
African Union and Public Health Crises in a Regional Legal Order

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Abstract

In the context of responses to the Covid-19 pandemic, the paper examines the African regional regime for public health crises and disasters. Using the combined analytic lenses of Capability Approach, Institutional Theory, Constructivism, New Regionalism Approach and Actor Network Theory, it focuses on the opportunities offered by, and limitations of, the African Union legal order.

Keywords: Africa CDC; African Union; Covid-19; Crisis Management; Public Health

I. African Union, Public Health and Covid-19

Article 16(1) of the African Charter on Human and Peoples' Rights 1981 recognised a human right to 'the best attainable state of physical and mental health' well before the right entered the mainstream of the current global discourse, as exemplified by resolutions 2002/31 and 2005/24 of the Commission on Human Rights and resolutions 6/29, 15/22 and 24/6 of the Human Rights Council. An African Union (AU) coordinated approach to public health crises, however, emerged only recently in the regional order. It took some time for the AU to concretise the wish in the preamble to its Constitutive Act for addressing 'multifaceted challenges that confront our continent and peoples in the light of the social, economic and political changes taking place in the world.' The AU's potential role in public health is further buttressed by references in Article 3(n) and other objectives enumerated in Article 3(k),(j),(m) of the Constitutive Act.

Nonetheless, just like any other public institution,¹ the AU's legitimacy and acceptability may be inter-linked with its ability to undertake effective crisis management, particularly the ongoing Covid-19 pandemic that presents unprecedented challenges. Although the incidence of infections and deaths are relatively low in Africa compared to trajectories in some parts of the world, Covid-19 potentially disproportionately affects African countries due to peculiar circumstances such as inadequate public health infrastructure and weak economies. In addition to health impacts, the World Bank reported that Covid-19 could potentially cause 'economic and social devastation' to African countries through considerable reductions in commodity trade and export prices, foreign investments and remittances, tourism and travel disruptions, and constraints on economic activities from lockdowns and restrictions.² Covid-19 also constrains the debt repayment and servicing ability of African countries many of which are already part of the Highly Indebted Poor Countries debt relief programme of the International Monetary Fund (IMF). The IMF offered 19 African countries debt relief in the sense of freezing interest payments for six months.³

¹ Arjen Boin, Paul 't Hart, Eric Stern and Bengt Sundelius, *The Politics of Crisis Management: Public Leadership under Pressure* (Cambridge: CUP, 2005); OECD, *The Changing Face of Strategic Crisis Management* (Paris: OECD, 2015).

² Ceasar Calderon, Gerard Kambou, Calvin Z. Djiofack, Megumi Kubota, V. Korman and Catalina Cantu Canales, 'Assessing the Economic Impact of Covid-19 and Policy Responses in Sub-Saharan Africa', *Africa's Pulse*, No. 21 (April), (Washington, DC: World Bank, 2020).

³ Matthew Davies, 'Coronavirus in Africa: "No time for half measures in helping the economy"', 16 April 2020.

Against the backdrop of Covid-19, this paper therefore examines the African regional regime for public health crises on the basis that ‘better’⁴ responses relate to ‘issues of authority, legitimacy and power that are inextricably connected to the way in which crises are defined and handled’.⁵ Using the combined analytic lenses of Capability Approach, Institutional Theory, Constructivism, New Regionalism Approach and Actor Network Theory, the paper focuses on the opportunities offered by, and limitations of, the AU legal order to enable in the assessment of the “ideological-institutional complex”⁶ of its existence.

The key pan-African body for tackling Covid-19 is the Africa Centres for Diseases Control and Prevention (ACDC). Following the 2014-2016 Ebola epidemic in West African countries, the 26th Ordinary Assembly of AU Heads of State in January 2016 agreed to establish the ACDC as a specialised technical institution permitted by Article 9(1)(d) and Article 14 of its Constitutive Act. Launched on 3 January 2017, the ACDC aims to enhance the capacity and capability of AU member states’ public health institutions and to undertake evidence-based collaborative interventions and programmes for rapid and effective disease detection and response.⁷ In addition to working with AU member states, the ACDC operates five regional collaborating centres for Central, Eastern, Northern, Southern and Western Africa which appear to reflect existing sub-regional political and economic groupings.

