MILITARY RULE WITHIN THE FRAMEWORK OF A DEMOCRATIC SYSTEM: THE GAMBIA'S EXPERIENCE OF COMBINING THE INCOMPATIBLES UNDER THE AFPRC/ APRC ADMINISTRATIONS (1994-2017)

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ABSTRACT
This article examines the challenges of Military Rule within the structure of a Democratic system of Governance and the ensuing contradictions of this combination focusing mainly on The Gambia experience with the AFPRC/APRC administrations from 1994-2017). It has interrogated the nature of the systemic contradictions between military rule and democratic governance as experienced in The Gambia since the 1994 military takeover which paved the way to the arrival, in 1997, of the second republic, and the implications of this contradiction owing mainly to the military style of governance and management in general and The Gambia experience in particular. Under the period of study there were a lot democratic contractions and incompatibles that played out in The Gambia Second Republic that tagged the country as a country with democratic concerns. Using mainly secondary sources and insider experience; being a Minister under the regime of investigation the research was analyses. The findings of the research show that the regime was authoritarian in their style of governing and also that their regime systematically targeted political opponents – subjecting them to torture, extrajudicial execution, arbitrary arrests and detention and enforced disappearances. They accused the military government of serious human rights violations, abuse of rule of law, suppression of the Media, frequent and irrational hiring and firing of judges and top civil servants. The article submitted that there is a marked difference between civil and military leaders in their leadership and management styles in conducting the affairs of the nation. Military rule is autocratic in nature whilst civilian rule is consultative in nature and humanely rational in approach. Thus, and as observed below the military-led administration in The Gambia has not done better in terms of respecting and maintaining rule of law and respecting fundamental human rights, which put a

big question mark (?) on the democratic ethos and credentials of military regime in The Gambia.

A Brief History of Military interventions in Africa

Military interventions in politics and governance in Africa as a whole has been an age-long phenomenon. Dating back to 1952, when a group of army officers, led by Gamal Abdel Nasser overthrew King Faruk in 1952 in Egypt. Actually, the 1952 coup d'etat was led by Muhammad Najeeb but he was deposed in 1956 by Jamal Abdu Nasir who masterminded the 1952 coup. Nasir then became one of the most powerful military rulers of the time not only in Africa but in the Arab World as well. Nasir remained in charge until his sudden death in 1970. Egypt's 1952/56 coup was followed by another military coup in the West African state of Togo in 1963, when Sylvanus Olympio was deposed. Another military coup in North Africa followed the Togo takeover and this came in September 1969 when a 27-year-old middle rank army officer, named Muamar Ghadafi, overthrew king Idris in Libya. Since then, military interventions in African politics and governance have become the rule rather than the exception. The Military in African politics and governance has always presented itself as a corrective force that would come to power, if the need arises, to redress noticeable anomalies such as ethnic cleavages, tribalism, discrimination, ethnic conflict, corruption and widespread abuse of power and maladministration.

In the same vein, on 22nd July 1994, Yahya Jammeh, a Junior Army Officer (Lieutenant) at 29, together with four other junior officers, in a bloodless coup d'etat, seized power from the democratically elected government of The Gambia under Sir Dawda Kairaba Jawara. Lieutenant Jammeh was thus, installed as chairman of what was named as "the Armed Forces Provisional Ruling Council" AFPRC, a military governing council functioning as the executive arm of the military government which ruled the country by decrees until December 31st, 1996, following Chairmen Jammeh's ascension as a civilian-turned president effective January first,1997. Thus, Yahya Jammeh was a soldier-turned politician and former military leader who ruled The Gambia from 1994 to 2017, firstly as chairperson of the Armed Forces Provisional Ruling Council, under a fully-fledged military regime, (AFPRC), 1994-1996, and later, as the president of The Gambia, under a quasi-military government (1997-2017). The now president Yahya Jammeh, ruling the country in a military style but within the framework of a democratic system continued to enjoy full legitimacy and huge popularity among the Gambian people and was thus, being re- elected as president of The Gambia from 2001, 2006, and 2011, but he lost to Adama Barrow in 2016.

The 1994 coup in The Gambia was preceded by a series of coup d'etats for about two decades in her Anglophone neighbours of Nigeria, Ghana, Liberia and Sierraleone. The most recent of these Anglophone coups were the 1992 Sierraleone coup led by a then 25- year- old Captain Valentine Strasser against the democratically elected government of former President Joseph Saidu Momoh on 29 April 1992. In 1996, Captain Valentine Strasser was himself deposed by his close friend Julius Mada Bio in another bloodless coup in Sierra Leone, who took over as Chairman or leader of the junta's National Provisional Ruling Council (NPRC) and president of the country. (Kamara 2018).

Earlier in 1981, one of the most charismatic and influential military commanders in Anglophone West Africa carried out what perhaps was the last successful military coup in Ghana- the former Gold Coast.

On December 31st, 1981, the former head of Ghana's Armed Forces Revolutionary Council Flight Lieutenant Jerry Rawlings overthrew the democratically elected government of the People's National Party (PNP) in another military coup in Anglophone West Africa. In a statement he released immediately after the coup, the new military ruler of Ghana (Lieutenant Rawlings) said "a holy war was necessary due to the PNP's failure to provide effective leadership and the collapse of the national economy and state services" Flight Lieutenant Rawlings later transformed himself into a military- turned politician and remained in power in Ghana until 7 January 1993. (en.m.Wikipedia.org visited today, wed. 20, 9, 2023).

Causes of Coups and Military Interventions

The question that has projected itself at this point is, what are the causes of military interventions in politics whether in Africa, Middle East, South America or Asia.? Are the reasons for coups and military interventions due purely to internal factors and domestic circumstances without any outside influences? or do they take place as a result of external and regional influence or as a result of the combination of both internal and external factors?

The above question or questions could be answered in multiple ways, one can simply argue that failure of civilian governments to bring about socioeconomic development or failure to ensure and maintain internal security, peace and stability or nepotism, widespread corruption and large-scale embezzlement of public resources or all combined are justifiable reasons for military coups in Africa and beyond. The above statement, released by J.J. Rawlings, immediately after his 1981 takeover, clearly shows that the failure of the PNP government to provide effective leadership, the collapse of the national economy and state services were the main reasons for the 1981 coup in Ghana. I must admit at this point that, J. J. Rawlings might have been partly motivated by his own personal ambitions and aspirations given the history of his involvement in coups in Ghana. The same thing applies to the other coup leaders of the subregion including Gambia's Yahya Jammeh, Sierraleone's Captain Valentine Strasser and Julius Madabio and Nigeria's General Sani Abacha. In the case of The Gambia for instance, although the coup leaders made it very clear in the early days of the coup that they had taken over the country to correct the outrageous mistakes, corrupt practices , and failures of the JAWARA administration but ensuing developments including their decision to stay in power after the transition period and manage the country's new political and development dispensation had clearly shown that the junta leaders could also have been partly motivated by other factors like personal ambitions and aspirations just as the case was with their peers in the region.

The argument that the failure of democratically instituted governments to deliver is the main reason for coups and counter coups has been gaining ground in the West African subregion where people have been forced by what appears to a growing culture of coups and frequent military interventions to start asking whether democracy as a system of government has so far brought or can in anyway bring about tangible benefits for the African people.

The latest coups that took place in Mali, Burkina Faso, Guinea Conakry and elsewhere in the subregion prompted the Abuja based Centre for Democracy and Development think tank to make the following worrying statement: "West Africans have become quite republican. They provide their (own) food, generate their own electricity (and) infrastructure. They expect just a little from the state but the state still fails expectations". The CDD argues that the West Africans cannot see what democracy has brought or can bring for them. Thus, as a result of such failures by democratically elected governments some opportunistic militaries in the subregion are taking advantage of this governance vacuum to intervene to bring down and replace the democratic or civilian governments in the countries concerned. (Akinwotu 2022).

Here in West Africa, apart from the suggestion that failure of democratic or civilian governments to provide inclusive and responsive governance is the main reason for coups and military interventions, there is another suggestion in answering the question of what is fuelling military takeovers across the subregion. This is the idea held by many observers that coup d'etats are contagious. In other words, coups in one country increase the likelihood of coups in neighbouring countries. Some political scientists argue that what the military of one country do today could be copied or imitated by their counterparts in neighbouring countries. (R.P.Y. Li & Thompson 1975).

Li and Thompson argued that the coup contagion phenomenon emphasizes the possibility of behavioural reinforcement processes operating within global and regional communication networks. Thus, the 1952 military coup in Egypt led by general Muhammad Naguib, which overthrew king Farouk, the Egyptian monarch of the time, was believed to have heavily influenced the subsequent coups or military interventions in France, Indonesia, Colombia and Venezuela. (R.P.Y. Li & Thompson 1975).

