



# The Impact of the COVID-19 Pandemic on Constitutionalism and the Rule of Law in East Africa

Analytical report, Webinar, 11 June 2020



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## 1. Introduction

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A webinar on the impact of the COVID-19 pandemic on constitutionalism and the rule of law in East Africa took place on 11 June 2020. Participants included a selection of invited panellists and individuals from the African Union Commission (AUC), the International Institute for Democracy and Electoral Assistance (International IDEA) and other experts from the East Africa region. The session was guided by a programme (Annex A) and a concept note (Annex B). The webinar was arranged as part of a series of engagements on the impact of COVID-19 on governance and democracy in Africa.

The webinar took place against a backdrop where the virus has been taking a toll on the lives and livelihoods of people in Africa. The national measures to tackle the virus have influenced the organization of national elections and the overall governance trajectory of some countries in the region. While the effects on elections are visible and have been recognized, the implications of COVID-19 on constitutionalism and the rule of law are less pronounced. It therefore became imperative for International IDEA to arrange an event in partnership with the AUC's Department of Political Affairs on the subject of the impact of the COVID-19 crisis on constitutionalism and the rule of law in East Africa.

The countries of East Africa (Burundi, Ethiopia, Kenya, Rwanda, Tanzania and Uganda) have adopted a range of emergency measures as part of their national responses to the COVID-19 crisis. The steps introduced range from the shutdown of institutions, isolation and quarantine policies, health screenings at airports and border crossings, international flight suspensions, domestic travel restrictions, limits on public gatherings, the closure of public services and military deployment. Given the range of actions introduced and imposed, there has been only limited reflection on the implications of these measures on the rule of law and constitutionalism.

The webinar was based on two overall premises: first, the need to consider constitutionalism and the rule of law in terms of their ultimate goals, which include a guarantee to respect citizens' fundamental rights and freedoms in both ordinary and extraordinary circumstances; second, the imperative of recognizing the need for a holistic perspective that is focused not only on civil and political rights but also on the economic and social rights of citizens in the context of the COVID-19 crisis.

The following core issues served to focus the deliberations that took place during the webinar:

- An overview of state-of-emergency regulations, including their conformity with constitutional provisions as well as regional, continental and international norms and

standards. This includes measures to control executive actions taken in response to the emergency.

- The socio-economic impacts of state-of-emergency regulations and the related impact on access to basic public services—mainly health services—and the overall functioning of the delivery systems for public services.
- The impact of emergency regulations on vulnerable groups—particularly women, young people, children, the elderly, refugees and internally displaced persons—including the effects of the measures on state–society relationships.

The webinar report serves as an interpretative, analytical summation of the issues discussed and not as a verbatim transcript of the inputs or related discussions. The report provides a consolidated overview of the challenges and potential future scenarios outlined during the seminar in relation to the impact of COVID-19 on constitutionalism and the rule of law. While the measures introduced to combat COVID-19 varied in substance across countries in East Africa, the following were common threads:

- the suspension of international and local flights and, in some instances, the requirement that all travellers self-isolate for a period;
- the imposition of various forms of lockdown, including curfews in some cases, with varied local regulations and requirements;
- the general prohibition of mass gatherings, including at educational institutions, churches, mosques, sporting events and social events;
- a variety of restrictions on the movement of people and the use of public transport;
- measures aimed at improving the capacity to deliver healthcare and actions directed at ensuring mass screening and, to a limited extent, virus testing; and
- economic measures directed at limiting exposure and, at the same time, ensuring that livelihoods are maintained.

Since the measures and related actions unfolded differently in every country, it is not easy to paint a single picture of the region. The concern that responses to the virus have impacted governance remains a common thread. While there are many particularities and differences, the webinar and this summary report provide a general perspective on the impact of COVID-19 on governance and development in the region more broadly. All of the content in this report was taken directly from the input and discussions that took place during the webinar.

## 2. The impact of COVID-19 measures on constitutionalism and the rule of law

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It is essential to understand that East Africa and other parts of the African continent were facing a general crisis of governance even before the onset of the COVID-19 pandemic. This crisis manifests itself in different forms, including through a propensity to amend constitutions, the narrowing of political spaces and attacks on civil society and the media.

The pandemic has brought to the forefront existing governance challenges in a very direct way and has simultaneously produced new challenges. Since the first case of the infection was identified in one African country in February 2020, more than 6,000 people have died on the continent as a result of the virus. There are now over 400,000 confirmed cases in Africa, and the governments of African countries have responded in a variety of ways to deal with the pandemic. The virus has had a discernible impact on human rights and public freedom. Many governments are also struggling with the organization of elections.

