

APPENDIX 4: CALL FOR PAPERS

ASSESSING THE IMPLICATIONS OF COVID-19 PANDEMIC REGULATIONS ON HUMAN RIGHTS AND THE RULE OF LAW IN AFRICA

A webinar on the theme “Assessing the implications of Covid-19 pandemic regulations on human rights and the rule of law in Africa,” is planned for 11-12 August 2020. It is organized by the Institute for International and Comparative Law in Africa and Centre for Human Rights of the University of Pretoria, in partnership with the Konrad Adenauer Stiftung’s Rule of Law Program for Sub-Saharan Africa - Nairobi, Kenya.

1. INTRODUCTION

The Covid-19 pandemic poses one of the gravest global challenges that the world has ever experienced. It is in fact an emergency like no other. Governments in Africa, like governments all over the world have been forced to take drastic measures to control the spread of the virus. Using the special powers allowed by their national constitutions and other relevant legislation, governments have introduced extraordinary legal measures that include:

- nationwide complete or partial “stay at home.”
- suspension of most business activities.
- strict curtailment of the right to freedom of movement and numerous other freedoms that we have taken for granted.
- restrictions on the operation of courts and parliaments.
- use of the police and in some countries, also the army, to enforce the lockdown and “stay at home.”

Although most national constitutions and legislation make provision for measures that need to be taken by invoking a state of emergency, state of siege, state of disaster or some other similar justification, the extreme nature of the risks posed by Covid-19 is such that no national constitution or legislation could have predicted and provided for the appropriate measures needed to deal with it.

This is a particularly difficult time for Africa’s fledgling democracies. The suspension of laws and the introduction of several measures needed to deal with the spread of the virus necessarily concentrates power in the hands of politicians and other officials. Many autocratic regimes can seize this opportunity to grab more powers for themselves, silence their critics and undermine the rule of law whilst being secure in the knowledge that the world is too busy trying to fend off the ravages caused by the virus to take notice. This is certainly the case in many

African countries today where the roots of democracy, respect for the rule of law and institutional checks and balances are weak.

There is enormous potential for democracy to be threatened and for human rights and the rule of law to be undermined. Powers, such as those given to the security forces to monitor and enforce the restrictions requiring everyone to "stay home" during the period of lockdown are not always fully understood or obeyed. The potential for conflict between citizens and the security forces is real. Law enforcement officials do not only have guns and the authority of the state to use force when necessary but have allegedly used these powers in an abusive manner that has resulted in the loss of lives in several African countries such as Kenya, Nigeria and South Africa.

The traditional checks that normally ensure that emergency powers are not abused have not, because of the very nature of the pandemic, been able to function properly. Many countries have had to adopt emergency measures regarding the functioning of their judicial systems that allow their courts to remain operational only to a limited extent. The strict requirement of social distancing and restrictions on the number of persons who can meet has meant that parliaments all over the continent have not been able to meet except, in a few countries, virtually. They have therefore not been able to exercise their oversight powers that are needed to ensure that the executive and other government officials do not abuse the extraordinary powers that have been conferred on them to deal with the pandemic.

The "stay at home" restrictions have had deleterious consequences on the poor, the low income earners and the millions who rely on informal activities to eke a living for themselves. The prolonged periods of lockdown have added many more millions to the millions of people on the continent who are never sure of where the next meal would come from. This has created not only high social stress but the risk of high unemployment and the collapse of many African economies.

Given that the virus will not disappear overnight, there are reasons to begin probing on what lessons can be learnt from this experience in order to prepare for the future. The risk that these emergency powers could be used in a manner that will undermine the gains made in the last three decades to recognise and protect human rights, promote constitutionalism and respect for the rule of law are real. The lockdowns have been particularly hard on the poor and vulnerable who have been deprived of the means of making a living.

Although there is some willingness to endure many of the sacrifices needed to enable the government to deal with the enormous challenges posed by the pandemic, the risks that these measures pose to Africa's fragile democracies and the rule of law cannot be lightly ignored. In fact, states of emergencies have for many years been used in many African countries as a pretext for repressive and authoritarian rule and practices. There is thus a well-founded fear that some of the excesses that we see today during the implementation of these emergency measures may endure and become a new way of life.

For example, in South Africa, one of the extreme measures taken to deal with the bubonic plague of 1899 to 1901 was the forceful ejection of all blacks from the city of Cape Town to the country's first black township, KwaNdabeni. When the plague was over, life never returned to normal because a new social order, based on racial segregation, had been installed. In Togo, a law has just been enacted that allows the president to rule by decree until parliament revokes these powers. Given that his party controls parliament, are we sure this law will be revoked? In Zimbabwe, peddlers of "falsehood" or "fake news", which often means those who make embarrassing disclosures or criticise the government, face 20 years in prison! In many countries, the huge sums set aside as relief cash or food parcels may be diverted by the ruling elites or selectively distributed to areas that support the government. The serious economic deprivation that is likely to result from the measures being taken to control the spread of the virus, particularly the prolonged periods of lockdown will leave people poorer, sicker and angrier.

