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THE CONTINUUM OF STATE SOVEREIGNTY: A Commentary on African Elections

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THE CONTINUUM OF STATE SOVEREIGNTY

A Commentary on African Elections

By: K.C. O'Rourke¹

Abstract

Twenty-six African States hold elections between 2016 and 2017.² More basic than campaign rhetoric and ethnocentric political jockeying, the state in Africa is ripe for a deeper engagement with notions of state sovereignty that are more relevant for this century as the African state seeks to exercise its core functions, protect its interests within its own geographic boundaries, and care for all of the people it seeks to govern. The intentional structuring of such a dialogue must be guided to secure the cornerstones of individual liberty and participatory democracy – two basic protective functions that uniquely belong to the nation-state. The functional components for the design of such a new social contract will need to be very different from the intra-State ethnocentric dynamics that regrettably continue to dominate Africa. A continuum for sovereignty that is unique to the African nation-state context, not one that mirrors Westphalian notions or reflects remnants of a postcolonial era, will be outlined here. This continuum of sovereignty incorporates a framework of liberty designed to bridge definitions of the nation state from the last century with new roles of sovereignty demanded in this century. It is the

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 2. *Presidential and Legislative Elections in Africa in 2016*, THE BROOKINGS INSTITUTE (2016), https://www.brookings.edu/wp-content/uploads/2016/01/foresightafrica2016_fullreport.pdf. (describing presidential elections in 2016) and *2017 African Election Calendar*, ELECTORAL INSTITUTE FOR SUSTAINABLE DEMOCRACY IN AFRICA, <https://www/eisa.org.za/index.php/2017-african-election-calendar> (list of African elections scheduled to be held in 2107).

framework of liberty that by necessity also includes the principles of human dignity and mutual benefit, anchors a new functional definition of sovereignty measured in terms of how a state cares for its people, and designs an enterprise of law from within a broader civil society comprised of economic traders.

Key Words: continuum for sovereignty, framework of liberty

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Introduction

Approximately twenty-six African states have scheduled elections in 2016 and 2017 representing a tremendous opportunity to constructively analyze efforts by African state-level public institutions to maintain democratic governance gains and to correlate strong public institutions, individual liberty, and democratic participation. For some, African democracy has been structurally stalled by a trend that reflects an “illiberal sort of pseudo-democracy in which the incumbent demonizes the opposition, exploits the power of the State to stack the electoral contest in his favor, and removes constraints on his power.”³ Freedom House reports that only 59% of African nations are a “part free” or “free” country—down from 71% in 2008.⁴ This trend is particularly troublesome in Africa where public institutions are still fragile, economies have been weakened by downward trends in commodity prices, and corruption continues.⁵

Citizen protests, election demands for stability in the public funding of social programs, prioritizing access to health care and education, and creating job opportunities—especially in urbanized settings—though growing, reflect the realization that such goals still remain aspirational and elusive. The necessary legitimacy of state-level core functions in the allocation of a country’s essential resources for economic capital, social capital, and human capital development programs is at the forefront as citizens continually express dissatisfaction with governance as it relates to measuring outcomes that matter to their daily lives. The operative mandates for the African nation-state are reflected in various news stories concerning elections on the continent where state sovereignty is often manipulated, bruised, or perhaps even surrendered unnecessarily.⁶ Multi-layer

3. *Political Reform Stalls: African Fragile Democracies*, THE ECONOMIST (Aug. 20, 2016), <http://economist.com/news/leaders/200750319> (last visited Oct. 12, 2016).

4. *Id.* (citing Freedom House research that shows only about 59% of sub-Saharan countries were “free” or “partly free” which is up from 39% in 1973 but down from 71% in 2008).

5. *Id.* (suggesting that one of the key issues is the notion that for many African national elections, the winner takes all the spoils of an election including total access to the natural resources and cash needed to remain in power; losing an election means being cut out of the spoils on a permanent basis).

6. Henry Umoru & Joseph Erunke, *Look Beyond APC, Set Up Special Squad to Rescue Nigeria From Economic Crisis, Ekweremadu Tells Buhari*, VANGUARD (Sept. 11,

governance structures across many states may be constitutionally mandated, but such an intrastate framework fosters fragmentation. It also presents some unique challenges for this analysis of African nation-state sovereignty, the operations of which often remain uniquely and rigidly ethnocentric and are often elusive to the legitimacy of the African nation-state itself.⁷ These issues, often widely discussed and promoted in campaign rhetoric and “back room deals,” would best be addressed as a matter of policy consistently unified at the level of the nation-state.⁸

State level lawmakers and African public officials are being confronted in two ways during this election cycle. First, nation-states will need to redefine and secure the *core function of the State* from a dif-

2016), <http://www.vanguardngr.com/2016/09/look-beyond-apc-set-up-special-squad-to-rescue-nigeria-from-economic-crisis-ekweremadu-tells-buhari/> (last visited July 15, 2017) See also SBM Intelligence, *2016 Nigeria Forecast : A Very Difficult Year*, STRATFOR (Dec. 17, 2015), <https://www.stratfor.com/the-hub/2016-nigeria-forecast-very-difficult-year>; see also Joe Mwansa Lombe Kaluba, *Zambia's 2016 Elections: The Aftermath*, ZAMBIA REP. (Aug. 31, 2016), <https://zambiareports.com/2016/08/31/zambias-2016-elections-the-aftermath/>; Norimitsu Onishi, *Zambia Votes Amid Economic Slowdown and Political Violence*, N.Y. TIMES (Aug. 12, 2016), <http://www.nytimes.com/2016/08/12/world/africa/zambia-election-lungu-hichilema.html?>; Norimitsu Onishi, *ANC Suffers Major Election Setback in South Africa*, N.Y. TIMES (Aug. 5, 2016), <http://nytimes.com/2016/08/06/world/africa/south-africa-election-anc.html>.; See also Mohammed Yusuf, *Kenya Launches New Political Party*, VOA NEWS (Sept. 10, 2016, 5:46 PM), www.voanews.com/a/Kenyan-president-launches-political-party/3501765.html.

7. *Global Goals, African Realities: Building a Sustainable Future for ALL*, AFRICA PROGRESS PANEL, 89 (2015), http://app-cdn.acwupload.co.uk/wp-content/uploads/2015/09/APP_ExecutvieSummary_WEB.pdf (last visited July 15, 2017) [hereinafter referenced as “African Progress Report/Annan”]; (Author noting that the Constitutions of the four nation-states reviewed [South African, Kenya, Nigeria, and Zambia] have liberty deeply embedded within the Preamble and operative functions of their governance structures. Furthermore, the sense of liberty outlined in these founding documents is supportive of an affirmative engagement of the nation State to protect liberty, not merely a western notion of liberty “freedom from” actions by the State).
8. Justice and equity and the benefits that accompany them are in the eyes of tens of millions of Africans still conspicuously absent in their lives because of poor State-level coordination and perceived lack of basic planning for food security, nutrition, education and jobs. As the African middle class grows across the Continent, too many are being left behind. The lack of a productive future, absence of outlets for gainful employment, and lack of education for youth have grave future consequences which will span generations and further stratify society into conflicting classes. These issues dominated the political rhetoric of the run up to 2016 elections and continued into the 2017 cycle of elections.

ferent and deeper understanding of state sovereignty. This will allow nation-states to move past rigidly drawn ethnocentric and ideological lines fostered from within its own intra-state competitive and multi-layered municipal, region, province, or council political processes. Second, the African State will need to reconsider its integration into the program pillars of the African Economic Community (hereinafter, AEC). This regional AEC integration may have structurally prevented the expansion of the nation-state between 1980-1990 in ways that limited it from defining its own sovereign role in a post-colonial era of the last century.⁹ Both dynamics have fragmented the capacity of the state to define the exercise of state sovereignty and to legitimately secure its own role on the continent and in the world.

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9. *Supra*, Note 7, African Progress Report/Annan, at 15-28. See also Posner, D.N. and D.J. Young, ‘ The Institutionalization of Political Power in Africa’, *Journal of Democracy*, [vol 18, No 3][2007][pages 126-140] [noting that in 47 sub-Saharan countries sampling 227 leaders, that around 70% of African leaders exited power through unconstitutional means between 1970-1980 but this trend dropped to around 19% between 2000-2005 but all 18 directly elected who faced term limits heard strong demands from their supporters to find a way to stay in power ; this review does not include the phenomenon of “crowd renting” which occurs often in African politics among African elite both civilian and military; 14 African presidents in that same time period attempted constitutional amendments that allowed a third term through a parliamentary vote where that contender’s party already had legislative majority]; See also Golder, Matt and Leonard Wantchekon, “ Africa: Dictatorial and Democratic Electoral Systems since 1946” [August 17, 2004] ; see at [https://www.princeton.edu/~lwantche/Africa-Dictatorial and democratic electoral-systems-since-1946](https://www.princeton.edu/~lwantche/Africa-Dictatorial%20and%20democratic%20electoral%20systems%20since%201946) [last visited March 21, 2017][suggesting that the electoral experience in Africa became more widespread after World War II as French and British attempted to mollify emerging nationalist movements by permitting the establishment of electoral colleges[French] and parliamentary systems[British]; the result of widespread confusion of fledgling multi-party systems was soon replaced by single party authoritarian government with dictatorships in the 1960s ; As democratic institutions continued to break down under the weight of regional and ethnic conflict, civil war and ethnic unrest, this instability was followed by a thirty year hiatus before multi-party electoral system design re-emerged after the Cold War ended and led to a high degree of political fragmentation in the 1990s; ; pointing to the opposition boycotts between 1995-1997 which clearly addressed patronage networks that were used to coopt opposition parties under single party rule. The colonial heritage of each country in turn, impacted majoritarian or proportional electoral institutions which in the end, were negotiated within various States on the Continent but this overall ethnic fragmentation was based on a strategy that deliberately focused on rapid ethnic mobilization and geographically concentrated ethnic groups that promoted regional single interest political parties; suggesting that this ethnic /regional fragmentation which continues today may lie at the heart of Africa’s growth tragedy]

Often, it appears that the African nation-state is left simply to be a conduit for economic development and contract management in the competition engendered and encouraged between various intra-state local governments, provinces and councils, municipal power brokers, and layers of conflicting rules of law, all operating from within different political subdivisions in the state itself and/or from within various AEC regional economic pillars of the African Economic Community [hereinafter AEC].¹⁰

This commentary sets out three areas for post-election reflection that call for a deeper level of state engagement concerning the legitimacy of sovereignty for the African nation-state which is unique historically in many ways. First, a brief review is provided on current election cycles already in process in four nations – Kenya, Nigeria, South Africa and Zambia – and the deeper level of engagement by the African nation-state beyond rigid ethnocentric divisions that will be required at the national level to secure its own state legitimacy. Second, a focused summary is outlined on notions of state sovereignty which have radically changed in the later part of the last century and into this century so much so that Westphalian notions of sovereignty, if ever applicable to Africa nation-states in the first place, are certainly no longer applicable to the complexity, role, and multi-layered function of African states in this pre-election and post-election cycle. Lastly, a functional *continuum of sovereignty* is described that engages a deeper discussion about legitimate nature of state sovereignty as it relates to a *framework of liberty*, the *core function of the State*, and the social contract offered as part of these election cycles to *all* the citizens the state seeks to govern.

