

**Militant Democracy and Transparent Governance towards Promoting Sustainable Development: the case of Some African States**

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### **List of Acronyms**

Au	African Union
FDRE	Federal Democratic republic of Ethiopia
ACDEG	African Charter on Democracy Election and Governance
HSGIC	Heads of State and Government Implementation Committee
CUD	cooperation for Unity and Democracy
EPRDF	Ethiopian Peoples' Revolutionary Democratic Front
OLF	Oromo Liberation Front

### Abstract

*Militant democracy as a defense for democratic values from autocratic and extremist threats should be backed by legitimate aims. African nations who are desirous for sustainable development shall exhaustively apply consensual part of democracy before using its militant part just for the sake of avoiding violent or terrorist acts of militant democracy measures' victims. International laws have tended to authorize African nations to employ militant democracy to preserve freedoms and liberty of their citizens. The legitimacy of militant democracy measures can be assured by transparent governance. Legitimate militant democracy and transparent governance have tremendous contributions for African sustainable development.*

**Key words:** *Militant Democracy, transparent governance, sustainable development, African democracy, legitimacy, international instruments*

## **1. Introduction**

No society truly desirous of development can ignore democracy.<sup>1</sup> Though the wave of democratization in Africa did not gain momentum until after the Cold War ended, in the 1980s critics inside and out began asking rough questions about the performance of the region's authoritarian governments.<sup>2</sup> Despite the fact that Africa's democracies have lasted longer and performed better than initially expected, the African development faced with some challenges such as corruption, ethnic conflict, Islamic waged terrorism and maladministration. In fact, the nations devised legal and institutional frameworks to eradicate such problems despite the effectiveness and efficiencies are in doubt.

The launch of the African Union and its adoption of the New Partnership for Africa's Development (NEPAD) an initiative that identifies “good governance” as an essential “condition for sustainable development” embodies the promise of African leaders to promote and protect democracy and human rights in their respective countries and regions, by developing clear standards of accountability, transparency and participatory governance at the national and sub-national levels.<sup>3</sup> Nevertheless, the promises and achievements in Africa seem to be in disparity.<sup>4</sup> Africa has been trying to democratize its democracy, good and transparent its governance as well as protect human rights in recent years in better way than the years 1990s and before. Autocracy and extremism seeks to abuse the weak side of democracy that is freedom of expression, assembly and demonstration. Democracy can defend and preserve itself from non democratic or autocratic threats through militancy. There are issues to be addressed regarding militant nature of

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<sup>1</sup> Adeoluo uwaseyi Oyekan, Democracy and Africa's Search for Development, The Journal of Pan African Studies, vol.3, no.1, September 2009, pp 214

<sup>2</sup> Ibid.

<sup>3</sup> New partnership for African development (NEPAD), framework document, 2001, pp 5.

<sup>4</sup> Only 43% of people living in Africa live in a country which has shown overall governance improvement since 2010. Whilst all African countries have improved in the Human Development category since 2000, only 21.1% of Africans live in a country that has improved in Safety & Rule of Law, 47.5% in Participation & Human Rights and 85.7% in Sustainable Economic Opportunity. The 10 most populous countries in Africa have improved in overall governance since 2000, but only 2 of these have improved in Safety & Rule of Law (Ethiopia and Uganda). There has been overall governance progress since 2000. 2013 Ibrahim Index of African Governance (IIAG), available at <http://www.moibrahimfoundation.org/interact/> accessed in 19<sup>th</sup> July 2014.

democracy and its legitimacy to enhance sustainable development in Africa? How can Democracy defend itself from autocrats and abusers of its militancy in guise of defending it? This paper tried to address the preceding issues with comparative perspective. Four African countries have been selected purposively for comparative perspective regarding militant democracy and its legitimacy. Ethiopia, Egypt, Nigeria, Rwanda are selected for comparison. The writer of this paper justified the selection of these African nations for comparison as follows.

**Ethiopia:** Non-colonized African nation and passed through monarchical, dictatorial and revolutionary democracy with in a century. It has also registered as relatively successful country to accommodate ethnic diversity through ethnic based federal system.

**Egypt:** The writer selected Egypt to represent the African-Arab nations and known for changing two regimes within three years. Hence, there might be a lesson to be learned from Egypt about militant democracy from its popular revolutions seeking democracy.

**Nigeria:** The African most populous and multi ethnic nation which is frequently under the threat of religious extremism and ethnic cleavage.

**Rwanda:** The genocide mass slaughter of Tutsi and moderate Hutu happened in Rwanda in 1994. How Rwanda use democracy to prevent such kind of crimes and how can it defend itself from Autocracy.

## **2. Militant Democracy: Theoretical Perspective**

Lowenstein had written his work thinking the authoritarian, fascist movements of the time. Arguing democracies were in capable of defending themselves against fascist movements if they continued themselves to subscribe to ‘democratic fundamentalism’, legalistic blindness’, and an ‘exaggerated formalism of the rule of law” he call for democracies to find political and legislative answers to anti democratic forces such as banning parties and militias, and restricting the rights to assembly, free speech, and, not least, the activities of those suspected of supporting fascist movements who could be guilty by association

In Lowenstein’s view, the only way in which democratic states could withstand fascism’s skillful exploitation of democratic rights to subvert democracy from within was to abandon what he took to be an outdated view of liberal democracy, under which all voices should be accorded free expression and participation, and to fight fire with fire: to adopt special measures to prevent

fascist leaders from exploiting what Joseph Goebbels famously defined as the “best joke of democracy,” namely that “democrats provide their enemies with the means to get rid of democracy”<sup>5</sup>. As Karl Lowenstein pointed out that when democracy becomes militant it can resist the autocratic threat.<sup>6</sup> He tried to enumerate the autocratic threats as absence of the separation of powers and a lack of mutual control within the administration, when power is concentrated in the hands of one person and others. Apparently, the autocratic treat should be imminent and real before making democracy to be militant for defense. In some instances, the autocrats themselves abuse militant democracy just to consolidate their autocracy.

