

# **CARROTS, VACCINES AND STICKS: CRITICAL REFLECTION OF COMPULSORY VACCINATION FROM A HUMAN RIGHTS PERSPECTIVE**

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## **ABSTRACT**

*The end of 2019 ushered in the COVID-19 virus which soon spread to many parts of the world in 2020. Breakthrough vaccine remedies for COVID were subsequently discovered and these vaccines have been endorsed by the World Health Organization (WHO) and several other health organizations as safe and necessary for ending the COVID-19 Pandemic. States have been encouraged to ensure equitable and fair access to vaccines to reduce the chances of contracting the virus and to prevent people from getting seriously ill or dying from COVID-19 complications. To control the spread of the virus and contain its devastating effect, governments, companies, businesses, and private organizations have issued compulsory orders for COVID vaccinations. In some cases, it is considered a mandatory condition of continued employment, education, or access to services.*

*While the vaccine is seen to provide the necessary hope for many, it has also raised concerns and opposition on personal, ideological, safety, religious and legal grounds. From a human rights perspective, it is contended that mandatory vaccination violates the freedom to make health-related choices of choice, rights to liberty, privacy, and freedom from discrimination, in addition to touching on the principle of informed consent to medical procedures. On the other hand, it is argued that human rights are not absolute at all times and these rights can be*

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*limited in the interests of public health, order, and safety. Moreover, human rights include the right to be protected from harm. Businesses and organizations also have the right to determine their business activities and shape their work environments. This paper will examine these conflicting arguments and also make recommendations for vaccine equity. This interrogation is necessary in light of other existing and emerging life-threatening public health diseases such as Ebola, Monkeypox, Cowpox, etc.*

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## INTRODUCTION

The end of 2019 saw the beginning of a global pandemic due to the SARS-CoV-2 pathogen and the resulting Coronavirus disease (COVID-19) which is commonly spread from an infected person's mouth or nose in small liquid particles.<sup>1</sup> The disease, which first manifested in Wuhan China, soon spread to many parts of the world in 2020.<sup>2</sup> Scientists and researchers swung into action to find a preventive and curative remedy for the coronavirus disease that was rapidly killing people and crippling social and economic activities.<sup>3</sup> Effects of the disease ranged from the common cold to severe respiratory or cardiovascular complications.<sup>4</sup> In worse cases, it can lead to death, depending on the immune system and severity of the illness.<sup>5</sup> Breakthrough vaccine remedies for COVID-19 were subsequently announced by AstraZeneca/Oxford, Johnson and Johnson, Moderna, Pfizer/BioNTech, Sinopharm, Sinovac etc.<sup>6</sup> These vaccines have been endorsed by the World Health Organization (WHO) and several other health organizations as safe and necessary for ending the COVID-19 Pandemic.<sup>7</sup> Several research initiatives, clinical trials, and studies have been undertaken to assess the safety and effectiveness of available vaccines.<sup>8</sup> States have been encouraged to ensure equitable and fair access to vaccines. The goal is to reduce the chances of contracting the virus and prevent people from getting seriously ill or dying from

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<sup>1</sup> Mahesh Jayaweera et al., *Transmission of COVID-19 Virus by Droplets and Aerosols: A Critical Review on the Unresolved Dichotomy*, 188 ENVIRON. RES. 1 (2020).

<sup>2</sup> Hengbo Zhu, Li Wei, & Ping Niu, *The Novel Coronavirus Outbreak in Wuhan, China*, 5, 6, GLOBAL HEALTH RESEARCH AND POL'Y. (2020).

<sup>3</sup> World Trade Organization (WHO), *Timeline: WHO's COVID-19 Response*, WHO <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/interactive-timeline>

<sup>4</sup> Raghuvir Keni et al., *COVID-19: Emergence, Spread, Possible Treatments, and Global Burden*, FRONT. PUBLIC HEALTH (2020).

<sup>5</sup> *Id.*

<sup>6</sup> *COVID-19 Advice for the Public: Getting vaccinated*, WHO (13 April 2022) <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/covid-19-vaccines/advice>.

<sup>7</sup> *Id.*; *Coronavirus Disease (COVID-19): Vaccines Safety*, WORLD HEALTH ORGANIZATION (24 January 2022) [https://www.who.int/news-room/questions-and-answers/item/coronavirus-disease-\(covid-19\)-vaccines-safety](https://www.who.int/news-room/questions-and-answers/item/coronavirus-disease-(covid-19)-vaccines-safety).

<sup>8</sup> Ali Pormohammad et al., *Efficacy and Safety of COVID-19 Vaccines: A Systematic Review and Meta-Analysis of Randomized Clinical Trials*, 9 VACCINES 5. 467 (2021); Dominique Deplanquea & Odile Launay, *Efficacy of COVID-19 Vaccines: From Clinical Trials to real life*, 76 THERAPIE 277, 277–83 (2021).

COVID-19.<sup>9</sup> To control the spread of the virus and contain its devastating effect, various state governments, companies, businesses, and private organizations have taken further steps by issuing compulsory orders for COVID-19 vaccinations.<sup>10</sup> In some cases, it is considered a mandatory condition of continued employment or access to services.<sup>11</sup>

While the vaccine is seen to provide the necessary hope for many, it has also raised concerns, controversies and opposition on personal, ideological, safety, religious and legal grounds.<sup>12</sup> From a human rights perspective, it is contended that mandatory vaccination violates the freedom to make health-related choices, rights to liberty, privacy, freedom from discrimination, as well as touching on the principle of informed consent to medical procedures.<sup>13</sup> On the other hand, it is said that human rights are not absolute at all times and these rights can be limited in the interests of public health, safety, order, and the rights of others by the state.<sup>14</sup> Moreover, human rights include the right to be protected from harm.<sup>15</sup> It is also argued that businesses and organizations have the right to determine their business activities, and a responsibility to provide a healthy work environment.<sup>16</sup>

This paper examines these conflicting arguments from a perspective on human rights and civil liberties. This paper considers the debate on whether human rights issues should be integrated into the state's health measures and response to COVID-19. It also makes the case for equitable allocation of vaccination within the context of protecting the rights of the people. The first part engages the various arguments,

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<sup>9</sup> Olivier J Wouters, *Challenges in Ensuring Global Access to COVID-19 Vaccines: Production, Affordability, Allocation, And Deployment*, 397 LANCET 10278 (2021).

<sup>10</sup> *Id.*; Lawrence O. Gostin, Daniel A. Salmon & Heidi J. Larson, *Mandating COVID-19 Vaccines*, 325, 6, JAMA. 532-533. (2020).

<sup>11</sup> The Cable, *FG Makes COVID-19 Vaccination Compulsory for Civil Servants*, THE CABLE, (Oct. 13, 2021), <https://www.thecable.ng/just-in-fg-makes-covid-19-vaccination-compulsory-for-civil-servants>; *Factbox: Countries Making COVID-19 Vaccines Mandatory*, REUTERS (Dec. 8, 2021), <https://www.reuters.com/business/healthcare-pharmaceuticals/countries-making-covid-19-vaccines-mandatory-2021-08-16/>.

<sup>12</sup> D. Gareth Jones, *Religious Concerns About COVID-19 Vaccines: From Abortion to Religious Freedom*, 61 J. OF RELIGION AND HEALTH 2233, 2233–52 (2022).

<sup>13</sup> Jeff King, Octávio Luiz Motta Ferraz, & Andrew Jones, *Mandatory COVID-19 Vaccination and Human Rights*, 399 LANCET 10321 (2022).

<sup>14</sup> *Id.*

<sup>15</sup> Zahara Nampewo, Jennifer Heaven Mike, & Jonathan Wolff, *Respecting, Protecting and Fulfilling the Human Right to Health*, 21 INT'L J. FOR EQUITY IN HEALTH 36 (2022).

<sup>16</sup> Debbie L. Stoewen, *Wellness at Work: Building Healthy Workplaces*, 57 CAN. VETERINARY J. 1188, 1188–90 (2016).

the second part makes recommendations for vaccine equity, and the final part concludes.

## I. EMERGENCE AND DETECTION OF CORONAVIRUS

Coronavirus or COVID-19 is a novel, “highly transmittable and pathogenic viral infection caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).”<sup>17</sup> Although the origin of all coronaviruses (family *Coronaviridae*, subfamily *Coronavirinae*) is estimated to date back to thousands of years BC,<sup>18</sup> the scientific discovery of human coronaviruses emerged in the 1960s.<sup>19</sup> In 1965, Tyrrell and a group of virologists conducted several scientific studies and discovered some viruses of the family coronaviridae.<sup>20</sup> The group of viruses was named coronavirus (corona denoting the crown-like appearance of the surface projections).<sup>21</sup> These viruses are known to be responsible for a substantial proportion of upper respiratory tract infections in people.<sup>22</sup> Research of coronaviruses reveals a cross specie transmission between humans and animals, particularly, bat and avian species, which suggests that these animals are the natural reservoirs of the viruses.<sup>23</sup> Over the years, coronavirology and its different variants have significantly advanced and led to the loss of countless lives.<sup>24</sup> In 2003, the severe acute respiratory syndrome, SARS coronavirus (SARS-CoV), which originated in China, rapidly spread to about 29 countries/regions in five

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<sup>17</sup> Mohammed Adnan Sheeran, et al., *COVID-19 infection: Emergence, Transmission, and Characteristics of Human Coronaviruses*, J. OF ADVANCED RSCH. 91, 91-98. (2020).

<sup>18</sup> Joel O. Wertheim et al., *A case for the ancient origin of coronaviruses*, 87 J. OF VIROLOGY 7039, 7039-45 (2013).

<sup>19</sup> June D. Almeida & D. A. Tyrrell, *The Morphology of Three Previously Uncharacterized Human Respiratory Viruses That Grow In Organ Culture*, 1 J. OF GEN. VIROLOGY 175, 175-78 (1967).

<sup>20</sup> Jeffrey S. Kahn & Kenneth McIntosh, *History and Recent Advances in Coronavirus Discovery*, 24 PEDIATRIC INFECTIOUS DISEASE J. S223, S223-27 (2005); D. A. Tyrrell & M. L. Bynoe, *Cultivation of Viruses from A High Proportion of Patients with Colds*, 287 LANCET 76, 76-77 (1966); D.A. Tyrrell et al., *Coronaviridae*, 5 INTERVIROLOGY 76, 76-82(1975).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Wertheim, et al., *supra* note 18; Daniel K. W. Chu et al., *Avian coronavirus in wild aquatic birds*, 85 J. OF VIROLOGY 12815, 12815-20 (2011); D. Vijaykrishna, et al., *Evolutionary insights into the ecology of coronaviruses*, 85 J. OF VIROLOGY 4012, 4012-20 (2007).

