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## **Global Health, COVID-19 and the State in East Africa**

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# Global Health, COVID-19 and the State in East Africa

## 1 Introduction

COVID-19 has prompted anxious reflections about the end of globalization. The closure of borders in the early months of the pandemic and the subsequent scramble for personal protective equipment (PPE) and vaccines has been viewed as a worldwide reassertion of the national interest over globalist concerns. This concern has been especially acute given the health focus of these measures. Solidarity and internationalism are held up as ideals for medicine and public health, in a manner quite unlike trade and defence, for example.<sup>1</sup> Philosophers and philanthropists had argued that a more cosmopolitan, global health community was under construction, however imperfectly, since the end of the cold war, as evidenced by the creation and funding of initiatives like the Global Fund for AIDS, Tuberculosis and Malaria.<sup>2</sup> It is this emergent Post-Westphalian order which populist political leaders are said to have undermined, looking to secure their own populations and frontiers against the virus and its variants.<sup>3</sup> Of course, the idea of health internationalism has long been undercut by nationalist realities. After all, even the UK's National Health Service has been valued for being produced by and for the *British* people since its foundation in 1948.<sup>4</sup> The politicized closure of borders against disease outbreaks dates back still further.

Our concern here is not with history *per se*, but with differences between specific contemporary states. The vaccine nationalism impugned by globalist critics has been almost exclusively confined to the global north. The states moving to pre-empt supplies of essential materials and medicines have been those of Europe and North America. Ethical criticism and political analysis have been largely directed at their performance during the pandemic.<sup>5</sup> Relatively less attention has been paid to its implications for African countries. The effects of the worldwide measures taken against COVID-19 for the internal stability and legitimacy of these states, as well as their capacity to act on the international stage has been a matter for regional specialists, rather than global theorists.<sup>6</sup>

In this paper, we sketch a theoretical frame for identifying these effects and relating them to the longer-term trajectories of selected African states. We combine political science insights on state formation in the global south, with critical perspectives on the nature and limits of state agency in international relations. Put briefly, although African states are considered weak and dependent, we suggest that many retain some capacity to act internally and externally to protect the health of their populations and to sustain themselves as states. Consistent with our preference for the specific, we examine the potential of this approach by focusing on the three

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<sup>1</sup> Farmer, Paul, and Amartya Sen, *Pathologies of power: Health, human rights, and the new war on the poor*. (Berkeley 2003).

<sup>2</sup> See for example, Peter Singer, *One world: The ethics of globalization* (New Haven 2002)

<sup>3</sup> Katz Ingrid et al. 'From vaccine nationalism to vaccine equity-finding a path forward', *The New England Journal of Medicine*, 384 (2021), 1281-1283

<sup>4</sup> John Harrington, *Towards a Rhetoric of Medical Law* (Routledge, 2018), cha 3.

<sup>5</sup> Schellekens Philip, 'For greater vaccine equity, first fix these misconceptions.' Brookings, 2 April 2021, available at: <https://www.brookings.edu/blog/future-development/2021/04/02/for-greater-vaccine-equity-first-fix-these-misconceptions/> (22 July 2022).

<sup>6</sup> Erondu, Ngozi et al. 'Open letter to international funders of science and development in Africa', *Nature Medicine* 27 (2021), 742-744

major East African states; Kenya, Uganda and Tanzania. This allows us to make useful comparisons and to draw broader conclusions than would be the case with a single country study, while avoiding the pitfalls of overgeneralizing about what happens ‘in Africa’.

Kenya, Uganda and Tanzania were subject to British rule from the late nineteenth century until they gained independence in the early 1960s. They have however had divergent careers as regards political and economic development. Kenya kept to the capitalist path originally imposed on it by the departing colonial power.<sup>7</sup> Supported to varying degrees by the Soviet bloc and Maoist China, Tanzania pioneered a form of African socialism though with little success.<sup>8</sup> Both states enjoyed a significant degree of stability, albeit accompanied by considerable coercion and the suppression of democracy. By contrast, power in Uganda changed hands as a result of coups d’état and violent insurgencies with terrible social and economic consequences.<sup>9</sup> Progress on the extension of health care to the general population across East Africa stalled and went into reverse in the 1980s due to cutbacks and user fees imposed as part of structural adjustment programmes, at the same time as the HIV/AIDS pandemic spread through the region.<sup>10</sup> Since then, all three states have been dependent to varying degrees on donor aid to support their health sectors, with the US and UK, as well as the Global Fund, playing key roles. Constitution-making and formal democratization followed the end of the cold war, although in practice, elections have often showcased and aggravated deep social fissures, with their outcomes contested in court and on the streets.<sup>11</sup> Along with Rwanda, Burundi and South Sudan, the three states form the East African Community, a free trade area, and are subject to its court- the East African Court of Justice.

In our discussion, we distinguish between internal and external responses to the spread of COVID-19, including coercive lockdown and quarantine policies, but also the strategies deployed to secure scarce vaccine supplies in an environment of competition between the Western powers and China for influence in Africa. At the same time, we are guided by the insight that these dimensions are deeply interconnected. The domestic is partly constituted by the global, and vice versa. We will argue in conclusion, that an increase in diplomatic assertiveness, as well as regional and continent-wide cooperation, has been evident during the pandemic. Nonetheless, experience during COVID-19 suggests that East African states remain embedded in a global health regime rooted in the global north.

## **2 Governed States and Dependent Agency**

The capacity of African states to act on the international stage has been long denied in theory and constrained in practice.<sup>12</sup> Unsurprisingly given the colonial and imperial history of the global order, international relations (IR) scholarship has been marked by a normative and Eurocentric orientation. Its key figure, the state, is theorized with reference to examples in

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<sup>7</sup> Charles Hornsby, *Kenya since independence* (London, 2012)

<sup>8</sup> Priya Lal, *African socialism in postcolonial Tanzania between the village and the world* (Cambridge, 2015)

<sup>9</sup> Oloka-Onyango, Joe, ‘Uganda’s ‘benevolent’ dictatorship’ August 30, 1998, available at: <https://ssrn.com/abstract=3621118> (22 July 2021)

<sup>10</sup> See for example, George Ndege, *Health, state and society in Kenya: Faces of contact and change* (Rochester 2001)

<sup>11</sup> See for example, John Harrington and Ambreena Manji, ‘Restoring leviathan? The Kenyan Supreme Court, constitutional transformation and presidential elections’, *Journal of Eastern African Studies* 9 (2015), 175-192

<sup>12</sup> Smith Karen, ‘Africa as an agent of international relations knowledge’, in Cornelissen Scarlet, Fantu Cheru and Timothy Shaw (eds) *Africa and international relations in the 21st century* (London, 2012) 21

Europe and its former settler colonies in North America and Australasia.<sup>13</sup> Little account is taken in the mainstream of the distinct trajectories of post-colonial African states, which are posited as fragile or failed. Represented as passive objects of the global order, they are merely clients in matters of security, rule-takers in economics, trade and social policy.<sup>14</sup> At best they exercise formal sovereignty, depending on Westphalian notions of comity to secure the material position of state elites as ‘gatekeepers’, extracting rents from the flow of resources in and out of their territories.<sup>15</sup> This still influential literature gave scholarly form to the concerns of Western foreign ministries in the 1980s, seeking to push back against the third worldist alliance which had threatened their dominance at the UN and other fora in the previous decade.<sup>16</sup>

The pathologization of these states, as neo-patrimonial and illegitimate, undoubtedly coincided with the genuine failure of many to meet the social and political promises of decolonization.<sup>17</sup> But it also provided intellectual cover for their internal reconstruction, through structural adjustment and poverty reduction strategies imposed by the International Monetary Fund and the World Bank, complemented and invigilated by other multilateral and donor agencies as well as non-governmental organizations, such as WHO, USAID and Médecins sans Frontières.<sup>18</sup> Over the last forty years or so, African states have, thus, been governed as much as governing.<sup>19</sup> From the domestic incorporation of international human rights norms to the implementation of detailed technical standards in areas like nutrition and health care, underpinned by continued reliance on external funding for many of its key activities, the contemporary state can be said to be, in part, a creature of global governance.<sup>20</sup> Of course, this has been true of states in the global north too, but its depth and scope has been greater in the global south, its historic roots deeper in the pre-independence imperial order.