The ACDC produced a continental Covid-19 strategy document on 5 March 2020⁸ prioritising the limitation of transmission and minimisation of harm from social and economic disruptions. As such, ACDC outlined twin objectives of coordination with partners within and outside Africa and promotion of evidence-based practices which are implemented mainly through the operational units of the Africa Task Force for Coronavirus (AFTCOR) and ACDC’s Incident Management System. ACDC collaborations underlined by Article 3(n) of the AU Constitutive Act include Partnership for Evidence Based Response to COVID-19 (PERC) and Institute Pasteur Dakar, Senegal. The Institute, which studies viral pathogens, is the co-lead of AFTCOR’s laboratory and subtyping working group.⁹ Furthermore, in collaboration private organisations, the AU and ACDC launched the Africa Covid-19 Response Fund to raise US\$150 million for transmission limitation measures and US\$400 million for procuring equipment and supplies, deploying rapid responders and supporting Africa’s vulnerable populations.¹⁰

⁴ Christopher Ansell and Martin Bartenberger, *Pragmatism and Political Crisis Management: Principle and Practical Rationality during the Financial Crisis* (Cheltenham: Edward Elgar, 2019), 4.

⁵ Paul ‘t Hart, ‘Symbols, Rituals and Power: The Lost Dimensions of Crisis Management,’ in Arjen Boin (ed), *Crisis Management*. Volume III, (London: Sage, 2008), 84–104, 100.

⁶ Sundhya Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (Cambridge: CUP, 2011).

⁷ ‘About Us,’ ACDC, accessed 7 May 2020, <https://africacdc.org/about-us/>; ‘Our Work,’ ACDC, accessed 7 May 2020, <https://africacdc.org/our-work/>.

⁸ ACDC, ‘Africa Joint Continental Strategy for Covid-19 Outbreak,’ last modified 5 March 2020, https://au.int/sites/default/files/documents/38264-doc-africa_joint_continental_strategy_for_covid-19_outbreak.pdf.

⁹ ‘Wellcome and DFID Support Africa COVID-19 Continental Response with €2.26 million’, ACDC, accessed 7 May 2020, <https://africacdc.org/news-item/wellcome-and-dfid-support-africa-covid-19-continental-response-with-e-2-26-million/>.

¹⁰ Aloysius Uche Ordu, ‘The Coming of Age of the Africa Centres for Disease Control,’ last modified 15 April 2020, <https://www.brookings.edu/blog/africa-in-focus/2020/04/15/the-coming-of-age-of-the-africa-centers-for-disease-control/>.

To facilitate the implementation of the continental strategy, the ACDC in conjunction with the AU Commission launched the Partnership to Accelerate COVID-19 Testing (PACT): Trace, Test & Track (CDC-T3)¹¹ for strengthening testing capacities with a view to testing 10 million Africans by October 2020. PACT is complemented by a surveillance protocol¹² issued by the ACDC to inform Covid-19 detection by AU member states and a detailed stepwise guidance.¹³ Differentiated in Phase 0 (no Covid-19 case) and Epidemic Phases 1 (early stage outbreak), 2 (expanding outbreak), 3 (advancing outbreak) and 4 (outbreak with nationwide transmission), the stepwise guidance also contains helpful definitions of key terminologies such as contact tracing, social distancing, isolation and quarantine. The ACDC regularly provides outbreak briefs, fact sheets, brochures and policy updates¹⁴ and provides manuals, guidelines and framework documents on assessment, monitoring and movement restrictions,¹⁵ community social distancing¹⁶ and contact tracing,¹⁷ and recommendations on meetings and travel.¹⁸

The ACDC's coordinated response has largely influenced AU member states' Covid-19 policy directions. PERC reported that most African governments swiftly imposed public health and social measures.¹⁹ Tanzania is, however, a notable exception. Tanzania's president rejected social distancing and other ACDC guidelines and even encouraged economic and religious activities involving large gatherings of people.²⁰ President Magufuli questioned the credibility of testing while asserting that the country's Covid-19 cases were exaggerated and supporting an unproven Madagascan herbal remedy. A few other African countries have placed orders for the product. The AU sought the technical data of the

¹¹ 'AU and Africa CDC Launch Partnership to Accelerate COVID-19 Testing: Trace, Test and Track,' ACDC, last modified 21 April 2020, <https://africacdc.org/news-item/african-union-and-africa-centres-for-disease-control-and-prevention-launch-partnership-to-accelerate-covid-19-testing-trace-test-and-track/>.