<sup>24</sup> See Marco Cascella et al., *Features, Evaluation, and Treatment of Coronavirus (COVID-19)*, STATPEARLS (2022), <https://www.ncbi.nlm.nih.gov/books/NBK554776/>.

continents.<sup>25</sup> At the end of the epidemic, more than 10% of the global estimated 8000 individuals who contracted the virus died of the disease.<sup>26</sup> Since 2003, at least 5 variants of novel human coronaviruses have been identified, with devastating mortality and morbidity rates across the globe.<sup>27</sup> In late 2012, the WHO issued a global alert when a new type of coronavirus (the novel coronavirus (nCoV) or Middle East respiratory syndrome coronavirus (MERS-CoV)) was discovered and traced to the Middle East.<sup>28</sup> A situation update in September 2019, indicates that a total of 2468 laboratory-confirmed cases of the virus with 851 reported deaths since April 2012.<sup>29</sup>

The exact emerging source of COVID-19 remains unknown, however, it was first detected in Wuhan, China.<sup>30</sup> The virus was first isolated from three people with acute cases of upper respiratory illness in December 2019.<sup>31</sup> The initially reported cases were traced to the Huanan South China Seafood Market where domestic and wild animals and other banned species like cobras, wild boars, birds, raccoon dogs, cats and bats were sold in the open market.<sup>32</sup> The market is also known for its wet, unsanitary and crowded conditions which likely provided a conducive environment where the viruses from animals could easily swap genes and transfer from animal to human hosts.<sup>33</sup>

Since many of the early infected patients either work in or visited the market, it has been suggested that the virus has an animal origin.<sup>34</sup> The bat origin theory is traced to a 96% genome sequence identity demonstrated between SARS-CoV-2 and

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<sup>25</sup> W. K. Lam, N. S. Zhong, & W. C. Tan, *Overview on SARS in Asia and The World*, 8 RESPIROLOGY S2, S2-S5 (2003).

<sup>26</sup> *Id.*; INSTITUTE OF MEDICINE: U.S. FORUM ON MICROBIAL THREATS, LEARNING FROM SARS: PREPARING FOR THE NEXT DISEASE OUTBREAK 1 (2004).

<sup>27</sup> Khan & McIntosh, *supra* note 20, at 223-27.

<sup>28</sup> *Novel Coronavirus Infection: Update*, WHO (May 22, 2013), <https://web.archive.org/web/20130607163823/>.

<sup>29</sup> *MERS Situation Update*, WHO (Sept. 2019), <https://applications.emro.who.int/docs/EMROPub-MERS-SEP-2019-EN.pdf?ua=1&ua=1>.

<sup>30</sup> Zhu, Wei, & Niu, *supra* note 2, at 6.

<sup>31</sup> Harapan Harapan, et al., *Coronavirus disease 2019 (COVID-19): A Literature Review*, 13 J. INFECTIOUS PUB. Health 667, 667-73 (2020).

<sup>32</sup> *Id.*; Hongzhou Lu, Charles Stratton, & Yi-Wei Tang, *Outbreak of Pneumonia Of Unknown Etiology in Wuhan China: the Mystery And The Miracle*, 92 J. OF MED. VIROLOGY 401, 401-02 (2020).

<sup>33</sup> Patrick C. Y. Woo, Susanna K. P. Lau, & Kwok-yung Yuen, *Infectious Diseases Emerging From Chinese Wet-Markets: Zoonotic Origins Of Severe Respiratory Viral Infections*, 19 CURRENT OPINION IN INFECTIOUS DISEASE 401, 401-07 (2006).

<sup>34</sup> *Id.*

another coronavirus named Bat-CoV-RaTG13.<sup>35</sup> Bat-CoV-RaTG13 was isolated from bat species which colonized a province nearly 2000 km away from Wuhan.<sup>36</sup> Furthermore, genomic analysis demonstrates that COVID-19 is phylogenetically related to severe acute respiratory syndrome-like (SARS-like) bat viruses.<sup>37</sup> Bats are, therefore, the most likely primary reservoir, although, pangolins are also suspected to be the natural host of SARS-CoV-2 and so it is widely speculated that the virus is lined to pangolins.<sup>38</sup> The novel virus was initially called 2019 novel coronavirus (2019-nCov) but was later renamed SARS-CoV-2 by the International Committee on Taxonomy of Viruses (ICTV).<sup>39</sup> The disease is more commonly known as COVID-19.<sup>40</sup>

#### A. *Global Spread of COVID-19 and Response*

The development and high infection rate of coronavirus marshalled a pandemic that cause a global shift in social relations and triggered an economic upheaval that many countries are still struggling to stabilize.<sup>41</sup> Unsurprisingly, the human-to-human transmission of the virus spread rapidly within China, and soon, it engulfed other parts of the world as people travelled and came in contact with others.<sup>42</sup> The severity of the disease accelerated the spread and surge in reported cases prompted the Director-General of the WHO to declare COVID-19 as a global public health

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<sup>35</sup> *Id.*

<sup>36</sup> Wagner Gouvea dos Santos, *Natural History of COVID-19 and Current Knowledge On Treatment Therapeutic Options*, 129 BIOMEDICINE AND PHARMACOTHERAPY 1, 1-18 (2020).

<sup>37</sup> *Id.*; Ping Liu, et al., *Are Pangolins The Intermediate Host Of The 2019 Novel Coronavirus (SARS-CoV-2)?*, 16 PLOS PATHOGENS 1, 1-13 (2020); Tao Zhang, Qunfu Wu, & Zhigang Zhang, *Probable Pangolin Origin of SARS-CoV-2 Associated with the COVID-19 Outbreak*, 30 Current Biology 1346, 1346-51 (2020).

<sup>38</sup> Liu, et al., *supra* note 37, at 1-13; Zhang, Wu, & Zhang, *supra* note 37, at 1346-51.

<sup>39</sup> Muhammad Adnan Shereen, et al., *COVID-19 infection: Emergence, Transmission, and Characteristics of Human Coronaviruses*, 24 J. OF ADVANCED RSCH. 91-98 (2020).

<sup>40</sup> *Naming The Coronavirus Disease (COVID-19) And The Virus That Causes It*, WHO, [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-\(covid-2019\)-and-the-virus-that-causes-it](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it) (last visited Dec. 29, 2022); Anton Pak, et al., *Economic Consequences of the COVID-19 Outbreak: the Need for Epidemic Preparedness*, 8 FRONTIERS IN PUB. HEALTH 1, 1-4 (2020).

<sup>41</sup> *OECD Policy Responses to Coronavirus (COVID-19): The Territorial Impact of COVID-19: Managing the Crisis Across Levels of Government*, OECD (10 November 2020), <https://www.oecd.org/coronavirus/policy-responses/the-territorial-impact-of-covid-19-managing-the-crisis-across-levels-of-government-d3e314e1/>.

<sup>42</sup> Zhu, Wei, & Niu, *supra* note 2, at 6.



emergency of international concern under the International Health Regulations (2005) on the 30<sup>th</sup> of January 2020.<sup>43</sup> Immediately following this declaration, all countries were advised by the WHO to “be prepared for containment, including active surveillance, early detection, isolation and case management, contact tracing and prevention of onward spread of 2019-nCoV infection, and to share full data with WHO.”<sup>44</sup> On the 11<sup>th</sup> of March 2020, the WHO finally characterized COVID-19 a global health pandemic,<sup>45</sup> following criticism that the organization was political and weak in its response and acted favorably towards China, the originating country.<sup>46</sup> Viral transmission among humans and the declaration of the disease as a “pandemic” was a strong signal of the rapid global spread and the need for a concerted effort of health agencies to control and manage the spread of the virus.

As many nations grapple to control the resulting public healthcare burden, they are increasingly faced with new challenges as the virus continuously mutates into variants that are more contagious and destructive than previous strains.<sup>47</sup> Delta, a predominant variant of the coronavirus was discovered in January 2021.<sup>48</sup> The delta variant is a contagious and severe infectious virus that is transmitted much easier than the first COVID-19 virus.<sup>49</sup> Similarly, on November 24, 2021, a new variant of SARS-CoV-2, B.1.1.529 (called Omicron) was reported to the WHO in

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<sup>43</sup> *Statement on the second meeting of the International Health Regulations (2005) Emergency Committee Regarding The Outbreak Of Novel Coronavirus (2019-nCoV)*, WHO (Apr. 10, 2020), [https://www.who.int/news/item/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-\(2019-ncov\)](https://www.who.int/news/item/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov)).

<sup>44</sup> *Id.*; *Coronavirus spread now a global emergency declares World Health Organization*, UN NEWS (Jan. 30, 2020), <https://news.un.org/en/story/2020/01/1056372>.

<sup>45</sup> *General's Opening Remarks at The Media Briefing on COVID-19*, WHO (Mar. 11, 2020), <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-COVID-19---11-march-2020>.

<sup>46</sup> *The coronavirus Outbreak Sure Looks Like a Pandemic, Except to the World Health Organization*, L.A. TIMES (Mar. 9, 2020), <https://www.latimes.com/science/story/2020-03-09/world-health-organization-resists-calling-coronavirus-outbreak-a-pandemic>.

<sup>47</sup> Salsabil Islam, Towhidul Islam, & Md. Rabiul Islam, *New Coronavirus Variants are Creating More Challenges to Global Healthcare System: A Brief Report on the Current Knowledge*, 15 CLINICAL PATHOLOGY 1, 1-7 (2022).

<sup>48</sup> Abdul Aleem, Abdul Bari Akbar Samad, & Amy K. Slenker, *Emerging Variants of SARS-CoV-2 And Novel Therapeutics Against Coronavirus (COVID-19)*, STATPEARLS (2022).

<sup>49</sup> *Id.*; *Delta Variant: What We Know About the Science*, CTR. FOR DISEASE CONTROL & PREVENTION (Aug. 26, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html>.

specimens obtained from Botswana and South Africa.<sup>50</sup> Preliminary evidence indicates that these variants have been shown to be deadlier, and more severe, allowing the easy spread of the virus or resistance to treatment and vaccines.<sup>51</sup> According to the WHO, people who have previously been infected with COVID-19 are more likely to become reinfected more easily with Omicron.<sup>52</sup>

*B. Features of COVID-19: Signs, Symptoms and Transmission*

COVID-19 spreads from person to person through close contact and it affects people in different ways.<sup>53</sup> The virus is spread through close contact with an infected person within six feet, airborne transmission, or respiratory droplets that contain the virus.<sup>54</sup> A person can contract the disease through infected droplets that enter the mouth or nose or land on surfaces or objects and a person touches the object or surface.<sup>55</sup> Other possible transmissions are through fecal-oral and aerosol contact.<sup>56</sup> Most people will develop mild to moderate symptoms and recover without the need for serious treatments.<sup>57</sup> Some will, however, exhibit severe illnesses requiring special medical treatment.<sup>58</sup> Although any age can contract the virus and become severely ill or die, older persons or those with underlying health conditions like cardiovascular disease, diabetes, chronic respiratory disease, cancer, or compromised immune systems are more susceptible to serious illness and death.<sup>59</sup>

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<sup>50</sup> *Id.*

<sup>51</sup> *Understanding Variants*, CTR. FOR DISEASE CONTROL & PREVENTION (Aug. 6, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/variants/understanding-variants.html>.

<sup>52</sup> *Update on Omicron*, WORLD HEALTH ORGANIZATION (Nov. 28, 2021), <https://www.who.int/news/item/28-11-2021-update-on-omicron>.

<sup>53</sup> Cascella, et al., *supra* note 24.; Saeed Behzadinasab, et al., *SARS-Cov-2 virus transfers to skin through contact with contaminated solids*, 11 SCI. REPS. 1, 1-7 (2021), <https://www.nature.com/articles/s41598-021-00843-0>.

<sup>54</sup> dos Santos, *supra* note 36.

<sup>55</sup> *Id.*

<sup>56</sup> Jordan Hindson, *COVID-19: faecal-oral transmission?*, 17 GASTROENTEROLOGY & HEPATOLOGY 259, 259 (2020), <https://www.nature.com/articles/s41575-020-0295-7>; Yi Xu, et al., *Characteristics of pediatric SARS-CoV-2 infection and potential evidence for persistent fecal viral shedding*, 26 Nature Med. 502, 502-05 (2020), <https://www.nature.com/articles/s41591-020-0817-4>.