This internal condition has been reflected in, and profoundly related to the shrinking external capacity of African states. Western resistance to the inter-state coalition launched at Bandung in 1955 and the ensuing campaign for a new international economic order was pursued through open and covert military support for allies in the global south, and through moves to ‘forum-shift’ issues like trade and development to more favourable institutions, either existing, like the

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<sup>13</sup> Candice Moore, ‘Disciplining the developing world. perspectives from a South African IR’ in Bischoff Paul, Kwesi Aning, and Amitav Acharya (eds), *Africa in global international relations: emerging approaches to theory and practice* (London, 2016) 4

<sup>14</sup> For this analysis see Ronald Chipaike and Matarutse H Knowledge, ‘The question of African agency in international relations’, *Cogent Social Sciences*, 4 (2018), 1-17: 2. See also Anderson, Emma-Louise. ‘African health diplomacy: obscuring power and leveraging dependency through shadow diplomacy,’ *International Relations* 32 ( 2) (2018), 194–217.

<sup>15</sup> Brown William and Sophie Harman, ‘African agency in international politics’, in Brown William and Sophie Harman (eds), *African agency in international politics* (London, 2013) 1

<sup>16</sup> Nils Gilman, ‘The new international economic order, a reintroduction’, *Humanity* 6 (2015), 1-16

<sup>17</sup> Partha Chatterjee, ‘The Legacy of Bandung’ in Louis Eslava, Michael Fakhri and Vasuki Nesiah (eds), *Bandung, global history and international law: Critical pasts and pending futures* (Cambridge, 2017) 657

<sup>18</sup> Sundhya Pahuja, *Decolonizing international law: development, economic growth and the politics of universality* (Cambridge 2011).

<sup>19</sup> See Carl Death, *The Green State in Africa* (New Haven, 2017) Cha 2

<sup>20</sup> Celine Tan, *Governance through development: poverty reduction strategies, international law and the disciplining of world states* (Abingdon, 2011). See also John Harrington, “‘We can’t wait for the bugs to spread’ time, space and biosecurity in global health law”, *Transnational Legal Theory* 9 (2018) 85-109

World Bank, or newly created, like the WTO.<sup>21</sup> The strategic capacity of African states, already constrained by internal adjustment and aid dependence, was weakened further by the end of the cold war which removed their ability to play one superpower off against the other. The ensuing era of global governance, marked by the rise to prominence of non-state actors transnationally and domestically, in health as in other sectors, was hailed as a worldwide move to ‘post-sovereignty’.<sup>22</sup> But on closer inspection, the international scene continued to be marked by salient asymmetries of power and capacity between states. For example, corporate pharmaceutical concerns, largely based in Europe and North America, secured the global imposition of strong patent protection through the diplomatic actions of their governments.<sup>23</sup> Outmanoeuvred and under-resourced within the WTO and in the context of bilateral free trade agreements, many African states gave up their power to protect access to essential medicines in return for promises of wider trade liberalization which were only partly honoured. The extent of their diplomatic agency, it appeared, was dependent on reluctant concessions by Western states, as when a global outcry over the availability of anti-retrovirals for treating people with HIV/ AIDS forced a commitment to flexibility in relation to patent enforcement on the part of WTO member states in 2002. Commendable moral and technical support for global south states was provided by NGOs and scholars, but not enough to shift the balance of power appreciably.

In the intervening two decades, however, scholarship and practice have begun to shift in a number of ways. It was recognized that African states have long exercised agency in a manner overlooked by orthodox IR. As Bayart argued, their very weakness has allowed them to ‘extravert’ local threats in order to secure resources from, or increase political traction with donors.<sup>24</sup> This might include humanitarian appeals for assistance in responding to HIV/AIDS or the securitization of infectious disease outbreaks, as in 2014 when Liberia highlighted the potential for the Ebola epidemic to spread to the United States.<sup>25</sup> Agency is still agency, even if exercised in ‘tight corners’<sup>26</sup> or in ways seemingly contrary to the wellbeing of citizens. More formally, at the highest level, effective lobbying and coalition-forming have secured leadership positions for African stateswomen and experts at the World Health Organization, the World Trade Organization and UNAIDS.<sup>27</sup> Substantive diplomatic successes include the push to include Malaria within the scope of the Global Fund, which was originally limited to HIV and TB, as well as shaping the content of the Millennium and Sustainable Development Goals to address the continent’s development needs as such.<sup>28</sup> There has also been a structural shift, with the post-cold war dispensation giving way to a multipolar order. In particular, the ‘return

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<sup>21</sup> Daniel Sargent, ‘North/ South: The US responds to the new international economic order’, *Humanity* 6 (2015) 201-216: 201

<sup>22</sup> See McInnes, Colin, and Kelley Lee, *Global health and international relations*, (Johanneshov, 2012), 102

<sup>23</sup> See Aginam Obijiofor, John Harrington, and Peter Yu. *The global governance of HIV/AIDS: Intellectual property and access to essential medicines* (Cheltenham, 2013)

<sup>24</sup> Bayart, Jean-François, ‘Africa in the world: a history of extraversion’, *African Affairs* 99 (2000) 217-267: 217

<sup>25</sup> Amy Patterson, *Africa and global health governance: Domestic politics and international structures* (Baltimore, 2018) 80

<sup>26</sup> John Lonsdale, ‘Agency in tight corners: narrative and initiative in African history’, *Journal of African Cultural Studies* (13) (1) (2000) 5-16

<sup>27</sup> Hany Besada, Jiajun Xu, Annalise Mathers and Richard Carey, ‘Advancing African agency in the new 2030 transformative development agenda’, *African Geographical Review* 36 (1) (2017), 19-44

<sup>28</sup> Loewenson Rene, Modisenyane Moeketsi, Pearcey, Mark ‘African perspectives on global health diplomacy’, *Journal of Health Diplomacy* (2014) 1-20: 7

of China' to the continent has increased room for diplomatic maneuver.<sup>29</sup> Now Africa's leading foreign investor, Beijing also offers aid, support for trade reforms, and backing for a development-friendly agenda at the UN.<sup>30</sup>

China has also functioned as an ally and exemplar for African states invoking the doctrine of national sovereignty to shield their domestic activities from scrutiny by the global governance regimes.<sup>31</sup> The successful resistance of Kenya's current President and Vice-President to prosecution by the International Criminal Court was a notable instance, facilitated by Chinese support at the UN.<sup>32</sup> Critics within and beyond East Africa have condemned the skewed and self-interested nature of this economic and diplomatic support.<sup>33</sup> Nonetheless the increased assertiveness on the part of African states which it has enabled is seen in a willingness to reject global health prescriptions, as when Nigeria refused UN- and US-supported Polio vaccination programmes in 2003. An American and WHO diplomatic commitment ultimately secured acceptance.<sup>34</sup> The African Union, albeit a work in progress, is undeniably a more coherent and better-resourced successor to the Organization of African Unity and has facilitated agreement on 'African agendas' and their promotion in multilateral fora.<sup>35</sup> The capacity of external powers to pick off client states on the continent, often former colonies, has diminished accordingly in favour of collective agency. Internally, a coercive apparatus, originating in colonial law and practice, continues to be deployed in spite of binding national and international norms on human rights and the rule of law.