¹² ACDC, 'Protocol for Enhanced Severe Acute Respiratory Illness and Influenza-Like Illness Surveillance for COVID-19 in Africa,' accessed 7 May 2020, file:///F:/38350-doc%20protocol%20for_enhanced_sari_and_ili_surveillance_for%20covid-19%20in%20africa_eng.pdf.

¹³ ACDC, 'Recommendations for Stepwise Response to Covid-19 by African Union Member States,' accessed 7 May 2020, <https://africacdc.org/download/recommendations-for-stepwise-response-to-covid-19/>.

¹⁴ 'Resources: Documents and publications from Africa CDC,' ACDC, accessed 7 May 2020, <https://africacdc.org/our-work/>.

¹⁵ ACDC, 'Guidance for Assessment, Monitoring, and Movement Restrictions of People at Risk for COVID-19 in Africa,' 5 March 2020, <http://www.africacdc.org/covid-19-and-resources/guidelines-policies/covid-19-and-resources/guidelines-policies/africa-cdc-guidance-for-assessment-monitoringand-movement-restrictions-of-people-at-risk-for-covid-19-in-africa-pdf/detail>.

¹⁶ ACDC, 'Guidance on Community Social Distancing During COVID-19 Outbreak,' 17 March 2020, <http://www.africacdc.org/covid-19-and-resources/guidelines-policies/covid-19-and-resources/guidelines-policies/africa-cdcguidance-on-community-social-distancing-during-covid-19-outbreak-pdf/detail>.

¹⁷ ACDC, 'Guidance for Contact Tracing for the COVID-19 Pandemic,' 24 March 2020, <http://www.africacdc.org/covid-19-and-resources/guidelines-policies/covid-19-and-resources/guidelines-policies/detail>.

¹⁸ ACDC, 'Policy Recommendation for African Union Meetings and Travel During COVID-19 Outbreak,' 15 March 2020 <http://www.africacdc.org/covid-19-and-resources/guidelines-policies/covid-19-and-resources/guidelines-policies/africa-cdc-policy-recommendation-for-african-union-meetings-and-travel-during-covid-19-outbreak-pdf/detail>.

¹⁹ PERC, 'Responding to Covid-19 in Africa: Using Data to find Balance,' 5 May 2020, <https://preventepidemics.org/wp-content/uploads/2020/05/PERCRegional5-6-2020.pdf>, 6.

²⁰ 'Coronavirus: Tanzanian President Promises To Import Madagascar's "Cure",' BBC, 4 May 2020.

unproven²¹ herbal remedy from Madagascar for efficacy and safety review by the ACDC²² but until the date of writing, the country's government and the Malagasy Institute of Applied Research that produced the remedy have not addressed the request nor shared the data with anyone else.²³ Evidence of the product's efficacy, if provided, will no doubt demonstrate the need for considering African traditional remedies within the framework of public health capacity and capability in addition to enhancing the self-confidence of public and private research organisations and promoting regional collaboration and coordination.

The public health visibility and coordinated approach of the AU acting through the ACDC contrasts sharply with its predecessor, the Organisation of African Unity. While the OAU coordinated efforts against colonialism and apartheid, at best it recorded 'terse'²⁴ achievement in areas such as good governance and development. Nonetheless, this emergent interest in continental public health coordination appears to mask deep structural and institutional limitations impeding African countries and the regional order to overcome public health challenges and resultant socioeconomic consequences. The following observation in the ACDC's continental strategy document raises fundamental capacity and capability questions:

Since 2003, the volume, velocity, and variety of travel between the rest of the world and Africa has increased dramatically, which will result in initial and continuous introductions of infected persons from areas with COVID-19 transmission. Africa's baseline vulnerability is also high, given its relatively fragile health systems, concurrent epidemics of vaccine-preventable and other infectious diseases, inadequate water, sanitation, and hygiene infrastructure, population mobility, and susceptibility for social and political unrest during times of crisis.²⁵

II. Situating Capacity and Capability

To understand the drivers of public health capacity and capability, the Actor-Network Theory may be useful as it suggests that society is a complex and fluid diversified collection of relationships and alliances.²⁶ Society is shaped not by predetermined and fixed systems but by contingent and potentially transformative interaction of actors and events. One lesson from the Actor-Network Theory is consideration of dynamic social relations and events to gain understanding of society which suggests the need for investigating wider political and socioeconomic dimensions of crisis management in the AU regional order and their intersection with public health. Accordingly, the following structural and institutional factors may be relevant in determining African countries' public health capacity and capability.