As the spread of COVID-19 remains uncertain, the situation in the region is very dynamic and hence requires constant engagement and reflection on what is unfolding politically, socially and economically. While some trends are concerning, as they impact negatively on governance, a comprehensive perspective suggests a need to engage with the reality both in an appreciative manner and with some level of vigilance concerning creeping authoritarianism that may emanate from an overeagerness to impose particular measures to safeguard populations.

### Legal measures and constitutionalism

Governments in East Africa have primarily utilized legislative measures and related executive actions to deal with the health crisis. There has been a reluctance to utilize constitutional authority to declare states of emergency, as these often presumably involve greater levels of parliamentary oversight.

Even with such legislative- and executive-centred approaches, there remains a concern that there could be momentum towards amending constitutions during this crisis and that the need to respond to COVID-19 could be used as an excuse for changes. An analysis of existing legal provisions and constitutions in the region suggests that there is ample space for governments to introduce and implement emergency measures without having to resort to constitutional amendments. There is little justifiable reason to amend constitutions or even to suspend aspects of related provisions. There is nevertheless a concern in the East Africa region that some governments and political elites may use the situation to counter the opposition and change the rules to secure their own political position.

While some countries outside of the East Africa region, such as Ethiopia, have used constitutional measures to declare a state of emergency, East African countries, such as Kenya and Uganda, have used direct legislation and executive orders. Executive orders have been used, for example, to order an increase in the number of beds in hospitals under subregional control and to impose certain restrictions at lower levels of government.

There are examples in the region of how countries are seeking a balance between accountability and executive actions. This approach requires carefully balancing the desire to act with the realities of ensuring appropriate oversight. Given the fraught and challenging political history in some countries, there is broader suspicion that COVID-19 will be used as an excuse to introduce measures to suppress political contestation during elections. Establishing direct linkages between the actions of executive authorities and political processes is nevertheless difficult. It has been contended that the only channel for managing legal measures and related actions is through better civilian oversight and greater transparency. It is often easy to conflate issues during a crisis, but it is essential to retain some degree of oversight and engagement to avoid a decline in accountability.

There is a concern that constitutional channels are not being used effectively and that this could lead to the establishment of parallel institutions. Such an approach could undermine the overall governance system and constitutionalism in the long run. Countries are generally struggling to establish legal pathways to respond to the crisis, which is exposing some of the challenges embodied in existing frameworks. As a result, the crisis could bring about in-depth reflection on constitutional and legislative measures that need to be introduced to deal with a new and similar crisis in the future.

## Accountability and oversight

Many of the countries in the region have opted to utilize existing legislative and related executive actions to deal with the crisis. These emergency measures have generally limited the role of parliament and hence allowed for lower levels of oversight of the use of public resources. While some of these measures are understandable and relate to the immediate need for action, there appears to be a general reluctance for more substantive parliamentary oversight. The lowering of accountability requirements creates momentum towards avoiding oversight and more profound forms of public scrutiny.

The use of authority to declare states of emergency, as a legal response, would generally serve to invite the participation of parliament and hence force governments to share power. With direct legislative and executive measures, however, the role of parliament is rendered weak. In some countries, executive orders are being challenged in courts, as such orders must be introduced in a legitimate way and in a manner consistent with the rule of law. This development is generally positive but is often limited by the weaknesses resulting from social-distancing measures, such as the reluctance of courts to remain open and accessible.

It is vital to reflect on the legal measures in place to prevent a shift towards authoritarianism in the region. It was noted that there are certain non-delegable rights under the constitution in some countries in the region. These rights are also secured through relevant international instruments. While emergencies allow for a lower threshold for human rights, there is still scope for review of those actions. Even under emergency measures, steps taken are always subject to judicial review and hence must be justifiable. There are inbuilt mechanisms to facilitate some level of oversight on the part of parliament, the judiciary and other actors in society. In Kenya, for example, some of the measures introduced by executive orders have been challenged through the judicial process. To fully appreciate the role of each of the actors involved in oversight processes, it is often vital to clearly distinguish the exercise of power (i.e., distinguish between how authority ought to be used and how authority should be used during an emergency).