### 3 Locking Down

The response to COVID-19 in East Africa varied between coercion deployed on the basis of international guidelines on one hand, and inaction on the other. Thus, following WHO's advice, Kenya imposed a 7 pm to 5 am curfew on 25<sup>th</sup> March 2020, along with general restrictions on movement into, out of and within Nairobi and Mombasa. As well as causing considerable hardship to residents of informal settlements in particular, these measures were enforced indiscriminately and with considerable violence, causing serious injuries to many, with at least 15 fatalities.<sup>36</sup> Journalists covering these abuses were also targeted for physical

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<sup>29</sup> Besada, 'Advancing African agency', 22. See also Bronwyn Bruton, 'African agency in the new cold war: traditional power competition in the post-covid-19 African landscape,' 30 November 2020 available at: <https://www.atlanticcouncil.org/in-depth-research-reports/report/african-agency-in-the-new-cold-war-traditional-power-competition-in-the-post-covid-19-african-landscape/> (22 July 2021)

<sup>30</sup> Daly Garrison *et al.* 'Challenges and opportunities in China's health aid to Africa: Findings from qualitative interviews in Tanzania and Malawi', *Global Health* 16 (2020) 1-10

<sup>31</sup> Patterson, Amy and Emmanuel Balogun. "African responses to COVID-19: The reckoning of agency?" *African Studies Review* 64 (1) (2021), 144–67

<sup>32</sup> Njoki Wamae, 'International relations and the International Criminal Court' in Nic Cheeseman, Karuti Kanyinga and Gabrielle Lynch (eds), *The Oxford Handbook of Kenyan Politics* (Oxford 2020). President Uhuru Kenyatta and Vice-President William Ruto were charged with having instigated widespread ethnic violence in the aftermath of the disputed Kenya presidential election of 2007.

<sup>33</sup> See for example, the sources considered in Samuel Makinda, 'The Rise of China in Kenya's Foreign Relations', in Nic Cheeseman, Karuti Kanyinga and Gabrielle Lynch (eds), *The Oxford Handbook of Kenyan Politics* (Oxford 2020).

<sup>34</sup> Kaufmann Judith, Feldbaum Harley, 'Diplomacy and the polio immunization boycott in Northern Nigeria', *Health Affairs* 28 (4) (2009) 1091-1101

<sup>35</sup> Besada, 'Advancing African agency', 22

<sup>36</sup> Al Jazeera, 'Kenyan police 'killed 15' since start of coronavirus curfew', Al Jazeera, 5 June 2020, available at <https://www.aljazeera.com/news/2020/6/5/kenyan-police-killed-15-since-start-of-coronavirus-curfew> (22 July 2021)

attacks.<sup>37</sup> Uganda imposed similar restrictions before any case was reported in the country and won praise from commentators willing to look past human rights violations, for the contribution this had made to keeping infection rates lower than elsewhere in the region.<sup>38</sup> In neither country was a legal state of emergency declared in accordance with the procedures and limits set out in relevant constitutional provisions. Nonetheless, we can say that a ‘political state of exception’ prevailed in the first three months of the pandemic.<sup>39</sup> Drawing on a common global idiom, ministers depicted COVID-19 as an existential threat to the nation itself, in the manner of major terrorist threats and wars, notwithstanding the relatively low case numbers at that point. Presidential decrees were used to announce disease control measures, and broader public order legislation was preferred to dedicated public health statutes, as the basis for enforcing them. The military was tasked with coordinating lockdown measures in Uganda; paramilitary and regular police in Kenya.<sup>40</sup>

Tanzania offers a different picture, shifting from nation-centric to globalist over time, rather than combining these stances at once. Thus, lockdown measures and the requirement to wear face masks in public places, which had been imposed during March and April 2020, were suddenly lifted when President Magufuli declared the country to be free of COVID-19.<sup>41</sup> The government’s rejection of the international consensus on pandemic control was shared at the time by global north states like the US and Sweden. Nonetheless, it made Tanzania an outlier in the region and, indeed, the continent as a whole. As in the American case, though not the Swedish, it has been explained on the basis of the President’s populist style, itself a break with that of previous Tanzanian leaders who had faithfully implemented globalist neo-liberal orthodoxy in economics and social policy.<sup>42</sup> In particular, it reflected a declared ambivalence as regards the scientific base for lockdowns and sought, more prosaically, to avoid their devastating and unpopular effect on livelihoods in an election year.<sup>43</sup> It also demonstrated a suspicion of the WHO, anticipated in 2014 when the government was accused of withholding information on an Ebola outbreak apparently in order to protect its tourist sector.<sup>44</sup> The wider

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<sup>37</sup> Abdi Najma ‘Protect Kenya’s journalists reporting on Covid-19,’ Human Rights Watch, 27 March 2020 , available at <https://www.hrw.org/news/2020/05/04/protect-kenyas-journalists-reporting-covid-19> ( 22 July 2021)

<sup>38</sup> Patrick Mugo, ‘COVID-19 Response: What Uganda and Rwanda got right and what Kenya, Tanzania and Burundi didn’t’, The Elephant, 18 June 2020, available at: <https://www.theelephant.info/features/2020/06/18/covid-19-response-what-uganda-and-rwanda-got-right-and-what-kenya-tanzania-and-burundi-didnt/> (22 July 2021)

<sup>39</sup> Carlo Salzani, ‘COVID-19 and state of exception: Medicine, politics, and the epidemic state’ Paris Institute For Critical Thinking, 12 March 2021, available at: <https://parisinstitute.org/depictions-article-covid-19-and-state-of-exception-medicine-politics-and-the-epidemic-state/> (22 July 2021). See also Cindy Patton, ‘Pandemic, empire and the permanent state of exception’ *Economic and Political Weekly* 46 (3) (2011) 103-110: 109

<sup>40</sup> Margini Federica *et al.* ‘Case Study: The initial COVID-19 response in Uganda’, (Washington, DC, 2020). See also Awino Okech, David Mwambari & Funmi Olonisakin, ‘COVID-19 responses and human rights in selected African countries’, *Australian Journal of Human Rights* 26 (3) (2020), 549-555

<sup>41</sup> Fergus Kell, ‘Tanzania evades COVID-19 lockdown, but restrictions persist’ Chatham House, 21 May 2020, available at: <https://www.chathamhouse.org/2020/05/tanzania-evades-covid-19-lockdown-restrictions-persist> (22 July 2021)

<sup>42</sup> Issa Shivji, ‘The dialectics of Maguphilia and Maguphobia’ CODESRIA Bulletin 13 June 2021, available at: <http://www.codesria.org/spip.php?article3183> (22 June 2021)

<sup>43</sup> Nic Cheeseman, Hilary Matfess, Alitalali Amani, ‘Tanzania: The roots of repression’, *Journal of Democracy* 32 (2) (2021), 77-89

<sup>44</sup> Ziraba Abdhalah, ‘Why it’s dangerous for Tanzania to withhold information about Ebola fears’ The Conversation, 4 October 2019, available at: <https://theconversation.com/why-its-dangerous-for-tanzania-to-withhold-information-about-ebola-fears-124617> (22 July 2021)



political resonance of the refusal to ‘take COVID-19 more seriously’ was clear.<sup>45</sup> As Dr. John Nkengasong, Director of the Africa CDC put it, ‘Tanzania is a sovereign country, we can't go there and pull-down data.’<sup>46</sup> This strong assertion of agency ended when Magufuli died of suspected COVID-19 complications in March 2021, although this was never officially confirmed by the Tanzanian government.<sup>47</sup> His successor, President Suluhu Hassan, herself detached from the dominant faction within the ruling CCM party, has restored curfew measures, mandated the wearing of masks, and ordered that COVID-19 infection numbers be collated and publicly announced.<sup>48</sup> Domestically she commissioned an expert taskforce, closely linked to the WHO and Africa CDC, to lead a new public campaign against the virus. Externally, engagement with Kenya and Uganda, as well as the East African Community was renewed in relation to cross-border measures against the pandemic.<sup>49</sup>