The proposed *continuum of sovereignty* secures a deeper engagement of African nation-state sovereignty so that the state operates within the *framework of liberty* which in turn anchors the *core function of the state*. The proposed *continuum of sovereignty* outlined here moves beyond the matters of political elections and its cyclical rhetoric of “winner takes all”—meaning control of natural resources and ethnic group dominance in geographic sub-regions of the State—to matters of overall state legitimacy. The *core functions of*

10. *Id.* (noting there needs to be a serious rethinking process around energy, health, and economic development in Africa at the level of the nation-state so that long-term national interests can overcome political corruption and private gain).

the state, justice and equity, are depicted along this proposed *continuum for sovereignty*.¹¹ The continuum functions within a precise *framework of liberty*. There are triangular relationships underlying election campaign rhetoric about justice, equity and gainful employment; between empowerment of equal opportunity and human rights; and the indispensable operation of a nation-state legitimately acting as sovereign.¹² These statewide matters, which must be addressed, do not devolve or dilute the constitutional mandates for multi-level governance unique to Africa nation-states. The discussion simply

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11. The *continuum of sovereignty* proposed from within the single core function of the sovereign state is presented in this article as a possible starting point for transformative conversation because the state would consistently balance all essential capital resources: economic, social, and human capital development and utilization. A continuum is referenced as the basis of this new typology for sovereignty because it represents a more flexible set of options given the range of possibilities in terms of how an individual state interacts with some sense of legitimacy on behalf of the people it is governing and interacts as a member of the international community of states. There is no limit to the possibilities offered as part of this proposal for a continuum of state sovereignty so long as it operates within a framework of liberty. See diagram and discussion detailed in this commentary. See continuum, <https://www.merriam-webster.com/dictionary/continuum> (October 12, 2016). An extensive literature review has informed the development of the proposed continuum of state sovereignty including a state's single core functions as outlined and its direct partnership with its people as part of the radical transformation of the twenty-first century state. See generally ANATOLE KALETSKY, CAPITALISM 4.0: THE BIRTH OF A NEW ECONOMY IN THE AFTERMATH OF CRISIS (2010); Steven Menashi, *Ethno-nationalism and Liberal Democracy*, 32 U. Pa. J. Int'l L. 57 (2010); G. Palombella & N. Walker, eds., RELOCATING THE RULE OF LAW (2009); Timothy William Waters, *The Momentous Gravity of the State of Things Now Obtaining: Annoying Westphalian Objections to the Idea of Global Governance*, 16 Ind. J. Global Legal Stud. 25 (2009); Peer Zumbansen, *Law After the Welfare State: Formalism, Functionalism and the Ironic Turn of Reflexive Law*, 56 Am. J. Comp. L. 769 (2008); Ivan Manokha, *The Political Economy of Human Rights Enforcement* (2008); James Rosenau, *Three Steps Toward a Viable Theory for Globalization*, *Frontiers of Globalization Research: Theoretical and Methodological Approaches* (Ina Rossi, ed., 2007). See also Saskia Sassen, A SOCIOLOGY OF GLOBALIZATION (2007); Eric Alan Engle, *Transformation of the International Legal Order*, 23 Quinnipiac L.Rev.23 (2007); John Allan Cohen, *Sovereignty in a Postmodern World*, 18 Fla. J. Int'l L. 907, 908-913 (2007); Tanja A. Börzel and Thomas Risse, *Public-Private Partnerships: Effective and Legitimate Tools of International Governance*, in COMPLEX SOVEREIGNTY: RECONSTITUTING POLITICAL AUTHORITY IN THE TWENTY-FIRST CENTURY (E. Grands & L.W. Pauly, eds., 2005); Paul Kahn, *The Question of Sovereignty*, 40 Stan J. Int'l L. 259, 260-268 (2004); Anne-Marie Slaughter, *A New World Order* (2004); See also Brad R. Roth, *The Enduring Significance of State Sovereignty*, 56 Fla.L.Rev.1017 (2004); Eric Allen Engle, *The Transformation of the International Legal System: The Post-Westphalian Legal Order*, 23 Q.L.R. 23 (2004).
12. *Supra*, Note 7, African Progress Report/Annan, at 93.

raises the bar of the true nature and function of the nation State. Not all inequalities documented across various African states are unjustified. However, the current and well documented scope, and level of injustice and inequality are unjustified and unfair – they truly represent an impediment to the function of liberty.

This commentary supports the premise that it is the nation-state, not regional AEC economic configurations, or intra-State competitive regions, provinces, councils or municipalities that must remain the primary architect of world order. Corporations, transnational entities [public and private] also do not have the capacity or capability to protect individual liberty or promote participatory democracy. This unique duty belongs alone to the nation-state as a whole. The time is ripe for serious consideration of constructing a *continuum of sovereignty* during the 2018-2020 post-election period, and for outlining a new zeal for democracy succinctly articulated to address some of the alarming downward trending in relation to participatory democracy and individual liberty on the African continent.

These matters of State legitimacy and sovereignty cannot be left to evolve from within a global marketplace, regional AEC pillar programs, private or public sector foreign economic development partnerships, or private sector commodity exchanges where short term economic gain is paramount and competes with the overall interests of the nation state. At times, these economic partnerships appear intentionally designed to supplant the legitimacy of the nation state altogether. Nor can the components of sovereign legitimacy be secured from within the volatile nature of political rhetoric and campaign promises falsely and expediently made along ethnic lines to secure swing votes.

The application of this proposed *continuum of sovereignty* could be part of the post-election political dialogue process over the next twenty-four months as the country strives to fight against instances of persistent and burning social injustices and prepares for the next cycles of elections in 2020-2022. This post-election dialogue process would clearly document African nation-states marshalling and developing its three essential capital resources in support of domestic programs that involve economic marketplace issues, social safety networks, labor regulation, job creation, and individual capability or

individual resource development.¹³ The balance needed points to a much more deliberate, well-defined, coordinated, focused, and intentional approach in the State's development and utilization of economic capital, social capital, and human capital.¹⁴ From this *continuum of sovereignty*, it is the nation-state that is uniquely positioned to design and direct the core functions of democracy, build strong public institutions, coordinate long term strategic development at various multi-level governance structures, design new economic organizing principles that manage systemic risk, and address social security programs.

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13. *Supra*, Note 7, African Progress Report /Annan at 59-65 [noting that issues for green revolution in Africa are uniquely situated from with the nation State's core function and include the following: Government equity targets are needed to be sure wealth distribution closes opportunity gaps that exist; Green revolution will require a different level of partnerships between States, global interests and private investors with goal to double African agricultural production; States to work to take the profit out of plunder –lumber and fishing; States must close the gap in infrastructure and inclusive financing [includes more balanced perceptions of risk];Tax evasions by multinational corporations caused by regional configurations requires disclosure of financial operations, lists of subsidiaries and tax payments; and nation States publish all tax exemptions given to private domestic and transnational corporations – this becomes huge issue when corporations operate across nation State jurisdictions
 14. Economic capital is the quantum of risk capital, assessed on a real basis, which an enterprise requires to cover the risks that it is running or collecting as a going concern, such as market risk, credit risk, legal risk, and operational risk. See http://www.glynholton.com/2013/06/economic_capital [Last visited on July 15, 2017]. The term social capital generally refers to (a) resources, and the value of these resources, both tangible (public spaces, private property) and intangible (“actors,” “human capital,” persons and people) but is in the GeoNOMOS Model© to be distinguished from human capital, (b) the relationships among these resources, and (c) the impact that these relationships have on the resources involved in each relationship, and on larger groups. The focus of social capital is generally as a form of capital that produces public goods for a common good. Human capital is a term popularized by Gary Becker, an economist from the University of Chicago, and Jacob Mincer that refers to the stock of knowledge, habits, social and personality attributes, including creativity, embodied in the ability to perform labor so as to produce economic value. In the alternative, human capital is understood as a collection of resources – all the knowledge, talents, skills, abilities, experience, intelligence, training, judgment, and wisdom possessed individually and collectively by individuals in a particular and defined population. Such resources are the total capacity of the people that represents a form of wealth which can be directed to accomplish the goals of the nation or state or a portion thereof.

Current Political Elections Cycles: Fragmentation of State Sovereignty and Regional Neoliberal Economic Pressures

This section briefly discusses the pre-election and post-election issues of four nations— Kenya, Nigeria, South Africa and Zambia— where there is a constitutional and common law foundation that includes working experience in support of civic society and public institutions for the preservation of democracy and government function. These four countries are completing their 2016-2017 political election cycles and under tremendous economic pressure from within the AEC. After almost a century of working to move past the effects and aftermath of colonialism, these four nation-states are grappling with redefining state sovereignty in a new period of political transition, uncertainty, pre-and-post-election turmoil, and public contestation.

The emergence of a new consumer class across Africa in the past decade, as well as growth and investment in the service sector, fueled hopes of sustained economic expansion on the continent.¹⁵ But recently, the quick downturn in many of Africa's fastest growing economies suggests how much of the impressive growth in the past decade and a half was still being driven by a boom in commodities.¹⁶ These trends are not lost in the political rhetoric of this campaign cycle either. Much of the local level political jockeying is over the control of resources and commodities for economic development (and the likely personal gain of those politicians who espouse such a campaign issues).¹⁷ This type of political jockeying sometimes clashes with citizen demands for better social and human capital development related to justice and equity in programs that in turn support

15. *Supra* note 7, African Progress Report /Annan at 42- 53 (noting Diversification efforts by Nigeria into a film industry helps stabilize economic growth (42); Reporting that Nigeria (6.96 %) and Zambia (6.95%) are in top 20 fastest African growing economies in the world (2008-2015) (52;53). However, the focus needs to be on wellbeing for the many and not just wealth for a few).

16. *See* Norimitsu Onishi, *China's Slowdown Tarnishes Economic Boom in Copper-Rich Zambia*, N.Y. TIMES (Dec. 2, 2015) <http://www.nytimes.com/2015/12/03/world/africa/zambia-china-economic-slow-down.html?action=click&contentCollection=Africa&module=RelatedCoverage®ion=Marginalia&pgtype=article> (last visited July 15, 2017).

17. *Id.*

better access to education, health, and job opportunities across the *entire* state.¹⁸

Trending at the structural level of municipality and provincial multi-layered processes is important too, but setting better policy projection and planning milestone at the state level for governance of the entire country is key for a sovereign state to secure its own legitimacy, stability, and continuity for all people it seeks to govern. Kenya, where tensions and fears of violence are rising, had 2017 political elections.¹⁹ Local political processes were continually challenged for fraudulent practices as the new 2016 Jubilee Party sought to consolidate twelve political parties across this nation-state based on promises of fairness and transparency in primary elections processes fueling a longstanding dispute on the effectiveness of open democracy practices.²⁰

18. *Id.*

19. See M.Yusuf, *Kenya Launches New Political Party*, GLOBAL SECURITY.ORG, (September 10, 2016) <http://www.globalsecurity.org/military/library/news/2016/09/mil-160910-voa02.htm> (last visited July 15, 2017) (reporting that Kenya's president launched a new political party that he intends to use for a second and last term in office in the 2017 election. The launch of the Jubilee Party followed days of political haggling in Nairobi as 12 parties dissolved and united under the new organization. In 1966, three years after Kenya gained independence, the biggest two political parties, the Kenya African National Union and the Kenya African Democratic Union, merged. The unity, political commentators said, followed years of ethnic nationalization. Twenty-five years after that agreement, some politicians and activists took to the streets, demanding multiparty democracy. Then in late 2007, political violence erupted after incumbent President Mwai Kibaki won elections and was sworn into office. A power-sharing agreement in early 2008 ended the crisis. In this election cycle, Deputy President William Ruto told party delegates that multiparty democracy had contributed to intercommunal fighting in Kenya during elections representing a tower of burden making democracy chaotic); see also Kenya Election and Political Process Strengthening Program, USAID (Feb 2014 report) <https://www.usaid.gov/documents/1860/kenya-election-and-political-process-strengthening> (last visited July 15, 2017) (program funded \$USD 23.2 million to support and train with technical assistance Kenya' Independent Electoral and Boundaries Commission that equipped 20,000 civil society leaders to convene 46,256 Kenyans to engage in Constitutional reform and peaceful 2013 elections; also registered to vote 14.3 million voters in 30-day program).