<sup>57</sup> Hindson, *supra* note 56, at 259; Xu, et al., *supra* note 56, at 502-05.

<sup>58</sup> Hindson, *supra* note 56, at 259; Xu, et al., *supra* note 56, at 502-05.

<sup>59</sup> Cascella, et al., *supra* note 24.

## II. ADVENT OF CORONAVIRUS IN NIGERIA

Following WHO's declaration of COVID-19 as an outbreak of public concern on January 30, 2020, the Nigerian authorities constituted the Coronavirus Preparedness Group on January 31, 2020.<sup>60</sup> Nigeria was speculated to be one of the thirteen highest-risk African countries with respect to the spread of COVID-19 by the WHO.<sup>61</sup> Nigeria was also identified among the vulnerable African nations, due to the high population but weak and deplorable state of the public healthcare system.<sup>62</sup> Thus, the proactive effort of the public health authorities to promptly address the situation was a significant development.

The Nigerian authorities took proactive preparatory and safety steps to control the spread of the virus into the country and mitigate any eventual impact of the disease, including strict precautionary measures at the international airports and land borders.<sup>63</sup> However, COVID-19 inevitably stepped into Nigeria.<sup>64</sup> The first reported case was from an Italian expatriate who returned back to the country after a trip to Milan, Italy on the 25th of February 2020.<sup>65</sup> This first confirmed case of the virus was announced on February 27, 2020, in Lagos State.<sup>66</sup> He was confirmed by the Virology Laboratory of the Lagos University Teaching Hospital (which is a part of the

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<sup>60</sup> Jimoh Amzat, et al., *Coronavirus outbreak in Nigeria: Burden and socio-medical response during the first 100 Days*, 98 INT'L J. OF INFECTIOUS DISEASES 218, 218-24 (2020), [https://www.ijidonline.com/article/S1201-9712\(20\)30502-6/fulltext](https://www.ijidonline.com/article/S1201-9712(20)30502-6/fulltext).

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*; Olivier Marbot, *Coronavirus Africa map: Which countries are most at risk?*, AFRICA REP. (Feb. 27, 2020), <https://www.theafricareport.com/23948/coronavirus-africa-which-countries-are-most-at-risk/>.

<sup>63</sup> Amzat et al., *supra* note 60; Chioma Dan-Nwafor, et al., *Nigeria's public health response to the COVID-19 pandemic: January to May 2020*, 10 J. OF GLOBAL HEALTH 1, 1-9 (2020), <https://jogh.org/documents/issue202002/jogh-10-020399.pdf>.

<sup>64</sup> Amzat et al., *supra* note 60; Dan-Nwafor, et al., *supra* note 63.

<sup>65</sup> Amzat et al., *supra* note 60; Dan-Nwafor, et al., *supra* note 63.

<sup>66</sup> Amzat et al., *supra* note 60; Dan-Nwafor, et al., *supra* note 63; *First case of coronavirus disease confirmed in Nigeria*, UNITED NATIONS OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS (Feb. 28, 2020), <https://reliefweb.int/report/nigeria/first-case-coronavirus-disease-confirmed->

[nigeria?gclid=EAIaIQobChMIyoy6zNXg9AIVTO7tCh3L6AM6EAAYASAAEgKI2fD\\_BwE. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7307993/](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7307993/); Inga Wessels, Benjamin Rolles, & Lothar Rink, *The Potential of Zinc Supplementation on COVID-19 Pathogenesis*, 11 FRONTIERS IN IMMUNOLOGY 1, 1-11 (2020), <https://www.frontiersin.org/articles/10.3389/fimmu.2020.01712/full>.

Laboratory Network of the Nigeria Centre for Disease Control).<sup>67</sup> A second case was confirmed on the ninth March 2020, a Nigerian citizen who came in contact with the Italian citizen.<sup>68</sup> As of the twenty-ninth of November 2022, the official website of the government recorded the total infection data at 266,283 and 3,155 official recorded deaths.<sup>69</sup>

As expected, the pandemic presented a challenge to the already overwhelmed and overburdened health sector in Nigeria. Commendably, the Government of Nigeria through the Federal Ministry of Health took proactive measures to strengthen health protection and ensure the disease was controlled and managed quickly.<sup>70</sup> Nonetheless, the existing and impending challenges to healthcare limited such efforts.<sup>71</sup> For example, existing health facilities, isolation facilities, intensive care units (ICU), and equipment (including ventilators and PPE) were grossly insufficient to handle the COVID-19 medical crisis.<sup>72</sup> Beyond medical facilities, many states struggled or were unwilling to set up isolation and treatment facilities.<sup>73</sup> Strikes by medical personnel over unpaid medical allowances, high exposure to infection, and lack of adequate and suitable medical equipment further mired the intervention measures.<sup>74</sup>

### III. COVID-19 HEALTH CONTROL MEASURES

Following the outbreak of the pandemic, the world shut down many activities

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<sup>67</sup> Amzat et al., *supra* note 60; Dan-Nwafor, et al., *supra* note 63; UNITED NATIONS OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS, *supra* note 66; Wessels, Rolles, & Rink, *supra* note 66.

<sup>68</sup> Nsikak Nseyen, *Coronavirus - Nigerian government confirms second case*, DAILY POST (Mar. 9, 2020), <https://dailypost.ng/2020/03/09/breaking-coronavirus-nigerian-government-confirms-second-case/>.

<sup>69</sup> *COVID-19 Nigeria*, NIGERIA CTR. FOR DISEASE CONTROL (Dec. 21, 2021), <https://covid19.ncdc.gov.ng/>.

<sup>70</sup> Amzat et al., *supra* note 60.

<sup>71</sup> *Id.*

<sup>72</sup> Nicholas Ibekwe, *Nigeria Govt Deletes Tweet Begging Tesla Founder for Ventilators*, PREMIUM TIMES (Apr. 2, 2020), <https://www.premiumtimesng.com/news/top-news/385556-nigeria-govt-deletes-tweet-begging-tesla-founder-for-ventilators.html>; Amzat et al., *supra* note 60.

<sup>73</sup> Ibekwe, *supra* note 72; Amzat et al., *supra* note 60.

<sup>74</sup> Ibekwe, *supra* note 72; Amzat et al., *supra* note 60.

to contain the spread of the SARS-CoV-2 pathogen and its catastrophic effect.<sup>75</sup> Given the scale of the pandemic, governments adopted several measures including lock-down orders, stay-at-home/movement control, restrictions of all activities and isolations of suspected/confirmed patients.<sup>76</sup> To further flatten the transmission rate, social and physical distancing, hygienic practices such as hand washing, and a mask covering were required.<sup>77</sup> While these COVID control measures may have contributed to reining in the virus, many objected to, or simply flaunted the social, economic, and mobility restrictions.<sup>78</sup> The curtailment measures also impacted adversely on businesses, the economic revenue of many states, educational activities, food security, and exacerbated poverty, especially in developing countries.<sup>79</sup> Science, however, came to the rescue and provided the means for governments and health authorities to relax the public-health restrictions and resume the transition to normalcy. A quick jab of the vaccine offered the hope of reducing transmission, severe morbidity, and mortality from the virus.<sup>80</sup>

#### IV. AVAILABLE COVID-19 VACCINES AND VACCINATION: THEIR SAFETY AND EFFICACY

A vaccine is an agent or biologics that provides active acquired immunity from infectious viruses and bacteria.<sup>81</sup> Vaccines, including those that create humoral

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<sup>75</sup> Stefan Gössling, Daniel Scott, & C. Michael Hall, *Pandemics, tourism and global change: a rapid assessment of COVID-19*, 29 J. OF SUSTAINABLE TOURISM 1, 1-20 (2021), <https://www.tandfonline.com/doi/full/10.1080/09669582.2020.1758708>.

<sup>76</sup> Giovanni Bonaccorsi, et al., *Economic and social consequences of human mobility restrictions under COVID-19*, 117 PNAS 15530, 15530-35 (2020), <https://doi.org/10.1073/pnas.2007658117>.

<sup>77</sup> *Id.*

<sup>78</sup> Aliu Oladimeji Shodunke, *Enforcement of COVID-19 pandemic lockdown orders in Nigeria: Evidence of public (non)compliance and police illegalities*, 77 INT'L J. OF DISASTER RISK REDUCTION 103082, 103082 (2022), <https://www.sciencedirect.com/science/article/pii/S2212420922003016?via%3Dihub>.

<sup>79</sup> Kwaw Andam et al., *Impacts of COVID-19 on food systems and poverty in Nigeria*, 5 ADVANCES IN FOOD SEC. & SUSTAINABILITY 145, 145-73 (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7550085/>.

<sup>80</sup> NATIONAL ACADEMIES OF SCIENCES, ENGINEERING, AND MEDICINE, ET AL., *FRAMEWORK FOR EQUITABLE ALLOCATION OF COVID-19 VACCINE* (Helene Gayle, et al., eds., 2020).

<sup>81</sup> Shivaji Kashte, et al., *COVID-19 vaccines: rapid development, implications, challenges and future prospects*, 34 HUMAN CELL 711, 711-33 (2021), <https://link.springer.com/article/10.1007/s13577-021-00512-4>; Emily K. Brunson, *Vaccine: Medicine*, BRITANNICA, <https://www.britannica.com/science/vaccine> (last updated Oct. 20, 2022); *Clinical Trials Related to Vaccines*, IAC,

immunity or longer-lasting cell-mediated immunity, have been routinely used to protect humans from the deadliest viruses and diseases.<sup>82</sup> Scientists have firmly stated that vaccines offer reliable, cost-effective life-saving protection against infectious diseases.<sup>83</sup> From polio to measles, mumps, rubella, varicella (chickenpox), monkeypox, smallpox, flu, and even malaria, etc., vaccines have immensely contributed to decreasing the chances of getting infected, experiencing worse symptoms of the disease, and or reducing the severity and fatality.<sup>84</sup> In this regard, COVID-19 vaccines have been researched and developed to provide a high level of protection against the disease.<sup>85</sup> These vaccines are also said to be safe, efficacious, and are critical to reducing the severity of the disease or death for people who already are already infected.<sup>86</sup> Many of these vaccines work by stimulating an immune response to an antigen, a molecule found in the virus, giving cells genetic information to produce antigens, using generic materials to produce cells with instructions to make them antigens, or using pieces of the pathogens (a fragmented piece of protein) to trigger immunity response.<sup>87</sup>

There are several COVID-19 vaccines that have been validated for use according to international standards.<sup>88</sup> As of December 2021, the following

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<https://iacthealth.com/vaccine/#:~:text=A%20vaccine%20is%20a%20biological,one%20of%20its%20surface%20proteins> (last visited Dec. 22, 2022).

<sup>82</sup> Andrew J. Pollard & Else M. Bijker, *A guide to vaccinology: from basic principles to new developments*, 21 NATURE REVIEWS IMMUNOLOGY 83, 83-100 (2021), <https://www.nature.com/articles/s41577-020-00479-7>.

<sup>83</sup> *COVID-19 vaccines: everything you need to know*, GAVI THE VACCINE ALLIANCE, [https://www.gavi.org/COVID19vaccines?gclid=EAIaIQobChMI1uiFhtng9AIVqoFQBh2thALZEAAYASAAEgI3vfd\\_BwE](https://www.gavi.org/COVID19vaccines?gclid=EAIaIQobChMI1uiFhtng9AIVqoFQBh2thALZEAAYASAAEgI3vfd_BwE) (last visited Dec. 22, 2022).

<sup>84</sup> *Immunization*, WHO (Dec. 5, 2019), <https://www.who.int/news-room/facts-in-pictures/detail/immunization>.