## **2. Legitimacy of Militant Democracy Measures**

What reasons are given to justify Militant democracy measures? Preserving democracy is the orthodox justification for Militant democracy. An electoral majority choosing an anti-democratic government is the classic “paradox of democracy,” which political theory has addressed in familiar terms: we cannot consent to foreclose the possibility of consent, of democratic decisions, in the future. But what does democratic self- defense require or permit? And, as difficult, what are the positive conditions that must be maintained to insure democratic reproduction? Measures of militant democracy must be legitimate. Unless the militant democratic measures taken legitimately, the miseries that affect peace and security of the society could be appeared. Legitimacy of militant democracy measures can be either substantive or procedural. Substantive legitimacy of militant democracy measure depends of the aims of the measures as well as the affected democratic values. Violation of such sanctified values, principles or norms entail militant democracy measure. It is possible to understand their sanctity by taking a look at the national constitutions or long lasting conventions. This kind of measure can be called substantive militant democracy measure. For instance, proscribing a rival political party in guise of demanding ethno-centric administration is substantive militant democracy measure since the aim of such measure is to oust ethnocentric administration from political agenda. Procedural aims of militant democracy measures manifested in the way of assuming governmental power. Despite the fact that, the perpetrator of democracy has procedural aims

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<sup>5</sup> Giovanni Capoccia Militant Democracy: The Institutional Bases of Democratic Self-Preservation The Annual Review of Law and Social Science is online at <http://lawsocsci.annualreviews.org> accessed on July 4 2014.

<sup>6</sup> Paul Cliteur and Bastiaan Rupkema, The foundation of militant democracy, leiden University, 2010, pp 230

such as assuming power through unconstitutional or undemocratic conducts,<sup>7</sup> the legitimacy of militant part of democracy that taken to prevent such undemocratic conducts has substantive nature. The substantive part of militant democracy measures emanates from what reasons given to justify the militant democracy measure.

Procedural legitimacy of militant democracy measures emanates from the process of taking militant democracy measures. Proportionality, reasonableness and lawfulness are the standards to evaluate procedural legitimacy of militant democracy.

When the struggle for empowerment is “waged within the world of democratic politics” it is waged through the use of parties.<sup>8</sup> Democracy can be enhanced through creation of conducive political atmosphere for political parties. Before the democracy being militant it has to be liberal. Equal opportunity in terms of public mass media coverage for the rival and ruling political parties to propagate their agendas has to be given. Freedom of expression, assembly, demonstration should primarily granted to all political parties equally. The procedural legitimacy of militant democracy depends on the fulfillment of the preceding requirements.

Ban of political parties is one of the militant democracy measures habitual in Africa. About twenty eight African countries have adopted laws that ban religious and ethnicity based political parties.<sup>9</sup> Ban of ethnic and religious parties as a militant democracy is justified on the ground of a legitimate desire of preventing violent ethnic conflict and the more narrow self-interested motives of decision-makers. Perhaps, the first nation in Africa that banned particularistic parties was Ghana.<sup>10</sup> Kwame Nkrumah, the first leader of independent Ghana, passed a law banning such parties in the 1960s. Rwanda banned the Hutu political parties in three waves from 1994-2003. The question is whether the justification given to militant democracy measure is relevant, reasonable, proportional or legal. How can it be evaluated? Apparently, there is no objective test to evaluate the justification of militant democracy measures. Social, political, cultural and economic context of African countries have to be taken in to account to evaluate the measure and

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<sup>7</sup> Looting the public votes to stay in power, subverting the government through coup d'état, incite the public to revolt against the government are undemocratic ways to assume.

<sup>8</sup> Nancy L. Rosenblum, MULTICULTURALISM & THE ANTI-DISCRIMINATION PRINCIPLE Banning Parties: Religious and Ethnic Partisanship in Multicultural Democracies, *Law & Ethics of Human Rights* Volume 1, Issue 1, 2007, pp 3.

<sup>9</sup> Wondwosen B. Teshome, Ethnicity and Political Parties in Africa: The Case of Ethnic-Based Parties in Ethiopia *The Journal of International Social Research* Volume 1/5 Fall 2008, pp 15.

<sup>10</sup> Ibid.

to test the substantive and procedural legitimacy of militant democracy measures. Which measures are constitutionally allowed? Let alone the African nation's constitution, the German constitution which is said to model for militant democracy measures remains silent regarding the question of which measures are constitutionally allowed. What are the boundaries for legitimacy of militant democracy measures? The militant democracy measures have their own limits. The first limit is that the measures should have legitimate aim as discussed above. The second limit is lawfulness of militant democracy measures. The measures should not be arbitrary. They should fall in specific national or international legal framework. Thirdly, proportionality of the militant democracy measures with the threat against democracy. Proportionality can be evaluated in terms of eminency of the autocratic threat to happen. These three limits might help to evaluate the abuse of militant democracy measures.