²¹ 'Coronavirus: Caution urged over Madagascar's "Herbal Cure",' BBC, 22 April 2020.

²² 'COVID-19: African Union in discussions with Madagascar over herbal remedy,' AU, last modified 4 May 2020, <https://au.int/en/pressreleases/20200504/covid19-african-union-discussions-madagascar-over-herbal-remedy>.

²³ 'AU Silence Greets Madagascar President's Claim of COVID-19 "cure",' Medical Brief, 13 May 2020, <https://www.medicalbrief.co.za/archives/au-silence-greets-madagascar-presidents-claims-of-covid-19-cure/>; Aryn Baker, "'Could It Work as a Cure? Maybe." A Herbal Remedy for Coronavirus is a Hit in Africa, But Experts Have their Doubts', Time, 22 May 2020, <https://time.com/5840148/coronavirus-cure-covid-organic-madagascar/>.

²⁴ Olufemi Babarinde 'The EU as a Model for the African Union: The Limits of Imitation,' (2007) 7(2) *Jean Monnet/Robert Schuman Paper Series* 1-12, 3.

²⁵ ACDC, 'Africa Joint Continental Strategy,' (n. 8), 2.

²⁶ Bruno Latour, *Re-Assembling the Social: An Introduction to Actor-Network Theory* (Oxford: OUP, 2005).

a) Funding

While it has made some progress, the ACDC requires more funding and resources in addition to the need to establish its autonomous operational and execution capacity to promote public health.²⁷ The ACDC's precarious funding mirrors the position in many African states where political and economic institutions have persistently failed to develop public health capacity through improved funding. This is reflected in the varied picture of Covid-19 responses by AU member states. Countries like South Africa²⁸ responded relatively quickly and instituted public health and social measures but some others have been impeded in their responses by minimal capacity.²⁹

Instructively, the AU 2001 Abuja Declaration required 15 percent of annual national budgets to be ringfenced for health, however only one country met the target in 2011 and many others remained a long way behind.³⁰ The average per capital health budget of 34 of Africa's 45 countries is below US\$200 with many hovering around US\$50.³¹ These levels of health spending make it almost impossible to procure and maintain public health facilities and equipment and employ healthcare professionals. No wonder Africans constitute a significant proportion of health professionals in the West,³² a brain drain on the continent's public health capacity and capability.

b) Good governance

Lack of good governance is another self-induced debilitating factor. The role of corruption, for instance, as being "often a symptom of overall institutional weakness"³³ with adverse impacts on public health³⁴ and other development indicators in African states is widely acknowledged. Initiatives like the AU Convention on Preventing and Combating Corruption 2003, New Partnership for Africa's Development and African Peer Review Mechanism have had modest success in changing the governance profiles. While Article 3(g) of AU Constitutive Act refers to good governance, efforts should be undertaken by the AU to more than symbolic.

A new approach is necessary to curtail prebendalism,³⁵ patrimonialism,³⁶ corruption and other impediments to good governance in African countries. To this end, the AU may

²⁷ Ordu, 'Coming of Age' (n. 10).

²⁸ Andrew Harding, 'South Africa's Ruthlessly Efficient Fight Against Coronavirus,' BBC, 3 April 2020..

²⁹ ACDC, 'Partnership to Accelerate' (n. 11).

³⁰ "Abuja Declaration: Ten Years On," WHO, accessed 7 May 2020, https://www.who.int/healthsystems/publications/abuja_report_aug_2011.pdf?ua=1.

³¹ Abiy Ahmed, 'A Pledge for Africa,' 1 May 2020, <https://www.project-syndicate.org/commentary/pledging-conference-to-help-africa-fight-covid19-by-abiy-ahmed-2020-05>.