<sup>85</sup> Kashte, et al., *supra* note 81.

<sup>86</sup> Alyson M. Cavanaugh et al., *Reduced Risk of Reinfection with SARS-CoV-2 After COVID-19 Vaccination - Kentucky, May-June 2021*, 70 MORBIDITY & MORTALITY WKLY. REP. 1081, 1081-83 (2021), <https://stacks.cdc.gov/view/cdc/109806>; Fernando P. Polack, et al., *Safety and Efficacy of the BNT162b2 mRNA Covid-19 Vaccine*, 383 NEW ENG. J. OF MED. 2603, 2603-15 (2020), <https://www.nejm.org/doi/10.1056/NEJMoa2034577>.

<sup>87</sup> This is explained better by Gavi The Vaccine Alliance. *There are four types of COVID-19 vaccines: here's how they work*, GAVI THE VACCINE ALLIANCE (Dec. 18, 2020), <https://www.gavi.org/vaccineswork/there-are-four-types-COVID-19-vaccines-heres-how-they-work>. Accordingly, there are four categories of COVID vaccines: Whole Virus, Protein Subunit, Viral Vector and Nucleic Acid (RNA and DNA). Some of the vaccines work by smuggling the antigens into the body while others use the body's own cells to make the viral antigen.

<sup>88</sup> Kashte et al., *supra* note 81; *WHO validates Sinovac COVID-19 vaccine for emergency use and issues interim policy recommendations*, WHO (June 1, 2021), <https://www.who.int/news/item/01->

certified vaccines are available: The Pfizer/BioNTech Comirnaty (31 December 2020), SII/COVISHIELD and AstraZeneca/AZD1222 vaccines (16 February 2021), Janssen/Ad26.COV 2.S developed by Johnson & Johnson, (12 March 2021), Moderna COVID-19 vaccine (mRNA 1273) (30 April 2021), Sinopharm COVID-19 vaccine (7 May 2021) and Sinovac-CoronaVac (1 June 2021), Bharat Biotech BBV152 COVAXIN vaccine (3 November 2021)<sup>89</sup> Nuvaxovid (NVX-CoV2373) Vaccine (20 December 2021) and Covovax (NVX-CoV2373) (17 December 2021).<sup>90</sup> Many more are in the pipeline to provide immunity to the virus, stop the transmission, provide a cure or control the severity of the illness.<sup>91</sup> Before vaccines are rolled out, there are measures and safety protocols in place to ensure that they are safe and fit for their purpose.<sup>92</sup> Rigorous testing in clinical trials is conducted to prove that they meet international standards for efficacy, suitable use, manufacturing, and quality control.<sup>93</sup> All available vaccines are subject to validation and regulatory review by the WHO and national health authorities before they are made available for public use.<sup>94</sup> Several studies have confirmed the efficacy of vaccines in providing protection against the virus, reducing the risk of infection or reinfection, and limiting the severity of the illness or death.<sup>95</sup> Thus,

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06-2021-who-validates-sinovac-covid-19-vaccine-for-emergency-use-and-issues-interim-policy-recommendations.

<sup>89</sup> *Coronavirus disease (COVID-19): Vaccines*, WHO, [https://www.who.int/news-room/questions-and-answers/item/coronavirus-disease-\(COVID-19\)-vaccines?gclid=EAJalQobChMImeWkbbP39AIVH4BQBh0jjQDAEAAAYBCAAEgKowvD\\_BwE&topicsurvey=v8kj13](https://www.who.int/news-room/questions-and-answers/item/coronavirus-disease-(COVID-19)-vaccines?gclid=EAJalQobChMImeWkbbP39AIVH4BQBh0jjQDAEAAAYBCAAEgKowvD_BwE&topicsurvey=v8kj13) (last updated May 17, 2022).

<sup>90</sup> *The Novavax vaccine against COVID-19: What you need to know*, WHO, <https://www.who.int/news-room/feature-stories/detail/the-novavax-vaccine-against-COVID-19-what-you-need-to-know> (last updated Sept. 28, 2022).

<sup>91</sup> *There are four types of COVID-19 vaccines: here's how they work*, *supra* note 87.

<sup>92</sup> *The Novavax vaccine against COVID-19: What you Need to know*, *supra* note 90.

<sup>93</sup> *Coronavirus disease (COVID-19): Vaccines*, *supra* note 89.

<sup>94</sup> *Id.*

<sup>95</sup> Aharona Glatman-Freedman, et al., *Effectiveness of BNT162b2 Vaccine in Adolescents During Outbreak of SARS-CoV-2 Delta Variant Infection*, 27 *EMERGING INFECTIOUS DISEASES* 2919, 2919-22 (2021), [https://wwwnc.cdc.gov/eid/article/27/11/21-1886\\_article](https://wwwnc.cdc.gov/eid/article/27/11/21-1886_article); Thibault Fiolet, et al., *Comparing COVID-19 vaccines for their characteristics, efficacy and effectiveness against SARS-CoV-2 and variants of concern: a narrative review*, 28 *CLINICAL MICROBIOLOGY & INFECTION* 202, 202-21 (2021), [https://www.clinicalmicrobiologyandinfection.com/article/S1198-743X\(21\)00604-2/fulltext](https://www.clinicalmicrobiologyandinfection.com/article/S1198-743X(21)00604-2/fulltext); Sara Y. Tartof, et al., *Effectiveness of mRNA BNT162b2 COVID-19 vaccine up to 6 Months in a large integrated health system in the USA: a retrospective cohort study*, 398 *THE LANCET* 1407, 1407-16 (2021), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(21\)02183-8/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(21)02183-8/fulltext); Juan Corchado-Garcia, et al., *Analysis of the Effectiveness of the Ad26.COV2.S Adenoviral Vector Vaccine for Preventing COVID-19*, 4 *JAMA* 1, 1-12 (2021), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2785664>.

there are freely available evidence to ascertain the safety of vaccines.<sup>96</sup>

A vaccination development process is carefully guided by safety and efficacy objectives.<sup>97</sup> As mentioned earlier, rigorous testing is needed.<sup>98</sup> Checks and balances have been put in place at each stage of a clinical trial to ensure that every candidate vaccine is certified as safe for use.<sup>99</sup> A vaccine goes through different stages, from exploratory science to rigorous pre-clinical testing on non-human subjects (animals) to ascertain toxicity and reactions.<sup>100</sup> This is to identify a safe dose before testing the vaccine candidate in people.<sup>101</sup> When a vaccine has completed pre-clinical studies, it moves to the clinical development stage, regulatory review and approval, manufacturing, and quality control.<sup>102</sup> The stages of trials are designed to identify any possible side effects and all stages must succeed before it is declared successful.<sup>103</sup>

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<sup>96</sup> Glatman-Freedman, et al., *supra* note 95; Fiolet, et al., *supra* note 95; Tartof, et al., *supra* note 95; Corchado-Garcia, et al., *supra* note 95; *Safety of COVID-19 Vaccines*, WHO (Mar. 31, 2021), <https://www.who.int/news-room/feature-stories/detail/safety-of-covid-19-vaccines>; Cavanaugh, et al., *supra* note 86; Qianhui Wu et al., *Evaluation of the safety profile of COVID-19 vaccines: a rapid review*, 19 BMC MED. 173 (2021), <https://bmcmmedicine.biomedcentral.com/articles/10.1186/s12916-021-02059-5>; John R. Kerr, et al., *Effect of Information about COVID-19 Vaccine Effectiveness and Side Effects on Behavioural Intentions: Two Online Experiments*, 9 VACCINES 379 (2021), <https://www.mdpi.com/2076-393X/9/4/379>.

<sup>97</sup> Thoman J Brouwers & Bernard A.M. Van der Zeijst, *Vaccine Production, Safety, and Efficacy*, 5 ENCYCLOPEDIA OF VIROLOGY 281, 281–88 (2021), <https://www.sciencedirect.com/science/article/pii/B9780128145159001211?via%3Dihub>.

<sup>98</sup> *Myths and Facts about COVID-19 Vaccines*, CTR. FOR DISEASE CONTROL & PREVENTION (July 20, 2022), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/facts.html>; Gabor David Kelen & Lisa Maragakis, *COVID-19 Vaccines: Myth Versus Fact*, HOPKINS MEDICINE, <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/covid-19-vaccines-myth-versus-fact> (last updated Mar. 10, 2022); *Episode 24 - Vaccine myths vs science*, WHO (Feb. 5, 2021), <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/media-resources/science-in-5/episode-24---vaccine-myths-vs-science>.

<sup>99</sup> Priya Joi, *How safe are COVID-19 vaccines?*, GAVI THE VACCINE ALLIANCE (Feb. 4, 2021), <https://www.gavi.org/vaccineswork/how-safe-are-COVID-19-vaccines>.

<sup>100</sup> Kenneth V. Iserson, *SARS-CoV-2 (COVID-19) Vaccine Development and Production: An Ethical Way Forward*, 30 CAMBRIDGE Q. OF HEALTHCARE ETHICS 59, 59-68 (2020), <https://www.cambridge.org/core/journals/cambridge-quarterly-of-healthcare-ethics/article/sarscov2-covid19-vaccine-development-and-production-an-ethical-way-forward/7A6A9FC206CD066689A44DEF52609729>; Shen Wang, et al., *COVID-19 Animal Models and Vaccines: Current Landscape and Future Prospects*, 9 VACCINES 1082 (2021), <https://pubmed.ncbi.nlm.nih.gov/34696190/>.

<sup>101</sup> Iserson, *supra* note 100.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*



While COVID-19 vaccines are deemed safe and effective, some people who are fully vaccinated may contract the virus if they are exposed and this has fueled distrust about the efficacy of the vaccines.<sup>104</sup> With regard to the effectiveness of the vaccines, it is important to note that no vaccine is 100% effective.<sup>105</sup> For reference, vaccines for Measles, Mumps, and Rubella (MMR), which are referred to as one of the most effective vaccines, are only 96% effective.<sup>106</sup> The COVID-19 vaccines (and boosters) typically protect individuals from severe illness, hospitalization and death.<sup>107</sup> Individuals who have been vaccinated may still be infected with the virus, but, the symptoms and its effect might not be so debilitating.<sup>108</sup> As Geddes put it:

Clinical trials of the Pfizer/BioNTech and Moderna vaccines found them to be 94-95% effective against all symptomatic COVID-19 disease after the second dose. This doesn't mean that we'd expect 5-6 in every 100 people to develop COVID-19, but that there was a 94-95% reduction in new cases of the disease among people who had been vaccinated, compared to unvaccinated individuals. China's Sinopharm vaccine was 78% effective and the Oxford/AstraZeneca vaccine was 67% effective in clinical trials. Protection against hospitalisation or death from COVID-19 was even higher.<sup>109</sup>

This excerpt suggests that although COVID-19 vaccines are not 100% effective, those who have been vaccinated are less likely to be infected by this deadly virus than those who have not been vaccinated. What is important is that the risk of a serious outcome is vastly lower for those who have been fully vaccinated against COVID-19, compared to those who have received no vaccine doses.<sup>110</sup>

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<sup>104</sup> *Coronavirus Disease (COVID-19): Vaccines*, WHO (May 17, 2022), [https://www.who.int/news-room/questions-and-answers/item/coronavirus-disease-\(covid-19\)-vaccines](https://www.who.int/news-room/questions-and-answers/item/coronavirus-disease-(covid-19)-vaccines); Michela Antonelli, et al., *Risk Factors and Disease Profile Of Post-Vaccination SARS-Cov-2 Infection In UK Users Of The COVID Symptom Study App: A Prospective, Community-Based, Nested, Case-Control Study*, 22 LANCET INFECT. DIS. 43, 43-55 (2022).