### **3. African Test of Militant Democracy: comparative perspective**

Despite the fact that the concept of Militant democracy in paper coined by the German Scholar Karl Lowenstein in USA, the features of its militancy observed in many democratic nations of the world either in de jure or de facto. Some of democratic African countries incorporated the militant democracy feature implicitly in their legal system. An attempt has been made to overlook four African counties namely Ethiopia, Egypt, Nigeria and Rwanda, theoretical and practical experience of militant democracy in bird's eye view. It has been tried to justify the selection of these countries for this paper in the introduction. Generally, all of these four countries applied militant democratic measures in different periods. However, they applied the militant democracy measure before exhaustively use the consensual part of democracy. The result is reopening Pandora's Box to activate the miseries of militant democracy victims on civilians. It is evident from the fact that OLF and Ginbot 7(CUD leaders waged it) are now threats to Ethiopia, Bokoharam in Nigeria, Muslim militants of the Muslim Brotherhood ruminants attack in Egypt and Hutu militias in Rwanda. Detail aspects of militant democracy measures in these counties have been discussed as follows.

#### **3.1. Ethiopia**

One third of the 1995 Federal Democratic Republic of Ethiopian Constitution has devoted to human rights. Although the constitution doesn't have a clause that prohibits the amendment of certain provisions, the rights, and freedoms specified in chapter three are entrenched with a strict



amendment procedure.<sup>11</sup> The FDRE constitution is with no political aims that are not subject to reform, and the political process; and it is not militant in its substance. The FDRE constitution recognizes militant democracy in procedure.<sup>12</sup> Despite the fact that Article 9(1) and (2) of the constitution declares supremacy of the constitution and nullity of everything that contradicts the constitution, it does not explicitly restrict any political parties from coming up with special political agenda and policies. However, the constitution prohibits assuming governmental power without winning election. Any organ including a political organization with the objective of assuming state power through revolution or rebellion is prohibited by the FDRE constitution; and they have the duty to ensure observance of the constitution and to obey it.<sup>13</sup> The 2004 FDRE criminal code has also provide a defense for the constitutional democracy through criminalizing illegal overthrow of the constitutional order.<sup>14</sup> The federal democratic republic of Ethiopia political parties registration proclamation no 573/2008 provides that a group or a body is barred from being registered as political party if it aims to foment conflict and war by preaching hatred and enmity among nation, nationalities and peoples on the basis of different in the race, religion, and the like, in violation of the constitution federal republic of Ethiopia; is organized to advance its political objectives by force of arms; aims to take over political power by over throwing the government by armed force; having members of foreign nationals; formed for the purpose of pursuing unlawful activities; formed to breakdown the constitutional order by way of illegal means.<sup>15</sup> The Ethiopian Anti terrorism proclamation provides that, political organizations, shall be proscribed as terrorist organization if it directly or indirectly commits acts of terrorism; prepares to commit acts of terrorism; supports or encourages terrorism; or is otherwise involves in terrorism in the proclamation.<sup>16</sup> Both the political parties' registration and anti terrorism

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<sup>11</sup> The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995 , *Federal Negarit Gazeta* of the Federal Democratic Republic of Ethiopia, year 1 No.1, Addis Ababa 25<sup>th</sup> August, 1995, article 105(1).

<sup>12</sup> Gebreabzgi W/Slase, the Extent of Reason of State in the Ethiopian Constitutional Order: the Quest for Restraining and Legitmizing, a Thesis Submitted to the School of Graduate Studies, School of Law, Addis Ababa University, in Partial Fulfillment of the Requirements for the Masters of Laws (LLM) Degree in Constitutional and Public Law, Available in <http://www.chilot.me> Accessed on 20 July 2014, Pp 87.

<sup>13</sup> Ibid.

<sup>14</sup> The Criminal Code of the Federal Democratic Republic of Ethiopia, proclamation no. 414/2004, Art 238 provides that the one who, intentionally, over throws, modifies or suspends the federal or state constitution; or over throws or changes the order established by it through violence, threats, conspiracy or any other unlawful means is punishable with rigorous imprisonment from three years to twenty-five years.

<sup>15</sup> The political parties registration proclamation no. 573/2008, Art 10 (1-8).

<sup>16</sup> The Anti Terrorism Proclamation No. 652/2009, Art 25(2).

proclamations have designed militant democracy measures such as dissolution of political parties through court and proscribing an organization as a terrorist organization by the parliament.

Nevertheless, the measure under the Ethiopian anti terrorism proclamation does not provide a way out for the political party to institute its case to be reviewed before the court or an independent organ. The law does not provide any clear Criteria that need to be considered in order to proscribe an organization as a terrorist organization. Let alone this, it is not clear which department of the executive organ is empowered to initiate and submit the proscription or de-proscription to the parliament. Granting of the power of proscription to the parliament up on the submission of the executive could make the existence of political parties at stake as it is difficult to expect the parliament will be neutral in giving such sort of resolutions taking in to account to the party discipline in parliamentary system of government and the political reality in the country. The constitutional interpretation power is also in the hand of upper house.<sup>17</sup> The political parties are unlikely to search for relief from the judicial organ or any other neutral umpire. The writer of this article agree with Gebreabzgi W/slase and other scholars statement that in the absence of institutional and procedural safeguards, and clear criteria required to be considered, proscribing a political party as a terrorist organization bears high potential for the creation of an arbitrary and politicized decisions in which the government could use as a political device to suppress its rival political group without its being of a terrorist.<sup>18</sup> Hence, the militant democracy measures have a tendency to be abused by the ruling party just for the sake of stay in power by eliminating or diminishing the rival political parties in Ethiopia.