20. Allan Mungai, *Aspirants Mount Kenya Region Threaten to Quit Jubilee Party*, THE STANDARD, (August 22, 2016 8:07 GMT) <http://www.standardmedia.co.ke/article/2000212918/over-50-aspirants-in-mt-kenya-region-threaten-to-quit-jubilee-party> (last visited July 15, 2017) (reporting that political aspirants in Mt. Kenya region have threatened to ditch Jubilee Party over biased representation at the September 10 delegates' conference. The over 50 political hopefuls, who are part of the Aspirants Caucus, say they would seek other options as they

Zambia was one of the first African nations to make a democratic transition in 1991.²¹ The recent narrow election of Edgar Lungu followed a campaign marred with harassment of the opposing parties, street protests, and allegations of vote rigging.²² Zambia's election promises reflect the need for a new social contract with citizens that would place emphasis on more consistent and sustainable domestic infrastructures and employment opportunities.²³ For the past decade,

fear the nomination process would be flawed. Among the parties that folded is the Grand National Union, which sponsored Nyeri Governor Nderitu Gachagua in the last General Election. On Friday, Gachagua, whose GNU party is among those that have agreed to fold to join JP, said the nomination process would be conducted in a free and fair manner. He however, voiced his support for the proposal by the Parliamentary Select Committee on election commission to bar individuals who lose in party nominations from decamping to other parties. But Gichohi said that party-hopping was mainly caused by irregularities in primaries. "Jubilee Party was formed to foster unity in the country but if the nomination process is not all-inclusive and handled democratically, the party will fall short of its mandate," he said. Others who have voiced their skepticism that the nomination process would be biased are Meru Governor Peter Munya, who decamped from the Kiraitu Murungi-led Alliance Party of Kenya (APK) to the Party of National Unity (PNU) after APK expressed its intention to join the Jubilee Party).

21. *Supra*, Note 3.

22. Peter Adamu, *Zambia's 2016 Elections: The Aftermath* (Aug. 31, 2016), <https://zambiareports.com/2016/08/31/zambias-2016-elections-the-aftermath/> (noting Zambia's political system boasts to be a multiparty democracy and that being such means there is competition among political opponents; noting that in contemporary politics, democracy must always win and if Zambia wants to see a much consolidated democracy, the people should come first; noting that in this year's elections from the nomination day through the campaign period and up to the voting day, people have learned or are still learning a lot of things for the first time in the history of Zambia's democratic era; suggesting the past three months more or less have been characterized with a lot of democratic challenges and lessons. Just like in every competition individuals, political parties, Civil Society Organizations (CSOs), the media, professional bodies, law enforcement agencies, traditional leaders, and Faith Based Organizations (FBOs) among others have found themselves in what was termed as '*Chamaeleon Challenge*' meaning a lot of emotions and finger pointing in different directions that kept changing; concluding there is only one Zambia and only one Nation, asking the people of Zambia, regardless of individual or organizational political affiliation, to work hard to make that One Zambia One Nation work; calling on Zambia people especially on social media to do their part to promote that One Zambia One Zambia. Being Emotional, Hypocritical or Threats will not help the process toward One Zambia One Nation).

23. Norimitsu Onishi, *Zambia Votes Amid Economic Slowdown and Political Violence*, N.Y. TIMES (Aug. 11, 2016), https://www.nytimes.com/2016/08/12/world/africa/zambia-election-lungu-hichilema.html?_r=0 (Zambia's economy remains highly dependent on a single commodity, copper, which makes up more than 70 percent of the country's exports. But plunging prices and decreasing demand from China, Zambia's main export market,

Zambia, a copper-rich nation in southern Africa, appeared to have been one of the continent's success stories; a stable democracy that enjoyed rapid economic growth thanks to China's ravenous demand for Zambia's main commodity, copper.²⁴ But, with a slowdown in consumption of this commodity in China, decreased demand for copper, and a collapse in prices, Zambia's economy tumbled based on its lack of diversification, which in turn contributed to a political campaign season punctuated by killings and widespread violence.²⁵

South Africa, despite its model Constitution, has been tarnished by president Jacob Zuma, who has worked to diminish public institu-

have led to the closing of mines and the loss of thousands of jobs. An acute power shortage, resulting from an El Niño-induced drought and mismanagement of its water resources, deepened the country's economic woes. Zambia is now in talks with the International Monetary Fund for a bailout. Mr. Lungu's government has agreed on measures to control spending, including cutting back on fuel and electricity subsidies — though only after the elections. Despite such economic problems, the main presidential contenders campaigned on promises to increase spending on infrastructure, health and education).

24. *Id.*

25. *Supra*, Note 23, (ONishi reports that millions of Zambians went to the polls on to elect a president and national lawmakers, amid warnings that the campaign violence could reduce turnout. The main contest, pitting President Edgar Lungu against a wealthy businessman, Hakainde Hichilema, was considered too close to call. It was a replay of a 2015 special election that Mr. Lungu won by a slim margin to complete the term of President Michael Sata, who died suddenly in October 2014; in a region known for presidents brutally clinging to office for decades, Zambia had smooth elections and transfers of power since 1991, long before multiparty democracies emerged elsewhere on the continent. But a handful of people have been killed and many others injured in recent political violence. Observers have attributed the violence to the two main parties, the Patriotic Front of Mr. Lungu and the United Party for National Development of Mr. Hichilema. On Tuesday, Esau E. Chulu, the chairman of the Electoral Commission, said that the violence was “unprecedented and has marred Zambia’s historic record of peaceful elections.”); *see also*, Notimitsu Onishi, *Zambia Economic Slowdown*, N.Y. TIMES (Dec. 03, 2015), <http://www.nytimes.com/2015/12/03/world/africa/zambia-china-economic-slowdown.html?%20%5blast%20visited%20August%202022,%202016%5d%20action=click&contentCollection=Africa&module=RelatedCoverage®ion=Marginalia&pgtype=article> (suggesting that 60% of population in Zambia is considered poor and 42% living in absolute poverty; while Zambia is seeking to regionally diversify in agriculture e.g., maize production but copper is still king and the State depends heavily on copper mining royalties from China; Zambia does have a strong legal environment and investment guarantee system giving it a bit of a competitive edge; campaign promises this season offers agricultural diversification, infrastructure projects with correction of corrupt practices, and job creation; reporting that the emergence of a new consumer class across Africa in the past decade, as well as growth and investment in the service sector, fueled hopes of sustained economic expansion on the continent).

tions, especially those dealing with corruption.²⁶ Arguments continued throughout the August 2016 election process and were focused on barriers within political processes at the municipal level where ethnic disputes and political ramifications impact the power and function of the nation-state overall.²⁷ Municipal elections from August 2016 in South Africa saw the African National Congress lose control of several major cities to an alternative power group called the Democratic Alliance.²⁸ In South Africa, the African National Congress

26. *Supra*, Note 3, *Africa's Fragile Democracies*.

27. Rapula Moatshe, *ANC to Fight to Bitter End for Joburg*, IOL (Aug. 20, 2016), <http://www.iol.co.za/news/politics/anc-to-fight-to-bitter-end-for-joburg-2059276> (noting that The ANC won 43 seats in the North-West city against the combined opposition's 46 and was expected to lose the Johannesburg council despite having received the most votes. The Johannesburg council was to meet on Monday to elect a speaker and mayor in what is likely to be a tense affair after the ill-tempered first sitting in Tshwane, where newly minted DA mayor Solly Msimanga was heckled by ANC councilors during his maiden speech. Solly Msimanga, who did not get a mayoral chain, wasted no time in highlighting some of the sweeping changes that would be introduced under the DA rule and his watch in the next five years. The newly elected mayor said the city would ban blue-light brigades within the metropolitan area and expected even President Jacob Zuma to abide by this law once it had been implemented. Msimanga warned people who would want to make the city ungovernable: "We are saying to you that we are watching you," he said. To those who had been waiting for title deeds, he promised to deliver them in no time. He said gone were the days when city officials would get to their offices and sleep. EFF councillor Benjamin Disoloane told the DA to make sure that in Tshwane there were no racists and white supremacy. "We support you, but we are not part of you," he told the mayor. Disoloane said the EFF was tired of seeing the ANC dispatching the Red Ants security to evict poor people and dismantle their shacks."We are going to teach the ANC how to become the opposition, so please behave yourself. You (the speaker) are not going to become Baleka Mbete," he said.); *see also*, AFB (Nov. 09), <http://www.africanews.com/2016/09/11/south-africa-s-johannesburg-mayor-vows-to-cut-unemployment-rate/> (The change of control in Johannesburg dealt a humiliating blow to the ANC Mashaba entered politics in 2014 and began a rapid rise to power that has attracted criticism over his lack of experience in both politics and local government administration. He has however pledged to root out corruption and has set a target of 5 per cent annual economic growth. "If unemployment is still over 20 per cent, please, don't give me a second chance. I would have failed you. Get someone else," said Mashaba. The new mayor also said he plans use the five years of his term to implement the DA's manifesto and ensure that the city is run like a professional civil service. The Democratic Alliance won 27 per cent of the vote in the local elections and is keen on further broadening its appeal ahead of presidential elections in 2019).

28. Norimitsu Onishi, *ANC Suffers Major Election Setback in South Africa*, N. Y. TIMES (Mar. 6, 2017, 10:49AM), <http://www.nytimes.com/2016/08/06/world/africa/south-africa-election-anc.htm> (The African National Congress, the party that helped liberate black South Africans from white-minority rule but has become mired in corruption, endured its worst election since taking power after the end of apartheid. The A.N.C.,

[hereinafter ANC] struggled to consolidate power in 2016 by signing a coalition agreement with the Botho Community Movement [hereinafter BCM].²⁹ The agreement, an example of ANC political drift, was mirrored in the local election in the Johannesburg municipality. The growing contestation occurring from within South Africa as a nation-state is exemplified by municipal leaders who continually dictate specific geographic-based rules of law that the state is mandated to respect, even when these rules are detrimental to another municipal area in the state.³⁰ All these issues impact state sovereignty, the legitimacy of governance, constitutional integrity, cohesion, and the state's core function in the twenty-first century.

After many decades of election cycles and a history also marred by military rule, civil unrest, strife and war, Nigeria transitions from its first elected civilian government of Jonathan Goodluck.³¹ Goodluck had his challenges to bring order, stability, and planning to the political process and for the benefit of its citizenry. Nevertheless, in 2016, he completed a subsequent and peaceful transition to a newly

the party of the nation's liberation hero and first black president, Nelson Mandela, could once count on the unyielding loyalty of tens of millions of black South Africans who lived under apartheid. But widespread anger over the stagnant economy and the brazen self-enrichment of the A.N.C.'s members have badly eroded the party's standing, gradually chipping away at its ability to rack up big electoral victories on the basis of its history alone. In the biggest shake-up of the nation's post-apartheid political order, the A.N.C. lost power in at least one big black-majority city, Nelson Mandela Bay, for the first time. The main beneficiary of widespread dissatisfaction in the country was the Democratic Alliance, a political party that was traditionally led by white South Africans who opposed apartheid but now has many young black leaders. During the campaign, the A.N.C. attacked the Democratic Alliance as a Trojan horse for white interests).