Besides, the pandemic has shown us that viruses do not obey border laws and that we are all connected. A failure to take prompt and decisive measures by one African country can compromise the good work being done by other countries. This raises the question whether our regional bodies, particularly the AU, have risen to the occasion. Is there a proper framework at the regional and sub-regional levels for coordinating a response to this sort of pandemic? From the lessons learnt, what measures at both the national and regional level need to be taken to prepare ourselves for the future? What safeguards need to be put in place to ensure that many of the abuses that are taking place now can be prevented? Can some of the measures now being taken to deal with the millions of people at risk of starving to death be incorporated in national policies on a permanent basis?

In *The Economist*, of Thursday, 23 April 2020, Bill Gates wrote: "When historians write the book on the Covid-19 pandemic, what we've lived through so far will probably take up only the first third or so. The bulk of the story will be *what happens next*." And he added; "*In a few weeks' time, many hope, things will return to the way they were in December. Unfortunately, that won't happen.*"¹ He rightly points out that what happens next is of critical importance because life will never be the same again. How can we ensure that the gains in democracy, constitutionalism and respect for the rule of law will remain intact in the post Covid-19 era? In other words, how can we ensure that the temporary measures do not become permanent? How can we ensure that the emergency powers are not abused?

¹ See, "The world after covid-19: Bill Gates on how to fight future pandemics," *The Economist*, of Thursday, 23 April 2020, https://www.economist.com/by-invitation/2020/04/23/bill-gates-on-how-to-fight-future-pandemics?utm_campaign=the-economist-today&utm_medium=newsletter&utm_source=salesforce-marketing-cloud&utm_term=2020-04-23&utm_content=article-link-5 accessed 24 April 2020. (Note that the emphasis has been added).

2. CALL FOR PAPERS

This call for papers wants authors to critically examine some of the issues that have arisen because of the measures that have been adopted by different countries in Eastern and Southern Africa to deal with the risks posed by the spread of the Covid-19 pandemic. The paper could examine the general response of a particular country (country study) or adopt a country or comparative cross-country approach that focuses only on a particular theme such as:

- Covid-19 and law enforcement and respect for civil and political rights
- Covid-19 and threats to socio-economic rights and poverty alleviation measures.
- Covid-19 and oversight of emergency regime: parliament, courts and others
- Covid-19 and threats to homeless people, minorities and other marginalised groups
- Covid-19 and the role of international interventions: WHO, AU and RECs

The papers, whether general or specific, should for example, deal with the following aspects:

- i) The legal framework for the measures taken
- ii) Safeguards for ensuring respect of the constitution and compliance with the rule of law
- iii) Challenges experienced especially with respect to compliance with the rule of law; and
- iv) General lessons for the future.

3. OBJECTIVES

The objective of the webinar is to provide an opportunity for participants to share their experiences, see what mistakes were made, and discuss ways in which we could prepare for any future pandemics. Papers from different countries that reflect the diverse constitutional traditions that operate in Africa will be presented to see how the different jurisdictions have responded to the pandemic.

4. INFORMATION ON THE SUBMISSION OF ABSTRACTS

We hereby invite all scholars and other persons interested in research in this area to submit an abstract of at least 500 words on any of the sub-themes indicated above or a closely related theme. The abstract should set out the issue to be addressed in the full paper, the methodology, and the main anticipated findings or insights.

The deadline for submitting abstracts is **10 June 2020**. Abstracts should be sent as e-mail attachments to Dr. Lukman Abdulrauf, at lukmanrauf@gmail.com and Tresor Muhindo at tresormakunyamuhindo@gmail.com copying Prof. Charles M.

Fombad, Institute for International and Comparative Law in Africa, Faculty of Law, University of Pretoria at Charles.fombad@up.ac.za .

On acceptance of an abstract by the organisers, the author will be invited to submit a draft paper, to be submitted by **25 July2020** on the basis of which a final invitation to the Webinar will be extended.

All authors whose papers are accepted will be provided with all-inclusive honorarium of Euro 400 to cater for their research-related and internet-related expenses during the two-day webinar.

All the papers presented during the webinar will be peer-reviewed for publication in the *African Human Rights Law Journal*, which is an accredited journal focused on human rights-related issues of relevance to Africa, and also published on the website of the Centre for Human Rights and that of the Konrad Adenauer Stiftung.

Please, kindly distribute this call for papers as widely as possible to all colleagues in your faculty as well as to other interested persons.

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