Although no any provision of the FDRE constitution recognize substantive part of militant democracy, the ruling EPRDF party had taken militant measures on the ground of the political parties' manifesto. However, the legitimacy of such measures should be tested neutrally. For instance, in 2005 election period the EPRDF blamed the rival parties as genocide inciter in the public media. Had the government aware of such facts it would have been expected to ban the party for the sake of protecting the people from genocide.

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<sup>17</sup> According to the 1995 Ethiopian Constitution, the authority to interpret the Constitution is vested in the second chamber, the House of Federation. According to the Constitution Articles 62 and 83, the House of Federations is not only empowered to decide constitutional disputes but also to interpret the constitution.

<sup>18</sup> Supra note 12, pp 78. .

*“The ruling Ethiopian People Revolutionary Front (EPRDF) Television spot asserted that the opposition parties, which are proponents of the interhamwe, want to destroy differences and from mixture they raise conflicts between people. Voting for the opposition brings a worse genocide than that of Rwanda.... If Interhamwe is Voting in Urban centers, cities will become arenas of chaos, development will stagnate, and genocide will take place.(22 April 2005).”<sup>19</sup>*

Amid these verbal attacks, members and supporters of the CUD and other opposition parties’ supporters were harassed and detained, particularly in rural areas and urban centers outside the capital.<sup>20</sup> Such kind of measure seems to be unreasonable to be legitimate militant democracy measure. Had the government found any reliable and relevant testimony that shows the parties manifesto resembled with interhamwe, it could have taken serious militant democratic measure such as prohibiting the party from election.

### **3.2. Arab Republic of Egypt**

In March 2007, President Hosni Mubarak introduced several constitutional amendments that would increase presidential powers and, more significantly, ban any political parties based on religion, race, or ethnicity in Egypt.<sup>21</sup> Such prohibition of political parties to organize them based on religion, race or ethnicity can be considered as the positive move of the Mubarak’s regime to defend Egyptian democracy from religious or ethnic extremists and to preserve national unity.<sup>22</sup> After Mubarak’s step down from power, Egyptians began 2014 being summoned back to the polls for the third time in three years on a constitutional matter. The new constitution approved at the referendum held on January 14 and 15, 2014, included a number of changes from the 2012 Constitution. The 2014 constitution has received militant democracy both in substance and procedure. Article 74 of the 2014 Egyptian constitution declared that all citizens shall have the right to form political parties by notification as regulated by law and no political activity may be practiced and no political parties may be formed on the basis of religion or discrimination based

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<sup>19</sup> Ethiopian Television, April 12, 2005 as cited by Louvis Aalen, the politics of Ethnicity in Ethiopia: actors, powers and mobilization under ethnic federalism, African Social studies series, 2009.

<sup>20</sup> Ibid.

<sup>21</sup> The amendments were put to a popular referendum and, despite low voter turnout and boycotts by opposition groups, passed with 75.9% approval

<sup>22</sup> Hosni Mubarak ruled Egypt for almost 30 years until he was removed from power in a wave of mass protests in February 2011.

on sex, or origin, or on sectarian basis or geographic location and no activity that is hostile to democratic principles, secretive, or of military or quasi-military nature may be practiced.<sup>23</sup> Unlike the Ethiopian system, political parties may not be dissolved except by virtue of a court judgment. Nevertheless, Islamic identity and Sharia has been preserved in the 2014 Egyptian constitution.<sup>24</sup>

Practically Egyptians has revolted two times within three years and changed two regimes. The subversion of President Hosni Mubarek's regime through popular revolt is apparently the militant democratic measure in-terms of demanding transparent governance and rule of law. The second wave of Egyptians revolution is exceptional and controversial in terms of whether the ousting of President Morsi is unconstitutional or revolutionary. From the regular militant democracy measures perspective, the second wave of Egyptians revolt is outstanding since once the autocrats sit on the saddle of administration through democratic ways, they are unlikely to be removed through popular revolt since they have democratic institutions and legal framework for coverage and swords in their hands to smack. In fact there are two reverse arguments about the ouster of president Morsi as to whether it is a coup d'état or popular revolution. On the one hand ouster of President Morsi categorized as coup d'état or unconstitutional change of government. Of all the global governance institutions, only the African Union has unequivocally categorized the ouster of President Morsi as an unconstitutional change of government.<sup>25</sup> Consequently it has suspended Egypt from participation in all AU activities including the Peace and Security Council until constitutional order is restored.<sup>26</sup> As Mehari Tadelle retrieved in the report that the swift and unequivocal response to the crisis in Egypt emanates from the AU's normative framework

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<sup>23</sup> Egyptian constitution Article 74.

<sup>24</sup> Article 2 of the constitution, which declares that Islam is the religion of the state and the principles of Islamic Sharia are the principal source of legislation, has remained unchanged.