Safeguards are fundamental for securing rights during an emergency. There is a general concern that political elites could use the current situation to manage the opposition and to amend the legal framework. Since the COVID-19 situation is dynamic, it is very difficult to draw conclusions about whether political power is being used to tackle the virus or for other purposes. For example, there is a lot of suspicion in some countries that the virus will be used as an opportunity to change the constitution. Nonetheless, it is challenging to establish the relationship between specific executive actions and political processes. The only way to manage this challenge effectively is through better civilian oversight and higher levels of transparency.

There is a chance that the virus could spread further and in waves and hence force countries to go into different stages of lockdown. The likely consequence of this is that many countries would begin to create parallel governance structures. These would serve to render courts and parliament weak and hence shift away from existing governance procedures. The creation of parallel structures remains a matter of concern, as such structures could well serve to undermine the formal authority of the structures established by constitutions. The inability of parliaments and the courts to continue working has often had severe implications, as this limits oversight of government during a difficult period of concerted public action and authority.

## Upholding human rights

Feelings of despair and fear of the virus in the broader population created an initial situation where many in the East African Community were prepared to trust government. The pandemic served to merit such a reasonable response, and hence created a feeling that government needs to be trusted to implement extraordinary measures. In many respects, governments in countries such as Kenya and Uganda have gone a long way to respond to the difficult health challenges they have been facing. However, the terminology and language used by these governments shifted rapidly towards a military-type approach. While many of their responses appeared rational, it is not certain that these were grounded in the normative frameworks of East African countries.

The human rights record in the region was already considered problematic before the onset of the virus. Many countries failed to implement or even acknowledge the decisions of the African Court on Human and Peoples' Rights in Arusha, Tanzania. There is general reluctance on the part of governments to implement the Court's decisions or to treat human rights as a key pillar of regional integration. While most governments proclaim human rights within formal documents, practice is often very different from articulated policies. The onset of the virus has thus served to add another layer of complexity to an already stressful situation.

One of the very visible challenges with the measures introduced is that some of the measures adopted to combat COVID-19 are discriminatory and, therefore, open to potential abuse. As an illustration, some parts of Kenya and Uganda have adopted measures that are more restrictive than in other parts of the country. A similar level of discrimination has emerged around international and interregional travel.

Related to the concern about discrimination is coercion by police and the use of military personnel to enforce restrictions. In the case of Kenya and Uganda, this reality prompted the presidents of both countries to appeal to security forces to use less violence. In general, states have shown a recourse to coercion to enforce short-term measures. Lockdown measures and other actions related to the free movement of people have given rise to concerns that governments are not sensitive to local realities and needs. Police and military operations are often strong and fail to recognize that people's rights need to be upheld. Little dialogue has

taken place on how rights are protected during a period of crisis or on measures that need to be in place to ensure that all actions are legitimate and subject to some form of oversight.

## State–society engagement

In general, there is an overall perspective that governments in the region must engage in broader consultation as they introduce emergency lockdown measures and related actions. The overly security-oriented approaches taken by governments in the region have generally presented challenges for civil society and progressive actors. Governments are perceived as often having to resort to violent and coercive strategies because people cannot be trusted to act properly. The reality, however, suggests that people often do not have access to technical information or are unable to contact government officials to seek the advice that they require in order to take self-correcting actions. Governments often fail to provide enough technical guidance that would help people accept measures in a voluntary manner. The security-oriented approach has shifted attention away from other, more positive actions that could be taken to educate people about the substantive rationale for specific measures. The overall logic of coercion to secure compliance has been reaffirmed because of the dominant security-driven approach to the crisis. Many of the imposed rules suggest that governments do not trust people or their ability to engage in rational behaviour during an emergency.

There has been a limited focus on the value of communication and engagement with the media in the region. Direct forms of communication and access to information may serve to encourage people to take positive actions voluntarily and hence limit the need for more coercive forms of engagement. More active measures to secure people's buy-in would help to empower communities and establish a deeper appreciation for actions directed at protecting people.

There is a growing concern in the region about misinformation or the propagation of approaches to fighting the virus that are not informed by science. Some in government are suggesting the use of religious services to fight the infection, which may not be ethical, nor is it in line with the need for social distancing to prevent further spread. Evidence from some regions outside of Eastern Africa suggests that local communities are much better able to impose measures to protect themselves, and hence governments should learn from these community-level measures. The level of social resilience is often high and needs to be understood.