29. African News Agency, *ANC Signs Coalition with BCM to Consolidate Power in Rustenburg*, THE CITIZEN (Mar. 6, 2017, 11:13AM), <http://citizen.co.za/news/news-national/1259394/anc-signs-coalition-with-bcm-to-consolidate-power-in-rustenburg/>.
30. Takalani Samuel Mashau, et. al., *The Relationship between Traditional Leaders and Rural Local Municipalities in South Africa: With Special Reference to Legislations Governing Local Government*, STUD TRIBES TRIBALS, 12(2): 219-225 (2014), [http://www.krepublishers.com/02-Journals/T%20&%20T/T%20&%20T-12-0-000-14-Web/T%20&%20T-12-2-000-14-ABST-PDF/S-T&T-12-2-219-14-345-Mashau-T-S/S-T&T-12-2-219-14-345-Mashau-T-S-Tx\[4\].pdf](http://www.krepublishers.com/02-Journals/T%20&%20T/T%20&%20T-12-0-000-14-Web/T%20&%20T-12-2-000-14-ABST-PDF/S-T&T-12-2-219-14-345-Mashau-T-S/S-T&T-12-2-219-14-345-Mashau-T-S-Tx[4].pdf).
31. *Nigeria's Goodluck Jonathan, Profile of a Defeated President*, BBC NEWS (Mar. 6, 2017, 11:13AM), <http://www.bbc.com/news/world-africa-12192152>; Katy Lee, *Nigeria's High-Stakes Presidential Elections: A Very Basic Guide*, VOX (Mar. 6, 2017, 11:13AM), <http://www.vox.com/2015/3/28/8305235/nigeria-elections-basic-guide>.

elected governing body.³² Despite this effort, the religious discrimination, senatorial district bias, propaganda, unfounded rumors and intra-political party clashes have largely found prominence in the state politics.³³ These disputes arising under the disguise of equal representation are often deeply rooted in ethnocentric bias either at geo-political zone, state, senatorial district, local government, or ward levels. This concept is the major factor driving the emergence of political or non-political office holders at all levels in Nigeria – only when there has been a promised element of economic “spoils” flowing from the election then, this “equal representation” argument can richly endow the candidate, their place of origin or their place of residence.³⁴ In Nigeria, 50% of the population living in urban areas live

32. Mark Green, *Nigeria Political Transition Sets Model for African Elections*, THE HILL (Mar. 6, 2017, 2:59PM),

<http://thehill.com/blogs/pundits-blog/international/243402-nigerian-political-transition-sets-model-for-other-african>.

33. Kunle Ajayi, *Ondo Election 2016: The Politics of Mad Men With Hoes Syndrome*, PM NEWS NIGERIA (Mar. 6, 2017, 3:09PM),

<https://www.pmnewsnigeria.com/2016/08/25/ondo-election-2016-the-politics-of-mad-men-with-hoes-syndrome/>.

34. Kunle Ajayi, *Ondo Election 2016: The Politics of Man Men With Hoes Syndromes* (Aug. 26, 2016), <http://www.pmnewsnigeria.com/2016/08/25/ondo-election-2016-the-politics-of-mad-men-with-hoes-syndrome> (suggesting the intrigues that has enveloped the politics leading to the emergence of the next Governor of Ondo State. The truth be told, this is not only peculiar to Ondo state but to almost all political wards in the country and surprisingly the nation as a whole. The emergence of a presidential candidate from one geo-political zone is often negotiated with a political calculation to pick a running mate from another geo-political zone to appeal to electorates for block votes. Disguised as equal representation, this concept in our politics is what I call “The Mad Men with Hoes Syndrome”. There is an adage in the south western part of Nigeria “When you give a hoe to a mad man, he will definitely make the heaps between his legs”. Most political office holders in Nigeria are guilty of this syndrome as it is evident in the distribution of the commonwealth at the local government, state or national levels. More visible development goes to the local government or hometown of the most prominent politician in the area); *see also* Henry Umoru & J.Erunke, *Look Beyond APC: Set Up Special Squad to Rescue Nigeria From Economic Crisis* (Sept.11, 2016), <http://www.vanguardngr.com/2016/09/look-beyond-apc-set-up-special-squad-to-rescue-nigeria-from-economic-crisis-ekweremadu-tells-buhari/> (Senate President Ike Ekweremadu urged President Muhammadu Buhari to in the spirit of Eid- Kabir celebration look beyond the ruling All Progressives Congress, APC and constitute a Special Economic Squad to rescue the country from the present economic meltdown. In his Eid-El Kabir message to the Muslim Ummah, Senator Ekweremadu also called on all Muslims to use the occasion of the Eid-El Kabir to pray for the nation’s quick recovery from her current economic recession, expressing confidence that Nigerians, working together, could heal the nation’s economy. According to the statement which was signed by his Special Adviser Media and Publicity, Uche Anichukwu, the Deputy

in poverty. Income inequality is a continuous political election issue because 10% of the population accounts for twice the income of the poorest 40%.³⁵

However, Kenya, Nigeria, South Africa and Zambia are consistently confronting problems linked to urbanization where broad based human development (human capital) gains are made only when available employment for those incoming residents is coupled with equitable distribution of infrastructure support and basic services.³⁶ Ethnocentric and religious rivalry that promotes personal gain in politics for the region, municipal, province or council level of intra-state

Senate President who noted that prayers alone, was not enough since Islam advocates both Work and Prayer, stressed that the present economic challenges were not beyond redemption, but could actually become the nation's turning point away from an oil-driven economy to real prosperity if the right policies and structures were put in place. Noting his warning long ago that elections had come and gone there would be a need to move from politics to governance, Ekweremadu noted it is time for governance that must bring all capable hands on the deck, irrespective of political, religious or ethnic backgrounds); *see also 2016 Nigeria Forecast : A Very Difficult Year* (Dec. 17, 2015), <https://www.stratfor.com/the-hub/2016-nigeria-forecast-very-difficult-year> (noting the challenges can be surmounted with the right planning; openness, so that the people of Nigeria are prepared for those challenges; and political will, in order to steer the country through the trying times. While the legal system is speedily reformed to ensure redress of the perceived massive looting and stealing of the past (President Jonathan led) government, the President Buhari led government should quickly quit the blame game as the 180 million citizens and daily population additions will become impatient once Year 2016 bills start coming up. With the exposure to social media and ghost radio stations, a one-man riot will quickly turn to a one million-man riot. 2016 was a promising year for Nigeria despite these challenges. The economic challenges are global and Nigeria has a young population which creates great opportunity for labour. With the right policies and quick implementation, Nigeria will witness a surge in local production and reopening of small scale manufacturing centers, greater emphasis on food processing and industrial farming).

35. Office for Economic and Cooperative Development, *African Economic Outlook 2015: Regional Development and Spatial Inclusion*, http://www.oecd-ilibrary.org/development/african-economic-outlook-2015/summary/english_03d0e741-en?isSummaryOf=/content/book/aeo-2015-en, (suggesting that gender inequality in Nigeria is directly related to maternal mortality rates, low percentage of women in parliament and low labor force participation rates for women).
36. *Supra*, note 7, African Progress Report /Annan at 85 (noting that Nigeria has strong labor policies and a national poverty reduction strategy that it often partners with expenditures plans and revenue sharing strategies but the core function of the state will need to better focus on future infrastructure development for roads, schools, IT, water and electric systems. So, while Nigeria is urbanizing, improvements in rule of law, safety, political violence and corruption must simultaneously occur. Nigeria set a Sovereign Wealth Fund with clear and transparent procedures for managing the ongoing flow and growth cycles tied to its natural resources).

political structures impedes the overall function of state sovereignty. Without the active design in the support of the *core function of the state* to balance all its capital resources, the African state will expand disparities as rural poverty is simply transferred to urban areas. Correction of this “urbanization exacerbation” during the post-election process, will at least in part require more openly accountable governance processes at all levels of the nation-state. A fair distribution system for better coordinated state-wide infrastructure expansions will need to reflect a human rights approach – an approach that is deeply embedded in the *continuum for state sovereignty* outlined in this commentary.³⁷

The point is made from review of the pre and post-election cycles in these four countries that a new dialogue concerning African nation-state sovereignty and state legitimacy is needed on a systems basis. Multi-layers of political structures in these four nation-states reflect large numbers of local governments, councils, municipalities, regions or provinces drawn along historically rigid ethnic lines, some of which operate quasi-independently of the state and at times even compete regionally and globally against each other and the legitima-

37. *Supra*, note 28 at 111, (Suggesting that a human rights based approach would look to develop and increasing public capacity for urban sustainability and population security, private sector investment tied to job creation, and social protection of worker rights; and participatory organizations around issues of resource allocation); *See also*, OECD Warning African Urbanization May Not Yet Be Sustainable (May 24, 2016), <http://www.economywatch.com/news/OECD-Warning-African-Urbanization-May-Not-Yet-Be-Sustainable0524.html> (last visited September 11, 2016). (The Organization for Economic Cooperation and Development (OECD) published its most recent African Economic Outlook and warned that although Africa has been urbanizing at an unprecedented rate, it must take steps to ensure that that process remains sustainable or it could lead to enormous economic collapses. Since 1995, the population of Africans living in cities has doubled to a record high of 472 million as of 2015. At that rate, the OECD opines, two-thirds of the African population will live in cities by 2050. Successful urbanization requires infrastructure and social transformations, however, and the OECD does not see changes at a comparable rate. From an infrastructure standpoint, these nations will also need to create safer and more diverse neighborhoods. They should also promote public transit, waste collection, more reliable utilities, and city planning and building codes that consider the effects of climate change. As noted by the OECD’s report, poor planning leads to costly urban sprawl and rapid decay. Africa, as a whole, remained the second fastest growing region for economic development, second only to Asia. In 2015, the region experienced 3.6% growth, a rate that is more than double the growth rate for Europe. The OECD’s report anticipates the region’s growth rate rising to 4.5% in 2017. That is despite the slump in commodity prices that has heavily impacted nations like Nigeria).

cy of their own nation-state.³⁸ This intra-state tension also impacts the legitimacy of state sovereignty and governance as the state interacts from within long-standing regional AEC program pillars, state constitution and regulatory variations, and pressures to implement a single market commodity development program for the continent.³⁹ In other words, there appears to be a disconnect at the state level to consistently engage and balance the interface and interlocking relationships required between the multiple governance layers within the state.

While it is important not to discourage the use or creation of multi-national, transnational, or regional organizations, the fragmentation of the current AEC regional practices on the continent also impact the nation-state's control over its three essential capital resources: diluting the state's sovereign role as it continues to be caught between the historic rigidity of ethnocentric politics within its own borders and the global economic and AEC regional dynamics based on the neoliberal paradigm for globalization.⁴⁰ The tensions caused

38. *Supra* note 28 at 111; *see also* *OECD Warning African Urbanization May Not Yet Be Sustainable* (May 24, 2016), <http://www.economywatch.com/news/OECD-Warning-African-Urbanization-May-Not-Yet-Be-Sustainable0524.html> (last visited Sept. 11, 2016).

39. *OECD Warning African Urbanization May Not Yet Be Sustainable* (May 24, 2016), <http://www.economywatch.com/news/OECD-Warning-African-Urbanization-May-Not-Yet-Be-Sustainable0524.html> (last visited Sept. 11, 2016).

40. *Supra*, Note 9, Posner & Young; Golder & Watchekon; *See Intergovernmental Organizations*, UNITED NATIONS (2016), <http://www.un.org/en/sections/member-states/intergovernmental-organizations/index.html> (elaborating on more information about the various African Nation States and their overlapping economic regional partnerships).