COVID-19 has also influenced wider political processes in East African states. We have already noted the influence of electoral calculations on Tanzania’s denialist response to the pandemic. This was backed up by the arrest and prosecution of journalists and civil society actors who dared to report cases of Coronavirus.<sup>50</sup> However, this ‘COVID-effect’ was still clearer and more wide-ranging in the other two countries, given their more wholehearted embrace of lockdown measures. The outbreak of the pandemic coincided with the so-called Building Bridges Initiative (BBI) in Kenya. BBI is aimed at achieving cross-ethnic unity between supporters of President Uhuru Kenyatta and those of his long-term rival Raila Odinga, to the exclusion, it is claimed, of Deputy-President William Ruto. The Initiative has its origins in the violence which followed the disputed 2017 elections. Subsequent contests have generated similar controversy and division, if less open conflict, with the Supreme Court nullifying the 2017 poll for irregularities. BBI was opposed by some ethnic groups associated with the Deputy-President, and by Kenyan civil society concerned about the short-circuiting of constitutional processes.<sup>51</sup> The pandemic offered a pretext for the government to ban rallies on infection-control grounds. This was applied one-sidedly, however, with BBI supporters allowed to continue campaigning.<sup>52</sup> Ultimately the initiative was halted by a ruling of the High Court in June 2021 which held that fundamental reforms could not be carried out at an elite level only, but rather required the whole population to be engaged in the deliberative process.

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<sup>45</sup> BBC. ‘Covid: WHO pleads with Tanzania to start reporting case’ BBC, 21 February 2021, available at: <https://www.bbc.com/news/world-africa-56145510?xtor=AL-72-%5Bpartner%5D-%5Binforadio%5D-%5Bheadline%5D-%5Bnews%5D-%5Bbizdev%5D-%5Bisapi%5D> (22 July 2021)

<sup>46</sup> Munyaradzi Makoni, ‘Tanzania refuses COVID-19 vaccines’, *The Lancet*, 13 February 2021, available at: [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(21\)00362-7/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(21)00362-7/fulltext) (22 July 2021)

<sup>47</sup> BBC, ‘John Magufuli: Tanzania's president dies aged 61 after Covid rumours’, BBC, 18 March 2021, available at <https://www.bbc.com/news/world-africa-56437852> (22 July 2021)

<sup>48</sup> Bella Genga, ‘Tanzanian President now wants citizens to wear face masks’ Bloomberg, 21 February 2021, available at: <https://www.bloomberg.com/news/articles/2021-02-21/tanzanian-president-now-wants-citizens-to-wear-face-masks>. (22 July 2021)

<sup>49</sup> Roland Ebole, ‘Tanzania: President’s new COVID-19 taskforce a positive move but the work starts now’ Amnesty International, 26 April 2021, available at: <https://www.amnesty.org/en/latest/news/2021/04/tanzania-presidents-new-covid-19-taskforce-a-positive-move-but-the-work-starts-now/> (22 July 2021)

<sup>50</sup> Fergu Kell, ‘Tanzania evades COVID-19 lockdown’

<sup>51</sup> Ambreena Manji, ‘The BBI judgment and project Kenya,’ *The Elephant*, 24 May 2021, available at: <https://www.theelephant.info/features/2021/05/24/the-bbi-judgment-and-project-kenya/> (22 July, 2021)

<sup>52</sup> Antonin Gasquets, ‘Being Kenyan in the times of a crisis: conflicting national narratives against COVID-19’, *Mambo!* XVIII (2), 18 February 2021, available at: <https://mambo.hypotheses.org/3063> (22 July 2021)

Interestingly a plea that constitutional change was itself impermissible during a pandemic was entertained but rejected for lack of submitted evidence that rallies would spread the virus.<sup>53</sup>

A similar process was evident in Uganda where President Yoweri Museveni faced elections in January 2021. Long favoured by the US and the UK as an ally in the ‘war on terror’, Museveni provided internal stability and regular elections after taking power in 1986, attracting significant resources for the struggle against HIV/AIDS.<sup>54</sup> However, the last two decades in Uganda have seen an increase in repression and foul play, particularly during election time.<sup>55</sup> On this occasion, the government was accused of orchestrating enforced disappearances and the break-up of rallies, as well as the harassment and arrest of opposition candidate Bobby Wine.<sup>56</sup> Legitimacy and a legal basis for these actions was claimed with reference to the COVID-19 pandemic and the ensuing need for restrictions.<sup>57</sup> Again, the measures were applied lopsidedly with the ruling, and ultimately victorious, National Resistance Movement permitted to hold rallies while the opposition was limited to online events and social media by the Electoral Commission.<sup>58</sup> A similar, partial and discriminatory application of disease control measures was reflected in the March 2020 round-up of LGBTQ+ community members in Kampala accused of failing to maintain social distancing rules.<sup>59</sup> This targeting was consistent with Uganda’s previous ban on 38 NGOs for ‘promoting homosexuality’<sup>60</sup> and its renewal of colonial anti-gay laws.<sup>61</sup>

#### 4 Vaccinating

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<sup>53</sup> David Ndi & others v Attorney General & others [2021] Accessible from <https://www.afronomicslaw.org/sites/default/files/pdf/BBi%20Consolidated%20Judgment%20-%20Final%20Version%20-%20As%20Delivered.pdf> par 773

<sup>54</sup> Oloka-Onyango Joe, ‘Uganda’s “benevolent” dictatorship’ SSRN, 30 August 1998, available at: <https://ssrn.com/abstract=3621118> (22 July 2022)

Abdi Latif Dahir, ‘The west’s patience with Uganda’s strongman wanes after a bloody election,’ *New York Times*, 30 January 2021, available at <https://www.nytimes.com/2021/01/30/world/africa/uganda-museveni-us-eu.html> (22 July 2021)

<sup>55</sup> Ann Mugisha, ‘Change in Uganda: Museveni’s machinations’, *Journal of Democracy* 15 (2) (2004), 140-144  
Pat Sidley, ‘Uganda’s election: murder, media censorship and vote-rigging,’ *International Bar Association*, 6 April 2021, available at: <https://www.ibanet.org/article/0F457085-93DE-48A4-82C3-FE4CDFB9FFDD> (22 July 2021)

<sup>56</sup> Sophie Neiman, ‘Will the U.S. still back Uganda’s Museveni despite another sham election?’ *World Politics Review*, 25 January 2021, available at: <https://www.worldpoliticsreview.com/articles/29376/after-uganda-elections-will-the-u-s-still-back-museveni-s-brutal-regime> (22 July 2021)

<sup>57</sup> Tanja Dittfeld, ‘From public health crisis to human rights crisis: the impact of covid-19 on marginalised groups in Uganda,’ *Humanity in Action*, April 2020, available at: [https://www.humanityinaction.org/knowledge\\_detail/article-denmark-tanja-dittfeld-from-public-health-crisis-to-human-rights-crisis-the-impact-of-covid-19-on-marginalised-groups-in-uganda/](https://www.humanityinaction.org/knowledge_detail/article-denmark-tanja-dittfeld-from-public-health-crisis-to-human-rights-crisis-the-impact-of-covid-19-on-marginalised-groups-in-uganda/) (22 July 2021)