### 3. Access to services and the impact on vulnerable groups

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The spread of COVID-19 in the region has exposed the reality of weak public service delivery and related challenges. It has also brought to the fore the complexities associated with better intra- and intergovernmental coordination. It appears that the region has not been affected by coordination failures in the same way that some other parts of the world have.

Existing data and reports indicate low levels of infection and only a small number of deaths attributable to the virus. At this stage, it is not clear if the numbers are low because testing has been done on only a small scale or because social-distancing measures are working. The steps taken to combat the virus have nevertheless exposed challenges relating to vulnerable groups in society and the overall social impact of COVID-19.

#### Health system and responses

The health systems in the region were primarily built on the foundations established during the colonial period. As a result, they are not optimally geared to handle the challenges caused by COVID-19, such as the need to isolate infected individuals and provide them with a high level of care. The weakness of health systems and the deep divide between rural and urban areas have been exposed. Many in the health systems in the region also have a limited understanding of the broader social issues impacting communities and are therefore unable to accommodate differing local realities and challenges.

The ongoing crisis has also exposed the fact that many in the region's health systems often have no appreciation of the rights enshrined in their respective constitutions, and they lack an understanding of the legal parameters of the work that they are doing. Many in the region's health systems also lack an understanding of the social and economic impact of the virus and are therefore unable to establish the balance needed.

In general, social safety nets in the region are weak, and governments are unable to provide any form of direct support to assist those who have lost their livelihoods. Some are calling for a more localized approach to ensure that communities are directly involved in screening and responding to the potential spread of the virus. It is evident that there is a need for health officials from various countries to share information.

COVID-19 has brought to the fore the reality that the region has limited testing capacity and that measures need to be introduced to upgrade health facilities and possibly to develop regional centres to assist with the fight against the virus. Within the region, it would be a positive step if there were more integration and sharing of health services and capacity, which

could well include the development of a regional centre for disease control. Moreover, border closures have meant that people also do not have access to treatment outside of their country or the region.

Despite these shortcomings, the health sector stands to gain in the long run primarily because of the global appetite to support improvements in this sector. COVID-19 is also having a positive impact in the region, as it is establishing a new culture of handwashing and personal hygiene, which will make it easy for the region to fight other diseases, such as cholera. The highly contagious nature of COVID-19 is pushing governments towards ensuring that health services are equalized across all countries in the region.

## Access to education

Access to quality education was a challenge before COVID-19. The lockdown of schools and other educational facilities is likely to have a substantive impact in East Africa. Initial evidence suggests a widening of the urban and rural divide in education because of the much lower levels of Internet connectivity in rural areas. Over the long term, the virus could also serve to deepen the gender divide, because the closure of schools will affect women more than men due to home-related workloads. Evidence from Tanzania and other countries suggests that young girls are particularly vulnerable and severely affected by stay-at-home measures. There has been an overall increase in teenage pregnancies.

Limited access to education during the lockdown has exposed the need to enhance internet connectivity in rural areas to facilitate inclusive education. It has been noted that the ongoing crisis has created some opportunities, as there has generally been an increase in people accessing education. Many remain concerned that, without formal access to institutions and face-to-face interactions, there will be a decline in students studying sciences and a general decline in overall education levels in the longer term. There is an urgent need for more direct government intervention to support online learning to overcome immediate challenges and to deal with the likelihood that the virus will continue to spread over several years.

## Impact on humanitarian aid and peacebuilding

The measures introduced in the region have generally weakened the role of the United Nations and the African Union. Restrictions and border controls have impeded humanitarian supply chains in the region. Organizations are unable to transport much-needed humanitarian aid for refugees and other vulnerable groups. Travel restrictions are also making it impossible for mediation efforts to take place, as it is impossible to arrange meetings with parties in conflict situations. There is a concern that conflict may worsen in some areas because of such difficulties.

COVID-19-related measures have also increased tensions and exacerbated conflicts in the region because of border closures and associated restrictions. Long delays at borders have escalated tensions, which reaffirms the need for mediation. For example, there have been tensions at the border between Kenya and Tanzania. Strains have also been noted between Kenya and Somalia. All these situations require some level of conflict mediation.

The virus that causes COVID-19 has also impacted the African Union peacekeeping missions in the region. For example, the pandemic is directly affecting the deployment of peace missions and others involved in mediation. There are also growing concerns around food shortages and how these could contribute to an increase in tensions and crime.