<sup>105</sup> *Coronavirus Disease (COVID-19): Vaccines*, *supra* note 104; Antonelli, et al., *supra* note 104.

<sup>106</sup> Linda Geddes, *Why are fully-vaccinated people still catching COVID-19?*, GAVI (Aug. 12, 2021), <https://www.gavi.org/vaccineswork/why-are-fully-vaccinated-people-still-catching-covid-19>.

<sup>107</sup> *Id.*

<sup>108</sup> *COVID-19 after Vaccination: Possible Breakthrough Infection*, CTR. FOR DISEASE CONTROL AND PREVENTION (June 23, 2022) <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/why-measure-effectiveness/breakthrough-cases.html>.

<sup>109</sup> Geddes, *supra* note 106.

<sup>110</sup> *Id.*

A study conducted using frontline workers in Arizona, USA analyzed breakthrough infections among 3,971 essential and frontline workers who were vaccinated with either the Pfizer/BioNTech or Moderna vaccines.<sup>111</sup> The study concluded that the vaccines were effective protections against infection, severity, and duration of the illness in comparison to the unvaccinated.<sup>112</sup> Accordingly, “participants who were partially or fully vaccinated at the time of infection had a 40% lower viral RNA load and a 66% lower risk of viral RNA detection for more than 1 week than participants who were unvaccinated at infection.”<sup>113</sup> Furthermore, “partially or fully vaccinated participants also had a 58% lower risk of febrile symptoms and a shorter duration of illness, with approximately 6 fewer days of symptoms and 2 fewer days spent sick in bed, than unvaccinated participants.”<sup>114</sup> The results indicated that out of the 205 coronavirus infections identified, the majority occurred among unvaccinated workers – with only five full and eleven partially vaccinated individuals testing positive.<sup>115</sup>

Besides the healthcare benefits, vaccination is hailed as an effective remedy for several other reasons. First, it offers means to restore social order and lift the restrictions that are imposed to contain the spread of diseases.<sup>116</sup> Secondly, inoculation is a means of coping with the anxiety of contracting viruses and restoring faith and confidence to get back to normal routines.<sup>117</sup> Furthermore, it is an effective strategy for the government to cope with health crises, dramatically reduce diseases, mitigate socio-economic damage, and rebuild the economy.<sup>118</sup> It guarantees public safety and offers protection, especially for the most vulnerable.<sup>119</sup>

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<sup>111</sup> Mark G. Thompson et al., *Prevention and Attenuation of Covid-19 with the BNT162b2 and mRNA-1273 Vaccines*, 385 NEW ENG. J. OF MED. 320, 320-29 (2021); see also, Lutrick K., et al., *COVID-19 Infection, Reinfection, and Vaccine Effectiveness in a Prospective Cohort of Arizona Frontline/Essential Workers: The AZ HEROES Research Protocol*, 10 J. OF MED. INT. RSCH. (2021).

<sup>112</sup> Thompson, et al., *supra* note 111.

<sup>113</sup> *Id.* at 327.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.* at 237.

<sup>116</sup> Charlene M. C. Rodrigues & Stanley A. Plotkin, *Impact of Vaccines; Health, Economic and Social Perspectives*, FRONTIERS IN MICROBIOLOGY (2020).

<sup>117</sup> *Id.*; *Enhancing Public Trust in COVID-19 Vaccination: The Role of Government*, OECD (May 2021), <https://www.oecd.org/coronavirus/policy-responses/enhancing-public-trust-in-covid-19-vaccination-the-role-of-governments-eae0ec5a/>.

<sup>118</sup> David E. Bloom, *The Societal Value of Vaccination in the Age of COVID-19*, 111 AM. J. PUB. HEALTH 1049, 1049–54 (2021).

<sup>119</sup> Rodrigues & Plotkin, *supra* note 116.

It is for these reasons and more that governments have encouraged immunization.<sup>120</sup>

## V. PROTECTING PUBLIC HEALTH THROUGH VACCINATION: MAKING THE VACCINES MANDATORY

With the sporadic rise and spread of the deadly disease, many countries have made the vaccine compulsory.<sup>121</sup> This has been welcomed with a plethora of criticisms and questions. Many have described it as a gross violation of their human rights.

Some governments and policy makers believe that vaccines should be made mandatory based on their ethical and legal considerations.<sup>122</sup> Most governments in various countries have made the vaccine compulsory for health workers as well as other high-risk groups as seen in countries like Croatia, Denmark, Egypt, among others.<sup>123</sup> Countries like Indonesia and Germany have made the vaccine compulsory for adults.<sup>124</sup>

The degree of vaccine compliance for different groups and sectors may vary.<sup>125</sup> For example, health workers who are responsible for ensuring the safety and well-being of the general public are expected to and sometimes, even mandated to receive the COVID-19 vaccination.<sup>126</sup> This is due to the fact that healthcare workers are at increased risk of contracting infectious diseases and transmitting them to vulnerable populations such as children and the elderly.<sup>127</sup> In other cases, some governments and sectors such as the health and educational sectors have imputed

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<sup>120</sup> *Id.*; *The Territorial Impact of COVID-19: Managing the Crisis Across Levels of Government*, *supra* note 41.

<sup>121</sup> *Factbox: Countries Making COVID-19 Vaccines Mandatory*, *supra* note 11.

<sup>122</sup> Gostin, et al., *supra* note 10.

<sup>123</sup> *Factbox: Countries Making COVID-19 Vaccines Mandatory*, *supra* note 11. Mandatory testing was required for COVID-19 in countries such as Austria, Ecuador, Greece, Indonesia, and Micronesia. Lynette Mtimkulu-Eyde, et al., *Mandatory COVID-19 Vaccination: Lessons from Tuberculosis and HIV*, 24 HEALTH HUM. RTS. 85 (2022).

<sup>124</sup> Mtimkulu-Eyde, *supra* note 123.

<sup>125</sup> WHO, COVID-19 AND MANDATORY VACCINATION: ETHICAL CONSIDERATIONS (2022); Julie Leask et al., *Policy considerations for mandatory COVID-19 vaccination from the Collaboration on Social Science and Immunisation*, 215 MED. J. AUSTRAL. 499, 499–503 (2021).

<sup>126</sup> WHO, *supra* note 125; Leask, et al., *supra* note 125.

<sup>127</sup> WHO, *supra* note 125; Leask, et al., *supra* note 125.

conditions, indirectly making the vaccines mandatory, for example, as a condition of service on continued engagement at work.<sup>128</sup>

### *A. Resistance to COVID Vaccinations*

Despite the plethora of evidence in support of vaccination, there are several skepticisms among the general public about the COVID-19 vaccines. While the vaccine is seen to provide the necessary hope for many, it has also raised concerns and opposition on personal, ideological, safety, religious, and legal grounds.<sup>129</sup> For example, when Edward Jenner created the first vaccination against smallpox in 1796, it was initially seen as a miraculous solution to a disease that was killing millions worldwide.<sup>130</sup> But it was not long before his vaccination began to attract opponents.<sup>131</sup> When smallpox vaccination was made compulsory for infants in the first three months of life by the UK's Vaccination Act of 1853, the legislation only served to increase resistance.<sup>132</sup> Anti-vaccination leagues were formed and thousands took to the streets to demonstrate against what they saw as an invasive practice.<sup>133</sup> The objections were raised on religious or health concerns, along with the recurring theme of the trampling of individual rights, which resonates in the cries of present-day vaccine objectors.<sup>134</sup>

Some of the current cynicism center on political factors, ideologies, misconceptions about the vaccine, ignorance of the scientific process of vaccine development, and conspiracy theories.<sup>135</sup> Because of the speed at which the vaccines were developed, tested, and made available to different countries at little

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<sup>128</sup> WHO, *supra* note 125; Leask, et al., *supra* note 125.

<sup>129</sup> Jones, *supra* note 12; Annie Kibongani Volet, et al., *Vaccine Hesitancy Among Religious Groups: Reasons Underlying This Phenomenon and Communication Strategies to Rebuild Trust*, FRONTIERS IN PUB. HEALTH (2022); Marc Debus & Jale Tosun, *Political ideology and vaccination willingness: implications for policy design* 54 POL'Y SCI. 477, 477–91 (2021).

<sup>130</sup> Stefan Riedel, *Edward Jenner and The History of Smallpox and Vaccination*, 18 BAYLOR UNIV. MED. CTR. PROCEEDINGS (2005).

<sup>131</sup> *Id.*

<sup>132</sup> Robert M Wolfe & Lisa K Sharp, *Anti-Vaccinationists Past and Present*, 325 BMJ 430, 430-32 (2002); Riedel, *supra* note 30.

<sup>133</sup> Wolf & Sharp, *supra* note 132; Riedel, *supra* note 30.

<sup>134</sup> Wolf & Sharp, *supra* note 132; Riedel, *supra* note 30.

<sup>135</sup> Adaeze Aroh, Bola Asaolu, & Chioma T. Okafor, *Myths and Models: What's Driving Vaccine Hesitancy in Africa and How Can We Overcome It?*, AFRICA PORTAL (June 7, 2021), <https://www.africaportal.org/features/myths-and-models-whats-driving-vaccine-hesitancy-in-africa-and-how-can-we-overcome-it/>.

or no cost, doubts have been raised about the safety and efficacy of vaccines.<sup>136</sup> The media, certain public figures, scientists, and even healthcare practitioners have made inflammatory negative remarks about the vaccine, thereby contributing to the fear and suspicion of vaccination as measure for COVID-19 control.<sup>137</sup> While opinions may differ among scientists and healthcare practitioners, the vehement and often public disagreement by experts on vaccine development and treatment for COVID further undermined the public's confidence in the vaccines.<sup>138</sup> Conspiracy theorists concocted rumors of satanic agendas and fueled the link between the vaccine and the "mark of the beast" from the Bible's Book of Revelation.<sup>139</sup> Questions were raised about dangerous ingredients in vaccines, with some alleging that it causes miscarriage, affects fertility, alter DNA or implants monitoring microchips technology.<sup>140</sup> Bill Gates, for example, was attacked for allegedly promoting and sponsoring vaccines to enhance depopulation and implanting microchip surveillance.<sup>141</sup> Gates has since denied these claims in an interview on CBS News on 22 July 2020.<sup>142</sup> A number of authors have indicated how distrust and myths have undermined the acceptance of vaccines by the general public.<sup>143</sup> Ethical issues have also been raised about the components of the vaccines

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<sup>136</sup> Tamam El-Elima, et al., *Acceptance and Attitudes Toward COVID-19 vaccines: A Cross-Sectional Study from Jordan*, 16 PLOS ONE 1, 1-15 (2021).

<sup>137</sup> *Id.*

<sup>138</sup> Marcus Dahlquist & Henrik D Kugelberg, *Public Justification and Expert Disagreement Over Non-Pharmaceutical Interventions for the COVID-19 Pandemic*, 49 J. MED. ETHICS 9, 9-13 (2021); *Health Experts Clash Over Use of Certain Drugs to Treat COVID-19*, L.A. TIMES (Nov. 19, 2020), <https://www.latimes.com/world-nation/story/2020-11-20/health-experts-clash-over-use-of-certain-drugs-for-covid-19>.

<sup>139</sup> El-Elima, et al., *supra* note 136; Elizabeth Dwoskin, *On Social Media, Vaccine Misinformation Mixes with Extreme Faith*, WASH. POST (Feb. 16, 2021), <https://www.washingtonpost.com/technology/2021/02/16/covid-vaccine-misinformation-evangelical-mark-beast/>.