³² Oleosi Ntshebe, 'Sub-Saharan Africa's Brain Drain of Medical Doctors to the United States: An Exploratory Study,' (2010) 2(2) *Insight on Africa* 103-111; Kingsley Ighobor, 'Diagnosing Africa's Medical Brain Drain,' accessed 7 May 2020, <https://www.un.org/africarenewal/magazine/december-2016-march-2017/diagnosing-africa%E2%80%99s-medical-brain-drain>.

³³ Melaku Geboye Desta and Moshe Hirsch, 'African Countries in the World Trade System: International Trade, Domestic Institutions and the Role of International Law,' (2012) 61(1) *Intl & Comp L Q* 127, 161.

³⁴ 'Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,' UN Doc. A/72/137, 14 July 2017.

³⁵ Richard A. Joseph, *Democracy and Prebendal Politics in Nigeria: The Rise and Fall of the Second Republic* (New York: Cambridge University Press, 1987).

³⁶ Anne Pitcher, Mary Moran and Michael Johnston, 'Rethinking Patrimonialism and Neopatrimonialism in Africa,' (2009) 52(1) *African Studies Review* 125.

formulate a good governance code enjoying equal status as the nascent continental aversion to unconstitutional takeover of government expressed in Article 4(p) of its Constitutive Act. A public health good governance code may include matters such as minimum health spending as a percentage of GDP, tax transparency, promotion of public-private partnerships, prohibition of health tourism by public officials and genuine distaste for corruption and illicit financial flows. The existence of such a code can provide a benchmark for African people to assess and compare the performance of governments. Public officials or governments violating the code may be penalised, for example, through sanctions.

c) Dependence

While the Ebola experience attests to the potential ability and initiative of African countries to tackle public health crises, the region intriguingly appears to lack the necessary self-confidence resulting in a habit of dependence on others. This dependence is epitomised by the call by Ethiopia's Prime Minister Abiy Ahmed for developed countries to come to the continent's aid, including through debt relief and financial assistance.³⁷ He also sought assistance for African countries in the Global Health Pledging Conference starting on 4 May 2020.³⁸ The Africa Covid-19 Response Fund launched by the AU and the ACDC similarly relies on external donations.

The ACDC does not seem different in approach notwithstanding that the Institute Pasteur Dakar, Senegal pioneered the isolation of the yellow fever causing arbovirus.³⁹ For example, PERC, which to support evidence-based Covid-19 responses, is a partnership between the ACDC and a private initiative (Resolve to Save Lives), multilateral agencies (World Health Organisation and World Economic Forum), external public health agency (UK Public Health Rapid Support Team) and private market research and data analysis companies (Ipsos and Novetta Mission Analytics). The lack of involvement of African organisations in PERC suggests the need for a more confident regional approach towards developing capacity and capability.

To move away from dependence, it is important to recall that Constructivism asserts "that the structures of human association are determined primarily by shared ideas rather than material forces, and that the identities and interests of purposive actors are constructed by these shared ideas rather than given by nature."⁴⁰ Likewise, the New Regionalism Approach underscores the need for "more spontaneous processes, that often emerge from below and from within the region itself, and more in accordance with its peculiarities and problems."⁴¹ An attitudinal change is therefore imperative. The AU can, for instance, step up in facilitating funding of inter-institutional collaboration between African and foreign researchers.

³⁷ Ahmed, 'Pledge' (n. 31).

³⁸ 'Coronavirus Global Response: International Pledging Event,' European Commission, 4 May 2020, https://ec.europa.eu/regional_policy/en/newsroom/news/2020/05/05-04-2020-coronavirus-global-response-international-pledging-event.

³⁹ ACDC, 'Wellcome' (n. 9).

⁴⁰ Alexander Wendt, *Social Theory of International Politics* (Cambridge: CUP, 1999), 1.

⁴¹ Björn Hettne and Fredrik Söderbaum, 'The New Regionalism Approach,' (1998) 17(3) *Politeia* 6-21, 7.

d) Coloniality and neoliberalism

While colonialism has been implicated in the continent's weak governance and development profiles,⁴² the Covid-19 pandemic confirms a long-standing attitude of African states to look up to former colonial powers for solutions to socioeconomic problems despite years of political independence. Apart from Ethiopia, African countries were colonised by Western European countries (and the United States in Liberia's case). Even the establishment of the ACDC was facilitated by external institutions, notably the governments of USA and China, despite African states' acknowledgment of the need for a regional health body by 2013.⁴³ The ACDC is loosely modelled after the European Centre for Disease Prevention and Control, an agency of the European Union which, in turn, provided the template⁴⁴ for the AU.