<sup>58</sup> HRW, ‘Uganda: Authorities weaponize Covid-19 for repression’ HRW, 20 November 2020, available at: <https://www.hrw.org/news/2020/11/20/uganda-authorities-weaponize-covid-19-repression> (22 July 2021). See also, Michelle Gavin, ‘Uganda’s upcoming elections face both longstanding problems and new constraint’, *Council for Foreign Relations*, 21 July 2020, available at: <https://www.cfr.org/blog/ugandas-upcoming-elections-face-both-longstanding-problems-and-new-constraintsCovid-19-hotspots> (22 July 2021)

<sup>59</sup> Jason Burke, ‘Ugandan police accused of abusing lockdown laws after LGBT arrests’, *The Guardian* 1 April 2020, available at: <https://www.theguardian.com/world/2020/apr/01/ugandan-police-accused-of-abusing-lockdown-laws-after-lgbt-arrests> (22 July 2021)

<sup>60</sup> David Smith, ‘Uganda bans 38 organisations accused of ‘promoting homosexuality’ *The Guardian* 20 June 2012, available at: <https://www.theguardian.com/world/2012/jun/20/uganda-bans-organisations-promoting-homosexuality> (22 July 2021)

<sup>61</sup> Elias Biryabarema, ‘Ugandan president signs anti-gay bill, defying the West’, *Reuters* 24 February 2014, available at: <https://www.reuters.com/article/us-uganda-gaybill-idUSBREA1N05S20140224> (22 July 2021)

The ability of East African states to procure vaccines during COVID-19 has showcased the limits of their agency in international relations; but it has also pointed to the potential for increasing its scope. The chief source in each of Kenya and Uganda was COVAX, the global vaccine sharing platform co-led by Coalition for Epidemic Preparedness Innovations, WHO and GAVI. As designed, all countries in the world (but particularly rich countries), as well as philanthropies, were intended to fund the purchase of vaccines for at least 20% of the population of low-income countries.<sup>62</sup> In a gesture towards risk-pooling global north countries were themselves encouraged to access vaccines through COVAX. Most have refrained, however, focusing instead on regional and bilateral procurement strategies, pre-empting global supply and stockpiling well beyond their own needs.<sup>63</sup> The distributional effects of this have been exacerbated by export controls in vaccine manufacturing countries, logistical challenges, and inadequate funding of the initiative.<sup>64</sup> European and American failure to live up to humanitarian promises was hardly unexpected; hypocrisy has a long pedigree in international relations. Moreover, COVID-19 could not be framed as a future threat that required immediate action in the global south, since it had spread first across the global north. African states were not, therefore, in a position to appeal to northern self-interest. The consequences were clear. By June 2021, nearly seven months after the first vaccines were approved and rolled out, only 1.6% of Kenyans had received one dose or more, by contrast with 70% in the UK.<sup>65</sup> The G7 summit of western powers committed a further billion doses for donation.<sup>66</sup> Not only was this well short of what was needed to provide worldwide coverage, but much was to be delivered bilaterally and, thus, subject to the strategic goals of donor states, rather than through the common pool of COVAX.<sup>67</sup>

In a reflection of its historically close collaboration with international and donor health agencies, such as the Global Fund and the US Centres for Disease Control, Uganda has to date trusted multilateralism, relying almost exclusively on COVAX for its vaccine supply. By contrast, as we have seen, Tanzania under the late President Magufuli repudiated the global health governance regime for a period. His populist refusal to recognize the scientific basis for the WHO's declaration of a Global Health Emergency and description of COVID-19 as a western disease also underpinned the government's early approach to vaccine procurement. Refusing to join COVAX, it sought no alternative sources, to the consternation of African and international public health experts, as well as the WHO.<sup>68</sup> Magufuli's death saw a reversal of

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<sup>62</sup>Seth Berkley 'COVAX explained' Gavi 3 September 2020, available at:

<https://www.gavi.org/vaccineswork/covax-explained> (22 July 2021)

<sup>63</sup> Ravello Jenny, 'Is COVAX part of the problem or the solution' Devex, 11 March 2021, available at

<https://www.devex.com/news/is-covax-part-of-the-problem-or-the-solution-99334> (22 July 2021)

<sup>64</sup> UN News, 'How can we vaccinate the world? Five challenges facing the UN-backed COVAX programme.'

UN News, 5 April 2021, available at: <https://news.un.org/en/story/2021/04/1088932> (22 July 2021)

<sup>65</sup> Reuters, 'Reuters Covid 19 tracker- Kenya' Reuters 22 July 2021, available at:

<https://graphics.reuters.com/world-coronavirus-tracker-and-maps/countries-and-territories/kenya/> (22 July

2021). See also UK Government, 'Vaccination in the UK' UKGOV, 22 July 2021, available at:

<https://coronavirus.data.gov.uk/details/vaccinations> (22 July 2021)

<sup>66</sup>Ann Danaiya Usher, 'A beautiful idea: how COVAX has fallen short', *The Lancet* 397 (2021) 2322-2325

<sup>67</sup> British Foreign Policy Group, 'The rise of vaccine diplomacy', BFPG 23 July 2021, available at:

<https://bfpgrp.co.uk/2021/07/the-rise-of-vaccine-diplomacy/> (23 July 2021)

<sup>68</sup> WHO, 'WHO Director-General's statement on Tanzania and COVID-19' WHO statement, 20 February 2021, available at: <https://www.who.int/news/item/20-02-2021-who-director-general-s-statement-on-tanzania-and-covid-19> (22 July 2021)

this position, with local experts declaring the leading vaccines to be sufficiently safe for use.<sup>69</sup> This allowed Tanzania to enter COVAX in June 2021 and order vaccines.<sup>70</sup> If a change of leadership helped this transformation, so too did pressure from the international community. With the economy under severe pressure due to the impact of the pandemic on tourist revenues and trade, the government was obliged to seek loans from the World Bank and the IMF.<sup>71</sup> Imposing what we might call ‘health conditionalities’, they required Tanzania to comply with WHO guidelines on vaccines and COVID-19 management generally, such as the publication of COVID-19 data.<sup>72</sup>

Kenya took a middle position on vaccine procurement, between Uganda’s almost exclusively multilateral engagement and Tanzania’s health autarky. Admittedly, COVAX has also been the first and chief source of Kenya’s vaccines, with 1.22 million doses being delivered in March 2021. But this has been complemented by smaller donations procured bilaterally.<sup>73</sup> Thus, it obtained 100,000 doses through India’s Vaccine Maitri programme.<sup>74</sup> Denmark, which has collaborated with Kenya on fighting piracy in the Indian Ocean, donated 350,000 doses.<sup>75</sup> Subsequent to the election of President Biden, the US promised to donate surplus vaccines to African states through the AU.<sup>76</sup> Kenya has been mentioned specifically as one such destination and is set to receive 10 million doses from Johnson and Johnson.<sup>77</sup> This too can be linked to wider security and geopolitical interests, given Kenya’s strategic role as a US ally in the Horn of Africa, fighting the Al-Shabaab terrorist group in Somalia and mediating during the current crisis in Ethiopia.<sup>78</sup> These were the focus of Biden’s telephone call to President Kenyatta, the

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<sup>69</sup> Monica Mwangi, ‘Tanzanian experts say COVID-19 vaccines safe, recommend joining COVAX’ Reuters 17 May 2021, available at: <https://www.reuters.com/business/healthcare-pharmaceuticals/tanzanian-experts-say-covid-19-vaccines-safe-recommend-joining-covax-2021-05-17/> (22 July 2021)

<sup>70</sup> Sarah Jervings. ‘Tanzania finally joins COVAX’ Devex, 17 June 2021, available at: <https://www.devex.com/news/tanzania-finally-joins-covax-100172> (22 July 2021). See also Katarina Hoijs and Fumbuka Ngwanakilala, ‘Tanzania ends covid-19 denialism by placing vaccine order’, Bloomberg, 17 June 2021, available at : <https://www.bloomberg.com/news/articles/2021-06-17/tanzania-ends-covid-19-denialism-by-ordering-vaccines-from-covax> (22 July 2021)