<sup>25</sup> Mehari Tadele Maru, a Coup or a Revolution the Egyptian Political and Legal Debacle, Aljezeera centre of studies, available at <http://studies.aljazeera.net/en/reports/2013/07/201372264346689240.htm> accessed on July 12, 2014. The United States of America (USA) and the European Union (EU) have also expressed their grave concerns on the involvement of the army, but stopped short of calling it a coup or an unconstitutional change of government. Significantly, the USA has decided to review its aid to the Egyptian military establishment

<sup>26</sup> The decision of the AU states "that the overthrow of the democratically elected President does not conform to the relevant provisions of the Egyptian Constitution and, therefore, falls under the definition of an unconstitutional change of Government, and [a]ccordingly, and as mandated by the relevant AU instruments, the Council decides to suspend the participation of Egypt in the AU's activities until the restoration of constitutional order."

developed in response to specific historical circumstances and the nature of African states and political parties because historically Africa has experienced more than 100 coups d'état.<sup>27</sup>

Indeed, President Morsi's attempt to monopolize some judicial and other powers through a presidential declaration could be cited as a deliberate violation of the declaration of people's trust. However, ousting the Morsi government is disproportional measure since it was immediately corrected when the opposition raised concerns and protested. Such rectification should take as an indication of the President's amenability to undertaking corrections. The pro-Morsi arguers further stated that, one year was too short a time for a president of a country to prove his leadership towards democratic and constitutional governance.<sup>28</sup> From this perspective, the legitimacy of Egyptians militant democracy measure seems to be illegitimate in view of the fact that the measure taken was disproportional and untimely.

On the other hand the ouster of president Morsi categorized as popular revolution to preserve or defend democracy. It was not initiated by the Egyptian Armed Forces but by the people of Egypt. Millions of Egyptians once again went to Tahrir Square and demanded the resignation of the president and an early election. Egyptians demanded such a political move due to the president's refusal to accept popular demands and rejected all offers for a peaceful solution. That brought the army's move to depose him. The army backed the popular demand to oust a president who was democratically elected but failed to serve the purpose of democracy.

The substantive and procedural legitimacy of Egyptians militant democracy measure is still controversial. Indeed the ultimate aim of subverting Morsi's administration could be preserving the democratic values. Failure to keep the promise which made at the time of election should not be backed by popular revolt rather it can be punished by the next poll. For the writer of this Article, the ouster of Morsi regime was coup d'état or popular revolution, it is illegitimate in terms of procedural militant democracy measures

### **3.3. Nigeria**

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<sup>27</sup> Supra note 25, pp 5.

<sup>28</sup> Ibid. It would be very difficult to convince the Egyptians and non-Egyptians alike that the only remaining option was the removal of the president in order to eliminate the causes of the grievances suffered by the anti-Morsi camp.

Since Nigeria returned to democracy in May 1999, after almost three decades of military rule, and almost two decades of economic crisis, the country has been faced with the complex challenges of national reconciliation, national reconstruction and economic reform, and democratic consolidation.<sup>29</sup> In Nigeria there are myriads of security challenges including the demand of Islam militant groups to create Muslim Nigeria to be ruled by Sharia, ethnic clashes between neighboring tribes and Muslim-Christian clashes.<sup>30</sup> The legacy of colonialism and military rule, combined with a population divided along ethnic and religious lines, has challenged Nigeria's transition to, and consolidation of, democracy

In a four-year period following Nigeria's 1999 transition, the democratically elected governments of 12 Muslim-majority states in northern Nigeria incorporated Sharia into state criminal law and launched extensive Islamic social and economic reforms.<sup>31</sup> In fact, the legal pluralism aspect of Nigerian legal system can be praised. However, the Sharia implementation in some parts of Nigeria obviously affects the democratic development in Nigeria.

There is constitutional prohibition of political parties which deemed to have ethnic, religious, or sectional, rather than truly national, orientations and organizational foundations in Nigeria.<sup>32</sup> This prohibition can be considered as one of the militant democracy measure reception in Nigerian constitution with substantive aspect. The historical ethnic cleavage and conflict occurred in 1970s' and 1980s' is the cause for such constitutional reception of substantive militant democracy.

The 1999 Nigerian constitution declared that every person has the right to freedom of expression, peaceful assembly and association.<sup>33</sup> The limitations for these rights are only general limitations such as in the interest of defence, public safety, public order, public morality or public health; or

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<sup>29</sup> Cyril I. Obi, Nigeria: Democracy on Trial Text of Lecture Organized by the Swedish Development Forum, Stockholm, Tuesday, September 14, 2004.

<sup>30</sup> Ibid.

<sup>31</sup> Brandon Kendhammer, the *Sharia* Controversy in Northern Nigeria and the Politics of Islamic Law in New and Uncertain Democracies Forthcoming at *Comparative Politics*, accepted June 2012

<sup>32</sup> Matthias Basedau, Matthijs Bogaards, and others, Ethnic Party Bans In Africa: A Research Agenda available online at [http://www.germanlawjournal.net/pdfs/Vol08No06/PDF\\_Vol\\_08\\_No\\_06\\_617-634\\_Articles\\_Niesen.pdf](http://www.germanlawjournal.net/pdfs/Vol08No06/PDF_Vol_08_No_06_617-634_Articles_Niesen.pdf) accessed in 12 July 2014.

<sup>33</sup> Nigerian constitution of 1999, Article 39 and 40.

for the purpose of protecting the rights and freedom of other persons.<sup>34</sup> These limitations are also justifications for defending democracy through such political rights.

Nigerian constitution incorporates militant democracy both substantively and procedurally. Article 224 of Nigerian constitution explicitly declares that the programme as well as the aims and objects of a political party shall conform to the provisions of Chapter II of this Constitution which dictates about fundamental Objectives and directive Principles of Nigerian State Policy. This shows apparent incorporation of militant democracy measure in Nigerian constitution substantively through compelling the political parties to adjust their manifesto in line with the constitutional economic, political, social and foreign policies.