The 1994 coup in The Gambia could be a typical example of this argument because all the

country's Anglophone neighbours in West Africa had experienced successful military interventions with the 1992 coup in Sierraleone being the most recent one although at the personal level, Flight Lieutenant J.J. Rawlings of Ghana was seen by many as an exemplary and characteristic influential military leader in the West African subregion, especially among coup leaders such as the then Captain Yahya Jammeh.

However, Li and Thompson have warned that the coup contagion question should not be taken as an exclusive conclusion but rather there is the possibility of other event influencing factors for the occurrence of coups in neighboring countries. They thus acknowledged that, "Military coup situations have been found to share some behavioural characteristics, although evidently there has been a tendency to exaggerate the level of similarity and influence of background conditions thought to be associated with the military coup ". They therefore further explained that the situational similarity theory at best "could account only for some limited portion of the coup-wave pattern. Hence it could be reasonably justified and also safer to take an approach which focuses on and or recognizes the alternative possibility of the interdependence of event influencing factors for the occurrence of coups and military interventions. (R.P.Y. Li & Thompson 1975).

Others make an attempt to narrow down the contagion theory to apply only to those circumstances where there are unhappy factions or disgruntled elements within the military in a given country or countries. That is to say that when a group of unhappy or disgruntled soldiers stage a coup d'etat in a given country, their action will or can simply be imitated by their contemporaries in other countries. The 1981 coup in Ghana by J. J. Rawlings was said to have inspired various coups in West Africa especially Captain Thomas Sankara's 1983 successful but bloody coup in Burkina Faso. (Akinwotu 2022). However, other political scientists and observers, who studied the pattern and incidence of coups in Latin America, don't subscribe to the theory of coup contagion. For political scientists and coups experts like Fabrice Lehoucq and Anibal Perez-Linan who studied the pattern and incidence of coups in Latin America for a period of over 106 years, coups in one country are in fact likely to or will reduce the likelihood of a coup or coups in neighbouring countries. (Lehoucq and Perez-Linan 2013).

Similarly, and most recently, Michael K. Miller, Michael Joseph and Dorothy Ohl have found no relationship between recent coups in a given country or countries and future coups and military interventions around the world. They define contagion as" any process in which the occurrence of a political event in one country increases the likelihood of a similar event in another country."

They critically examined the coup contagion hypothesis, which claims that coups anywhere increase the coup propensity of surrounding countries, and argued extensively that coups are not contagious. The three scholars made a distinction between political events that are mass-based and those they described as elite-led violence. According to them, Mass participation events like popular rallies or calls for democratic transitions such as the Arab spring, and revolutions, mass protests and demonstrations can be contagious and therefore do have spillover effects in surrounding areas, communities or countries. As for coups and military interventions, they fall under the category of political events driven by elite-led violence according to Miller, Joseph and Ohl and as such they are not contagious. The coup experts concluded that it is primarily the mass participation- based political events that cross national boundaries and are imitated in surrounding countries rather than elite-led violence like coups and military interventions which do not diffuse within the neighbourhood regions and may have no domino effects across frontiers. (Miller, Joseph and Ohl 2016).

In other words, the attributes of a given political event should be able to determine if that particular event has the likelihood of diffusing or spreading across frontiers. Many of the essential features of coups are obviously different from most mass-driven political events; Coups are violent seizures of power; they are typically undertaken by a small but coordinated group of professional elites who are primarily high-ranking military officers. Coups can also be staged by a well-organized and coordinated group of junior military officers. In contrast most mass- driven and popular participation political events are usually spontaneous and usually they do focus on certain normative goals like calling for a democratic system, fighting corruption, agitating against deteriorating economic and living conditions of the population in the country or calling for respect for human rights and the rule of law. They are also sometimes composed of broad collections of politically excluded

individuals, opposition groups and parties and other spontaneous mass actors.

The three coup experts argued that as a result of the above-mentioned differences in attributes there are three primary mechanisms used to explain political diffusion and these mechanisms do support the spread of mass participation based political events but not violent elite driven political events like coups and military interventions. The mechanisms are emulation, learning and focal points.

As for emulation, it favours the spread of aspirational normative behavior over violent acts like coups especially in the current international environment. They argued that "political behaviour spreads through emulation when new cultural norms and reference groups develop around a political action and change its value to potential adopters."

Thus, in international politics a state may emulate or mimic certain policies adopted or associated with another state, similarly an advocacy group may follow the footprints of another advocacy group beyond national frontiers. The typical example of this is democracy as a system of governance which we can say, has spread through normative diffusion and acculturation or regional organizations. Coups on the other hand, are never regarded in the international system as inherently legitimizing or esteemed acts that are worth emulating (Miller, Joseph and Ohl 2016).

For the learning mechanism, it is more likely to take place among mass actors (demonstrators/ protesters/ activists) rather than professional military elites or even junior army officers plotting a coup, who would have experience with politics and the use of force or only with the latter. Learning as a tool is a weak justification for the coup contagion hypothesis because neighbouring coup attempt officers or plotters are very unlikely to provide critical information on their techniques and methods that would ensure success for their process of seizing power, so as to allow others in neighboring countries to learn from their experience. Coups are high -risk propositions that hinge on the inter-play of domestic institutions. Furthermore, the techniques for orchestrating coups are usually well known to military officers who have the expertise of mobilizing and using force. On the other hand, learning can trigger diffusion in mass- based and spontaneous events. It causes "diffusion when an external event provides information about the process, costs or benefits of adopting a similar process or strategy". This can take place spontaneously when, for instance, a population views or learns about a revolution or an uprising in a neighbouring country or neighbouring countries and recognizes the similarities of their conditions and circumstances (Miller, Joseph and Ohl 2016).

Regarding the focal point mechanism, it also works better with mass-driven events. This is because when mass populations are facing collective action problems especially when they are not sure about what techniques to apply or when faced with risks of opposition, they are very likely to be looking for the possibility of drawing inspiration from external sources or events. This is in sharp contrast to elite- driven violent political events like coups and military interventions where the key decision makers in the military hierarchy are much smaller in number and do easily communicate directly with each other. Coups are usually organized by a small but centralized and well-coordinated group of senior military officers or even junior officers who are also in a small group when they are staging a coup. Typical examples of this are the small team of soldiers that organized the 1980 coup in Liberia led by Sergeants Samwel Doe and the 1994 coup in The Gambia led by Captain Yahya Jammeh supported only by 4 other junior soldiers of the Gambian Army.

Thus, coups are so confidently and carefully orchestrated and executed that the coup plotters must control the information environment, especially public broadcasts and coordinate the execution plan in such a way that they do not have to look for anyone or anywhere to draw inspiration. External coups are not usually expected to inspire potential coup plotters normatively or by way of giving informational support to others. In other words, external coups are unlikely to influence the motivations for coups elsewhere in a neighbouring country or region and in which case the supposed coup or coups happen to be driven "by domestic political crisis, structural economic factors and institutional prerogatives" (Michael K. Miller, Michael Joseph and Dorothy Ohl 2016). The conclusion to be drawn from the above expose is that as per the opinion of these political scientists and coup experts, military officers plotting or staging a coup are going to overwhelmingly draw from domestic events and past experiences rather than external events or factors.

They further explained that Sub-Saharan Africa for instance, suffered five coups in the first two months of 1966 and from the year 2000 to 2010, the same region had experienced 23 coup attempts but these events were not necessarily connected to each other and no one can conclusively argue that they were independent products of a highly coup-prone environment or that they were examples or anyone of them was an example of the coup contagion hypothesis. Instead, there could be a couple of other reasons producing or causing coups and military interventions each of which may be peculiar to the circumstances of the environment where the coup or coups has or have taken place.

To conclude discussions on this section, it may be useful to briefly mention at this point that the coup contagion idea is widely believed and speculated by political leaders in different regions of the world. Let's take the example of the former president of the Dominican Republic Leonel Fernandez, when he warned that the 2009 Honduras coup could have a contagion effect towards other nations of the region. Similarly, the former Presidents of Costa Rica, Ecuador and Guatemala warned of a domino effect across Central America if the Honduran 2009 coup was allowed to stand. These worries by Central American political leaders about the contagious potentials of the 2009 Honduras coup, were complemented by diplomats from the American government in 2009. It is therefore, practically or pragmatically very difficult to take the coup contagion theory of the table and condemn it for good.

For Africa however, given the seemingly endless coups, counter coups, militarily interventions and coup attempts, the widely held view in the comity of nations is that the continent lags and retard behind the rest of the world in terms of functioning democracies, responsible, dedicated and committed leaderships.