<sup>71</sup> Mathew Hill and Fumbuka Ngwanakilala, ‘Tanzania publishing covid-19 data could unlock IMF support’ Bloomberg, 9 June 2021, available at: <https://www.bloomberg.com/news/articles/2021-06-09/tanzania-must-publish-covid-19-data-to-unlock-imf-emergency-loan> (22 July 2021)

<sup>72</sup> Ibid

<sup>73</sup> John Harrington and David Ngira, ‘Vaccine diplomacy and the agency of African states: what can we learn from Kenya?’ *Mambo!* XVIII (5) 2021, available at: <https://mambo.hypotheses.org/3158> (22 July 2021)

<sup>74</sup> Leon Lidigu ‘India donates 100,000 Covid vaccine doses to Kenya’, Nation, 15 March 2021, available at: <https://nation.africa/kenya/news/kenya-receives-covid-vaccine-donation-from-india3319854?view=htmlamp> (22 July 2021)

<sup>75</sup> Capital News, ‘Denmark hands suspected pirates to Kenya for trial’ Capital News, 18 February 2012, available at <https://www.capitalfm.co.ke/news/2012/02/denmark-hands-suspected-pirates-to-kenya-for-trial/> (22 July 2021). See also Kiogora Mugambi, ‘The prosecution of maritime piracy off the coast of Somalia, SSRN 17 November 2014, available at <https://ssrn.com/abstract=2531597> (22 July 2021)

<sup>76</sup> White House, ‘Fact sheet: Biden-Harris administration unveils strategy for global vaccine sharing, announcing allocation plan for the first 25 million doses to be shared globally’, White House Press Statement, available at: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/03/fact-sheet-biden-harris-administration-unveils-strategy-for-global-vaccine-sharing-announcing-allocation-plan-for-the-first-25-million-doses-to-be-shared-globally/> (22 July 2021)

<sup>77</sup> State House, ‘The sixteenth presidential address on the coronavirus pandemic’, State House Press Statement, 29 June 2021, available at: <https://www.president.go.ke/2021/06/29/the-sixteenth-16-th-presidential-address-on-the-coronavirus-pandemic/> (22 July 2021)

<sup>78</sup> Reuters, ‘Biden discusses crisis in Ethiopia's Tigray region with Kenyan leader -White House’, Reuters, 26 February 2021 available at: <https://www.reuters.com/article/us-usa-kenya-biden-idUSKBN2AQ0LP> (22 July 2021)

first with an African leader after his election.<sup>79</sup> Similar pledges were made by the UK, which retains close ties with the region, as the former colonial power. Kenya hosts a permanent training camp for British troops and sites for collaborative medical research with the Wellcome Trust and Oxford University, including early trials of the AstraZeneca vaccine.<sup>80</sup> The UK's post-Brexit foreign policy in Africa is targeted and instrumental. On one hand, it cuts back on development aid and on the other pursues free trade agreements, including that with Kenya concluded in March 2021.<sup>81</sup> Notwithstanding London's verbal commitments, none of the East African states has yet received any vaccine from the UK, leading Uganda and Kenya to accuse the UK (and the West generally) of 'vaccine apartheid'.<sup>82</sup>

The earlier spread and containment of COVID-19 in China meant that it was in a position to engage in health diplomacy in Africa while Western states were still struggling to respond to the pandemic. As part of the 'Health Silk Road' strategy, President Xi Jin Ping convened an Extra-Ordinary China-Africa Summit on COVID-19 in June 2020 at which he pledged solidarity in return for reciprocal commitments on issues such as Hong Kong, Taiwan and Xinjiang.<sup>83</sup> Western self-absorption contrasted with high profile offers from Chinese philanthropists, most notably Jack Ma, who donated masks and PPEs to African states. While the US, under President Trump at that time, had significantly resiled from its close health, trade and military engagement with Africa, France and by extension the EU were sufficiently concerned about widening Chinese influence and convened their own Africa Economies Financing Summit in response.<sup>84</sup> This fear proved misplaced, however. The subsequent development of vaccines, by Sinopharm and Sinovac, did not lead to the breakthrough China had sought in African health diplomacy and landscape. Though donations were taken up in Egypt, other North African states, and in Zimbabwe, the two East African Countries- Kenya and Uganda avoided the vaccines while Zanzibar, the semi-autonomous Tanzanian Island, only commenced vaccinating health workers using Sinovac vaccine in July 2021.<sup>85</sup> Uganda

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<sup>79</sup> Andrew Wasike, 'US to send troops to Kenya to boost regional security', Anadolu Agency, 13 June 2021, available at: <https://www.aa.com.tr/en/africa/us-to-send-troops-to-kenya-to-boost-regional-security-report/2272511> <https://www.theeastafrican.co.ke/tea/news/east-africa/us-president-biden-first-official-call-to-kenya-uhuru-kenyatta-3305308> (22 July 2021)

<sup>80</sup> FCDO, 'Foreign Secretary sets out UK's unique offer to East African nations on visit to region' FCDO, 23 January 2021, available at: <https://www.gov.uk/government/news/foreign-secretary-sets-out-uks-unique-offer-to-east-african-nations-on-visit-to-region-> (22 July 2021)

<sup>81</sup> Susan Nyawira, 'Kenya-UK finally give life to trade deal', Bilaterals.org, 23 March 2021, available at: <https://www.bilaterals.org/?kenya-uk-finally-give-life-to> (22 July 2021)

<sup>82</sup> MFA, 'Press statement on the decision by UK to "redlist" Kenya' MFA, 3 April 2021, available at: <https://www.mfa.go.ke/wp-content/uploads/2021/04/Press-Statement-1.pdf> (22 July 2021). See also, Jason Burke, 'Ugandan minister blames West for Covid vaccine shortage', available at: <https://www.theguardian.com/world/2021/jul/11/ugandan-minister-blames-west-for-countrys-covid-vaccine-shortage> (22 July 2021)

<sup>83</sup> Forum for China Africa Cooperation, 'Xi Jinping chairs the extraordinary China-Africa summit on solidarity against COVID-19 and gives keynote speech', FOCAC, 22 June 2020, available at: <http://www.focac.org/eng/ttxsxy/t1790867.htm> (22 July 2021). See also, Kirk Lancaster, Michael Rubin and Mira Rapp-Hooper, 'Mapping the health silk road', Council for Foreign Relations, 10 April 2020, available at: <https://www.cfr.org/blog/mapping-chinas-health-silk-road> (22 July 2021)

<sup>84</sup> Sam Morgan, 'Macron urges Europe to send vaccines to Africa to combat Chinese and Russian influence', The Telegraph, 18 February 2021, available at: <https://www.telegraph.co.uk/news/2021/02/18/macron-urges-europe-send-vaccines-africa-combat-chinese-russian/> (22 July 2021)

<sup>85</sup> Fumbuka Ngwanakilala, 'Vaccine Holdout Tanzania Begins Inoculations With Sinovac Doses', 13 July, 2021, available at: <https://www.bloomberg.com/news/articles/2021-07-13/vaccine-holdout-tanzania-begins-inoculations-with-sinovac-doses> (22 July 2021)

permitted the importation of Sinopharm only for use by the local Chinese community.<sup>86</sup> The Ugandan authorities, like their Kenyan counterparts, were not prepared to allow the administration of the Chinese vaccines on their citizens on the basis that WHO's approval had not (yet) been obtained. This official preference for internationally sanctioned, Western-made vaccines, was consistent with popular anxieties in the region about Chinese-made counterfeit products more generally and with the discriminatory application of infection-control measures to African expatriates living in China.<sup>87</sup>