<sup>140</sup> Chioma Obinna, *COVID-19: Misconceptions, Conspiracy Theories Stall Vaccination Progress in Nigeria*, VANGUARD (Sept. 21, 2021), <https://www.vanguardngr.com/2021/09/covid-19-misconceptions-conspiracy-theories-stall-vaccination-progress-in-nigeria/>.

<sup>141</sup> Jane Wakefield, *How Bill Gates became the Voodoo Doll of Covid Conspiracies*, BBC NEWS, (June 6, 2020), <https://www.bbc.com/news/technology-52833706>; HealthGuard, *The Top COVID-19 Vaccine Myths Spreading Online*, BRITANNICA (Sep. 15, 2021), <https://www.britannica.com/list/the-top-covid-19-vaccine-myths-spreading-online>.

<sup>142</sup> Wakefield, *supra* note 141; HealthGuard, *supra* note 141.

<sup>143</sup> See Kenneth Boyd, *Beyond Politics: Additional Factors Underlying Scepticism of a COVID-19 Vaccination*, 43 HPLS 1, 1-4 (2021); Chizoba Wonodi, et al., *Conspiracy Theories and Misinformation about COVID-19 in Nigeria: Implications for Vaccine Demand Generation Communications*, 40 VACCINES 2114, 2114-21(2022); Will Jennings, et al., *Lack of Trust*,

with the allegation that aborted fetal issues are part of the ingredients.<sup>144</sup> Many have simply refused to be vaccinated due to the fears and misconceptions they hold against the vaccines, coupled with myths spreading like wildfire.<sup>145</sup> All of these threatened the acceptance and voluntary inoculation against COVID-19. Unfortunately, social media also proved useful in entrenching fake news, misinformation and propaganda against vaccines.<sup>146</sup> To counter these claims, national health authorities have rebutted these myths as false and misleading.<sup>147</sup> This paper is more concerned with the human rights aspect and the following subsection will engage the human right-centered contentions.

### 1. *Examining the Human Rights Contentions Against Vaccination*

Some may argue that compulsory vaccination is capable of violating basic human freedoms and liberties.<sup>148</sup> Human rights essentially guarantee the freedom of choice and the liberty to act (or not to act) or think. Within the context of health, human right emphasizes an individual's personal power to act and think as one wants with regard to their health without hindrance, coercion, interference or restraint from third parties and the state.<sup>149</sup> Human rights, so construed, find legal and moral expression in several international, regional, and national human rights laws, conventions and legal instruments that impose a degree of enforceable commitment on states and duty-bearers to guarantee, safeguard, enforce, and protect.<sup>150</sup> From a human rights perspective, it is contended that mandatory

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*Conspiracy Beliefs, and Social Media Use Predict COVID-19 Vaccine Hesitancy*, 9 VACCINES 1, 1-14 (2022).

<sup>144</sup> Richard K. Zimmerman, *Helping Patients with Ethical Concerns about COVID-19 Vaccines in Light of Fetal Cell Lines Used in Some COVID-19 Vaccines*, 39 VACCINES 4242, 4242-44 (2021).

<sup>145</sup> Aroh, et al., *supra* note 135.

<sup>146</sup> Cheryl Lin, Pikuei Tu, & Leslie M. Beitsch, *Confidence and Receptivity for COVID-19 Vaccines: A Rapid Systematic Review*, 9 VACCINES 1, 1-41 (2020).

<sup>147</sup> UNDP: *Governments Must Lead Fight Against Coronavirus Misinformation and Disinformation*, UNDP (June 10, 2020), <https://www.undp.org/press-releases/undp-governments-must-lead-fight-against-coronavirus-misinformation-and-disinformation>; Wonodi, et al., *supra* note 143.

<sup>148</sup> Jonathan Pugh, *The United Kingdom's Coronavirus Act, Deprivations of Liberty, And The Right To Liberty And Security Of The Person*, 7 J. OF LAW AND BIOSCIENCES 1, 1-14 (2020).

<sup>149</sup> *Human Rights*, WHO (Dec. 10, 2017), <https://www.who.int/news-room/factsheets/detail/human-rights-and-health>.

<sup>150</sup> MAGDALENA SEPÚLVEDA, ET AL., HUMAN RIGHTS REFERENCE HANDBOOK (2004).

vaccination policies and requirements violate basic human freedoms and liberties.<sup>151</sup> The human rights contentions are further examined.

## 2. *Freedom to Make Health-Related Decisions and Choices*

Everyone is guaranteed the right to make their own health-related choices and to choose their treatments.<sup>152</sup> The right to health, as with all human rights, accentuates “freedoms” and “entitlements.”<sup>153</sup> Freedom includes the right to make decisions and control one’s own health and body while the entitlement aspect of the right to health pertains to equal rights and opportunities for everyone to access an adequate healthcare system including health services, facilities, and drugs.<sup>154</sup> The importance of people's choices, freedoms, and the opportunities to do and be what they term as valuable and lead the kind of lives they choose to lead has been acknowledged by several human rights bodies and instruments.<sup>155</sup> Mandatory vaccine orders may undeniably interfere with the ability to make an act, refrain from acting, or chart a course for one’s health.<sup>156</sup>

Scholars have also made the point that the nature of human rights underlies “wills,” or “choices.”<sup>157</sup> Accordingly, “wills” or “choices” underscore an individual’s personal liberty, freedom of choice and actions.<sup>158</sup> The “wills” right advocates hold the view that the purpose of the law is to give individuals the broadest possible means to assert and express themselves.<sup>159</sup> Thus, Hart, the philosopher, speaks of rights as equal liberty of “all men to be free”<sup>160</sup> and advances the concept of rights that are based on will, freedom and the capacity for

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<sup>151</sup> King, *supra* note 13.

<sup>152</sup> UN Office of the High Commissioner for Human Rights (OHCHR), *Fact Sheet No. 31, the Right to Health*, June 2008, at 3; *Human Rights*, *supra* note 149.

<sup>153</sup> *Id.* Freedoms include: the right to make decisions and control one’s own health and body which includes sexual and reproductive rights.

<sup>154</sup> *Id.*

<sup>155</sup> Sepúlveda, et al., *supra* note 150.

<sup>156</sup> Jessica Flanigan, *A Defense of Compulsory Vaccination*, 26 HEC FORUM 5–25 (2014); Andrzej Grzybowski, Rafał K. Patryn, Jarosław Sak & Anna Zagajac, *Vaccination Refusal. Autonomy and Permitted Coercion*, 111 PATHOG GLOB. HEALTH 200, 200-05 (2017).

<sup>157</sup> Michael Da Freeman, LLOYD’S INTRODUCTION TO JURISPRUDENCE 335 (Sweet & Maxwell, 9th ed. 2014).

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> H. L. A. Hart, *Are There Any Natural Rights?* 64 THE PHIL. REV. 175, 175 (1955).

autonomy.<sup>161</sup> Essentially, this rights perspective is defined by people's freedom to be and do something, even if it is a refusal to do a thing. The philosopher, Mills, argues in this respect that an adult of sound mind has an absolute right over his mind and body.<sup>162</sup> While the state has the responsibility of making it easier for people to make healthy choices, the prerogative to make these choices, e.g., to eat healthily, undertake physical activities, take care of their sexual health, or seek medical treatments ultimately lies with the individuals. The same argument can be extended to vaccinations, no matter the benefits of the vaccination to an individual's health, individuals should be free to decide whether they will subject their bodies to medical treatments. This argument is captured in this statement by a civil liberty organisation thus:

It is important to note that while governments are obliged to protect individuals from external dangers, they do not have a right to protect them from their own choices. To illustrate, states may be justified in introducing mandatory vaccination schemes to protect the vulnerable members of the community who cannot be vaccinated, but vaccination mandates aiming to keep individuals healthy even against their own choices would not be justified. To clarify, a mandatory vaccination regime with the sole purpose of keeping individuals who would not want to get vaccinated healthy cannot be justified.<sup>163</sup>

Accordingly, therefore, individuals should be allowed reasonable control over their human body, manage their own affairs, and make decisions about medical treatments.

### *3. Principle of Informed Consent, Refusal to Medical Treatments, and the Right to Self-Determination in Matters of One's Health*

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<sup>161</sup> *Id.*; Freeman, *supra* note 157, at 1305.

<sup>162</sup> Accordingly, In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign. JOHN STUART MILL, ON LIBERTY 12-13 (2001). Mills, however, adds that that 'the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.' *Id.* at 13.

<sup>163</sup> Orsolya Reich, *Mandatory COVID Vaccines and Human Rights: Questions and Answers*, LIBERTIES (2021), <https://www.liberties.eu/en/stories/mandatory-covid-vaccines-human-rights/43918>.



A related argument is that individuals should have the autonomy to choose their healthcare and to freely determine the circumstances of their health that warrant such consent.<sup>164</sup> While the foregoing point pertains more to a person's general medical decision and lifestyle, i.e., whether or not to protect one's health through inoculation, this argument on informed consent refers to a person's inviolable right to choose medical treatment.<sup>165</sup> Informed consent (including refusal) is based on the moral, ethical, and legal premise of patient autonomy; i.e., a patient has the right to make decisions about treatments for their own health and medical conditions.<sup>166</sup> This cornerstone of ethical biomedical practice centrally recognizes an autonomous individual's "moral permissibility of an intervention."<sup>167</sup> Another primary argument behind the resistance to mandatory inoculation is that it erodes the power of an individual to consent or object to medical interventions, even if a medical expert considers that decision to be detrimental or beneficiary as the case may be.<sup>168</sup> This argument may find support in the pithy dictum of Justice Benjamin Cardozo in the United States case of *Schlendorff v. The Society of the New York Hospital*, that "every human being of adult years and sound mind has a right to determine what shall be done with his body."<sup>169</sup>

Consent implies permission and free consent presupposes that the consent is not obtained through coercion or manipulation.<sup>170</sup> Consequently, any compulsion by the state or manipulation by businesses to receive a vaccination will interfere with the right to free and informed consent to medical treatment, regardless of whether the decision to refrain from medical treatment will significantly harm them. The right of an individual to consent to any medical intervention generally provides a

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<sup>164</sup> Patricia Imade Gbobo & Mercy Oke-Chinda, *An Analysis of the Doctrine of Informed Consent in Nigeria's Health Care Services*, 69 J. OF LAW, POL'Y AND GLOBALIZATION (2018); Jerel M. Ezell, *The Medicalization of Freedom: How Anti-Science Movements Use the Language Of Personal Liberty And How We Can Address It*, 28 NATURE MED. 219, 219 (2022); Mark T. Hughes et al., *The importance of offering vaccine choice in the fight against COVID-19*, 118 PNAS (2021).

<sup>165</sup> Gbobo & Oke-Chinda, *supra* note 164.

<sup>166</sup> K H Satyanarayana Rao, *Informed Consent: An Ethical Obligation or Legal Compulsion?*, 1 J. OF CUTANEOUS AND AESTHETIC SURGERY 33–35 (2008); John Coggon & José Miola, *Autonomy, Liberty, And Medical Decision-Making*, 70 CMB. LAW J. 523, 523–47 (2011).

<sup>167</sup> JONATHAN PUGH, *AUTONOMY, RATIONALITY, AND CONTEMPORARY BIOETHICS* (2020).

<sup>168</sup> Kevin Bardosh, *The Unintended Consequences Of COVID-19 Vaccine Policy: Why Mandates, Passports and Restrictions May Cause More Harm Than Good*, 7 BMJ GLOB. HEALTH 1, 1-14 (2022).