AUTHOR NOTE: Regional configurations from within the African Economic Community (AEC) are also part and parcel of the struggle for the overall nation-state seeking legitimacy from the people they seek to govern. States voluntarily participate in various pillars of the AEC but that activity has the propensity to negatively impact the *core function of the nation-state*. Historically, the primary AEC regional focus appears to be based solely on economic capital development and utilization for a common market and money union, a consolidated effort which was rapidly developed across one decade (1980-1990) and deeply imbedded with the global economic organizing principles of the neoliberal era (c.1980-2010). *See* discussion in third section of this article. States who were literally “bought into” this neoliberal paradigm had a double-blind spot in guarding their duty for participatory democracy and individual liberty protections—it is well documented that these economic organizing principles did not support sustainable state-level public institutional function and routinely dismantled the sustainability of social capital or human capital program funding at the level of the state. Suffice it to say here though that when the fragility of public institutions in African

by this fragmentation impede the state as it seeks to empower its own domestic level governance structures and secure democratic function and adequate funding of its public institutions. This tension was palpable throughout the 2016-2017 election cycles.⁴¹

The charged atmosphere around various African elections and political parties actively point to a growing sense of *citizen entitlement* that in turn demands a proper balance related to state accountability. The democratic challenge calls for a new vision of state sovereignty; one that builds a different kind of civil society, effectively unifies and empowers multi-level competition and governance, and both anchors state-level legitimacy needed to design a new set of global market organizing principles that functions beyond the neoliberal paradigm [c.1980-2010] notion of “trickle-down” global economics.⁴² This particular set of economic organizing principles is often controlled by the African political elite, and in this case, from within a set of AEC regional economic configurations on the continent that function to the detriment of nation-state autonomy and governance models.⁴³ This dynamic, coupled with the neoliberal para-

states aligned with the structural demands of the neoliberal paradigm for a priority on regional AEC development, there was bound to be slippage not only in the nation-state functionality but also in commitments to participatory democracy with effective public institutions. The nation-state in the twenty-first century is now challenged to become more than just a repository for global and regional economic actors.

41. See Joe Mwansa Lombe Kaluba, *Zambia's 2016 Elections: The Aftermath*, ZAMBIA REPORTS (Aug. 31, 2016), <https://zambiareports.com/2016/08/31/zambias-2016-elections-the-aftermath>.
42. See JOHN GRAY, FALSE DAWN: THE DELUSIONS OF GLOBAL CAPITALISM (1998) (providing a detailed step-by-step review and analysis from the state's perspective outlining how a neoliberal set of global economic organizing principles functioned to destroy domestic level public sector budgets by transferring assets wholesale to the private sector as a pre-condition for market access, locked out democratic legislative oversight through private sector contracts, and more).
43. A partial resource list on the context for globalization of the late 20th century and the negative impact the neoliberal paradigm (c.1980-2010) for global capitalism has had on exercise of State autonomy: S.A. Ramirez, 'Taking Economic Rights Seriously After the Debt Crisis'[2011] 42 Loy. U. Chi. L. J. 713 ; see also Dani Rodrik, *The Globalization Paradox : Democracy and the Future of the World Economy* [W.W. Norton & Co., 2011]; see M. Milgate & S.C. Stimson, *After Adam Smith: A Century of Transformation in Politics and Political Ideology* [Princeton University Press 2009];]; see also Paul Krugman, *Trade and Wages Reconsidered* [Brookings Institute: Papers on Economics,2008] ; see P. McMichaels, *Development and Social Change: A Global Perspective* [Sage 2008]; see P. Nolan, *Capitalism and Freedom : The Contradictory Character of Globalization* [Anthem Press 2008]; see J. Abu-Lughod, ' Globalization in Search of a Paradigm', in I. Rossi ,ed., *Frontiers of Globalization Research: Theo-*

digm and its economic impact for fostering these African regional pressures, have limited the legitimacy and scope of individual state sovereignty and cannot be ignored.⁴⁴

In Africa, the rapid AEC integration between 1980-1990 was fostered by the global neoliberal economic organizing principles, and by the international private sector seeking to operate within competing regional configurations at the expense of designing strong, unified political units of governance at the level of the nation-state.⁴⁵

retical and Methodological Approaches [Springer 2007]; see also R. Abdelal, *Capital Rules: The Construction of Global Finance* [Harvard University Press 2007]; see R. Findlay & K. H. O'Rourke, *Power and Plenty: Trade, War and The World Economy in the Second Millenium* [Princeton University Press ,2007]; see B.K. Gills & W.R. Thompson, eds., *Globalization and Global History* [Routledge 2006]; see also John Bogle, *The Battle for the Soul of Capitalism* [Yale University Press 2005]; see also C. El-Ojeile & P Hayden, *New Critical Theories of Globalization* [2006]; see also J.A. Scholte, *Globalization: A Critical Introduction* [Palgrave MacMillan 2006]; see also J. Osterhammel and M. Pertersson, *Globalization: A Short History* [Dona Geyer, trans., Princeton University Press 2005]; R.H. Robbins, *Global Problems and The Culture of Capitalism*[3rd Edn., Pearsons 2005]; see R. Robertson, *The Three Waves of Globalization: A History of Developing Global Consciousness*[Zed Books 2003]; see B. Smart, *Economy, Culture and Society: A Sociological Critique of Neo-Liberalism* [Open University Press , 2003]; see also J. Stiglitz, *Globalization and its Discontents* [Penguin Press 2002]; see P.A. Hall & D. W. Soskice ,eds., *Varieties of Capitalism: The Institutional Foundations of Capitalism*[Oxford University Press 2001]; see M. Kohr, *Re-Thinking Globalization : Critical Issues and Policy Choices*[Zed Books 2001]; see M.A. Bamyeh, *The Ends of Globalization* [University of Minnesota 2000]; see A. Bhaduri, ' Implications of Globalization for Macroeconomics: Theory and Policy in Developing Countries', in D. Baker, G. Epstein & R. Pollins, eds., *Globalization and Progressive Economic Change* [Cambridge University Press 1998]; see C. Chase-Dunn, *Global Formation: Structure of the World Economy* [Cambridge University Press 1989]; see J.M. Keynes, *General Theory of Employment, Interest and Money* [MacMillan 1936]

44. *Supra*, note 42, Gray.

45. *Supra*, Note 7, Africa Progress Report /Annan, at 81-87. [Governments once at the unified level of the nation-state needs to set the terms of national strategies for resource extractions and sustainable economic development including but not limited to licensing and regulations. Yet, poor oversight of state-operated corporations is costly; e.g., between Nigeria and Angola missing funds of USD \$4.2 bil to \$6.8 bil assets from state-owned operations documented. There are still patterns of underpricing of concessions given by states [or intra-state governmental subdivisions, e.g., councils, provinces, regions] to private operators that have negatively impacted revenue and GDP outcomes. Special waiver programs such as extensive tax concessions and "tax holidays", low royalty payments and even complete corporate tax exemptions hurt the sustainability of the Africa nation-state. An example of the implications of erratic tax policies: Zambia had half a million copper mine workers between 2005-2009 that were paying higher taxes than major copper multinational mining companies. Trade mispricing which continued since 2008 has cost Africa USD \$38 billion annually meaning

States and even municipalities within states began to compete with each other at the expense of a single core function of the state, namely to protect and coordinate essential capital resources (economic, social, and human) within a defined geographic boundary.⁴⁶ These private sector regional partnerships and global economic configurations blurred pre-established state geographic boundaries and politicized multi-layers of distrust and financial obligations by fragmenting the traditional role of the sovereign state.

Rodrik argues that the blind spot of the capitalist globalization process in the neoliberal era (c.1980-2010) consisted of deep and rapid integration in the world economy, coupled with the idea that the required institutional underpinnings could catch up later at the domestic level of the state.⁴⁷ Rodrik's focus on structure would prioritize these matters: African-state domestic level infrastructure, eradicating corruption, empowering multi-level governance, promoting justice and equity in economic development, defining clear roles of regional economic partnerships, addressing poverty, and health and education – all from within a unique history and cultural dynamic of the African nation-state, but each with different dynamics and priorities that may impact the core function of the state as a whole.⁴⁸ The *continuum of sovereignty* discussed here suggests a new typology that

Africa as a Continent could double its OECD aid by simply fixing trade mispricing practices. Underfinancing of health care initiatives in Zambia, Kenya and Nigeria show that it is done intentionally as a form of ceremonial compliance only. These programs are skewed away from the most disadvantaged. In Nigeria 1.5% of GDP for the *Care For the People* program covers approximately 22,000 households or less than 0.001 % of population.]

46. *Id.*

47. Dani Rodrik, *The Globalization Paradox : Democracy and the Future of the World Economy* [W.W. Norton & Co., 2011] 231-242,245 [discussing a dominant role for the nation State in relation to the principles of democratic decision-making which is the foundation for the international economic architecture; noting that when States are not democratic this scaffolding collapses and one cannot presume a country's institutional arrangements reflect the preference of its citizens]; see generally M. Milgate & S.C. Stimson, *After Adam Smith: A Century of Transformation in Politics and Political Ideology* [Princeton University Press 2009]; see also Robert Riech, *Saving Capitalism* [Vintage Press,2015] [discussing new domestic and global market mechanisms beyond neoliberal constructs and outlines five new building blocks for capitalism; suggesting that the terms “free market”, “free trade” and “freedom of contract” are clearly defined legal constructs that can be “redefined” in this century to be more inclusive, that in their current forms may not always be a vehicle for the protection of participatory democracy and individual liberty]

48. *Id.*, Rodrik.

has the flexibility and sustainability to meet these ongoing state-level challenges.

With respect to how African nation-states might develop and utilize economic capital and its potential as part of the proposed *continuum of state sovereignty*, Rodrik's premise points to a basic principle that markets always require other social institutions (at the domestic level) to support legal arrangements and global market stabilizing functions so there can be a sustainable state-level coordination of fair redistribution, taxation, safety nets, and social insurance.⁴⁹ As African states seek to more even-handedly adjust its legal arrangements and market functions at the core of the nation-state, in the post-election 2018-2010 period, careful review of several basic structural principles might prove to be crucial.

First, the singular focus of the past neoliberal era [c.1980-2010] that relied on global market development to support concentrated economic growth in various regions of Africa and /or to serve private sector foreign direct investment at various competing sub-levels inside the state [e.g., municipalities, regions, provinces, and councils] should raise caution in Africa.⁵⁰ There is widespread documentation of the uneven implementation and results of the neoliberal paradigm [c.1980-2010] within the capitalist globalization process.⁵¹ This issue of *general dissatisfaction* evidenced by citizen protests during the 2016-2017 African election cycles reflect failed notions of both "trickle down" economic benefits [a neoliberal construct] that have not occurred for the average citizen's standard of living and of in-

49. *Id.*, Rodrick at 237-239 [setting out a series of statements in support of a state's right to protect their owns social arrangements, regulations and institutions; and suggesting that trade is a means to an end, not an end in itself so that globalization should be an instrument for achieving the goals that a society seeks: prosperity, stability, freedom and quality of life]

50. *Id.*

51. *Supra*, Note 43. *Author Note*: The legitimacy of the neoliberal paradigm [c.1980-2010] for the globalization process has increasingly been challenged as the impact of the 2008-2010 global recession continued and as global financial institutions are still forced to wrestle with the regulatory boundaries of a global market, the growing/ongoing financial and political instability of State governments[Greece, Italy, Spain, Egypt, Ireland, Portugal to name a few] , equity issues in the global political economy, and the growing demands to create a more humane paradigm for capitalist globalization. Contact author for a full listing of references on the neoliberal paradigm [c.1980-2010] for global capitalism and this impact of its economic organizing principles on nation-state.

cremental budgetary policy for social and human capital development that have not predictably supported growing human need.⁵² The failures of “trickle down” economics is not merely an intra-state municipal/region/province/council level issue to be addressed separately at each independent sub-level of governance. These failed economic organizing principles negatively impact the African state as a whole in its legitimate governing capacity.

It is a nation-state function to create and provide unifying economic organizing principles where advantages for the nation-state as a whole can be addressed in a more cohesive and integrated manner.⁵³ The historical process of applying the neoliberal paradigm across Africa perhaps has intentionally remained non-integrated, regionally focused and overtly competitive against and between municipalities/regions/councils as a way to give outside international and private sector economic interests a competitive edge over the nation-state in terms of its primary role – namely protecting participatory democracy and individual liberty.⁵⁴ If the state is kept busy continuously settling municipal contract disputes over resource/commodity development and utilization or jockeying for competitive advantage with other states in the same regional geographically configured area, then there can be little focus on developing a *core function of the nation-state* within a *framework of liberty*.