This is perhaps the most significant political expression, particularly, in terms of leadership engagement and institutionalization of democracy as a system of governance and state management that critics sometimes use to discuss the continent's governance and development predicaments. While this discussion is going on in and around the continent, we continue to grapple with a situation where authoritarian, oppressive, tyrannical, despotic and unconstitutional regimes or rulers continue to hold sway in Africa's fragile and flexible democracies, vulnerable and failing state and economic institutions. From Algeria to Zimbabwe and from Cabovarde to Cape Town you will see that most Africans are struggling with democratic discrepancies and inefficiencies, weak state institutions and failing economies instead of amassing democratic dividends and returns, prevalence of rule of law, respect for human rights and fundamental freedoms, stable and peaceful socio-cultural environment, rapid and sustainable economic growth with healthy, prosperous and happy peoples as per their expectations. The African peoples could not expect less than this given the fact that millions of people elsewhere in the world, especially in the so called advanced world, live and operate under regimes which can comparatively be judged as democratic with strong and highly performing economies and effective and efficient social welfare systems operating under well-established political and legal institutions that ensure the people's enjoyment of the benefits of good governance, respect for and adherence to the principles of the rule of law and human rights and fundamental freedoms of individuals and communities in general.

Thus, the main thrust of this section, which continues to project itself clearly, seeks to explain that the soldiers' style and tradition of management and governance do not fit within the framework of democratic institutions and principles of governance and state management. The military commanders' perception of power and authority, the manner and style in which and the extent to which they can or do exercise or handle power are incompatible with the principles and institutions of democratic governance. Thus, in the event of a coup d'etat or military intervention in a given country with senior military commanders taking over the reign of political power and executive authority in the country, stakeholders from all walks of life in the country including those in the diaspora must come together and do everything humanly possible to convince the soldiers not to prolong or perpetuate their stay in power because their management and governance style do not match with the principles and processes of democratic governance. This is if the concerned country was a democracy before the military's takeover and it wishes to continue to be governed by democratic principles and institutions. Although, martial law, which means "the replacement of civilian government by military rule and the suspension of civilian legal processes for military power" (J. Absher, 2023), is in most cases,

declared during war times and in other emergencies like civil unrest and natural disasters, but martial law may also alternatively be declared in instances of military coup d'etats. This is, however, only in theory but not in practice. Hence and as I explained earlier, anywhere, there is a military coup d'etat or takeover there is ipso facto the application of martial law directly or indirectly given the real nature and actual meaning of the application of martial law. In other words, when coup makers in a given country abrogate or suspend the country's constitution, dissolve parliament, impose restrictions on human rights and civil liberties, ban political activities and shut down all other civil society and political institutions either indefinitely or for a specified period of time, there is effectively full enforcement of martial law even though the coup makers didn't explicitly proclaim the state of emergency or martial law. Thus, it is against this extraordinary and very unusual background that a military government comes from and that all executive and administrative decisions /orders taken or to be taken by the military's executive council or by the most senior military commander through his diluted government functioning within the framework of democratic institutions, are bound to be influenced by that background which is in total contrast to and incompatible with the principles and procedures of democracy as a governance system.(J. Absher,2023).

The main concepts in this article concerning the combination of two incompatible systems and styles of management are: Military Rule, Democratic Governance, the Rule of Law, the Incompatibility of Military Rule and Democracy as a system of governance. As for Military Rule and democratic governance and the contradictions between the two systems, they have been the main focus of discussions for most part of this paper. It is, therefore, incumbent upon us to turn our attention to and give a brief explanation of the other concepts for the benefit of our student readers and researchers. To do so, I hereby revisit one or two of my previous studies on the subject matter and related issues with additional materials and new ideas.

The Concept of Democracy

Democracy can be seen as a political system that adheres to the principles of constitutional rule, respect for human rights and fundamental freedoms particularly, the freedom of expression and press freedom, respect for the rule of law, independence of the judiciary and the legal profession, free and fair participation of multiple political parties in the political life of the state, free and fair elections organised at regular intervals, direct or indirect involvement of the populace in the affairs and political process of their country, the principles of accountability and transparency, separation of powers among the three main organs of government**.**

In other words, for a governance system or process to be democratic, it advocates and adheres to the principles of constitutional rule, respect for human rights and fundamental freedoms particularly, the freedom of expression and press freedom, respect for the rule of law, independence of the judiciary and the legal profession, free and fair participation of multiple political parties in the political life of the state, free and fair elections organized at regular intervals, direct or indirect involvement of the populace in the affairs and political process of their country, the principles of accountability and transparency , separation of powers among the three main organs of government. These principles, in my view, constitute the core values and major characteristics of a democratic system.

Democracy has been defined in various ways using different approaches. Saward argues that the best approach is to look at those countries known to be democratic and define the concept according to the main features of their practice (Saward 1994:6-2 1). For Beetham who takes the second approach the core principles of a democratic system are those embodied in the historical conception of democracy as the "rule of the people" i.e. popular control of sovereignty and political equality (Beetham 1993:6). According to Holden who constructs a conception of political democracy, inclusive citizenship and political equality are basic principles of a democratic system (Holden 1974:7-9). The definitions reviewed above seem to agree that there are four basic elements or core values of a democratic system i.e. equality, sovereignty/control and inclusiveness. These include majority rule and popular participation, equality, freedom, consensus, coercion, competition, pluralism, constitutional rule and more.

Saward develops the assumption that in a democratic system "all citizens are equal with respect to their right to decide the appropriate political course of their community". It is

important to state here that the basic characteristics of democracy are just more than the three core principles highlighted above. The pillars of democracy include:

- Free press
- Respect for human rights
- Constitutionalism or Constitutional Rule
- Free and fair periodic elections (regular)
- Separation of powers
- Popular participation in the political process
- Majority rule with respect for the minority, etc.
- Pluralism

With all these pillars one can then argue that the system concerned is democratic. This has been re-emphasized by the major international donor organizations such as

the International Monetary Fund (IMF) and the World Bank since the 1980s when democracy in the sense of popular participation, good governance and respect for human rights including press freedom were a prerequisite for obtaining their assistance. It is on the basis of this equality assumption that Saward develops a general defining rule of democracy "Within the theory of democracy". Thus, according to this rule "substantive policy, and politics and administrative actions performed under substantive policy must correspond to the expressed preferences of the majority of citizens". In other words, there should be necessary correspondence between acts of the government of the day and the equally weighted expressed wishes of its citizens with respect to those acts. This is what Saward calls "the responsive rule" and for him a political system is democratic to the extent that and only to the extent that it involves realization of the responsive rule" (Saward 1994: 6 – 20).

The problem of the "responsive rule" definition is that it appears to suggest direct, rather than, representative forms of decision-making as the favourite. This is because direct decision-making processes are certainly more responsive than the representative forms. But in Africa in general and in The Gambia in particular, what obtains is the representative mechanisms of decision-making. To remedy this shortcoming of "the responsive rule" definition, which he himself acknowledges, Saward identifies some core principles or minimal conditions and describes them as "the logically necessary conditions of democracy". These principles are: basic freedoms, citizenship and participation, administrative code, publicity and social rights (Saward 1994: 6 – 21).

So, for a political system to be democratic it has to observe and respect the basic freedoms of the individual and it also must have a common and standardised form of legal membership compatible with the basic freedoms. There should also be appropriate codes of procedure for employees in public bodies, for decisions to be taken into effect and a constant formal process of public notification of decisions, opinions, arguments, issues and outcomes of all these conditions or basic principles of democracy.

According to Saward, there is another view which believes that democracy, being the rule of the people by the people and for the people, implies in political terms, the right of the people to freely choose their representatives. In his opinion, "a democratic administration is one in which the people, all the people, are enabled to express a free choice on all matters affecting them" (Saward 1994:6-21). However, it should be noted here that this view, too, recognises the practical difficulty of operating a system of direct expression of the will of the people as implied by the ''responsive rule'' definition discussed above. I now turn attention to some of the rules and elements constituting a democratic system as per the definitions given above.

The Rule of Law

Rule of law is the supremacy of the authority of the law and that all people and institutions are equally subject to the control and dictates of the law. The principle of the rule of law emphasizes the equality of people before the law and equal protection of the law, the legality of the administrative and executive acts of the political authorities and also the fairness or constitutionality of the legal authority backing the legislative and administrative activities of the government of the day. In other words, it is not only enough to govern by law and submit to and be under the control and authority of the law,

but also, the laws that are used to govern and regulate and handle relations must be just, fair and reasonable. Furthermore, the concept of the rule of law in the modern time also calls for the prevalence of law and order rather than anarchy and chaos as well as the supremacy of international law particularly the international human rights law to domestic legislations. In other words, the rule of law in this sense means that states and governments and all other actors in the international system must respect their international obligations and give effect to them (Wade and Philips 1997:44-45).

The application and effective functioning of the principle of rule of law necessitate the existence and full enforcement and operationalization of the other principles of democratic governance highlighted below.