Africa's Covid-19 containment measures seem to mirror that of Western European countries. Lockdowns imposed by African governments, for example, did not quite consider unique socioeconomic circumstances like the dominant informal economy, non-existent social welfare and inadequate power and internet infrastructures. Concerns include the impact of social distancing measures on the informal sectors and urban poor⁴⁵ and exacerbation of gender, education and social inequalities.⁴⁶ The reality is highlighted in a PERC survey of residents of 28 cities in 20 African countries which reported significant food shortages and financial difficulties if lockdowns were imposed for 14 days or more.⁴⁷

Related to coloniality is the adoption of neoliberal orientations by African states which resulted in social welfare and infrastructural deficits. The IMF-devised Structural Adjustment Programme imposed on African countries is a particularly harmful neoliberal experiment with 'devastating and debilitating effects'⁴⁸ including significant funding healthcare gaps. Neoliberal developmentalism⁴⁹ has clearly not improved the fortunes of African economies.

⁴² Walter Rodney, *How Europe Underdeveloped Africa* (London: Bogle L-Ouverture, 1972); Peter E. Ekeh, 'Colonialism and the Two Publics in Africa: A Theoretical Statement,' (1975) 17(1) *Comparative Studies in Society and History*, 91-112.

⁴³ Callie Aboaf, 'U.S.-China Collaboration in Creating and Supporting the Africa Centres for Disease Control and Prevention,' accessed 7 May 2020, <https://www.cartercenter.org/resources/pdfs/peace/china/trs-04-us-china-collaboration-africacdc.pdf>.

⁴⁴ Babarinde, 'The EU as a Model,' 8-9, 11 (n. 24).

⁴⁵ Addisu Lashitew, 'Social Distancing Unlikely to hold up in Africa without a Safety Net for Microentrepreneurs,' 9 April 2020, <https://www.brookings.edu/blog/africa-in-focus/2020/04/09/social-distancing-unlikely-to-hold-up-in-africa-without-a-safety-net-for-microentrepreneurs/>; Zachary Barnett-Howell and Ahmed Mushfiq Mobarak, 'Should Low-Income Countries Impose the Same Social Distancing Guidelines as Europe and North America to Halt the Spread of COVID-19?', 2 April 2020, <https://som.yale.edu/sites/default/files/mushfiq-howell-v2.pdf>.

⁴⁶ 'Joint Solidarity Letter to the African Union: The Impact of COVID-19 on Girls' Education and Child Marriage,' Global Partnership for Education, 30 April 2020, <https://www.globalpartnership.org/news/joint-solidarity-letter-african-union-impact-covid-19-girls-education-and-child-marriage>.

⁴⁷ PERC, 'Responding,' 6 (n. 19).

⁴⁸ Simon Springer, 'Fuck Neoliberalism,' (2016) 15(2) *ACME: An International Journal for Critical Geographies* 285–292, 285.

⁴⁹ Sam Adelman, 'The Sustainable Development Goals, Anthropocentrism and Neoliberalism,' in *Sustainable Development Goals: Law, Theory and Implementation*, ed. Duncan French and Louis J. Kotzé (Cheltenham: Edward Elgar, 2018), 15-40, 18.

Contrary to coloniality and neoliberalism in the African context, the institutional theory suggests that the pronounced socioeconomic disparities between African and Western countries⁵⁰ highlight the need for an African perspective wherever possible. PERC similarly noted growing peaceful resistance and protests against public health and social measures in African countries and stressed the need for adaptation to “local needs” with context-specific mitigation of adverse effects to enhance compliance levels and even prevent unrests and violence.⁵¹ Just like some researchers are increasingly rejecting the conflation of Western ideas as universal benchmarks,⁵² there is therefore the need for decolonisation of the African approach to public health and its political and socioeconomic dimensions.