## Women and other vulnerable groups

As in other parts of the world, there has been an increase in gender-based violence in some countries in the region. Coupled with this, there has been a rise in teenage pregnancies, as many young girls and boys are out of school. It is generally recognized that there is limited research on what is happening in communities or on the scale of violence and difficulties confronting women. Much more information is needed on the direct impact measures to combat the spread of COVID-19 have had on families and local initiatives directed at resolving disputes related to women and other vulnerable groups.

There has been a tendency to focus on physical health while largely ignoring the mental health of women and other vulnerable groups during pandemics. Evidence suggests that many are struggling with mental-health issues and the loneliness associated with lockdown measures. Many are also struggling with the stigma associated with having tested positive for the virus. While there are high levels of social resilience in the region, it is evident that women are particularly vulnerable to non-scientific views about the virus. In some countries, women, the elderly, and other vulnerable groups have been urged to use unproven remedies or have been encouraged to congregate in churches to pray against the virus.

At the level of governance, the different ways in which countries have approached the spread of COVID-19 suggest a need to engage in some dialogue around how policy is shaped and about the nature of how advice is presented to governments from the broader scientific community.

## Understanding wider vulnerabilities

COVID-19 has made it clear that it is necessary to carry out a detailed analysis of wider vulnerabilities in the region. An initial study suggests that there are many structural vulnerabilities related to the state and the level of resilience in countries in the face of COVID-19. A model developed in the region that investigates a wide range of structural issues has identified higher education, road and rail infrastructure, technological readiness and health as the key drivers of resilience. The model provides a more substantive picture of each of the countries in the region and may serve to encourage policy intervention to shift states onto a more positive trajectory in combating the spread of the virus.

On the basis of the data collected, it has been noted that resources are being shifted within the region to fight the virus, which may have a negative impact on other areas, such as the development of road and rail infrastructure. It is also likely that there will be a reduction in support from development partners in the future, which will have a considerable impact on the region. Initial analysis suggests a need to reflect carefully on the use of public resources and to understand the long-term implications of shifting resources from some areas to others. While investments in health and related facilities are positive, these need to be balanced with much-needed investments in other areas so that there is a more sustainable path towards recovery in the future.

## 4. The economic impact and long-term implications

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All evidence indicates that COVID-19 will have a lasting negative impact on economic growth and employment and will most likely increase inequality in the region. The countries of East Africa will find it difficult to recover from reductions in demand and supply-chain disruptions. Many states have now started considering how they can spur economic growth and distribute further resources to stimulate the economy. Across the East Africa region, the impacts of COVID-19 are being felt in different ways, and the economic measures taken by governments are vastly different.

### Long-term economic disruptions

All evidence suggests that COVID-19 will have a considerable impact in the long term. Initial evidence indicates that the effects will vary across sectors and geographical areas. In addition to a general decline in foreign remittances, an overall decrease in foreign investments is also expected. Many countries in the region rely on the tourism and hospitality sectors. These have been hard hit by the virus, and it is very difficult to determine when they will recover. All indications are that many people are losing their jobs and livelihoods in the hospitality sector, which will have a substantial effect on related industries. Recovery will mostly depend on the reopening of the global economy and the lifting of restrictions related to travel and isolation.

Some countries are beginning to take measures to stimulate economic growth, albeit with limited resources. There will likely be a considerable economic contraction with severe implications for employment. Some of the connections established with Asian markets are likely to be lost during this period of the pandemic.

The measures introduced across the region are very different. Tanzania, for example, has mainly remained open internally, whereas other countries have shut down various parts of their economies. Every country in the region is focusing on thinking through longer-term measures. Kenya, for example, has established a committee to consider how to stimulate the economy. Given the wide-ranging impact of the virus on local economies, there is an urgent need for more reflection on structural changes that can be introduced to ensure a rapid recovery and to make certain that people can survive, which will help avoid possible social unrest in the region.

## Disruption of supply chains

The closure of borders and measures directed at limiting movement have had a considerable impact on supply chains in the region. These measures have affected landlocked countries in particular, as border closures and restrictions on movement have limited exports, therefore reducing much-needed revenues coming into these states. It is anticipated that it will take time to establish the delivery networks and much-needed interregional trade. Indications are that exports are decreasing considerably and that access to goods from the wider international market is becoming more and more difficult. Supply chains with Asia have been considerably disrupted, and it may take a long time to re-establish them. There have also been substantial border tensions in the region, as the movement of goods across borders has slowed down, and many have experienced considerable new challenges and delays at borders. While the development of interregional trade has been helping develop relations over the years, the ongoing crisis has slowed that trade, and this may limit further integration in the long term.