Constitutional Rule

The principle of constitutional rule as a core element of a democratic system of government usually goes with constitutional supremacy In perhaps most liberal democracies with the obvious exception of the United Kingdom where Parliamentary Supremacy reigns. Thus, when the constitution enjoys supremacy status within the legal and political system of the country, then it becomes the guide and regulator of any other authority in the country whether legislative, political or executive, judicial and traditional authority as well. In other words, there should be some kind of basic law as a governing instrument whether collectively compiled or written into a single document or scattered in various legislations and enactments as is the case in the United Kingdom. This basic governing instrument is, in most countries, called a constitution or in some other countries a basic law as is the case in Germany. It may also be called the fundamental law of the land. According to modern legal traditions of various liberal democracies of the modern world, the constitution enjoys a supremacy status within the legal and judicial hierarchy of the country. (see article 6 of the United States Constitution, section 4 of The Gambia's 1997 republican constitution, article 4 of the Malaysian Federal Constitution and article 13 of the Constitution of the Union of India as examples).

In the case of India, the supremacy clause of the constitution is planted into the human rights provisions of article 13, part 3 of the Federal Constitution and as a result of this, legal and judicial experts in India have concluded that Part 3 (on Fundamental Rights and Liberties), Constitutes the foundation and basic structure of the Indian Federal Constitution. Consequently, the power of Parliament to amend the Indian Constitution does not include or cover part 3 on Human Rights and Fundamental Freedoms. This is because the chapter on Human Rights and Fundamental Liberties is so basically and centrally structured that an attempt to amend any part of it or any of its provisions could be considered an act of rewriting that part of the constitution which goes beyond the scope of the amending power of Parliament. In other words, the Parliament in India may have power to amend several parts of the Federal Constitution but NOT to rewrite it. So, there is a difference between the amendment and the power to rewrite a legal document. (Senghore, ,1999).

The concept of constitutional supremacy teaches that the constitution is the supreme law of the land and all other laws, executive decisions and administrative orders, procedures and activities of the government of the day must be in conformity with the constitution; otherwise, they are declared null and void by a court of competent jurisdiction. In 2005, the Supreme Court of The Gambia, in Sabally v Inspector General of Police, nullified several provisions of the Indemnity (Amendment) Act 2001 for contravening the human rights provisions of the 1997 Constitution of the Republic of The Gambia and Article 7 of the African Charter on Human and Peoples' Rights which guarantee the fundamental right of the individual to access the courts of the land. (Sabally v.s Inspector General of Police and others (Civil Ref: No. 2/2001, 1999 to 2001: GR at 883**).** As shown above**,** this principle of constitutional supremacy is established in Section 4 of the 1997 Constitution of the Second Republic of The Gambia. Constitutional supremacy also ensures a more conducive environment for the observance of the rule of law, the independence of the judiciary and respect for and observance of human rights and fundamental freedoms of the individual and the collective rights of society as whole.

Independence of the Judiciary and the legal profession

An independent judiciary is an indispensable prerequisite of a political system that adheres to the principles of the rule of law and freedom of expression. It implies freedom of the judiciary

from all sorts of interference by the executive and the legislature branches of government with its exercise of the judicial functions of the state. It is important to explain, at this juncture, that judicial independence does not mean that the freedom of courts and judges or their entitlements to act or apply the law in an arbitrary manner. Rather, it means non-interference by the political authorities and all other interests' groups in society within the country, in the affairs of the judiciary. The courts system does have its own inbuilt control mechanism which perfectly checks and controls or corrects what may be termed as excesses, weaknesses or errors and mistakes of the lower courts. There is therefore, absolutely no need for the executive, the legislative and all other branches of government or any other authority or structure in society to interfere with the work of the judiciary and the judicial process as a whole. (Senghore, 2012).

Separation of Powers

Within a system of government based on law, the legislature, the executive, and the judiciary distinctly and separately perform legislative, executive and judicial functions of the state respectively. This threefold division of labour between the three main branches of government is a necessary condition for the rule of law in modern society and therefore democratic governance itself (Wade and Phillips 1997:44-45). One of the biggest problems of military regimes of all time especially in today's modern world – Africans and non-Africans alike, has always been and is still and will continue to be lack of full respect for the principles of separation of powers, independence of the judiciary and proper functioning of the rule of law in practice, though not necessarily in theory. Thus, practically speaking, the military- run executives in those countries under military rule continue to dominate or even manipulate and some harass other arms of government, particularly the judicial branch. (Senghore: 2012).

International Human Rights and Democratic Governance

The principles highlighted above as being the essential ingredients and functional characteristics of a democratic system of governance are all incorporated or embodied, in one way or the other, within the juries-corpus of the modern concept of human rights and fundamental freedoms in international law. This supports the suggestion by some legal and constitutional experts that democratic governance is itself becoming a matter of rights. In other words, democratic governance is an emerging and fast-growing fundamental human right of peoples and communities in the modern world. This is understandable in the sense that governments derive their just powers and legitimacy from the consent and will of the very people they govern. This is sometimes referred to as "democratic entitlement." On the other hand, every independent sovereign nation enjoys a separate and equal standing or station amongst the community of nations in the international arena provided that it demonstrates full and genuine respect to the opinions of mankind. Thus, for a state to acquire international legitimacy it has to respect and give effect to the principles of inter-state relations and acceptable behaviour amongst the collective community of nations and in today's international political system, democracy as a system of governance is one of those principles. As for domestic legitimacy it obviously comes from the consent of the governed and without acquiring the two sets of legitimacy a government cannot function properly or peacefully and effectively. In this case, people's collective and also sometimes, individual contributions to development could be impeded. (Frank, 1992).

The spontaneous and unanimous reactions that individual governments, the United Nations, the regional intergovernmental bodies and both local and international civil society organizations make to condemn a coup d'etat or any other form of undemocratic change of government in any country of the modern world, present to us a strong sense and good example of how democracy is rapidly becoming a collective entitlement in international law. Thomas M. Frank believes that the failure of the August 1991 coup in the former Soviet Union, due mainly to the United front both locally and globally against the coup, demonstrated that democracy was beginning to be seen as the *sine qua non* for validating governance. In other words, for a governance system and process to be valid it will have to be somehow democratic. Likewise, the collective or unanimous reaction of governments in the Organization of American States and the United Nations General Assembly opposing the overthrow, in September 1991, of the elected president of Haiti, Jean- Bertrand Aristide, presented another example of the

growing trend of democracy as a system of governance becoming an international entitlement. The Assembly then unanimously, without vote, approved what was referred to by Thomas Frank as" a groundbreaking resolution" demanding the return of Aristide to office, full application of the Haitian constitution and full observance of human rights and fundamental liberties in Haiti. (T.M. Frank,1992).

Coup d'etats and other unconstitutional means of changing governments have continued to receive the same or even stronger global and regional reactions, outright condemnation and total rejection till today. The very recent coups in West Africa involving Burkina Faso and Niger republic are living examples of universal rejection of military interventions and unconditional takeovers and thus further cementing the standing of democratic governance as people's legitimate and legal entitlement in international law.

It is worth noting at this point that the emergence of democracy as people's entitlement under international law has gone or it is in actual fact, going through both a normative and a customary evolution.

Frank argues that democracy as people's entitlement has evolved (I believe it is still evolving), both as a system of rules and as a practice of states and organizations as major players or actors in international relations. This evolution process, Frank continues, "has occurred in three phases. First came the normative entitlement to self-determination. Then came the normative entitlement to free expression as a human right. Now we see the emergence of a normative entitlement to a participatory electoral process" (Frank, 1992).

Thus, all that can be said about the evolving right to democratic governance at this juncture is that despite being a new phenomenon or trend in international politics the peoples entitlement to democracy as a system of governance is already enjoying a high degree of legitimacy as an instrument of validation of governance in international legal and political relations and it derives this legitimacy both from various texts and from the practice of states and of "global and regional organizations supplemented by that of a significant number of non- governmental organizations". These texts and practices, according to Frank, have attained a surprising degree of specificity given the newness of the entitlement and especially of its requirement for free and open elections." (Frank, 1992). Under international customary law before a state practice can attain a customary character and constitutes a binding legal rule, specificity, repetition, frequency and consistency of the practice by states are among the required ingredients and preconditions for that state practice to be considered a rule of international law. It is therefore interesting to note that at this juncture, the ongoing practice of states and organizations towards democracy and democratic governance as people's entitlement, has attained at least two or three of those ingredients and preconditions.