Article 227 of the 1999 constitution provides that no association shall retain, organize, train or equip any person or group of persons for the purpose of enabling them to be employed for the use or display of physical force or coercion in promoting any political objective or interest or in such manner as to arouse reasonable apprehension that they are organised and trained or equipped for that purpose. This provision shows that the Nigerian constitution receives militant democracy procedurally since it demands every political party to assume power through free and fair election.

### **3.4. Rwanda**

After the wake of mass slaughter genocide in 1994, Rwanda has been trying to defend the democratic values and political pluralism in various dimensions. Rwandan constitution incorporates militant democracy in substance and procedure. Substantively, the 2003 Rwandan constitution under Article 52 allows a multi-party government as long as parties do not destabilize national unity, territorial integrity and security of the nation. Moreover, political organizations are not allowed to base themselves on “race, ethnic group, tribe, clan, region, sex or any other division which may give rise to discrimination”.<sup>35</sup> This prohibition actually seeks to avoid ethnic consciousness that triggers ethnic conflict and mass killings. In practice, the Rwandan party ban occurred from 1994-2003. The immediate post genocidal ban on the former state party called movement party coalition pour la defense de la republica (CDR) in 1994 is the

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<sup>34</sup> Id, Article 45.

<sup>35</sup> Rwandan constitution, 2003, Article 51.

first party ban in Rwanda.<sup>36</sup> In 2001, the formation of a new party, party for democracy and regeneration (PDR) ‘Ubuyanja’ had been outlawed.<sup>37</sup> In 2003, the largest opposition party Mouvement Democratique Republicain(MDR) was banned.<sup>38</sup> These clearly show that Rwanda tried to apply militant democracy measures to preserve peace and security of the society as well as democratic governance of the people of Rwanda. However, the legitimacy of such militant democracy measure can be justified with the historical background of Rwanda.

Rwandan Law governing political organizations and politicians under article 17 declares that parties have to notify the local authorities when they want to organize a public assembly or demonstration. Political organizations “causing trouble or carrying out divisive acts shall face sanctions.<sup>39</sup> Moreover, the law requires political organizations to be recognized and to organize themselves in the forum of parties<sup>40</sup> There is also an extensive code of conduct for political organizations and politicians with a large list<sup>41</sup> of what political organizations should do or not as well as sanctions against organizations violating these principles of the code of conduct can be taken by the High Court of the Republic based on a complaint lodged by the Senate.<sup>42</sup> Sanctions can include formal warning, suspension of the activities or dissolution. This is also an other indication of Rwandan militant democratic safeguard equipped by the constitutional not repeat what has happened in April 1994. In the presence of such constitutional guardians to the ruling party, the people have to enjoy transparent and accountable governance.

Even though the passage of a Rwandan constitutional amendment requires a three quarters majority vote of the members of each chamber of Parliament it has entrenched the presidential term and the system of democratic government based on political pluralism, or the constitutional regime established by the Constitution especially the republican form of the government or national sovereignty as it requires the amendment must be passed by referendum, after adoption by each Chamber of Parliament.<sup>43</sup>

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<sup>36</sup> Peter Niesen: Public Party Bans in Rwanda 1994-2003: three narratives of justification, Journal of democratization, Vol 17, no 4, 2010, pp 710

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Rwandan Law governing political organizations and politicians, article 18.

<sup>40</sup> Id, Article 52

<sup>41</sup> Id, Article 36-41

<sup>42</sup> Id, Article 42

<sup>43</sup> Ibid.



To summarize, in addition to protecting democracy from its enemies (‘militant democracy’) as a justification invoked in Rwanda, two alternative narratives carried the burden of justification. The first is that of banning strongly particularistic parties, i.e. parties that discriminate or incite hatred and violence along ethnic or similar lines. The second is that of banning the former ruling party, responsible for mass atrocities, and its successor organizations.

## **5. Militant African Democracy: From International Instruments Point of View**

There is no international legal definition of democracy as such but there are essential constituents of democracy with binding character such as the holding of free and fair elections and the granting of essential civil and political rights.<sup>44</sup> In 2004, the UN General Assembly adopted a resolution that lays out seven ‘essential elements’ of democracy, including: separation and balance of power, independence of the judiciary, a pluralistic system of political parties and organizations, respect for the rule of law, accountability and transparency, free, independent and pluralistic media, respect for human and political rights; e.g., freedoms of association and expression; the right to vote and to stand in elections.<sup>45</sup>

Dominique E. Uwizeyi Mana tried to express African democracy from African leaders’ point of view as follows.

*‘An African democracy is a form of government based on one-party rule. Political parties may exist nominally- but may not freely organise political activities in opposition to the rulers and the ruling party. Another description of African democracy put forward by African leaders of the post-African independence is based on their argument that traditional African societies rested on a politics of consensus not competition a principle they perceived to be promoted by proponents of multiparty democracy.’<sup>46</sup>*

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<sup>44</sup> General Assembly Res 59/2001 of 20 December, 2004 no 1.

<sup>45</sup> Ibid.