e) International economic system

While the impediments discussed above are largely self-inflicted, the contemporary international economic system is an external determinant of public health capacity and capability. Noteworthy are neoliberal ideas like free trade and liberalisation championed by the World Trade Organisation, the IMF and the World Bank.⁵³ While conventional neoliberal wisdom suggests that Africa can pursue foreign investments and trade its way out of socioeconomic problems, the unequal international economic system obstructs fair competition between developing African countries and developed economies. Existing objections to the international economic system’s neoliberal foundations and domination by developed economies⁵⁴ include the UN General Assembly Resolution 3171,⁵⁵ New International Economic Order,⁵⁶ Charter of Economic Rights and Duties of States⁵⁷ and Declaration on the Right to Development⁵⁸ and Third World Approaches to International Law.⁵⁹

An illustrative segment is international trade and investment law which establishes a system of “winners and losers” by having ‘rules [that] determine who will benefit, who will lose and, perhaps more importantly, who will adapt to whom so as to render the policy

⁵⁰ ‘Africa Progress Report: Power, People, Planet: Seizing Africa’s Energy and Climate Opportunities,’ Africa Progress Panel, accessed 7 May 2020, https://reliefweb.int/sites/reliefweb.int/files/resources/APP_REPORT_2015_FINAL_low1.pdf.

⁵¹ PERC, ‘Responding,’ 3, 6 (n. 19).

⁵² Pahuja, ‘Decolonising’ (n. 6); Linda Tuhiwai Smith, *Decolonising Methodologies: Research and Indigenous Peoples* 2nd Ed (London: Zed, 2012); Eve Darian-Smith, *Laws and Societies in Global Contexts: Contemporary Approaches*. (Cambridge: CUP, 2013).

⁵³ Sarah Babb and Alexander Kentikelenis, ‘International Financial Institutions as Agents of Neoliberalism,’ in Damien Cahill, Melinda Cooper, Martijn Konings and David Primrose (eds), *The SAGE Handbook of Neoliberalism* (Thousand Oaks: Sage, 2018), 16-27.

⁵⁴ B.S. Chimni, ‘Capitalism, Imperialism and International Law in the Twenty-First Century,’ (2012) 14(1) *Oregon Rev Intl L* 17-45; Kate Miles, *The Origins of International Investment Law: Empire, Environment and the Safeguarding of Capital*, (Cambridge: CUP, 2013); John Linarelli, Margot E. Salomon, and Muthucumaraswamy Sornarajah, *The Misery of International Law: Confrontations with Global Injustice in the Global Economy*, (Oxford: OUP, 2018).

⁵⁵ *Permanent Sovereignty over Natural Resources* (17 December 1973) UNGA Res 3171 (XXVIII).

⁵⁶ *Declaration for the Establishment of a New International Economic Order* (1 May 1974) UNGA A/RES/S-6/3201.

⁵⁷ *Charter of Economic Rights and Duties of States* (12 December 1974) UNGA Res 3281 (XXIX).

⁵⁸ *Declaration on the Right to Development* (4 December 1986) UNGA Res 41/128.

⁵⁹ Usha Natarajan, John Reynolds, Amar Bhatia and Sujith Xavier, ‘Introduction: TWAIL- on Praxis and the Intellectual,’ (2016) 37(11) *Third World Quarterly* 1946-1956.

goals of trade and investment rules most efficacious'.⁶⁰ Critical international political economy⁶¹ therefore spotlights the role of international trade and investment law in sustaining disparities and inequalities between states and regions, for instance between the Global North and the Global South. Hickel, for example, suggested the need for “real justice” in the global economy to tackle global poverty and growing inequality between countries.⁶²

The adverse effects of the international economic order on African countries' capacity and capability⁶³ are manifest in different ways. Corruption and poor governance in African countries are often endorsed by multinational enterprises and other actors from developed economies⁶⁴ that are equally the recipients of the proceeds of corruption. African countries are unable to invest on healthcare, which is partly a legacy of Structural Adjustment Programmes,⁶⁵ the Washington Consensus on neoliberalism, heavy debt burden and unfavourable international trade. Richer countries have access to cheaper loans that are handy for Covid-19 stimulus packages, but African countries⁶⁶ are charged considerably more interest plus other stringent conditions.