The Nature of Contradictions between Military Rule and Democratic Governance under the AFPRC/ APRC Administration in The Gambia

A couple of ideas, attitudes, policies, practices and approaches pronounced and adopted by the military government from the onset of the new republic they themselves had ushered in in 1997 and through the lifespan of the period of quasi military rule in The Gambia, have beyond any doubt demonstrated the contradictions of and incompatibility between the military style of governance and state management on one hand and a democratic system of governance and administration on the other. Such ideas, policies, practices, attitudes and approaches were wide ranging and diverse in nature and spheres of application. They included the establishment of a new political party with a name almost the same as the name of the military executive during the four years of fully fledged military rule (AFPRC/ APRC), the incorporation of all the AFPRC decrees into the juris corpus of the laws of the land, the continuation of the military rulers' perception of and intolerance to the full functioning of the rule of law with an independent judiciary. Also, their attitude and practice of irrational and excessive hiring and firing of staff including personnel of the judiciary, they continued to brand the 22nd of July, 1994 coup as a Revolution and naming events and places or even institutions after the dates of the take over and the continuation of their skeptical attitude and inconsistent or sometimes hostile approach to the big question of human rights and its related fundamental values in general and the civil and political rights especially the question freedom of expression and press freedom in particular, to name a few of those contradictions.

Thus, this section makes a brief reference to those contradictions while explaining the nature of the incompatibility of the two systems and styles of governance and state management. This is preceded by a brief recap of the circumstances leading up to and surrounding the July 22nd, 1994 coup and the subsequent inception of the second republic of The Gambia in January,1997.

The Contradictions between and Incompatibility of the Two Styles of Governance and Management

The practice of military commanders being involved in democratic governance and decision making in The Gambia under the APRC administration from 1997 to 2017 has raised considerable issues and led to so many controversies, one of which was the overt display of 'militarized political culture and style of management in the democratic space. From 1994-1996, the military government of then Captain Yahya Jammeh was transitional and ad hoc in nature. This was a time when he himself and his colleagues were wearing their green khakis, red berries and dark glasses symbolizing a moment of fully fledged military rule in the tiny but strategically important and beautiful west African nation. Consequently, the 1970 republican constitution was suspended and all political activities including opposition parties were suspended. It was a typical martial law situation. This scenario is very normal and typical of military interventions because all coup d'etats and military takeovers are unconstitutional and illegal, that is to say, they are rejected and condemned by the constitution which happens to be the basic or fundamental law of the land. As a result of this and given the inconvenience of the military commanders to co-exist and work together hand in hand with such a basic governing document that rejects and condemns them as Governors, they wasted no time in moving to attack and put the constitution out of operation. What is, however, abnormal and always challenging is when the military leaders choose to prolong their stay in power and start working to legitimize themselves as the country's new rulers. This means initiating a process that involves removing their military attires, lifting restrictions and bans on political activities, introducing new democratic institutions and processes such as a new constitution, holding democratic elections and establishing a new political party or parties to accommodate their political dreams and aspirations and accommodating civil society organizations including political think tanks and pressure groups. With all these changes in the new political landscape spearheaded by the military leaders, one thing that would never change was their attitude and style of management and decision making. This ushers in what I have earlier on referred to as diluted or quasi military rule in the Gambia, referring to a situation whereby military commanders run democratic institutions armed with democratic principles and procedures, but they would tend to be governing and doing things or taking decisions and implementing them militarily or in a military way. This is where most problems of quasi military rule always emanate from because they tend to combine two systems that are diametrically opposed to each other and therefore incompatible.

The Gambia has experienced a long period of fully fledged and quasi military rule from 1994 to 2017. However, what is striking in the Gambia experience of military governance is the fact that on attaining power through the barrel of the gun (though, bloodless) as against the ballot box, the military junta proclaimed itself as a corrective regime that has come to wipe out rampant corruption, ethnicity and tribal politics, hardship, nepotism in the face of the citizenry (Nnaocha & Bojang,2021). The new military governors accused the previous government of Sir Dawda Jawara of rampant outrageous corruption and `random plundering of the country' s assets to benefit a privileged few (Daily Observer, 1994). In its place, the military promised a new era of freedom, progress, democracy and accountability'. The head of the junta promised to base his governance principles/ philosophy on accountability, transparency and probity. He promised to institutionalize these trio catchy words in all sectors of The Gambia's political, economic, and social lives and assured that his government would be one with a difference (Nnaocha & Bojang,2021)

The new military rulers' proclamation of themselves as a corrective regime that has come to wipe out rampant corruption, ethnicity and tribal politics , hardship, nepotism in the face of the citizenry as well as promising Gambians a new era of freedom, progress, democracy and accountability' backed by a governance philosophy based on accountability, transparency and probity, justified the high expectations and aspirations of many Gambians that the military we're running and managing a transition period and that their role during this

transition period to democracy will be that of an arbiter and a corrective process so that there would be no conflict of interest. On the contrary, the junta leaders chose to become stakeholders themselves not only in the transition process to democracy but more importantly in the future political and economic development dispensation of The Gambia. So, they redefined themselves politically and assumed a long term political, social and economic development and management role.

Thus, the changeover to 'civilian' rule began with the introduction of a new republican constitution ushering in a new or second republic, the creation of a new political party by the military themselves and their participation in the 1996 and 1997 Presidential and National Assembly elections in The Gambia. As anticipated by critics and political observers, this new development ushered into the transition process worrisome and unwholesome practices that tilted an already uneven political playing field even further in favor of the incumbent military leaders. (Saine,1998). While the arrival of a new republican constitution and holding the presidential and parliamentary elections under the stewardship of the military as stakeholders in the process, represent uncertain steps in the direction of the country's transition toward democratic governance from military rule, they are however clearly a reversal of the First Republic's relatively democratic tradition. Instead, military involvement in the political landscape of the country increased the negative side effects on democratization and the protection of human rights and fundamental freedoms in particular as well as on the functioning of rule of law and the whole question of democratization in general, problems and challenges that have been addressed above and are also further explored in the later part of this work.

The National Assembly election of January 2, 1997, completed the transition to 'civilian rule, or as I would say; from full-fledged military to quasi or diluted military rule, following the aftermath of the Presidential election in September 1996, in which the then retired Colonel Yahya Jammeh, representing the party formed by the military, was elected President of the Second Republic of The Gambia. Thus, the new party of the military- the Alliance for Patriotic Reorientation and Construction (APRC) won 56 percent of the Presidential vote, as opposed to 35 percent of votes won by the United Democratic Party (UDP) lead by Lawyer Ousainou Darboe (The Point Sept.30, 1996). Darboe's refusal to accept the election results because his party believed that they did not appear to reflect the wishes of the Gambian electorate, as well as similar concerns raised by the Commonwealth and the European Union (E.U.) observers, tainted the victory celebrations, even for President elect Yahya Jammeh's most fervent supporters. However, with the APRC's strong showing in the parliamentary elections by winning a 33-seat majority as opposed to the UDP's minority standing in the National Assembly, Jammeh and his party consolidated the military's grip on power in the dawn of what was to become "New Democratic Gambia ''. (Weekend Observer, January 3, 1997). With this ambivalent victory bringing Jammeh and associates into full control of power and authority within the framework of democratic institutions in the governance and state management system of The Gambia the truth began to emerge that there can be no genuine democracy under any form of military governance (full-fledged and quasi military regimes alike). The military ruler continued to demonstrate his audacious, uncompromising and iron fist leadership and military management style in the new Gambian republic that he himself and military junta ushered in and with a style he was known for during the two years of full military rule in the country, which spanned over two decades.

The new constitution introduced by themselves to transform the country into a constitutional democracy has contained provisions clearly indicating that the incoming democratic dispensation for The Gambia will not be a complete departure from the country's military past. This is a direct reference to paragraph c of section 7 of the 1997 second republican constitution, which incorporated all decrees passed by the Armed Forces Provisional Ruling Council into the existing laws of The Gambia that will continue to govern the country after its transition into a democracy.

The Continuation of the AFPRC Decrees in the Second Republic

Apart from the controversy surrounding the contents of many of those decrees, the fact that they were laws passed by the military junta and further that they were not made and adopted by a constitutionally defined authority, raised the legitimate question as to whether such decrees fulfilled the fundamental characteristics of what

should and could be called laws or rules such as the principles of just, reasonableness and fairness. So, including the decrees into the ordinary laws of the land was a clear signal or indication of the incompatibility of the two governance traditions the military rulers had set out to combine from 1997 onwards.

As mentioned above, immediately after the takeover the military junta suspended the first republican constitution of 1970, dissolved parliament- the country's legislative body and banned all political activities. Thus, in order to be able to govern smoothly and properly, the AFPRC administration was completely relying on decrees it was issuing from time to time to meet its legal challenges in the governance process. Among the most controversial of these decrees were decrees 89, 71 restricting the private media, the NIA decree and decree No.1

Decree 89, issued by the military government on 14 August, 1996 reiterated the ban from political activities that the military had imposed on the major political parties in the country. The political parties affected by the decree 89 included the Peoples Progressive Party (PPP) of the deposed president, Sir Dawda JAWARA, the National Convention Party (NCP) and The Gambia People's Party (GPP), they were also among the political parties suspended by the military during the early days of the 1994 takeover. However, the military government then lifted the ban on the other parties like People's Democratic Organization for Independence and Socialism (PDOIS), the People's Democratic Party (PDP) and similar insignificant or invisible political parties or groups in the country. In the same way, on 28 August, 1996, Yahya Jammeh was formally promoted to the rank of colonel and then he retired from the army on 6 September, one month before the 1996 presidential elections

Needless to say, the exclusion of the three main political parties from the 1996 presidential elections and the 1997 Parliamentary elections had discredited the democratic nature and character of the transition process from military rule to a democratic constitutional order. Decree 89 was later repealed by the Jammeh administration in July, 2003.