<sup>46</sup> Dominique E. Uwizeyimana, Democracy and Pretend Democracies in Africa: Myths of African Democracies, Law Democracy & Development, Vol 16(2012)

The members of African Union has asserted at the preamble of African Charter on Democracy, Elections and Governance that they are committed to promote the universal values and principles of democracy, good governance, human rights and the right to development.<sup>47</sup> Transparent governance is the key factor for Africa's social and economic development. Governance and democracy have become widely recognized as prerequisites for sustained development.<sup>48</sup>

African countries are embedded with a system of international legal commitments to democratic standards by their membership to African Union; African charter on human and people's rights; *African Charter on Democracy, Elections and Governance*; and other land mark agreements. Although a general obligation to democratic governance of a regime is not uncontested in international law; a regional obligation under customary international law in Africa is therefore possible.<sup>49</sup> Violation of African charter on human and people's rights can at the most be considered by the African Commission, an institution consisting of state member representatives. From this perspective, the African practice in the enforcement of international treaties seems to be participatory and emphasized on both the legal, social, economic, cultural and political aspect of the African people. Where the international convention provides court system for human right convention enforcement just like the European human right convention, it has only legal implication.

For the question of a legal duty for African democracy to be militant, it is possible to say that as long as African nations committed to regional and international law of democratic standards, such as African Charter on Democracy Election and Governance, they are compelled to transform the international legal commitment on national level including provide for measures on national level in order to be able to comply with international legal obligations, in particular to defend the reached democratic standards.<sup>50</sup> However, there is no any institutional foundation at the international as well as national level to measure the legitimacy of the measures taken to defend democratic standards. Distinguishing the combatant military measure whether it is taken to defend democracy or regime would be the difficult part in practice.

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<sup>47</sup> African Charter on Democracy, Elections and Governance, 2007.

<sup>48</sup> Johnson, Chalmers. *MITI and the Japanese Miracle*. Stanford: University Press, 1982 and White, Gordon and Robert Wade eds., *Developmental States in East Asia*. London: Macmillan, 1988.

<sup>49</sup> Marcus Thiel, 'Militant democracy' principle in modern democracies, Farnham, England; Burlington, VT : Ashgate, c2009, pp 43.

<sup>50</sup> Ibid.

#### **4. Militant Democracy in light of transparent Governance for Sustainable Development: the nexus in African perspective**

Governance is the exercise of economic, political and administrative authority to manage a country's affairs at all levels. The concept of Governance is broader than Government. The concept of Governance focuses on institutions and processes. Transparent governance hence can be defined as openness of economic, political and administrative institutions and process.

As NEPAD<sup>51</sup> Heads of State and Government Implementation Committee (HSGIC) indicated implementing transparent and credible governance is the key objective of economic management. Transparency governance, particularly in Africa, has several dimensions.<sup>52</sup> The first dimension consists of mainly behavioral aspects, such as clearly established conflict-of-interest rules for elected and appointed officials, a transparent regulatory framework, open public procurement and employment practices, a code of conduct for public officials, and freedom of information requirements.<sup>53</sup> The second dimension is the provision of reliable information on the government's economic policy intentions and forecasts. The third is the requirement for detailed data and information on government operations, including the publication of comprehensive budget and other planning and policy documents. In all three dimensions, transparency is closely associated with the successful implementation of good governance and the achievement of sustainable development. Moreover, countries characterized by a relatively high degree of transparency in their governance have exhibited greater political and economic discipline and, in many instances, have been able to achieve a more healthy political and economic performance compared to countries with less transparent policies even within a same region.<sup>54</sup> As sir Kempe Ronald Hope pointed out that transparent, accountable and credible governance is the

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<sup>51</sup> The NEPAD initiative is governed by a Heads of State and Government Implementation Committee (HSGIC) composed of 20 members, with four drawn from each of the five subregions of the continent—East Africa, West Africa, Southern Africa, North Africa, and Central Africa.

<sup>52</sup> Kopits, G., and J. Craig. 1998. *Transparency in Government Operations*. Washington, DC: IMF.

<sup>53</sup> Kempe Ronald Hope, Toward Good Governance and Sustainable Development: The African Peer Review Mechanism, *An International Journal of Policy, Administration, and Institutions*, Vol. 18, No. 2, April 2005 (pp. 283–311).

<sup>54</sup> Henning, C. R. 2003. Peer Review. Paper Prepared for the Meeting of the Commission on Capital Flows to Africa, Washington, DC, February 21 as cited by Kempe Ronald Hope, Toward Good Governance and Sustainable Development: The African Peer Review Mechanism, *An International Journal of Policy, Administration, and Institutions*, Vol. 18, No. 2, April 2005 (pp. 283–311).

prerequisite to sustainable economic development.<sup>55</sup> He further stated that the openness of the political space is a critical barometer of the nature of democracy in a given country. Hence, the militant nature of democracy can be quantified through transparent governance.

<b>Ingredients</b>	<b>Militant Democracy</b>	<b>Transparent Governance</b>	<b>Sustainable Economic Development</b>
<b>Aim</b>	Defending or preserving democracy from autocracy, extremism and totalitarianism	opening of economic, political and administrative institutions and process for public scrutiny	Long term growth of economy in terms of GDP, per-capital income and other economic indexes.
<b>Common Measures Or Features</b>	<ul style="list-style-type: none"> <li>-Ban political parties that abuse democracy to enhance autocracy</li> <li>- Restrict some political rights such as freedom of expression, association and assembly to preserve democratic values.</li> <li>- Restrict unconstitutional assumption of power</li> </ul> <p>The measures must be proportional, reasonable and legal.</p>	<ul style="list-style-type: none"> <li>-Free access to information is a key element in promoting transparency</li> <li>-sharing information and acting in an open manner.</li> </ul>	<ul style="list-style-type: none"> <li>- link consideration of environment and development issues</li> <li>-approach national issues in the context of international problems and processes</li> <li>- adopt a fairly comprehensive approach, drawing together the policy response to a significant subset of national problems</li> </ul>

<sup>55</sup> Kempe Ronald Hope, Toward Good Governance and Sustainable Development: The African Peer Review Mechanism, *An International Journal of Policy, Administration, and Institutions* , Vol. 18, No. 2, April 2005 (pp. 283–311).