India's strategic importance during the pandemic has been based in the first instance on its role as chief vaccine producer for COVAX. By contrast, bilateral donations were relatively low in number, as we have seen, with 17 African countries receiving about 965,000 doses in total by July 2021.<sup>88</sup> For more pressing strategic reasons, Delhi preferred to target its South Asian neighbours, before the spread of the Delta variant caused the Modi government to prioritize domestic needs.<sup>89</sup> Russia's involvement was still more fitful and diminutive. Commercial delivery of Sputnik V vaccine to Nairobi in April 2021 became embroiled in political factionalism and institutional conflicts.<sup>90</sup> Initially promoted by the Deputy-President's allies (and labelled as a product for the rich), it was subsequently banned by the Ministry of Health, again on the basis that it had not been approved by the WHO.<sup>91</sup>

The dependence of Kenya, Tanzania and Uganda on multilateral institutions for COVID-19 vaccines, along with charitable and strategic donations from the western powers, recalls the period of struggle over access to antiretrovirals for people living with HIV/ AIDS, which we mentioned above. While the limits to East African diplomatic capacity have been clear, the prevailing distribution of vaccines and its underlying causes has not gone uncontested. Thus, in May 2020 Kenya hosted an Extra-Ordinary Summit of the Organisation of African, Caribbean and Pacific States (OACP) which called for global partnership and assistance in responding to the pandemic. East African states have also been active at the WTO, supporting an initiative led by Brazil and South Africa to impose a waiver of patent rights currently limiting the scope for the manufacture of vaccines. They have also endorsed the COVID-19 Technology Access Pool (C-TAP), originally proposed by Costa Rica, to allow sharing of relevant knowledge, intellectual property, and data. But it has been at the continental level that the most notable differences with HIV/AIDS controversy have been evident. As Patterson and

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<sup>86</sup> Ronald Kato, 'Uganda authorizes Chinese nationals to import COVID-19 vaccine for own use,' Africa News, 09 December 2020, available at: <https://www.africanews.com/amp/2020/12/09/uganda-authorizes-chinese-nationals-to-import-covid-19-vaccine-for-own-use/> (22 July 2021)

<sup>87</sup> Yun Sun, 'COVID-19, Africans' hardships in China, and the future of Africa-China relations', Brookings, April 17 2020, available at: <https://www.brookings.edu/blog/africa-in-focus/2020/04/17/covid-19-africans-hardships-in-china-and-the-future-of-africa-china-relations/> (22 July 2021)

<sup>88</sup> MEA, 'Vaccine supply', MEA, 29 May 2021, available at: <https://www.mea.gov.in/vaccine-supply.htm> (22 July 2021)

<sup>89</sup> Nitya Biyani, Niels Graham, 'COVID vaccines: India and China's new diplomatic currency,' The Atlantic Council, 25 March, 2021, available at: <https://www.atlanticcouncil.org/blogs/new-atlanticist/covid-vaccines-india-and-chinas-new-diplomatic-currency/> (22 July 2021). See also, Kulshrestha et al, 'An exploratory study of role of India in vaccine diplomacy for covid 19 pandemic era' *Turkish Online Journal of Qualitative Inquiry*, 12 (3) (2021), 652-665, available at SSRN: <https://ssrn.com/abstract=> (22 July 2021)

<sup>90</sup> Patrick Gathara, 'What is going on with Kenya's COVID-19 vaccine drive?', Al Jazeera, 3 April, 2021, available at: <https://www.aljazeera.com/opinions/2021/4/3/what-is-going-wrong-with-kenyas-covid-19-vaccine-drive> (22 July 2021)

<sup>91</sup> Reuters, 'Kenya stops private import of COVID-19 vaccines', Reuters, 2 April, 2021, available at: <https://www.reuters.com/article/health-coronavirus-kenya-idUSL8N2LV1DN> (22 July 2021)

Balogun have argued, the collaboration on all aspects of the pandemic has been facilitated to an unprecedented degree by the African Union (AU) and the Africa Centre for Disease Control (CDC), established through US partnership in the aftermath of the 2014 Ebola epidemic in West Africa.<sup>92</sup> As well as coordinating African positions in multilateral organizations, the AU has advised on containment measures and vaccine standards, and jointly with World Bank, established a US\$ 400 million vaccine purchase fund.<sup>93</sup> It has also sought to move states beyond their dependence on outside funders and suppliers, initiating a Pharmaceutical Manufacturing Plan for Africa (PMPA) and launching the Partnerships for African Vaccine Manufacturing (PAVM) with the African CDC.<sup>94</sup> This aims to ensure that 60% of vaccines used in Africa are produced in the continent by 2040.<sup>95</sup> Such efforts are already bearing fruits, with a new plant being established in Senegal and existing facilities re-deployed for Covid 19 vaccine production in South Africa and Egypt.<sup>96</sup> Similar plans have been mooted in Uganda and Kenya.<sup>97</sup>

#### 4 Discussion

We have argued that the East African state response to COVID-19 has taken place on two interconnected levels; internal and external. Thus, global health governance helped shape the domestic state apparatus, requiring, for example, the creation of a national COVID-19 taskforces, capable of communicating with international organizations and donors. Tanzania's failure to do this and its ensuing refusal to share data under President Magufuli constituted a strong assertion of sovereignty, rare among African states during the pandemic, albeit one with potentially severe consequences for that country's disease control efforts. International standards and the interventions of UN bodies are not the only factors influencing the course of the national response. A variety of other factors also influenced state performance, including current political and constitutional developments, and the culture and history of institutions

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<sup>92</sup> CDC, 'African Union and U.S. CDC partner to launch African CDC', CDC Press Statement, 13 April 2015, available at: <https://www.cdc.gov/media/releases/2015/p0413-african-union.html> (22 July 2021)

<sup>93</sup> Africa CDC, 'The World Bank and the African Union's Covid-19 Africa Vaccine Acquisition Task Team (AVATT) agree to work together to deploy vaccines for 400million Africans', Africa CDC, 14 June 2021, available at: <https://africacdc.org/news-item/the-world-bank-and-the-african-unions-covid-19-africa-vaccine-acquisition-task-team-avatt-agree-to-work-together-to-deploy-vaccines-for-400million-africans/> (22 July 2021). See also, Rene Loewenson, Moeketsi Modisenyane and Mark Pearcey, 'African Perspectives on Global Health Diplomacy', *Journal of Health Diplomacy* (2014), 7 available at

<sup>94</sup> Aisling Irwin, 'How COVID spurred Africa to plot a vaccines revolution,' *Nature*, 21 April, 2021, available at: <https://www.nature.com/articles/d41586-021-01048-1> (22 July 2021)

<sup>95</sup> Africa CDC and AU, 'African Union and Africa CDC launches partnerships for African Vaccine Manufacturing (PAVM), framework to achieve it and signs 2 MoUs, Africa CDC, 12-13 April 2021, available at: <https://africacdc.org/wp-content/uploads/2021/04/post-summit-comunique-African-Union-and-Africa-CDC-launches-Partnerships-for-African-Vaccine-Manufacturing.pdf> (22 July 2022)

<sup>96</sup> EU Commission, 'Republic of Senegal and Team Europe agree to build a manufacturing plant to produce vaccines against COVID-19 and other endemic diseases,' EU Commission Press Release, 9 July 2021, available at: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_3562](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_3562) (22 July 2021). **See also**

Bartholomew Akanmori, 'Why Africa's push to make vaccines should look further than COVID-19' *The Conversation* 6 July 2021, available at: <https://theconversation.com/why-africas-push-to-make-vaccines-should-look-further-than-covid-19-162110> (22 July 2021). Also see, Reuters, 'South African firm to help make Pfizer/BioNTech COVID vaccine', Reuters, 24 June 2021, available at: <https://www.reuters.com/business/healthcare-pharmaceuticals/pfizerbiontech-strike-south-africa-covid-19-manufacturing-deal-with-biovac-2021-07-21/> (22 July 2021)