Another controversial decree promulgated by the military government was decree 71 issued to amend the 1944 Newspaper Act with the sole intention to mainly impose severe restrictions on private media practice in the country.

Thus in 1996, the Armed Forces Provisional Ruling Council, the then military government of Captain Yahya Jammeh, introduced a drastic amendment to the 1944 Act. This amendment known as Decree No 71 of (the Newspaper Act amendment No 2, 1996) increased the cost of mandatory registration fee from 1000 (One thousand Dalasi) to 100, 000 (One hundred thousand Dalasis) that is from what was then about 40 US Dollars to about 3500 (three thousand five Dollars) for anyone wishing to establish a newspaper in a country where an average salary is between 150 and 200 US dollars. This was a crucial turning point in the relationship between the new military government, describing itself as a corrective system that had set out to establish the Second Republic and the independent media.

The other controversial decree promulgated by the military government as one of the junta's series of decrees was Decree 45, which later became the Act establishing the country's much feared National Intelligence Agency during the days of the military in governance – The NIA.

On July 29, 1994, Decree No. 1 was issued by the junta, suspending parts of the 1970 constitution and with it, the parliament. This made it Crystal clear that business was not going to be as usual as two of the most fundamental pillars of the country's democratic system were effectively destroyed i.e. the constitution and parliament. The first decree stipulated as follows; "The Armed Forces Provisional Ruling Council shall have power to make laws for the peace, order and good government of The Gambia with respect to any matter," and also that, the junta shall have judicial powers, in some cases, which effectively ousted the courts' jurisdiction to even question them. Decree No.1, continues, "The validity of this or any other decree shall not be questioned in any court of law, Thus, the decrees passed by the military council were made unquestionable before any court of law and if anyone had any quarry or complain regarding any of those promulgated laws or aggrieved by the NIA, such a complainant cannot go to court. Rather, the aggrieved party could only report to the president of the Republic, who could decide whether or not to appoint a high court judge to look into such cases of complaint and grievances.

Another typical characteristic of military governance that clearly demonstrated itself within or throughout the period of the APRC quasi military rule in The Gambia was the

existence of the political culture of mistrust and intolerance of the judiciary and a total disregard of its independence in many instances.

There were many instances of disregard for and non- compliance with court orders as well as firing both lower and superior courts judges for handing down decisions or judgments that were not in favour of the military government. Similarly, and away from the court environment, there are a plethora of cases of violations and abuses of human rights and fundamental freedoms for which the military government was accused of having committed especially, freedom of speech and expression, press freedom, freedoms of association and movement and participation in the political process.

The military rulers and senior commanders always find it very difficult to succumb to and comply with decisions, verdicts or orders from another superior authority other than that of their own senior commanders in the name of separation of powers or judicial independence, respect for human rights and political freedoms or constitutional supremacy and rule of law and similar principles of a democratic dispensation.

In March, 2014, the Commander in Chief of the Gambian Army and president of the Republic Yahya Jammeh was himself, while swearing in a new Chief Justice, quoted as saying the following regarding the principle of separation of powers:

> *"I just want you to understand that there is nowhere in the world where the judiciary is independent,". "We pay your salary, we appoint you, and you are part of the government - how can you be independent? (Darboe, 2021*

Another interesting scenario of the early days of the military time in power, which is related to the issue of the AFPRC decrees under discussion here and which is worth mentioning here, was the appointment of Fafa Edrisa Mbai as the junta's first Justice Minister who stayed on with them only for six months while Amie Bensouda was their first Solicitor General. A veteran lawyer, Mbai had already been Gambia's Justice Minister from May 1982 to June 1984 under the JAWARA administration. His appointment under the new military junta made him one of few civilians in that government, though he could not last long. By February 1995, he was fired. But during his time as Minister of Justice, he was also sitting in the Executive Council, a body created by the new military government to effectively replace the parliament in making laws for the country. The Council started to issue a pile of decrees, a large number of which were giving the military leaders sweeping powers. Thus, Fafa Mbai participated in the creation of the decrees at three levels: drafting them at the ministry, deliberating on them in the cabinet and passing them in the Executive Council. This was a clear signal and perfect example of how the principle of separation of powers was going to be disregarded by the new military government, which had continued to dominate Gambian politics and governed the tiny but blessed and beautiful West African nation for more than two decades albeit in a diluted fashion.

As destiny would have it, within six months into Jammeh's full-fledged military government, Minister Mbai was dismissed, together with Amie Bensouda. A Commission of Inquiry was then established by the Junta and headed by Omar Alghali, a Sierra Leonean lawyer who would later become the Chief Justice of The Gambia. The Commission found Mr. Mbai to owe the state 1.5 million dalasi (about 24,000 in today's euros) in tax arrears (Darboe, 2021). As was expected, Fafa Mbai filed a lawsuit at the country's Supreme Court in November 1996, challenging the findings of the Commission. However, either incidentally or by Allah destiny, Decree No. 11, which Minister Mbai himself drafted originally and later amended by Decree No. 25, which said no court can question a commission established by the military, caught up with him in the court and his case was consequently dismissed by the Court. Based on decree No. 11 as amended by Decree No. 25, the court ruled that it had no jurisdiction to address the matter. Thus, the jurisdiction of the Court that he ran to recourse with was ousted by the very Decree he drafted as stipulated above.

For more details and specific examples of the military government's disrespect for separation of powers, judicial independence, various human rights issues and non-compliance with court orders and other examples of behavior, practices and policies or procedures incompatible with the norms and principles of democratic governance, reference can be made to a couple of my previous articles or works especially the following ones:

a. Press Freedom and Democratic Governance in the Gambia: A Right Based Approach, Published in South Africa by the University of Pretoria, African Human

Rights Law Journal, Volume 12 No 2., 2012.

b. The Independent Media and Democracy in the Gambia – Since 1970, Published in the Republic of Hungary by – Afrika Tanulmanyok (Africa Studies, Hungary) Vol. IV. 2012. No. 1

c. The Judiciary in Governance in The Gambia and the Quest for Autonomy Under the Second Republic – Published in New Jersey USA, by the Journal of the Third World Studies (Journal of The Third World Studies, Vol. 27, No. 2 (Fall 2012), pp. 215-248)

Another concrete example clearly showing the contradictions and the incompatibility between the military's perception, style and practice of governance and management as opposed to the principles, procedures or processes and institutions of democratic governance was the military's attitude and behavioral approach to as well their understanding and utilization or application of the concept of being in command and control of the country and its governance machinery and mechanisms. Thus, the following section briefly examines the command-and-control question.

Command and Control Chain as demonstrated and applied by the Military Government in The Gambia

The typical understanding of effective command and control, as Gambians have experienced with the AFPRC/ APRC administration, is that the one in command should also be in control, especially when we talk about a strong and coercive type of command and control. (US Marine Corps, 2018).

In other words, to be in command means to exercise absolute authority and dictate the actions of others, who are subject to his/ her/ their authority and control, while those who are under that control and authority should respond promptly and precisely without any quarry or complaint- (obey first and then complain or make any quarry).

In the general sense of the term command and control is described in various ways by the United States Marine Corps including these:

"In the broadest sense, command and control applies far beyond military forces and military operations. Any system comprising multiple, interacting elements, from societies to sports teams to any living organism, needs some form of command and control. Simply put, command and control in some form or another is essential to survival and success in any competitive or cooperative enterprise. Command and control are a fundamental requirement for life and growth, survival, and success for any system." Or "The traditional view of command and control sees "command" and "control" as operating in the same direction: from the top of the organization toward the bottom". or:

"Command and control are thus an interactive process involving all the parts of the system and working in all directions. The result is a mutually supporting system of give and take in which complementary commanding and controlling forces interact to ensure that the force as a whole can adapt continuously to changing requirements." (US Marine Corps,2018).

As from the point of view of the Gambia experience of military rule, the lesson learned is that the command-and-control process was more of a kind of strong and coercive mechanism of exercising superior authority by the most senior military commander and the most superior overall authority across the length and breadth of the country than a mere interactive process involving a give and take scenario. This is because the military ruler who was commander in chief of the army and president of the Republic at the same time has absolutely been the most powerful man and the superior overall authority in the country. He saw himself as above any other authority in the country including the judiciary and all must therefore do what he wants and how he wants it to be done even in matters relating to the application and enforcement of the law. Otherwise, his ax would fall any time on anyone who dares to defy him and his government's policies and directions.