Second, Rodrik concludes a state has the right to protect its own public institutions, social arrangements, and regulations so that globalization becomes an instrument for achieving the goals that a society seeks: prosperity, stability, freedom and quality of life.⁵⁵ It has been the uneven application of the neoliberal paradigm [c. 1980-2010], both from a global perspective and from within regional AEC configurations, that has tragically limited state sovereignty in a variety of

52. *Supra*, Note 47, Rodrik at 181.

53. *Supra*, Note 7, AFRICAN PROGRESS REPORT/ANNAN

54. *Id.*

55. *Supra*, Note 47, Rodrik, at 231-242,245 [setting out a series of statements in support of a State’s right to protect their own social arrangements ,regulations and institutions; and suggesting that trade is a means to an end , not an end in itself so that globalization should be an instrument for achieving the goals that a society seeks: prosperity, stability, freedom and quality of life; noting that when states are not democratic this scaffolding collapses and one cannot presume a country’s institutional arrangements reflect the preference of its citizens; concluding that non-democratic states must play by a different, less permissive set of rules in the global marketplace].

African contexts—sovereign legitimacy that now will require a re-balancing process in terms of aligning global and regional trade as a means to an end, and not an end in itself.⁵⁶

Often the functional role and legitimacy of state sovereignty lies dormant until a conflict, like a change in political parties, emerges or competitive political campaigns surface and challenge the status quo. Then the issues of sovereign powers as well as state legitimacy or authority arise, are challenged, and need to be redefined. These demands are now made not upon a set of elected individuals or candidates for public office, but upon the overall state's functional role and scope of legitimate authority acting as a sovereign nation-state.⁵⁷

This re-balancing process points directly to a much-needed debate in the 2018-2020 post-election period. The sustainability of the African state—specific domestic social arrangements and the State's utilization of globalization as a blunt tool to achieve prosperity, stability, freedom and quality of life. A structured but more transparent internal functional review at the level of the nation-state could facilitate a new definition and deeper engagement in the role for twenty-first century state sovereignty – *a continuum for sovereignty* operating within a *framework of liberty*.

Third, the proposed GeoNOMOS© *continuum of sovereignty* designs a *single core function* for the state both in relationship: [a] to all citizens within the geographic boundary of the state [vertical axis] from whom the State as a legal entity now seeks legitimacy in order to govern, and, [b] to the state's coordinated engagement in the regional / global marketplace [horizontal axis] from an intentionally crafted long term strategic and sustainability perspective that folds in multi-levels of governance [e.g., municipalities, councils, regions,

56. *Supra*, Note 42, providing a detailed step-by-step review and analysis from the state's perspective outlining how a neoliberal set of global economic organizing principles functioned to destroy domestic level public sector budgets by transferring assets wholesale to the private sector as a pre-condition for market access, locked out democratic legislative oversight through private sector contracts, and more]

57. Karen A. O'Rourke, *The Crossroads of Globalization, Human Rights, and Rule of Law: Creating a Legal Culture of Human Rights Designing a Geonomos Model for the State*. AM. U., 301 (2012). (The GeoNOMOS Model© is copyrighted and consists of a series of schematics addressing the function of the nation state in the 21st century, of which diagram 6 is incorporated into this article for purposes of discussion only)

provinces] but does not complete with municipalities, councils, regions and provinces within each respective nation-state.⁵⁸

Applying the *continuum of sovereignty* to these four African nations would see these states better positioned to develop an enterprise of law that in turn generates a new set of economic organizing principles designed to ensure that economics follows state law and not the other way around.⁵⁹ A transition is needed for the sustainability of the state's own public institutions, multi-layer governance structures, social arrangements, and state regulations. In other words, if Kenya, Nigeria, South Africa and Zambia seek to support a sustainable state restructuring in its governance to better secure participatory democracy and individual liberty, then, the activity of the state needs to begin by redefining the *core function of the state*.

Why A New Typology for State Sovereignty in Africa: Endorsements Beyond Westphalia

The world in relation to the operation of sovereign states has changed dramatically in the last half of the twentieth century demonstrated by the end of traditional colonialism and the sheer number of newly emerging African nation-states claiming and being accorded sovereignty.⁶⁰ Traditional notions of sovereignty established by the Treaty of Westphalia [1648] are no longer fully applicable or realistic as the state legitimizes its function in the twenty-first century.⁶¹ Furthermore, as global economic organizing principles have also changed over time, the ongoing function of state sovereignty was altered even into the early twenty-first century.⁶² But even in what is

58. *Id.*

59. *Supra*, Note 14, Forms of Capital, for references and very brief definitions of three forms of capital noted in this new typology; this commentary suggests that every state has these three forms of capital and the differences in how states define their function is directly related to the amount of each form of capital that the state constructively balances, manages and oversees as a sovereignty entity. Contact author for full list of resources on these essential forms of capital.

60. *Supra*, Note 9, Posner and Young; Goldner and Watchekton

61. The Treaty of Westphalia [1648] originally was signed to stop the religious wars of the 17th century by securing a domestic jurisdiction and a defined geographic boundary for emerging nations, thus offering protection for nation States; See http://avalon.law.yale.edu/17th_century/westphal.asp [last visited August 22,2016] ;

62. Barry Buzan and George Lawson, *The global transformation: the nineteenth century and the making of modern international relations*, INT'L STUD. Q. 59 (2012), http://eprints.lse.ac.uk/44894/1/_libfile_REPOSITORY_Content_Lawson%2C%20G

viewed as a traditional approach to the recognition of a new sovereign state, the underlying issue for each African nation-state may be this: the traditional scope of the state sovereignty required for sustaining state-level governance may never have been fully recognized or secured as each African state initially emerged out of a colonial model of governance and continued or even expanded very broad intra-state governance structures mostly based on ethnic or historical geographic locations of people.⁶³

Historically, the idea, even in post-colonial times, that how sovereign states conduct themselves is a dynamic phenomenon in constant flux requires a parallel consideration that there will be another set of transitions required in this century as the defined role, legitimacy, responsibility and operational function of a sovereign state continues to change. The changing global realities of the last fifty years and certainly the challenges to state legitimacy presented in the 2016-2017 election cycles on the African continent point to the evolution of a *continuum of state sovereignty* for this century, one that better coordinates intra-state cooperation, addresses the legitimacy of its citizen concerns, and designs a new global, better coordinated regional market paradigm.

Debates concerning state sovereignty that ensued at the end of the twentieth century and into the early twenty-first century bear relevance to the post-election context in Africa. New typologies for state sovereignty reflect an evolution in the expression of state sovereignty emerging with more inclusive ideas that relied on state collaboration and interdependence including a more interactive and relational definition of how states expresses their sovereignty.⁶⁴ Jack

[_The%20global%20transformation%20the%20nineteenth%20century%20and%20the%20making%20of%20modern%20international%20relations_The%20global%20transformation%20the%20nineteenth%20century%20and%20the%20making%20of%20modern%20international%20relations%20%28LSERO%29.pdf](#)

63. *Id.*

64. See G. Palombella & N. Walker, eds., *Relocating the Rule of Law* [Hart 2009]; see Barak Y. Orbach, *The New Regulatory Era: An Introduction* [2009] 51 *Ariz. L. Rev.* 575 ; see Eric Engles, 'Transformation of the International Legal Order'[2007]23 *Quinnipiac L.Rev.*23; see also James Rosenau, 'Three Steps Toward a Viable Theory for Globalization', in I Rossi, ed., *Frontiers of Globalization Research: Theoretical and Methodological Approaches*[Springer 2007]; see E. Krahmman, ' National Regional and Global Governance: One Phenomenon or Many'[2003] 9 *Global Governance* 323; see also B. Roth, ' The Enduring Significance of State Sovereignty'[2004]

Donnelly proposed a new typology [a four-sectioned rectangular box] that balanced state authority and capabilities with sovereign rule and the state's scope of domination as it intersected effective components of formal sovereignty and material/normative weaknesses.⁶⁵

Francis Deng and Helen Stacey suggested two different typology arrangements for *sovereignty as responsibility* and *relational sovereignty*.⁶⁶ Deng's typology analyzed a range of both internal and external state factors and then, correlated these factors with a new international standard of *responsible sovereignty as an irreversible process*.⁶⁷ Helen Stacey suggested that a new typology of *relational sovereignty* was emerging where the sovereign would be judged by how well and by what means the state concretely and continuously "cares" for its people.⁶⁸

A fourth typology by Julian Ku and John Yoo discussed a *popular sovereignty* based on the idea that people in a sovereign state govern themselves through constitutional structures and institutions.⁶⁹ In

56 Fla.L.Rev.1017; see Paul Kahn, 'The Question of Sovereignty'[2004] 40 Stan J. Int'l L. 259,260-268; see Paul Kahn, *Putting Liberalism in its Place*[Princeton University Press 2005]; see A. Clair Cutler, 'Critical Reflections on the Westphalian Assumptions of International Law and Organization: A Crisis of Legitimacy'[2001] 27 Rev. Int'l Law Stud 133; see Michael Fowler & J. M. Bunck, *Law, Power and The Sovereign* [Routledge 1995]; for historical notions of sovereignty , see Thomas Hobbes, *Leviathan: Parts One and Two*, Herbert Schnieder, ed.[18th Edn, Bobbs Merrill Co, 1958]; see also Thomas Hobbes, *Leviathan* ,C. B. MacPherson ,ed. [1st Edn, Penguin Books 1968]; see also John Locke, *Second Treatise of Government* , Thomas Peardon, ed.[1st Edn, Prentice-Hall,1953]

Resource lists on State Sovereignty that supports the analysis is available for authors.

65. Richard Falk, "Jack Donnelly: State Sovereignty and Human Rights", *Political Science Quarterly* [1981]
66. Francis Deng, *Frontiers of Sovereignty*, 8 Leiden J. Int'l L. 249, [1995]; See also Helen Stacey, *Relational Sovereignty*, 55 Stanford L.Rev.210 [2009].
67. *Id.*, Deng at 250-277.
68. *Supra*, Note 66., Stacey, at 218-222.
69. Julian Ku and John Yoo, *Globalization and Sovereignty*, 31 Berkeley J. Int'l L 210 [2013];[noting that sovereignty is in decline but the decline in national sovereignty is not desirable since state maintains decision-making and individual liberties. Suggesting a new form of popular sovereignty with shift away from Westphalian models to the right for people to govern themselves through institutions of the Constitution and its structures. Popular sovereignty is flexible to maintain national sovereignty and assumes state can share sovereign power without giving up entire system; popular sovereignty can co-exist with globalization and governance issues in ways that the rigidity of Westphalian system could not. State turning automatically to international organizations inconsistent with reliance and continued power of nation States; by referring to structural provisions of Constitution. eg, separation of powers, promotes state level democratic governance and incorporates the gains of international cooperation]

this construct, the state can legitimately share sovereign power with its citizens without compromising the whole system.⁷⁰ The typology presented in this article builds on concepts noted above pointing to yet another evolution in how sovereign states function in this century.⁷¹ The GeoNOMOS© that establishes a *continuum for sovereignty*, is anchored within a *framework of liberty* and secures the single *core function of the nation -state*.⁷²

The GeoNOMOS© operates interactively on two levels of a state and offers both sovereign stability and operational flexibility by addressing the two primary functional components of any twenty-first century state. One component redefines how the sovereign state functions to create and sustain a civil society within its own *domestic sphere* [vertical axis] and addresses the specific needs of its populations who will live and work most of their lives within the geographic boundary of that state, and a second component seeks to redefine how the sovereign state functions and engages within its own *regional / international sphere* [horizontal axis] by engaging with the public and private sector global marketplace and foreign investment sector, public sector international institutions, other African states in the regional AEC pillars, and an international community of states.⁷³ The state is located at the crossroad / intersection of these two axis points in the *continuum for state sovereignty* because the state simultaneously must coordinate both a domestic function [vertical] and a regional/international function [horizontal] as described.