## The informal economy

In much of the region, people rely on the informal economy, meaning they have to earn income on a day-to-day basis. Lockdown measures have impacted people's ability to engage in informal activities to earn a living. In much of the region, people have been forced to continue their informal economic activities, as there are no viable alternatives. While some efforts have been taken to assist people, governments in the region simply do not have the resources needed to support informal businesses and prevent deepening poverty levels.

Since the informal sector has considerable potential to respond to local needs and challenges, more work needs to be done to support this part of the economy. Many local informal businesses have responded to the needs of the health sector and have been instrumental in ensuring that people have access to face coverings and other health-related necessities. While it has been easy for governments to shut down the formal sectors of the economy, the informal sectors have continued to function in many places, as people are dependent on the day-to-day income derived from such localized economic activities for their livelihood. A higher level of resilience is evident among the informal sector; however, this is not uniform, and many people have faced difficulties. They will not recover quickly without some form of direct financial support from their government.

## 5. Shaping the future through research and programmatic interventions

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The discussions that took place during the webinar included perspectives about the future and about actions that need to be taken. Suggested actions range from engaging in further research to enhancing constitutionalism and the rule of law and hence reaffirming governance practices so that the overall trajectory in combating COVID-19, and building democracy, in the region remains positive.

### Governance innovation

In view of the propensity to adopt emergency measures, there is an urgent need to reaffirm constitutionalism and ensure that human rights are upheld. Efforts need to be made to guarantee that governments do not use COVID-19 to suspend aspects of constitutions or use it to limit substantive oversight. To secure accountability, there needs to be more exploration of the use of technology to ensure better oversight. This includes the idea of a virtual parliament. Given future uncertainty, it is also vital to explore other ways in which courts can continue to function. Much more reflection and innovation are needed to accommodate the reality of COVID-19 as the new normal. Within the terrain of peacebuilding and mediation, the African Union and other institutions need to look at alternative ways of shaping interventions. The use of technology to track the movement of the virus is a positive example of possible innovations. The current crisis also points to the importance of rethinking modes of accountability for the future and other measures that could be introduced to secure greater inclusivity.

### Community mobilization and protecting the vulnerable

COVID-19 has reaffirmed the need to reflect on how women and other vulnerable groups may be protected during a time of crisis. It is also imperative to sustain the existing momentum to ensure that women have economic freedom. More research is needed on issues related to gender-based violence.

As we think about the future, more attention needs to be focused on the mobilization of communities to take charge of their health and to prevent the spread of COVID-19. Local communities and health workers can solve many challenges and need to be empowered to do so. To accomplish this, we must think about how the health sector could be reorganized. The current focus on building hospitals may not be sustainable in the future.



Further thinking is also needed on gender relations and the family unit. It is also evident that more evaluative research is needed on peacebuilding efforts. This would provide a basis for a more in-depth exploration of the involvement of communities and the role and use of local mediators.

## Regional standards

It is imperative to further reflect on the issue of human security and the safety of people in view of the measures introduced in the region. This is linked with the need to think about the role of regional economic communities and the African Union.

More attention needs to be paid to the use of force by police in the region. Common standards would help to establish a framework to guide countries during a crisis. Central to these standards would be ensuring a better balance between upholding people's fundamental human rights and the use of force to protect the public from the virus.

It would also be prudent to enhance regionalism in the health sector. Common standards and the sharing of information will be vital for the future. This will help to overcome the reality of different testing protocols and related measures concerning isolation. There is a strong need for the establishment of an East African centre for disease control and other associated health structures and networks to facilitate learning and exchange.

Concerning national elections, the AUC has been engaging with member states and with electoral management bodies on the implications of the virus. In this respect, the African Union is developing guidelines for dealing with elections in the context of the ongoing health crisis. The issues are complex, as they also impact constitutions and the rule of law in general. The guidelines will need to address problems related to postponing elections. The guidelines are being developed in consultation with member states, some of which are already developing their own approaches. Similar initiatives are also taking place at an international level.

## State rebuilding

COVID-19 provides an opportunity to focus more attention on state-building. The reality of the current situation demonstrates the weaknesses of the neoliberal framework for policy-making and development, including the emphasis on a minimalistic state. The response to the virus has also revealed the importance of coherence in policy-making. It is inconceivable that effective, coherent and robust public policy-making would simply be treated as a residual category, and that there would be a reversal to a strong-arm, sometimes almost militaristic, approach to managing the pandemic. Building state capacity and a system for future planning remain vital.