Thus, for the military ruler in Banjul, it wouldn't make sense for him to have the overall authority to make and enforce all decisions but at the same time not in full control of the situation or of everybody and everything in and around the country or for him to be subject to any kind of legal check and balancing procedures and corrective measures.

In other words, the commander in chief of the armed and security forces and president of the

Republic believed and probably rightly so, that he was the highest overall authority in the country and therefore could not or didn't want to understand how and why his (superior) orders or decisions should be quarried or checked and let alone be nullified and set aside by another authority whether you name it legal or judicial or whatever, which in actual fact was or it was presumed to be inferior to and under the authority of the commander in chief and the president of the Republic.

In The Gambia situation this was amplified and demonstrated by numerous instances in which the government of the Gambian had lost court cases but chose to ignore the courts decisions in those cases or in the worst scenarios the presiding judge or magistrate in some of those cases would be dismissed. (Senghore, 2012).

The following season examines another problematic issue regarding the contradictions and the incompatibility between military rule and democratic governance. Hence the section examines the irrational excessive hiring and firing syndrome of the AFPRC/APRC administrations and its impact on the civil service and public institutions in The Gambia- from 1994-2017.

The Excessive Hiring and Firing Practice of the Military Government

Excessive hiring and firing of people or government staff including suspected disloyal employees and political appointees into and from all sectors of government were the hallmark of the Jammeh's AFPRC /APRC administrations throughout the entire 22 years period of military rule in the country. The military ruler's critics and political opponents accused him of becoming increasingly paranoid as he was regularly reshuffling his cabinet and keeping only a tiny circle of trusted allies close to him. The same pattern of keeping government officials in and out of the system was frequently happening in all other departments and institutions of the central government. As for the case of Cabinet ministers it was definitely an unprecedented situation in the political and governance history of The Gambia. The sacking of late Sulayman Masanneh Ceesay as Secretary of State for the Interior and Religious Affairs, just two months short of the tenth anniversary of the military's ascendance to power had upped the number of hired and fired ministers since 1994 to 48, (Bojang, 2004). This was calculated to be an average of four ministers hired and fired every year since the most senior military commander- Yahya Jammeh was sworn in as president ten years into his reign as a full and quasi-military ruler. ((Jallow, 2013). Thus, by 2016 the number of hired and fired ministers, which includes the author, was about or above one hundred (100).

The Impact of the Military Government's Irrational Hiring and Firing Syndrome on the Gambia's Civil Service

The excessive and irrational hiring and firing pattern of staff and employees in the Civil Service and public institutions by the military government has further undermined the morale of public officers and eroded public confidence in The Gambia's public institutions and administration system throughout the period of military rule in The Gambia. This approach by the military, which was also marked by politicization of the public service, proliferation of public institutions with overlapping roles and functions and government's inconsistency with its adherence to meritocratic principles in matters concerning appointments, recruitments and promotions did not help in-terms of bringing in and assuring the strongly needed reform, reorganization and enhancing professionalism in the country's civil service and public institutions. According to (Tarro, 2021), the performance of the Civil Service and public institutions were hindered by " low commitment from government, to provide the necessary training, incentives , motivations, the necessary supervision and required resources etc, lack of capacity at PMO (Personnel Management Office), proliferation of public institutions, poor management ethics, lack of clarity of institutional roles, lack of appraisal system, unclear policies, lack of job fit and organization fit…" (Tarro, 2021).

Thus, despite several attempts and series of methods of reforms directed at this sector, those efforts to bring in the necessary reforms have not yet translated into meaningful results in the country's personnel administration systems and in the practices of its civil service institutions. In other words, the few studies and policies made to tackle public service inefficiencies and weaknesses in the administrations of the first and second republics have not yet given the desired results in the tiny and beautiful but complicated West African state of The Gambia. (Ceesay, 2006) & (Tarro, 2021).

The weaknesses and inefficiencies of The Gambia's civil service and public administration referred to above could have been the result of a combination of factors including the total absence of higher education and academic research culture in the country throughout the entire lifespan of the first republic. This however, does not contradict the fact that some of the pioneers of the civil service in The Gambia such as Dr. Jebez Langley, Alhagie Ebou Tall, Alhagie Sara Janha and others were well educated, highly disciplined. and well trained. As for the days of the second republic, which ushered in higher education and academic culture with the establishment of the University of the Gambia in1999 accompanied by the advent of strong and vibrant students' unionism, the situation was somewhat different from that of the first republic. In other words, the underlying causes of the weaknesses and inefficiencies of the civil service under the two republics are quite different from each other. As for the second republic, some of the main contributing factors to the weakness and inefficiency of the civil service and public administration in the country, included politicization of appointments, recruitments and promotions, frequent interferences of the military government in the day-to-day operations and management of the civil service and perhaps proliferation of public institutions with conflicting roles.

As a former Foreign Minister, and Higher Education, Research, Science and Technology of the Gambia under the period of diluted military rule, the author had experienced a lot of such interferences and overlapping roles between his ministry and the ministry of Presidential Affairs and the Presidency itself.

In the same way, Civil Society in The Gambia was also weak during the first republic even though the JAWARA administration was very democratic as compared to Jammeh and was therefore, somewhat, more tolerant to civil society activism. (Ceesay, 2006). The situation under the second republic was comparatively different from that of the JAWARA administration. During Jammeh's rule there was every opportunity for civil society to expand and become much stronger and more involved in the political and governance process of the country because the privately owned media organizations proliferated while many human rights and community development organizations were established and Banjul became a vibrant center for regional and international human rights activism as it continued to host the continent's then only human rights promotions and enforcement mechanism- the African Commission for Human and People's Rights and a couple Pam-African human rights promotions non- organizations such as the African Center for Democracy and Human Rights Studies, the Institute for Human Rights and Development in Africa, the Center for the Protection of Child Rights and many more.

However, Civil Society organizations of the second republic, especially the human rights promotion institutions and political think tanks, were not as strong, vibrant and effective as they were supposed to be and this was due mainly to the fluctuating nature and levels of commitment and attitude of the military government to the principles and ideals of democratic governance enshrined in their very own constitution that ushered in the second republic. As I have stated above, the military government both during the period of fully fledged and quasi military rule in the country did not always do very well in the area of respect for and protection of human rights and civil liberties particularly the category of rights situated in the area of civil and political rights otherwise known as the first-generation rights. There were numerous instances of abuses and attacks against private media practitioners, their premises and political opponents and critics. Thus, the following section aptly explains part of this problem

The Military Government and the Broadcast Media

Given the limited number of privately owned radio stations in The Gambia during the First Republic, and that private broadcasting only started in the country in the 1970s, the of intolerance to the free media and the bad practice of closing them down particularly, independent radio stations as a method of interference with or obstruction of press freedom, was almost not a known practice during the year of the First Republic of The Gambia. However, the situation was different from the second republic time when there had been numerous incidents of closing down private media outlets Especially radio and newspapers. Some of the significant cases of attacks and shutting down of private media outlets in the second republic that are worth mentioning included the following:

In 1990, the Citizen FM Radio, belonging to a veteran journalist and a former BBC Banjul correspondent, the late Baboucarr Gaye, was closed down by the state and the proprietor taken to court on charges of operating without a licence contrary to Section 5.7 of the Telegraphic Stations Act 1913 and Regulation 4 made under Section 12 of the Act. The Kanifing Magistrates' Court serving as the court of first instance convicted Mr. Gaye and sentenced him to one month imprisonment with hard labour with option to pay D350, 00 as fine. The court ordered the radio station be forfeited to the state. Thereupon, Gaye appealed to the High Court in Banjul against his conviction and sentence and on 3 July 2000, the High Court reversed the magistrate court's judgement. In his ruling the late Justice W.G Grante Jr. decided that the principal magistrate erred in law and therefore he quashed the conviction and sentence and the consequential order of forfeiture passed on Gaye. The High Court then ordered the state to restore to Babouccar Gaye his radio apparatus and property, which were forfeited, within 7 (seven) days for the radio to resume its normal operation. The High Court Judge in the course of his judgement described freedom of expression not only as a fundamental right but also a basic necessity of a democratic system. The High Court's ruling in this case is significant for various reasons including the following:

- That the court was well conscious of the rights dimension of independent media practice as a basic principle of a democratic system.

- In an outstanding pronouncement, the High Court recognized the fact that the work of the media to seek and disseminate information freely is a cornerstone of a democratic system in every civilized country of the modern world. (Gaye Vs the IGP 2000: WLR 189-200).

- This case posed a serious challenge to the independence of the Gambian judiciary of the time functioning under the watchful eyes of the military as it provided the latter with yet another golden opportunity to assert its authority and continue to check on an increasingly ever-powerful military led executive.