As each nation-state begins to build a different engagement for domestically integrated political function at the level of the state, based on collaboration rather than fierce competition or corruption among and between the various intra-state multi-level ethnocentric

70. *Id.* at 218.

71. *Id.*

72. *Supra*, Note 11, defining continuum and why the *continuum of sovereignty* is proposed.

73. Without a doubt, the rapid and uncontrolled movement of private sector global capital and public sector capital and domestic finances in and out a State's legal boundaries also bears witness to these relational components of state sovereignty within the *international sphere* of the equation. The same flexibility of global movement never seemed to occur on the side of development or utilization of social and human capital. While economic capital was and remains highly mobile and unregulated, most human labor [human capital] is bound by state geographic boundaries and people's life circumstances and citizenship rights are dictated by those state boundaries.

structures. This appears to be a significant challenge for stability at the core function of the four nation-states reviewed for this article. Some of these matters may be governed by state constitutional provisions that have yet to be fully articulated, analyzed and enforced. Others reflect longstanding political practices and jockeying of political personalities and campaign promises made. However, in a 2018-2020 post-election action plan, the overriding issue remains the stability and consistency of the *single core function* of the state in relation to balancing development and utilization of essential capital resources [economic capital, social capital, and human capital] to the benefit of all citizens in the state.

The state rests at the intersection of the vertical axis [domestic function] and the horizontal axis [regional/ international function]. At the intersection of these two axis, the three essential capital resources of the state also intersect in the form of three overlapping, equally sized circles depicting the core function of the state to consistently engage, balance and protect is three essential resources – economic capital, social capital and human capital.⁷⁴

A Continuum of Sovereignty Based on Liberty

The GeoNOMOS© [*continuum of sovereignty*] represents a graphic schematic depicting the next evolution for state sovereignty because it differentiates three important principles.⁷⁵ One, it posits conceptually that for all human activity, enterprise and undertakings at the level of the state, liberty represents the outer geographic boundary of any and all such endeavors.⁷⁶ Beyond this *framework of liberty* nothing can, nor does exist, and all activity with the state falls within the four corners of this frame defined by liberty at the state's outer boundary.

Two, the GeoNOMOS© distinguishes, in contrast to other models which seek to develop an economic/legal model, or some other models for nation-states from times long past, that the nation-state and the nation-state alone can function as a legal guarantor as it alone

74. *Supra*, Note 57.

75. *Id.*

76. To be distinguished as “freedom from” factors like oppression, slavery, prejudice and racism, and to be distinguished from “Liberty” as the quintessential element which enables whereas freedom does not in and of itself enable.

can vouchsafe liberty both toward the individual and also toward other nation-states and supranational organizations who operate with semi-governmental character. The nation-state alone is the only entity that can hold supranational organizations accountable to some form of law. It is the nation-state alone that can balance individual human rights with global commerce and the overreach of global international and inter-governmental networks.⁷⁷ It is the nation-state alone that can exercise jurisdiction legitimately.

Three, the GeoNOMOS© [*continuum of sovereignty*] remains dynamic and ever evolving through the intense and continued interaction of three forms of capital [e.g, social capital, human capital and economic capital] as the purpose and *single core function* of the nation-state. It is the state consistently functioning at the center of these three forms of capital that will secure a balance between these three essential resources to the benefit of the individual [those persons the state seeks to govern] as it stabilizes its domestic function [vertical axis] and its regional/ international function [horizontal axis].⁷⁸ All of this activity occurs and is grounded within the *framework of liberty*.

Liberty is that quintessential element necessary in human existence which is the fertile ground to allow the most productive, creative and mutually beneficial human endeavors and interactions to flourish and to bring benefits to all, and the absence of which tends to dampen the manifold expressions of all those truths people collectively hold to be self-evident.⁷⁹ It is grounded in the rule of law, to be distinguished from freedom, and requires a steadfast juxtaposition and weighing of individual and communal rights, benefits, obligations and privileges without which no human civil society can function. In the *continuum of sovereignty* [GeoNOMOS], the existence of liberty

77. Jean L Cohen, GLOBALIZATION AND SOVEREIGNTY: RETHINKING LEGALITY, LEGITIMACY, AND CONSTITUTIONALISM 72 (CAMBRIDGE UNIV. PRESS, 2012).

78. In this construct, a failed nation-state can be described as a nation-state where the boundaries of the three forms of capital have become disconnected, i.e., the nation-state has been forced into one or the other circle, but cannot be in all three circles. More importantly, such a state has become unable to stay at the core of these capital resources to keep and preserve the necessary areas of overlap between these three forms of capital.

79. *Supra*, Note 77, at 72.

further forms a foundation to all of human community and its guarantor can only be the nation-state.⁸⁰

There is no doubt that liberty in this framework will be a highly contested topic and hotly debated not unlike rule of law, and it should be so both nationally, regionally and transnationally across the African continent.⁸¹ T.H. Green defines liberty as the capacity to do

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80. T.H. Green, 'Liberal Legislation and Freedom of Contract', in D. Miller, ed., *The Liberty Reader* [Paradigm Press 2006] [arguing that liberty is a means to an end and freedom forms a goal for social efforts; concluding that the institution of property can be justified only as a means to free exercise altogether and that no contract is valid in which human beings willingly or unwillingly are dealt with as commodities].
81. Samantha Besson & J. L. Marti, 'Law and Republicanism: Mapping the Issues', in S. Besson & J. L. Marti eds., *Legal Republicanism: National and International Perspectives* [Oxford University Press 2009] [noting that works contributing to the long tradition of republican philosophy include the works of Aristotle, Montesquieu, Rousseau, Arendt, Cicero, Machiavelli, Harrington, Paine and Jefferson; suggesting that republicanism and liberalism are not foes but allies; the differences in these two theories is a matter of approach and interpretation as republicanism is more forward-looking as it seeks to identify the conditions for protecting liberty; legal republicanism is a normative theory that is concerned about the content and structure or the form of law as it relates to those substantive and procedural standards designed to protect liberty; republicanism can be found in all areas that traditionally constitute the law and nothing prevents the development of new principles of republican contract law, republican labor law, republican administrative law, and so on;]; see generally, J. MacCormick, *Institutions of Law: An Essay in Legal Theory* [Oxford University Press 2007] [see in section Law, Morality and Methodology]; see Phillip Petit, 'The Republican Ideal of Freedom' in, D. Miller, ed., *The Liberty Reader* [Paradigm Press 2006] [suggesting that equal distribution of the ideal of liberty as noninterference would leave a lot to be desired in regard to redistribution and fall short of distributive justice; concluding that liberty as non-domination will require a more substantial commitment to redistribution; and if redistribution measures adopted can be pursued under a fair rule of law, then these measures do not themselves introduce any form of domination; this is so because redistribution under a republican theory is a form of conditioning liberty on par with the conditioning affected by factors like poverty or disability or illness; redistribution puts the State under intense scrutiny to prevent relatively arbitrary powers and to secure constitutional constraints]; see J. Bohman, 'Cosmopolitan Republicanism and The Rule of Law', in S. Besson & J. L. Marti ,eds., *Legal Republicanism : National and International Perspectives* [Oxford University Press 2009] [arguing that non-domination is a power that belongs to individuals who can control their own destiny and this negatively requires the power of any agent who can prevent ills from happening to them; furthermore, citizens can define and redefine their polity with each other]; see Isaiah Berlin, 'Two Concepts of Liberty' in Henry Hardy, ed., *Liberty: Incorporating Four Essays on Liberty* [Oxford University Press 2002] [Berlin speaks of positive liberty as self-mastery and negative liberty as the absence of obstruction or interference]; see D. Miller, ed., *The Liberty Reader* [Paradigm Press 2006] [speaking of three different doctrines that come to represent positive liberty: the capacity to act in certain ways as contrasted with mere absence of interference; the freedom of rational self-direction where one's life is governed by rational desires; and

things, not the mere absence of restraint and, thus, liberty actively includes a moral value and certain social elements that are enjoyed in common with others.⁸² While there is no agreement even among the many schools of republican legal thought, liberty is defined primarily as non-domination by the state and its governing sub-parts, and includes human rights, civic virtue and the creation of a common good.⁸³ These basic characteristics of a liberal republican theory are incorporated within the GeoNOMOS© *continuum of sovereignty* as part of participatory democracy, supported by an interventionist state whose *single core function* continuously reflects and balances the development and utilization of all its essential capital resources.⁸⁴ This active participatory function at the core of the state includes a rule of law that reflects the principles of mutual benefit, liberty and human dignity.

The proposed *continuum of sovereignty* is highly interactional process based in part on the law of merchants constructed for a society of economic traders, and espouses that the 'rule of law' will have meaning only from within the social context reflected by the interaction of public institutions, regulations, procedures, and values depicted at the core of the GeoNOMOS© where the *single core function* of the state is secured.⁸⁵ The *framework of liberty* is intentionally created as part of the *continuum of sovereignty* since there can be no claims for state legitimacy and, thus, no state-related activity conducted outside the *framework of liberty*.

The functioning and manifestations of liberty are secured by its four cornerstones and by the constant and continual interaction and balancing inside the *framework of liberty* for the state's three forms of capital: economic, social, and human capital. These forms of capital are found to exist in every form of human society, or human asso-

collective self-determination where each person plays a role in controlling the social environment through democratic institutions].

82. *Supra*, Note 80.

83. *Supra*, Note 57.

84. *Id.*

85. The single core function of the state is to consistently and intentionally balance its three essential forms of capital: economic capital, social capital and human capital. In doing so, the state governs the development and utilization of its capital resources in ways designed to protect both its viability and sustainability as a political entity because as it meets the human rights needs of people, it is attempting to govern and balances its activity in the global marketplace.

ciation, albeit to differing degrees and at different levels of development, but can be discerned and even measured quantitatively to be present and functioning in a state of association and in a state of flux. From within this *framework of liberty* and moving along this *continuum of state sovereignty*, each state secures its *single core function* [sovereign capacity] to manage a wide range of possibilities because all domestic and international actors must also function within the state's framework of liberty.

The *framework of liberty* is anchored by four cornerstones—two on the lower end of the frame depicting equity and justice[ethics] that support the principle of mutual benefit, and two on the upper corners of the framework of liberty depicting elements that support the principle of human dignity—individual autonomy/choice and individual capability/resource development.⁸⁶ This framework depicts an actual relationship that can be measured along the continuum between the state and the people it seeks to govern so long as the state continues to function within the *framework of liberty*.⁸⁷ This dynamic exists because quantitative outcomes for the qualitative work that the state undertakes at its *single core function* designs a more legitimate accountability and transparent expression of state sovereignty in relation to how the state uses its three essential capital resources in the domestic sphere [vertical axis] and in the regional /international sphere [horizontal axis] of its day-to-day function.⁸⁸

The four African nations discussed in this article already have possession of all these capital resources and within their existing constitutions, each has the authority and relative stability to engage with the integrated vision of the GeoNOMOS©.⁸⁹ The operational components of a *continuum of sovereignty* align with the driving force of a variety of constitutional mandates unique to each of these four states.⁹⁰ The dynamic of this process begins at the state level with a thorough review of all of its capital resources and the various stages of resource development and utilization. It secures an integrated *single core function* for the state by functioning within the framework of liberty based on its principles of: liberty, mutual benefit, and human

86. *Supra*, Note 57.