The state has a critical role to play in building its own capacity, which the ongoing pandemic has affirmed. In state-building efforts, it is important to avoid a shift towards 'state hardness'. At the level of democracy, existing challenges are pushing us towards thinking about alternative models. In the past, we have been dependent on Western models. New developmental paths require us to think of more inclusive modalities for democracy and participation. The crisis has, in many respects, brought to the fore the importance of rebuilding the African state and ensuring that institutions have the required capacity and resources to fulfil their public function.

## Research and analysis

The realities of COVID-19 have confirmed the need for more substantive research and analysis. It is important to conduct comparative and evaluative studies on the different

approaches countries have used and the impact these have had. In particular, the experience of Tanzania has differed from that of many other countries and may be comparable to Sweden's approach. A deeper understanding is needed of the policy process and the way science feeds into policy decisions. Over time, more research will be needed to see which lockdown method has worked best. Finding a balance between protecting people's health and ensuring that they can maintain their livelihood is not easy. It is essential to learn from the experiences of other countries.

We must appreciate that Africa is also different, as we have many borders, few of which can be controlled effectively to prevent the movement of people.

In many respects, countries have generally copied each other when it comes to the protection of health workers. Some have gone as far as sending representatives to learn from different contexts.

Much more research is required to understand local development, even as we seek to learn from other contexts. There are many unknowns concerning COVID-19 and related measures to protect communities. To ensure that policies and practices remain positive in the future, research and more in-depth forms of analysis are needed. Research institutions need to be more proactive in collecting data and ensuring that policymakers can understand what has happened, the impact of interventions and what strategies would be optimal for the future.

## Annex A. Programme

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Webinar on the Impact of the COVID-19 Pandemic on Constitutionalism and the Rule of Law in East Africa, 11 June 2020, 14:00–16:45 East Africa time.

### Programme

#### 14:00–14:05 **Welcoming remarks**

- **Prof. Adebayo Olukoshi**, Regional Director for Africa and West Asia, International IDEA

#### 14:05–14:10 **Introductory remarks**

- **H. E. Minata Cessouma Samate**, Commissioner for Political Affairs, African Union Commission

#### 14:10–15:50 **Presentations by panellists**

- **Prof. Kabumba Busingye**, Makerere University, ‘Overview of State-of-Emergency Regulations; Constitutional Frameworks for Controlling the Exercise of Emergency Powers in East Africa’
- **Dr Winluck Wahui**, constitutional expert, ‘Rights-Based Outcomes of the Emergency Regulations: Balancing Cooperative versus Coercive Governments’
- **H. E. Dr Speciosa Wandira-Kazibwe**, former Vice President of the Republic of Uganda, Chairperson of the African Union Panel of the Wise and Co-chairperson of FemWise, ‘Socio-economic Impact of Emergency Regulations on Vulnerable Groups in East Africa—Particularly Women, Youth, the Elderly, Refugees, IDPs, the Unemployed, etc.’

- **Ms Elizabeth Mutunga**, Head of Governance, Peace and Security, Secretariat of the Common Market for Eastern and Southern Africa, ‘Impact of the COVID-19 Pandemic and Emergency Regulations on Security and Peace in East Africa’
- **Ms Christina Kamili**, legal practitioner, Tanzania, and member of FemWise, ‘Impact of the COVID-19 Pandemic on Conflict Resolution in East Africa’

15:50–16:35 **Questions for panellists**

16:35–16:45 **Conclusions and closing of the webinar**

## Annex B. Concept note

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Webinar on the Impact of the COVID-19 Crisis on Constitutionalism and the Rule of Law in East Africa, 11 June 2020, 14:00–16:45 East Africa time

As the COVID-19 crisis takes a devastating toll on lives and livelihoods across the continent of Africa, its effects on the democratic development of African countries are becoming fundamental. While much attention has been paid to the question of its consequences for democratic and electoral processes, its impact on constitutionalism and the rule of law in these states has received relatively less attention. It is against this backdrop that International IDEA is organizing, in partnership with the Department of Political Affairs of the African Union Commission, a three-hour webinar on the impact of the COVID-19 crisis on constitutionalism and the rule of law in East Africa.