The other private radio station to be subjected to closure by the military authorities was Sud FM, which was jointly owned by a group of Senegalese and Gambian

entrepreneurs. The radio, which was shut down early November 2005, was a subsidiary branch of the Dakar-based Sud FM and which the Senegalese government in October of the same year also closed down. The reasons for the closure of Banjul Sud FM were not indicated despite the fact that there is a consensus among media practitioners and the radio audience in Banjul that during its 8 years of operation in the Gambia, Sud FM had never had any problem with the government and the public at large. The radio station's manager argued that Banjul Sud FM never had any problem with the Senegalese president or the time Mr Abdoulie Wade, suggesting the possibility of the parent station in Dakar being closed down as a result of a problem between the radio and the Wade administration. Nevertheless, the Sud FM Banjul Station Manager thought that the closure of his radio which happened immediately after the return of President Yahya Jammeh from a one-day official trip to Dakar, Senegal could have been the result of an understanding between the two presidents, Wade and Jammeh. Whatever reasons there might be, the closure of Sud FM in Dakar and Banjul does not only represent a case of violation of press freedom in the two countries but also it shows the extent of vulnerability of private media organizations operating under the military government in The Gambia, despite the country being under obligation inThe 1997 constitution and in international law to respect, promote and protect the right to freedom of expression and free speech (chapter 4 of the 1997 constitution, Articles 19 of the Universal Declaration; 9 of the African Charter; and 19 of the International Convention on Civil and Political Rights). Other private media outlets including but not limited to Teranga FM radio, the Independent Newspaper were also subjected to attacks and subsequently closed down by the military government.

For more details on the troubled relationship between the military government and the independent media, the judiciary and other human rights and democracy related matters in The Gambia reference can be made to my earlier studies on the subject, which include these:

a- Press Freedom and Democratic Governance in the Gambia: A Right Based Approach, Published in South Africa by the University of Pretoria,

African Human Rights Law Journal, Volume 12 No 2., 2012.

b- The Independent Media and Democracy in the Gambia – Since 1970, Published in the Republic of Hungary by – Afrika Tanulmanyok (Africa Studies, Hungary) Vol. IV. 2012. No. 1

c- The Judiciary in Governance in The Gambia and the Quest for Autonomy Under the Second Republic – Published in New Jersey USA, by the Journal of the Third World Studies (Journal of The Third World Studies, Vol. 27, No. 2 (Fall 2012), pp. 215-248)

To conclude all the issues discussed and the examples given under this section have clearly shown the nature and extent of the contradictions between and the incompatibility of the military's style and system of management and state governance on one hand and the principles, institutions and procedures of the system of democratic governance and state management on the other.

In The Gambia under Jammeh, democratic institutions existed but were manipulated and served to maintain Jammeh's rule, whims and caprices. Jammeh claimed legitimacy through defeating opposition parties in popular elections in 1996, 2001, 2006, and 2011. However, the electoral process was manipulated in ways that significantly disadvantaged any opposition. For example, exceptionally high party registration fees were required, significant state resources were used to support Jammeh's campaign efforts, and restrictions on media meant coverage was uneven and highly favoured the president. Additionally, opposition candidates and supporters were at times arrested and intimidated by state security forces. The National Assembly was generally ineffective in instigating debates or critical discussions and instead rubber-stamped Jammeh's policies and programmes. While the constitution gave the judiciary independence, judges were frequently and unconstitutionally sacked by Jammeh. Independent media technically existed under Jammeh, but there was an increasingly hostile attitude towards the media, resulting in the closures of numerous independent newspapers/radio stations and the surveillance, arrest, torture and murder of independent journalists. During his time in office, Jammeh stifled freedom of expression by implementing laws on sedition, defamation and the publication of so-called "false news."(Sofia, 2017).

A central element to Jammeh's attempt to balance the perceived threat from within the forces while also maintaining the military as a functional force was incorporating unpredictability into the operation of the armed forces. The importance of unpredictability in modern authoritarian regimes is emphasized by Rebecca Tapscott's theory of institutionalized arbitrariness (Dwyer, 2023). She argues that the state in this type of governance model becomes 'unpredictably present and absent, at times intervening in matters and disputes to determine an outcome, at other times abjuring responsibility and refusing to enforce decisions. The arbitrariness is institutionalized in that it becomes a regular part of how the regime functions. The governing style 'makes it difficult for citizens and local authorities to calculate and assess the risks of possible intervention, which causes them to self-police' (Dwyer, 2023). Authorities then must constantly adjust their actions to respond to the state's unpredictable actions. Ultimately, it fragments and weakens opposition and alternative authority. Overall, Jammeh's military rule and democratic governance had witnessed series of contradictions, absurdities and incompatibles in The Gambia that sent grave waves that altered the political and international image of the Republic of The Gambia to a monstrous state within his tenure.

Conclusion

This paper examines military rule and the system of democratic governance together with the incompatibility nature and the contradictions between the two systems as demonstrated by The Gambia experience under the AFPRC/ APRC administrations from 1994-2017. Thus, the paper has interrogated the nature of the military government's democratic contradictions and the implications of those contradictions for the country throughout the 22 years period of both full-fledged and quasi military rule in the tiny but blessed and peaceful West Africa nation. The author submits that governing within the framework of democratic institutions and processes but with a military style of management amounts to combining two systems of management and state governance that are incompatible with and contradictory to each other. The second republican constitution

which was introduced by the military themselves has incorporated all the necessary principles and institutions of democratic governance in the modern time including a bill of rights, an Ombudsman's office, separation of powers, an independent judiciary, a permanent independent electoral commission and the principles of accountability and transparency. Yet some of the most outstanding accusations leveled against the military government included widespread human rights abuses, ranging from forced disappearances, extrajudicial killings, arbitrary arrests and detentions, political intimidations and harassment against their opponents and critics including the private media, excessive firing of ministers, senior government officials, civil servants and others, unlawful interfaces with the judiciary and the recruitment process of various government departments and agencies.

The paper further argues that the military rulers despite having transformed themselves in 1997 into civilian politicians and administrators, which was proceeded by the introduction of a new democratic dispensation beginning with a new republican constitution with a bill of rights and so many other changes there was one thing that would never change and this was their attitude to and style of management and decision making. This had ushered in what I have earlier on referred to as diluted or quasi military rule in the Gambia, referring to a situation whereby military commanders run democratic institutions armed with democratic principles and procedures, but they would tend to be governing and doing things or taking decisions and implementing them militarily or in a military way. This is where most problems of quasi military rule always emanate from because they tend to combine two systems that are diametrically opposed to each other and therefore incompatible.

The paper admitted that, with all sincerity, the former military government in Banjul did not do very well in the area of human rights protection and democratic governance in general as compared to its outstanding achievements in other areas of socio-economic and political development. Despite having introduced drastic changes into the governance and state management system of The Gambia by adding numerous new institutions and revamping, reorganization and restructuring a couple of the existing institutions and despite having done extremely well in infrastructure development and in terms of ensuring and maintaining internal security, domestic peace and stability, the military government's performance in the domain of respect for, promoting and protection of human rights and full adherence to the principles of democratic governance was fluctuating and in many occasions disappointing. There were many instances of high-profile cases of government failures to protect human rights, as well as cases of alleged abuses and violations of fundamental rights and freedoms of individuals and groups. One of the biggest challenges the military authorities were grappling with was the respect for and full adherence to the democratic principles of respect for the rule of law and the authority and supremacy of the law, the independence of the judiciary and the legal profession and press freedom. It is always difficult for military rulers and military commanders in general anywhere across the continent to come to terms with and wholeheartedly accept and submit to the democratic reality that decisions of the justices of the courts are superior to and therefore should prevail over any administrative decisions or executive directives and orders including orders from the Military High Command, that they can be reviewed by or challenged before and set aside by courts of competent jurisdiction. Similarly, they also find it difficult to understand or admit that it is always in the absolute interests of the peace, stability and security of society and also for the sake of ensuring good governance that press freedom and free flow of information must be allowed under all circumstances. Our experience with the military has repeatedly shown that a military ruler cannot simply come to terms with or accept the fact that there exists in the state or in the very government he is heading a higher authority that can definitively nullify, invalidate or set aside an administrative order or decision of his government or even his own executive directives. For the military authorities, orders from the Military High Command are superior orders and must therefore be obeyed by all at any cost. To reconcile this culture of authority and command in the military tradition with the principles of democratic governance and state management (such as constitutional rule, respect for human rights and fundamental freedoms, respect for the rule of law , independence of the judiciary and the supremacy of the constitution and the laws in general etc…), is one of the biggest and most difficult challenges facing the modern day political phenomenon of military rule and the possible attempts to normalize or legitimize

military takeovers of power and their involvement in governance and state management across the globe. The military ruler in Banjul was obviously not an exception to the above challenge. This is exactly what I call "combining incompatible and contradictory systems of governance and state management. As mentioned earlier, the previous studies I referred to above have considerably addressed the question of human rights and democratic governance under the military in The Gambia in a more detailed and comprehensive manner.

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