<sup>97</sup> Nobert Atukunda, 'Museveni commissions vaccine-making facility' *Daily Monitor*, 7 July 2021, available at: <https://www.monitor.co.ug/uganda/news/national/museveni-commissions-vaccine-making-facility--3464116> (22 July 2021). See also State House, 'The sixteenth [16 th] presidential address' par 25- 28

such as the police and the military, sometimes in unpredictable combination with international standards. Thus, while Tanzania refused global governance, Kenya and Uganda combined international norms (ie. WHO advice to act early to block the spread of infection), with longer-established reflexes (ie. executive-centred decision-making and unconstrained force).<sup>98</sup> Science and coercion ran together here, however uneasily. We might characterize the state in this hybrid mode as a ‘Health Leviathan with global characteristics’.<sup>99</sup>

The pandemic was also marked by an opportunistic use of the crisis to head off contestation, in the form of election campaigning, for example.<sup>100</sup> The emergency situation called forth what Atieno Odhiambo has called an ‘ideology of order’ which insists ‘at all times that sovereignty, national unity and national security are sacred and inviolate.’<sup>101</sup> These steps did not go uncontested in the courts and civil society. Kenya’s BBI litigation was complemented by a successful challenge to the use of public order, rather than public health legislation.<sup>102</sup> Though praised for its early infection-control successes by the Global Fund,<sup>103</sup> Uganda’s election-time repression attracted criticism from Amnesty International, Chapter 4 Uganda, Human Rights Watch and others.<sup>104</sup> The East African Law Society brought Museveni’s government before the East African Court of Justice over the shutting-down of the internet in the aftermath of the 2021 elections.<sup>105</sup> These examples provide important testimony to the resilience of the democratic constitutionalism in the region, and to the capacity of law to constrain and direct public health responses. But it is clear that the latter remains in tension with authoritarianism that is the chief legacy of the colonial period. What we might call the ‘political leviathan’ - a strong executive, unified, and significantly freed from the constraints of law and the constitution – hasn’t gone away.

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<sup>98</sup> Sylvie Namwase, ‘The roots of pre-election carnage by Uganda security forces’ *The Conversation*, 10 January 2021, available at: <https://theconversation.com/the-roots-of-pre-election-carnage-by-uganda-security-forces-152774> (22 July 2021). See also Ssemoga Geoffrey, ‘Why Uganda’s ban on open-air campaigns could tilt the 2021 poll in Museveni’s favour,’ *The Conversation*, 6 September 2020, available at: <https://theconversation.com/why-ugandas-ban-on-open-air-campaigns-could-tilt-the-2021-poll-in-musevenis-favour-144814> (22 July 2021). Also see The Star, ‘Matiang’i vows to ‘turn up heat’ in enforcing curfew in Nairobi from tonight’ *The Star*, 17 April 2020, available at: <https://www.the-star.co.ke/news/2020-04-17-matiangi-vows-to-turn-up-heat-in-enforcing-curfew-in-nairobi-from-tonight/> (22 July 2021)

<sup>99</sup> See further, John Harrington, ‘Indicators, Security, and Sovereignty during COVID-19 in the Global South’ *International Journal of Law in Context* 17 (2021), 249-260

<sup>100</sup> Nkatha Kabira and Robert Kibugi ‘Saving the soul of an African constitution: Learning from Kenya’s experience with constitutionalism during COVID-19’, *African Human Rights Law Journal* 20 (2020), 436-461:438

<sup>101</sup> Atieno Odhiambo, ‘Democracy and the ideology of order in Kenya’, in Michael Schatzberg (ed), *The political economy of Kenya* (New York, 1987). See also Awino Okech, David Mwambari and Funmi Olonisakin, ‘COVID-19 responses and human rights in selected African countries’, *Australian Journal of Human Rights*, 26 (3) (2000) 549-555: 552

<sup>102</sup> *Law Society of Kenya v Hillary Mutyambai Inspector General National Police Service & 4 Others; Kenya National Commission on Human Rights & 3 Others (Interested Parties) 2020 eKLR.*

<sup>103</sup> Global Fund, ‘Uganda’s remarkable response to Covid-19’, Global Fund, 23 March 2021, available at: <https://www.theglobalfund.org/en/blog/2021-03-23-ugandas-remarkable-response-to-covid-19/> (22 July 2021)

<sup>104</sup> Amnesty International, ‘Uganda: Stop killings and human rights violations ahead of election day’, Amnesty International, 14 December, 2020, available at: <https://www.amnesty.org/en/latest/news/2020/12/uganda-stop-killings-and-human-rights-violations-ahead-of-election-day/> (22 July 2021)

<sup>105</sup> The Observer, ‘East African Law Society sues Uganda govt over internet shutdown’, 13 March 2021, available at: <https://www.observer.ug/news/headlines/68817-east-african-law-society-sues-uganda-govt-over-internet-shutdown> (22 July 2021)



The orientation to international institutions and their standards is still clearer in the context of vaccine procurement, albeit with specific country-by-country variations. These have depended on the temper of incumbent political leadership. But they can also be traced to historical patterns and influences: Uganda's record of successful collaboration with the Global Fund, the US CDC and the US Emergency Fund for AIDS Relief (PEPFAR); Tanzania's heritage of self-reliance and anti-imperialism; and Kenya's position as a commercial and strategic hub for the region, and 'quiet' ally of the Western powers.<sup>106</sup> Domestic politics and policies, themselves influenced by previous international engagements, returned to shape foreign policy in health. It is perhaps unsurprising then that Kenya and Uganda exercised a relatively low level of positive diplomatic agency in cultivating partners (by contrast to Tanzania's largely negative stance). In particular, the multipolar world order and the arrival of China, in addition to Russia and India, as global health actors, seem not to have been capitalized on to compensate for the vaccine nationalism of the West.

In explaining this, it is important to keep in mind the specifics of global health, which up to now has been quite distinct from more high-profile concerns of East African states like international criminal law and accountability for human rights violations. In such instances, heads of state have been willing to challenge western orthodoxy and to look for allies elsewhere, like China. This willingness should not be overstated, however. Deep ties of trade, language, professional and scientific culture, military training, and donor aid connect African political and administrative leaders to Europeans and their North American counterparts.<sup>107</sup> Official declarations of neutrality in global affairs are undercut by substantive alignment with the West in many areas, particularly those which have had a lower profile, such as health and social welfare.<sup>108</sup> This is reinforced by Western domination, until recently, of international institutions responsible for standard-setting and global policy, such as the WHO and UNICEF.<sup>109</sup> The pandemic has also seen the emergence of a coherent and integrated African response unprecedented in the history of public health on the continent. This has been realized through the refurbished African Union and the newly-created African CDC, as well as the growing network of African researchers and institutes with experience in tackling health crises and epidemic outbreaks. To date, Kenya, Uganda and Tanzania have been tentative in their engagement with this new continental health governance system. Nonetheless, it gives hope of a move away from the governed state, dependent agency, and massive asymmetries in power and resources for health as between the global north and south.

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<sup>106</sup> Boaz Mbaya, *Kenya's Foreign Policy and Diplomacy: Evolution, Challenges and Opportunities* (Nairobi 2019)

<sup>107</sup> See for example, Jonathan Crane, *Scrambling for Africa: AIDS, expertise, and the rise of American global health science* (Ithaca 2013)

<sup>108</sup> Sophie Harman and William Brown, 'In from the margins? The changing place of Africa in International Relations' *International Affairs* 9 (1) (2013) 69-87

<sup>109</sup> Nitsan Chorev, *The World Health Organization between North and South*, (Ithaca 2012)