<sup>169</sup> *Schoendorff v. Soc'y of N.Y. Hosp.*, 211 N.Y. 125 (1914).

<sup>170</sup> Gbobo & Oke-Chinda, *supra* note 164; Daniel E. Hall, Allan V. Prochazka, & Aaron S. Fink, *Informed Consent for Clinical Treatment* 184 CMAJ, 533, 533–40 (2012).

compelling reason to reject a medical procedure.<sup>171</sup> Pugh writes that it grants a “trumping” or “exclusionary moral reason” to refuse a non-conceptual treatment unless there is a higher legal rationale or stronger moral reason to justify the overriding of this negative duty to refrain from carrying out a medical procedure without consent.<sup>172</sup> In other words, unless the right conflicts with a competing equal or stronger right, it should not be interfered with. This raises the question of whether the state has a stronger legal or moral justification to override this right of individuals by imposing a compulsory vaccination regime.<sup>173</sup>

The 2002 decision of the Nigerian Supreme Court on a patient’s freewill in the case of *Medical and Dental Practitioners Disciplinary Tribunal v. Nicholas* strengthens the argument of the anti-vaxxer on the basis of human rights.<sup>174</sup> Accordingly:

The patient’s consent is paramount...the patient’s relationship with a doctor is based on consensus... the choice of an adult patient with a sound mind to refuse informed consent to medical treatment, barring state intervention through judicial process, leaves the practitioner helpless to impose a treatment on the patient.<sup>175</sup>

This right to “self-government”<sup>176</sup> or “right to self-determination”<sup>177</sup> concerning one’s health is linked to other ethical principles of beneficence, meaning the patient’s best interest, and non-maleficence, meaning do no harm.<sup>178</sup> These principles curtail unnecessary medical harm to individuals by requiring that their moral, legal, social, ethical, and even spiritual interests are taken into account in medical treatments.<sup>179</sup> The argument may be made that the principles defend the

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<sup>171</sup> Robert S. Olick, ‘*Ethical Issues in Mandating COVID-19 Vaccination for Health Care Personnel*, 96 MAYO CLINIC PROCEEDINGS 2958, 2958–62 (2021).

<sup>172</sup> PUGH, *supra* note 167.

<sup>173</sup> Flanigan, *supra* note 156; Alberto Giubilini & Julian Savulescu, *Vaccination, Risks, and Freedom: The Seat Belt Analogy*, 12 PUB. HEALTH ETHICS 237, 237-49 (2019).

<sup>174</sup> *Medical and Dental Practitioners Disciplinary Tribunal v. Okonkwo* [2001] 1 AHRLR 159 (Nigeria).

<sup>175</sup> *Id.*

<sup>176</sup> Coggon & Miola, *supra* note 166.

<sup>177</sup> Rao, *supra* note 166.

<sup>178</sup> Mawere Munyaradzi, *Critical Reflections on the Principle of Beneficence in Biomedicine*, 11 PAN AFR. MED. J. (2012).

<sup>179</sup> Jacob P. Olejarczyk & Michael Young, PATIENT RIGHTS AND ETHICS (StatPearls Publishing, 2022); PUGH, *supra* note 167; Basil Varkey, *Principles of Clinical Ethics and Their Application to Practice*, 30 MED. PRINCIPLES AND PRACTICE, 17, 17–28 (2021).

right of patients from emotional harm and psychological distress arising from non-consensual medical treatments in the case of vaccination.

#### 4. *The Individual's Right to Dignity and Right to Bodily Integrity*

Anti-vaccination sentiments are also justified within the context of the right to personal dignity and bodily integrity.<sup>180</sup> The right to dignity entails that a person is respected, treated ethically and valued for their intrinsic worth.<sup>181</sup> The concept of dignity also means that a person's wishes are honored.<sup>182</sup> Within the context of healthcare, a central postulation is that respect should be accorded to a patient's decisions.<sup>183</sup>

The Preamble to the Universal Declaration of Human Rights (UDHR) sets the context for the right to dignity thus "all human beings are born free and equal in dignity and rights."<sup>184</sup> The International Covenant on Civil and Political Rights (ICCPR),<sup>185</sup> the International Covenant on Economic Social and Cultural Rights (ICESCR),<sup>186</sup> the UN Convention on the Right of the Child (UNCRC),<sup>187</sup> the African Charter on Human and Peoples Rights (ACHPR),<sup>188</sup> and the Convention against Torture, Inhuman and other Degrading Treatment and Punishment<sup>189</sup> echo the UDHR's commitment for the "inherent dignity of the human person" as the

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<sup>180</sup> Fereniki Panagopoulou, *Mandatory Vaccination during the Period of a Pandemic: Legal and Ethical Considerations in Europe*, 10 BIOTECH 4 (2021); Filippo Gibelli, et al., *COVID-19 Compulsory Vaccination: Legal and Bioethical Controversies*, 9 FRONT MED 1, 1-8 (2022).

<sup>181</sup> Vasil Gluchman, *Nature Of Dignity And Human Dignity*, 27 HUM. AFF. 131, 131-44 (2017); Christopher McCrudden, *Human Dignity and Judicial Interpretation of Human Rights*, 19 EUR. J. OF INT'L LAW 655, 655-724 (2008).

<sup>182</sup> Robin Dillon, *Respect*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY ARCHIVE (Jul. 2, 2022), <https://plato.stanford.edu/archives/fall2022/entries/respect/>.

<sup>183</sup> Yusrita Zolkefli, *Evaluating the Concept of Choice in Healthcare*, 24 MALAYS J. MED. SCI. 92, 92-96 (2017).

<sup>184</sup> Universal Declaration of Human Rights, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71 [hereinafter UDHR].

<sup>185</sup> International Covenant on Civil and Political Rights, art. 10, pmbl., Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

<sup>186</sup> International Covenant on Economic, Social and Cultural Rights, pmbl., Dec. 16, 1966, 993 U.N.T.S. 3.

<sup>187</sup> UN General Assembly, Convention on the Rights of the Child, pmbl., Nov. 20, 1989, 1577 U.N.T.S. 3.

<sup>188</sup> African Charter on Human and Peoples' Rights, pmbl., June 27, 1981, CAB/LEG/67/3 [hereinafter ACHPR].

<sup>189</sup> Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85.

“foundation of freedom, justice, and peace in the world.”<sup>190</sup> Specifically, Article 7 of the ICCPR states that: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”<sup>191</sup>

Human rights protection may be invoked when a person is compulsorily subject to medical tests, treatments, or procedures, especially invasive vaccination.<sup>192</sup> Articles 4 and 5 of the ACHPR are clear on the point that every person should be accorded respect for his life, dignity, and the integrity of his person.<sup>193</sup> The Constitution of many countries also protects this fundamental right alongside equality and freedom. For example, the Nigerian Constitution states clearly that every “individual is entitled to respect for the dignity of his person” in section 34(1) of the 1999 Constitution (as amended).<sup>194</sup> For this reason, the dignity of the human person is an essential part of the substance of all rights protected by human rights law. Resistance to compulsory vaccine policies may be raised on the grounds that it degrades or diminishes the core value of human beings, particularly, over their own bodies.<sup>195</sup> In corollary, the right to dignity protects against any physical, mental, or emotional assault upon a person or any acts that reduces the personal worth of an individual.<sup>196</sup> Accordingly, enforced inoculation can be injurious to human dignity by subjecting a person to required medical treatment or tests or exposing them to humiliating medical treatment without their informed consent.

The right to dignity goes hand in hand with bodily (physical) integrity; thus, one should not to be exposed to physical and mental harm.<sup>197</sup> This right provides protection for a person to be free from physical interference, including the refusal

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<sup>190</sup> UDHR, *supra* note 184, at pmbl.

<sup>191</sup> ICCPR, *supra* note 185, at art. 7.

<sup>192</sup> Gibelli et al., *supra* note 180.

<sup>193</sup> ACHPR, *supra* note 188.

<sup>194</sup> European Convention on Human Rights art. 3, Nov. 4, 1950, 213 U.N.T.S. 222 (similarly protects the right to integrity of the person. Accordingly, 1. Everyone has the right to respect for his or her physical and mental integrity. 2. In the fields of medicine and biology, ...the free and informed consent of the person concerned, must be respected); CONSTITUTION OF NIGERIA § 35, ¶ 1 May 5, 1999.

<sup>195</sup> Alberto Giubilini, et al., *The Moral Obligation to Be Vaccinated: Utilitarianism, Contractualism, and Collective Easy Rescue*, 21 MED. HEALTH CARE PHILOS. 547, 547–60 (2018).

<sup>196</sup> Christopher McCrudden, et al., *Dignity: A Fundamental Principle Of Mental Health Care*, 142 INDIAN J. MED. RES. 355, 355–58 (2015).

<sup>197</sup> Dana Blander, et al., *Human Dignity: A Living Right in Medical Treatment*, THE ISRAEL DEMOCRACY INST., <https://en.idi.org.il/media/14572/human-dignity-final-for-web.pdf> (2020); Jonathan Herring & Jesse Wall, *The Nature and Significance of the Right to Bodily Integrity*, 76 CAMBRIDGE L. J. 566, 566-88 (2017).

of medical treatment, even if it is life-sustaining medical care.<sup>198</sup> A violation of bodily integrity occurs when a person's right to personal autonomy, self-ownership, and self-determination over their own body or in matters relating to their own healthcare is denied.<sup>199</sup> In the Indian case of *Devika Biswas v. Union of India*, the state government's practice of subjecting women to sterilization procedures in dangerous and unsanitary sterilization camps, where informed consent is often not obtained from patients before conducting the procedures was found to be a violation of the rights to life, health including reproductive right and bodily integrity.<sup>200</sup> Likewise, the Irish Court in *Ryan v. Attorney General* took the view that a person has the right not to have their body or personhood interfered with.<sup>201</sup> These cases crucially recognize and acknowledge an individual's autonomy to determine their medical treatment. Accordingly, the state has a duty not to interfere with the life or health of individuals.

The right to physical integrity is grounded in classical liberalism with its emphasis on the protection of the body as personal property.<sup>202</sup> In a legal sense, it could be used to justify the right to exclusively "possess" one's own body and it exclude interference with the human body as personal property. The argument may be made in this respect that the physical integrity of an individual is a right that could be violated if individuals are required to be vaccinated by law.<sup>203</sup>

##### 5. *Right to Liberty and Freedom of Thought and Conscience*

Human rights are conceived on the principles of physical and mental freedoms,

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<sup>198</sup> Annelize Nienaber, *The Right To Physical Integrity And Informed Refusal: Just How Far Does A Patient's Right To Refuse Medical Treatment Go?*, 9 SOUTH AFRICAN J. OF BIOETHICS AND L. 70, 70-72 (2016); Emmanuel OC Obidimma & Angela E Obidimm, *A Right of a Patient to Refuse Medical Treatment: Justification for Judicial Intrusion*, 5 NNAMDI AZIKIWE UNIV. J. OF INT'L L. AND JURIS. 150, 150-62(2014).

<sup>199</sup> Ezell, *supra* note 164.

<sup>200</sup> See AIR 2016 SC 4405 (2016) (India).

<sup>201</sup> *Ryan v. Att'y Gen.* [1965] IR 294 (Ir.).

<sup>202</sup> Alexandra George, *Property in the Human Body and Its Parts: Reflections on Self-Determination in Liberal Society*, (EUI Working Paper Law No. 2001/8, 2001), <https://cadmus.eui.eu/bitstream/handle/1814/172/law01-08.pdf>.

