarded as such by international law, including the outcome of their dealings with other states. However, despite the significant implications of a de facto government on a state as a legal entity, history has shown that legitimacy can be acquired through popular acceptance of a de facto government. Outside this exception, a de facto government's actions are not in alignment with the interest and will of the state, and international law should regard this sort of governments through the responses of popular support or rejection.

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