<b>Challenges</b>	Susceptible to abuse by the authorities who has entitled to apply it.	Corruption, limited resource for dissemination of information, illiteracy of the people particularly in African states.	Corruption, autocracy, bureaucracy, conflict, war etc
<b>Nexus</b>	Contributes to the promotion of sustainable economic growth through keeping peace and order of the society and defending core constitutional and democratic values.	Supports the process of militant democracy to be legitimate. It enhances sustainable economic development through free flow of information in the economic institutions and political process.	Militant democracy and transparent governance can contribute for sustainable development of a specific nation in various diemensions.

The above table shows that the meaning, features, measures, challenges and the nexus of militant democracy, transparent governance and sustainable economic development. As indicated below in the diagram transparent governance and militant democracy have contribution for economic development of a specific country.

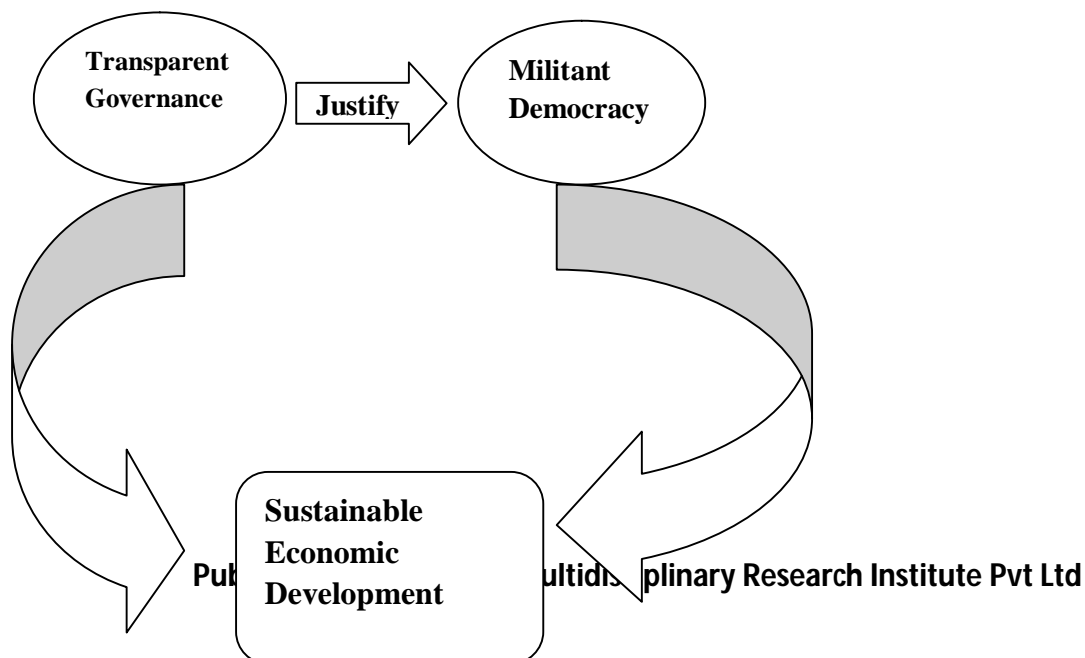


Diagram showing the nexus among Transparent Governance, Militant democracy and Sustainable Economic development

## **5. Conclusion**

Militant democracy is inspired in many African national constitutions. The common measures backed by militant democracy in Africa are forbidding ethnic or religious based political parties from electoral participation, restricting the political rights of political parties that entail autocratic aims, restricting unconstitutional assumption of power. The substantive part of militant democracy measures emanates from what reasons given to justify the militant democracy measure. Procedural legitimacy of militant democracy measures emanates from the process of taking militant democracy measures. Proportionality, reasonableness and lawfulness are the standards to evaluate procedural legitimacy of militant democracy.

Africa needs to democratize its democracy through consensus and mutual understanding in lieu of focusing the militant part of democracy. The victims of militant democracy measures and their fans in many countries observed to use violence so as to achieve their desire. The Muslim brotherhood supporters in Egypt, the CUD leaders in Ethiopia, the Hutu in Rwanda and Boko Haram in Nigeria tried to use violence or employ terrorism over the people so as to fulfill their wish. All of them were victims of militant democracy in the respective countries. Accommodating diverse interests of such kind of extremists and autocrats had better preferred before tending to apply militant democracy. When government prefers to apply militant democracy before exhausting tolerant remedies through mutual consensus, it chooses to reopen Pandora's Box just to spread the miseries of autocrats or extremists through violence. Yet hopes are availed in the legitimacy of the militant democratic measures if properly and transparently waged by. The use of militant democracy to evade autocracy requires transparent governance so as to widen its economic development. Hence, transparent governance, militant democracy and sustainable development have common meeting points. Transparent governance uses to

legitimatize and justify militant democracy so as to facilitate the nation's drive to sustainable economic development.

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