All the countries of East Africa (Burundi, Kenya, Rwanda, Tanzania and Uganda) have adopted some sort of state of emergency to respond to the COVID-19 crisis. These measures have ranged from school closures to isolation and quarantine policies, health screenings at airports and border crossings, international flight suspensions, domestic travel restrictions, limits on public gatherings, closures of public services and military deployment, among others. The following question remains: To what extent are constitutionalism and the rule of law at risk from COVID-19?

The objectives of the webinar will be—based on a retrospective and forward-looking practical analysis—to inspire decision-makers and shape the thinking of experts, academics, researchers, journalists and citizens on this subject. More specifically, the discussion will consider not only challenges in terms of the sociopolitical dynamics induced by the COVID-19 crisis and its impact on constitutionalism and the rule of law in East Africa but also the opportunities it presents for their democratic development.

The webinar will be based on two premises: first, the need to consider constitutionalism and the rule of law in terms of their ultimate goals, which are to guarantee respect for the fundamental rights and freedoms of citizens in both ordinary and extraordinary situations; second, the adoption of a holistic perspective that enables consideration not only of civil and political rights but also of the economic and social rights of citizens in the context of the COVID-19 crisis in the countries concerned.

The following issues will be discussed.

- An overview of state-of-emergency regulations, including their conformity with constitutional provisions as well as regional, continental and international norms and standards.

- The socio-economic impacts of state-of-emergency regulations.
- The impact of emergency regulations on access to basic public services, particularly health services/systems.
- The impact of emergency regulations on vulnerable groups—particularly women, young people, children, the elderly, refugees and internally displaced persons.
- The impact of emergency regulations on state–citizen relations.
- Oversight of the executive under emergency regulations.

The webinar will take place on **11 June 2020, from 14:00 to 16:45 East Africa time**, and it will be accessible via a link that will be shared in the near future. Moderated by Professor Gilbert Khadiagala, Dr Maurice Engueleguele and Sharon Ndlovu, the webinar will include presentations by the following panellists:

- **H. E. Dr Speciosa Wandira-Kazibwe**, former Vice President of the Republic of Uganda, Chairperson of the African Union Panel of the Wise and Co-Chairperson of FemWise;
- **Ms Christina Kamili**, a legal practitioner from Tanzania and a member of FemWise;
- **Professor Kabumba Busingye**, Lecturer in Law, Human Rights and Peace Centre (HURIPEC), Makerere University;
- **Ms Elizabeth Mutunga**, Head of Governance, Peace and Security, Secretariat of the Common Market for Eastern and Southern Africa; and
- **Dr Winluck Wahui**, a constitutional expert from Kenya.

## About International IDEA

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The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with the mission to advance democracy worldwide, as a universal human aspiration and enabler of sustainable development. We do this by supporting the building, strengthening and safeguarding of democratic political institutions and processes at all levels. Our vision is a world in which democratic processes, actors and institutions are inclusive and accountable and deliver sustainable development to all.

### What do we do?

In our work we focus on three main impact areas: electoral processes; constitution-building processes; and political participation and representation. The themes of gender and inclusion, conflict sensitivity and sustainable development are mainstreamed across all our areas of work.

International IDEA provides analyses of global and regional democratic trends; produces comparative knowledge on democratic practices; offers technical assistance and capacity-building on reform to actors engaged in democratic processes; and convenes dialogue on issues relevant to the public debate on democracy and democracy building.

### Where do we work?

Our headquarters are located in Stockholm, and we have regional and country offices in Africa, Asia and the Pacific, Europe, and Latin America and the Caribbean. International IDEA is a Permanent Observer to the United Nations and is accredited to European Union institutions.

<<https://www.idea.int>>

A webinar on the impact of the COVID-19 pandemic on constitutionalism and the rule of law in East Africa took place on 11 June 2020. Participants included a selection of invited panellists and individuals from the African Union Commission (AUC), the International Institute for Democracy and Electoral Assistance (International IDEA) and other experts from the East Africa region. The session was guided by a programme and a concept note. The webinar was arranged as part of a series of engagements on the impact of COVID-19 on governance and democracy in Africa.

The webinar took place against a backdrop where the virus has been taking a toll on the lives and livelihoods of people in Africa. The national measures to tackle the virus have influenced the organization of national elections and the overall governance trajectory of some countries in the region. While the effects on elections are visible and have been recognized, the implications of COVID-19 on constitutionalism and the rule of law are less pronounced. It therefore became imperative for International IDEA to arrange an event in partnership with the AUC's Department of Political Affairs on the subject of the impact of the COVID-19 crisis on constitutionalism and the rule of law in East Africa.



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