The unbalanced international economic system contrasts starkly with the Capability Approach and its emphasis on access to opportunities and resources and ability to make informed choices and achieve valued objectives.⁶⁷ Fundamental changes are needed in the international economic order to promote fair and accessible opportunities that will enable African economies to develop and sustain public health capacity and capability.

III. Conclusion: Reinvigorating Capacity and Capability

Against the backdrop of the current Covid-19 pandemic and with insights from the Capability Approach, Institutional Theory, Constructivism, New Regionalism Approach and Actor Network Theory, this paper demonstrates the need for appropriate investment and fostering an institutional climate for public health in the African continent and indeed globally. A refocused AU for public health is evident in the ACDC-led regional response to Covid-19. While the ACDC represents a marked departure from fragmented approaches to tackling infectious diseases and demonstrates a viable pan-African approach, the

⁶⁰ Nicolás M. Perrone and David Schneiderman, 'International Economic Law's Wreckage: Depoliticization, Inequality, Precarity,' in Emiliós Christodoulidis, Ruth Dukes and Marco Goldoni (eds), *Research Handbook on Critical Legal Theory* (Cheltenham: Edward Elgar, 2019), 446-472, 446.

⁶¹ Ibid.

⁶² Jason Hickel, *The Divide: Global Inequality from Conquest to Free Market*, (London: Heinemann, 2017).

⁶³ Julio Faundez and Celine Tan, *International Economic Law, Globalization and Developing Countries*, (Cheltenham: Edward Elgar, 2010).

⁶⁴ Onyeka K. Osuji, 'Fluidity of Regulation-CSR Nexus: The Multinational Corporate Corruption Example,' (2011) 103(1) *Journal of Business Ethics* 31-57.

⁶⁵ Alexander E. Kentikelenis, Thomas H. Stubbs and Lawrence P. King, 'Structural Adjustment and Public Spending on Health: Evidence from IMF Programs in Low-Income Countries,' (2015) 126 *Social Science and Medicine* 169-176; Alexander E. Kentikelenis, 'Structural Adjustment and Health: A Conceptual Framework and Evidence on Pathways,' (2017) 187 *Social Science and Medicine* 296-305.

⁶⁶ Thomas Stubbs, Alexander Kentikelenis, David Stuckler, Martin McKee and Lawrence King, 'The Impact of IMF Conditionality on Government Health Expenditure: A Cross-National Analysis of 16 West African Nations,' (2017) 174 *Social Science and Medicine* 220-227; Thomas Stubbs and Alexander Kentikelenis, 'Targeted Social Safeguards in the Age of Universal Social Protection: The IMF and Health Systems of Low-Income Countries,' (2018) 28(2) *Critical Public Health* 132-139.

⁶⁷ Amartya Sen, *Development as Freedom*, (Oxford: OUP, 1999); Amartya Sen, 'Elements of a Theory of Human Rights,' (2004) 32(4) *Philosophy and Public Affairs* 315-356.

fragility of public health institutions and socioeconomic environments seriously question African countries' capacity and capability. Self-induced obstacles include inadequate health funding, poor governance and a culture of dependence that includes coloniality and neoliberalism.

The AU can play vital roles in developing workable African public health perspectives and strengthening the capacities of regional, sub-regional and national authorities. The preamble to the AU Constitutive Act similarly calls for 'necessary measures to strengthen our common institutions and provide them with the necessary powers and resources to enable them discharge their respective mandates.' The consideration of institutions serves a wider purpose since these are critical to economic development even in the case of public health.⁶⁸ It has been shown that disease burdens impede development in African countries. Improvements in public health capacity and capability can therefore assist in reducing poverty and promoting development in African countries.

On the other hand, the neoliberal international economic system is an external trigger for the region's public health vulnerability. The global community needs to address underlying structural issues in the international economic system affecting African countries' public health capacity and capability. Covid-19 has demonstrated that ineffective health infrastructure in a country or region potentially exposes the rest of the world to crises of disastrous proportions.

⁶⁸ John Gallup and Jeffrey Sachs, 'The Economic Burden of Malaria,' (2001) 64(1-2) *The American Journal of Tropical Medicine and Hygiene* 85-96; Jeffrey Sachs and Pia Malaney, 'The Economic and Social Burden of Malaria,' (2002) 415(6872) *Nature* 680-685.