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

dignity, to form a new typology called a *continuum of state sovereignty* which the GeoNOMOS© represents.⁹¹ Functioning from within a *framework of liberty*, the state is in a position to design and implement a strategy for the post-neoliberalism era that supports its domestic stability [vertical function] and its regional AEC/ international market economic participation [horizontal function]. The nation-state's *single core function* engages at the center of three overlapping circles [three forms of capital] and the center of the intersection of a vertical axis and a horizontal axis inside the GeoNOMOS©.⁹² This *single core function* incorporates three essential building blocks that belong to every nation-state all of which must remain inter-connected and continuously balanced in order for the state to maintain legitimacy as sovereign as to its function.⁹³

A very brief explanation follows on these three essential building blocks that form the state *single core function* follows.⁹⁴ Economic capital can be defined as the amount of risk capital assessed on a realistic basis which a nation-state requires in order to remain solvent over a period of time. Economic capital can be calculated.⁹⁵ It is an open question whether rigorous risk analysis is or can be a necessary and required function of government. Yet, it can be reasonably presumed that it is part and parcel of any and all economic and commercial enterprise. Social capital is understood as a stock of resources that *an individual* can control by how they invest their time in community organizations, educational institutions, religious organizations

91. *Supra*, Note 47, Rodrik.

92. *Supra*, Note 11, Definition of Continuum.

93. *Pierre Bourdieu*, FORMS OF CAPITAL 47, W.W. Norton (1986).

94. *Supra*, Note 14, Forms of Capital [for definition and related explanations]; The other two types of capital [social capital and human capital] can be derived from economic capital but only at a cost based on the calculated effort of transformation initiated by the state at the state level. Individual economic capital is developed and utilized by the state in its role as a legal entity. The overlapping circles depicted as the core function of the state show that economic capital must remain in a direct and balanced relationship with the other two forms of capital [social and human capital]. By necessity, this process of balancing economic capital will point to the state's relationship with non-state actors in the global marketplace and in the domestic policy arena.

95. Glyn Holton, *Economic Capital*, GLYNHOLTON.COM, https://www.glynholton.com/notes/economic_capital/.

and neighborhood networks.⁹⁶ It represents a *form of trust and reciprocity* that is developed within social networks in any given culture.

For Africa, the core function of the state will need to embrace a way to build strong public institutions that unite longstanding ethnic and tribal groups [municipalities, regions, provinces and councils] in ways that capital resources are developed, shared, and utilized in support of the whole nation-state and not simply along historical ethnic groups, political patronage, and tribal geographic configurations. Social capital, which as an individual characteristic, tends to aggregate and represents a *collective or public good* as part of a civil society.⁹⁷ Economic capital and human capital are also forms of capital

96. Rebecca Bratspies, Regulatory Trust[2009] 51 Ariz.L.Rev.575 [suggesting that as new technologies underscore the divergence between market incentives and social welfare, social trust can be developed as a resource through creating regulatory agencies that function effectively in times of uncertainty][this author noting that Bratspies's "social trust" equates to a form of social capital]; see Richard Sandbrook, Patrick Heller, Marc Edelman, & D. Teichman, *Social Democracy in the Global Periphery: Origins, Challenges and Perspectives* [State University of New York 2007] [Defining a social democracy regime as a widely supported set of norms, institutions, and rules constraining government to [a]be subjected to democratic control ,and [b] activity to regulate market forces and intervene to enhance equity, social protection and social cohesion]; see also Janos Berok & Elodie Beth, *OECD Overview for Managing Conflicts of Interest in the Public Service*, 64-70[OECD 2005][describing various self-interests that governments perceive as creating a conflict of interest sufficient to undermine a public official's ability to faithfully carry out the public's interest] ;see also Eric M. Uslaner, *The Moral Foundations of Trust* [Cambridge University Press 2002]; see Joel Sobel, Can We Trust Social Capital[2002] 15 *Journal of Economic Literature* 139,139-145; see Pierre Bourdieu , *Forms of Capital* [W.W. Norton, 1986] [Bourdieu would say that *social capital* is an attribute of an individual in a social context; one can acquire social capital through purposeful actions and can transform social capital in conventional economic gains; the ability to do this conversion depends on the nature of the social obligation connections and the networks that are available to one as an individual].

97. There are examples of intentional social capital development may be helpful for review here. One is the amazing success in South Africa's eThekweni Municipality which established the Municipal Institute of Learning to build capacity for local government and in that process trained 3600 local practitioners in matters related to strategic planning as well as revenue management coupled with new trends for water conservation and sanitation. Can the "best practices" of this municipal level program be implemented across a variety of municipal structures as a state building activity to the benefit of constructing a different context from within which the nation-state better functions ? Second is The Association of African Planning Schools which is a network of 54 city and regional planning institutes designed to train urban planners on matters of governance, infrastructure planning and law reform. Other examples of success in capital development and utilization at the nation state level are evident. Boosting agricultural and fishing communities across the Continent which support two-thirds of Af-

but they are generally more fungible in the sense that these two forms of capital are linked to private goods.⁹⁸ Human capital is a hybrid consisting of both quantitative and qualitative aspects. Human capital in this schematic focuses first and foremost on the individual, and then on how that individual reaches maximum levels of capabilities/resource development and individual autonomy in order to contribute to society in ways that the individual actually can choose to develop his or her human capital. This is precisely why the two cornerstones for the *framework of liberty* are linked to the principle of human dignity.

What might take place in the core function of the state when the three forms of capital become disjointed and lose connection, instead of remaining interconnected as the *continuum for sovereignty* suggests that they must remain? In short, in this *continuum of sovereignty*, the result is a failed nation-state. If a state disconnects the economic capital function from the core function of balancing the development and utilization of human capital or social capital, the state essentially implodes: the state fails as it continues to operate outside the *framework of liberty*.⁹⁹ Likewise, if a state concentrates

icans, mostly women is a *core function of the nation-state*, for state-level coordination, not exclusively for individual regions, provinces, councils or municipalities situated on or near these valuable natural resources. Sustained support at the state-level in support of justice and equity will require state government sponsored, legally regulated, and protected infrastructure coupled with accessible and fair financial systems, not ethnic patronage, political despots, or conflicting and inconsistent regulatory schemes at various municipal/region/council/province levels within nation State. Some existing state-level programs generate social protection programs that can boost income from agriculture. Strong growth in agriculture continues in Zambia. Kenya has developed IT applications to support communication between farmers of best practices for planting, harvesting, dairy production and more [I-COW and M-FARM] and fisheries for marketing services [EF-MISKE]. Nigeria and Kenya both offer farmers seed/fertilizer subsidies vouchers via mobile applications[E-Wallet]. So the state-level managed outcomes of tying social capital with economic capital are measurable within the single core function of the state even if such function crosses ethnic lines or geographic mandates of municipality, province, council, or region. See *Supra*, Note 7, African Progress Report/Annan at 43-47;51-57.

98. *Supra*, Note 93.

99. In like manner, a state whose leadership blatantly opts to exploit one form of capital resources over another, will cause serious imbalance at the core function of the state, a support a diminished sense of liberty overall, and potentially trigger an internal implosion of domestic level institutions at the expenses of its global marketplace participation. The imbalance of always prioritizing economic capital development and utilization means that public funds and state priorities are not balanced in a focus that

only on human capital development without a consistent program for economic and social capital development and utilization, it is out of balance at its core and will likely fail. The key parameter is consistently balancing the three forms of capital as the *core function of the state* within the *framework of liberty* because the four corners of the liberty framework as described below anchor the State in perpetuity.

The state's core integration and balance in the GeoNOMOS© is required so state-level public sector institutional development and the rule of law reflects strong economic capital but also simultaneously addresses aspects of social capital and human capital such as trust, mutual benefit and reciprocity. It is this consistent integration within the *core function of the state* that creates the *continuum for state sovereignty*. This integration at the *single core function* of the state operates in tandem with liberty's mandates in support of justice and equity. The four cornerstones for the *framework of liberty* reflect a standard of conduct that together support the principles of human dignity and mutual benefit as the state's is reflective of individual choice, individual capability/resource development, justice, and equity.¹⁰⁰ In this GeoNOMOS © *continuum of sovereignty*, all actors, whether domestic or international, private or public, governmental or non-governmental must function from within the *framework of liberty* because it is axiomatic that nothing can exist outside the *framework of liberty*.

Conclusion

A detailed African action plan in the 2018-2020 post-election period could solidify a tremendous domestic and global opportunity on the continent—a revitalized process for democracy where the African state intentionally designs a deeper engagement concerning the legitimacy and the expression of its own state sovereignty. As the state and all of its constituent groups learn to engage and respectfully function in partnerships within the various components of the GeoNOMOS©, a common good is created and supported by an evolving and newly expanding set of state best practices. African nations would find themselves in a very unique leadership position in history

includes human capital development and utilization and the intentional formation and support of social capital.

100. *Supra*, Note 57.

– to shape new forms of participatory democracy based on individual liberty and then, to create an ‘enterprise of law’ defining how private and public actors [economic traders from domestic, regional, international sectors] could better intersect with the state’s core functions without destabilizing it. Within a proposed deeper engagement with sovereignty, one that lies inside the *framework of liberty*, the nation-state moves beyond the neoliberal paradigm [c.1980-2010] of global capitalism and into a more “humanizing” paradigm for globalization—one based on new economic organizing principles akin to those proposed by Rodrik, Reich, Kaletsky and others. As the state and all of its constituent groups learn to respectfully function within the GeoNOMOS©, the principles of mutual benefit, human dignity and liberty emerge. The social contract that was repeatedly espoused in the African 2016-2017 election cycle could become a fundamental and functional reality in the day-to-day lives of those citizens the state seeks of govern.

The GeoNOMOS Model:
The Core and Enterprise of State Functions

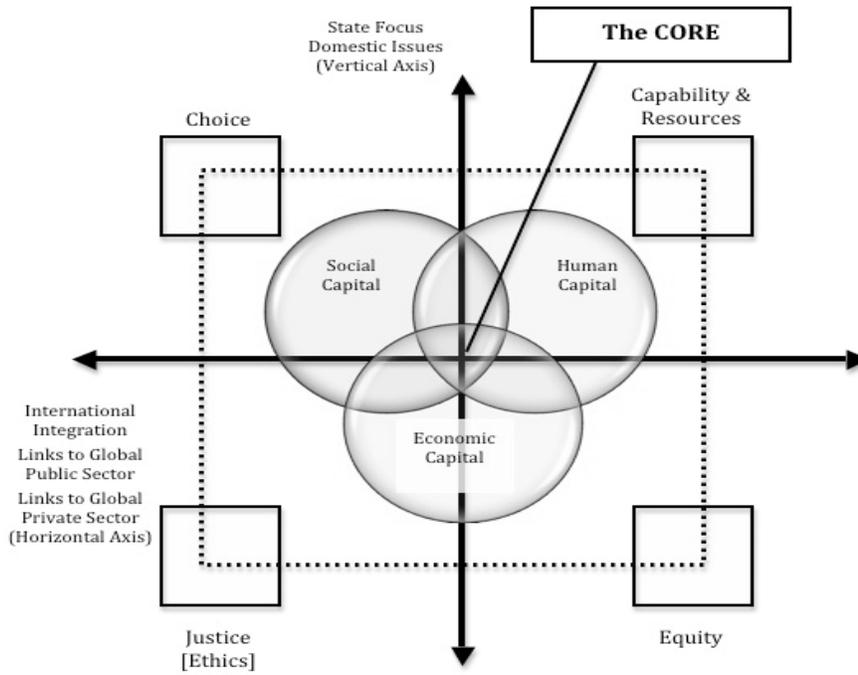


DIAGRAM 06

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