<sup>203</sup> Anja Krasser, *Compulsory Vaccination in a Fundamental Rights Perspective: Lessons from the ECtHR* 15 VIENNA J. ON INT'L CONST. L., 207, 207-33 (2021); King, et al., *supra* note 13.

liberty, and immunity from arbitrary coercion.<sup>204</sup> Therefore, the right to personal liberty is one of the quintessential individualistic rights of a human being. The right to personal liberty is essentially personal freedom or autonomy to do one's wishes (within the confines of the law) without undue interference from the government or others.<sup>205</sup> It is the autonomy to live as you choose without too many restrictions or constraints from the state or its agencies and third parties. It encompasses several aspects including the right to create, choose, and follow personal life goals, values, and passion assiduously.<sup>206</sup> The meaning of personal liberty was explicated by the Nigerian court in *Adewole v. Jakande*<sup>207</sup> to include the freedom of action, including privileges, immunities, and rights of a personal nature. The court followed the expansive construction of the right to personal liberty in the U.S. case of *Meyer v. State Of Nebraska*<sup>208</sup> finding that personal liberty "denotes not merely freedom from bodily restraint, but rights to contact, to have an occupation, to acquire knowledge, to marry, have a home, children, to worship, enjoy and have privileges recognized at law for happiness of free men."<sup>209</sup> To buttress this point, Sir Blackstone adds that personal liberty also entails the "the right or power of locomotion; of changing situation or moving one's person to whatsoever place one's own inclination may direct, without imprisonment or restraint, unless by due course of law."<sup>210</sup>

It may be contended that the broad classification of personal liberty extends to the freedom of the body.<sup>211</sup> In this view, mandatory vaccination, to the extent that it affects the physical and mental liberty of an individual, may potentially breach the right to liberty. A central tenet to this argument is the deference to a person's

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<sup>204</sup> LOUIS HENKIN, HUMAN RIGHTS, IN ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 286 (1981); LOUIS HENKIN, THE AGE OF RIGHTS (1990); SIENHO YEE, TOWARDS AN INTERNATIONAL LAW OF CO-PROGRESSIVENESS (2004).

<sup>205</sup> Tuija Takala, *Concepts of "Person" and "Liberty," and Their Implications to Our Fading Notions of Autonomy* 33 J. MED. ETHICS, 225, 225–28 (2007); Coggon & Miola, *supra* note 166.

<sup>206</sup> Charles E. Shattuck, *The True Meaning of the Term "Liberty" in Those Clauses in the Federal and State Constitutions Which Protect "Life, Liberty, and Property"*, 4 HARV. L. REV. 365, 365-88 (1891); Alan Apperley, *Liberalism, Autonomy and Stability*, 30 BRITISH J. OF POL. SCI. 291, 291-311 (2000).

<sup>207</sup> *Adewole v. Jakande* [1981] N.C.L.R. 264 (Nigeria).

<sup>208</sup> *Meyer v. Nebraska*, 262 U.S. 390 (1923).

<sup>209</sup> *Id.*

<sup>210</sup> WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 1 (1979).

<sup>211</sup> Daniel Wei Liang Wang, et al., *Is Mandatory Vaccination for COVID-19 Constitutional under Brazilian Law?* 23 HEALTH HUM. RTS. 163, 163–174 (2021); Alberto Giubilini, *Vaccination Ethics*, 137 BRIT. MED. BULL. 4, 4–12 (2021).

liberty to voluntarily consent to or refuse to be subject to medical treatment.<sup>212</sup> Several human right instruments and the Constitutions of many countries has recognized and protected liberty of a personal nature.<sup>213</sup>

The freedom of mental autonomy and liberty draws inspiration from the philosophical postulation of two notable philosophers, Kant and Mill, who assert the rightful position of individuals to make their own decisions and exercise their capacity for self-determination.<sup>214</sup> Mill rightly insists that all persons are innately and unconditionally worthy to develop their character and their own way of living and should be free to make rational decisions and moral choices.<sup>215</sup> Mill's argument for freedom of character and action in *On Liberty* rejects the attempt to coerce people's opinions and behavior in the forms of legislative, state coercion, or social pressure.<sup>216</sup> Nonetheless, Mill provides a policy space for the limitation of such autonomy on the basis of harm to others and society.<sup>217</sup> He wisely asserted that "the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others."<sup>218</sup> The

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<sup>212</sup> Wei Liang Wang, et al., *supra* note 211; Giubilini, *supra* note 211.

<sup>213</sup> The African Charter on Human and Peoples provides in Article 6 that Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. It follows that the depravity of physical liberty is only at the instance of a specified law. Save for the clear and explicit stipulation or conditions of the law. *See e.g.*, African Charter on Human and Peoples' Rights, *supra* note 188. Similarly, Section 35[1] of the Nigerian 1999 Constitution provides: "Every person shall be entitled to his personal liberty." *See e.g.*, CONSTITUTION OF NIGERIA, *supra* note 194, at § 35, ¶ 1 May 5, 1999.

<sup>214</sup> Varkey, *supra* note 179; Paul Guyer, *Kant On the Theory and Practice Of Autonomy*, 20 SOC. PHIL. POL'Y, 70, 70–98 (2003); Christopher Macleod, *John Stuart Mill*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY ARCHIVE (Aug. 25, 2016), <https://plato.stanford.edu/archives/sum2020/entries/mill/>; Coggon & Miola, *supra* note 166 (Kant and Mills are two prominent philosophers who are instrumental in theorizing the moral/ethical standards and defining moral conducts and rules. They have written considerably on themes of personal autonomy, liberty, human rationality and free will in their ethical postulations and moral philosophy. *See* Roger Hancock, *Ethics and History in Kant and Mill*, 68 ETHICS 56, 56-60 (1957); *see also* Victor Wolemonwu, *Richard Dean: The Value of Humanity in Kant's Moral Theory*, 23 MED. HEALTH CARE AND PHIL. (2020); John Christman, *Autonomy in Moral and Political Philosophy*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY ARCHIVE (June 29, 2020), <https://plato.stanford.edu/archives/fall2020/entries/autonomy-moral/>; Louise Campbell, *Kant, Autonomy and Bioethics*, 3 ETHICS, MED. AND PUB. HEALTH (2017).

<sup>215</sup> Mill, *supra* note 162; Varkey, *supra* note 179.

<sup>216</sup> Mill, *supra* note 162.

<sup>217</sup> JONATHAN RILEY, THE ROUTLEDGE PHILOSOPHY GUIDEBOOK TO MILL'S ON LIBERTY (1998).

<sup>218</sup> JOHN STUART MILL, COLLECTED WORKS OF JOHN STUART MILL 223-24, 292 (John M. Robson ed., 2006).

philosophical considerations of this autonomy and “diversity-oriented” philosophers are prominent in the ongoing debate on how best to protect democratic values against legislative or government coercion.

The right to subject oneself to medical tests or to choose treatments is enhanced by the human right to thought, religion, and conscience. Freedom of thought, religion and conscience is at the heart of all human rights as they secure the mental capability to exert and enjoy all human rights.<sup>219</sup> Article 18(3) of the ICCPR and Section 38(1) of the Nigerian Constitution protect the right to think freely and to entertain ideas and hold positions based on personal conscientious values, religious or other beliefs.<sup>220</sup> Regarding coercive medical tests and vaccines, the argument can be made that the state has a primary duty to ensure that its policies, public authorities, businesses, and other third parties do not interfere with the individual’s right to think freely. This duty also ensures that the state should not prevent individuals from entertaining ideas or holding health-related positions based on their personal beliefs. Likewise, the state may not impose laws that would interfere with the right to make a medical decision based on one’s religious inclination and belief. While the argument seems to suggest that individuals have the right to live according to their religious convictions, the right is still subject to limitations that are necessary or the protection of public health, order, safety and the freedom of others.<sup>221</sup>

#### 6. *Right to Personal Privacy and Family Life*

Those who believe in a person's right to have personal private control over their health also rely on the right to personal privacy and the right to family life.<sup>222</sup> A

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<sup>219</sup> JIM MURDOCH, *PROTECTING THE RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS* (2012).

<sup>220</sup> See ICCPR, *supra* note 185, at art. 18, ¶ 3 (providing that “Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others”); see CONSTITUTION OF NIGERIA, *supra* note 194, at 31, ¶ 1 (stating “Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.”).

<sup>221</sup> See MURDOCH, *supra* note 219.

<sup>222</sup> E.g., Aaron Chia, *Is Compulsory Covid-19 Vaccination A Violation of Human Rights?* HEALTH AND HUM. RTS. J. (2021), <https://www.hhrjournal.org/2021/07/student-essay-is-compulsory-covid-19-vaccination-a-violation-of-human-rights/>; Francesca Camilleri, *Compulsory vaccinations for*



primary concern for privacy is that individuals should be secure in their personal and private life against unreasonable encroachment.<sup>223</sup> With respect to medical care, privacy refers to the freedom, choice and autonomy to make personal health related decisions.<sup>224</sup> The central argument against mandatory health directives such as COVID-19 protocols is that a person should be entitled to reasonable private control over the medical decisions they make, especially as it pertains to their own human body, even if it is contrary to popular opinion.<sup>225</sup> Similarly, mandatory testing and inoculation could violate the right to medical privacy by compelling a person to submit their bodies to unwanted medical treatments.<sup>226</sup>

Having privacy in a healthcare context also refers to the rights over one's health information and the confidentiality of a patient's medical record.<sup>227</sup> This right to confidentiality of medical and health information could arguably be breached when people are obligated to disclose their COVID-19 status (through testing), past COVID-19 infection, or indicate evidence of vaccination (including personal medical information on the date of vaccination, type of vaccine, and batch of the vaccine) as a condition to access or services employment, travel, and enjoy certain privileges.<sup>228</sup> Although vaccination certificates or vaccine passes do raise human

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*children: Balancing the competing human rights at stake*, 37 NETH. Q. OF HUM. RTS. 205, 245-67 (2019).

<sup>223</sup> See generally INST. OF MED. (US) COMM. ON HEALTH RSCH. AND THE PRIV. OF HEALTH INFO.: THE HIPAA PRIV. RULE, BEYOND THE HIPAA PRIVACY RULE: ENHANCING PRIVACY, IMPROVING HEALTH THROUGH RESEARCH (Sharyl J. Nass, Laura A. Levit, & Lawrence O. Gostin, eds., 2009); Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193-220 (1890).

<sup>224</sup> See Anita Allen, *Privacy and Medicine*, THE STAN. ENCYCLOPEDIA OF PHIL. (Spring 2021), <https://plato.stanford.edu/archives/spr2021/entries/privacy-medicine/>.

<sup>225</sup> See Ezell, *supra* note 164, at 219.

<sup>226</sup> See *Privacy in Health Care*, in ENCYCLOPEDIA OF BIOETHICS 2064-73 (Bruce Jennings, ed., 4th ed. 2014); Allen, *supra* note 223; *Covid: Greece to fine over-60s who refuse Covid-19 vaccine*, BBC NEWS (Nov. 30, 2021), <https://www.bbc.co.uk/news/world-europe-59474808>.

<sup>227</sup> See generally INST. OF MED. (US) COMM. ON REG'L HEALTH DATA NETWORKS, HEALTH DATA IN THE INFORMATION AGE: USE, DISCLOSURE, AND PRIVACY (Molla S. Donaldson & Kathleen N. Lohr, eds., 1994).

<sup>228</sup> See generally COUNCIL OF EUROPE COMM. ON BIOETHICS (DH-BIO), STATEMENT ON HUMAN RIGHTS CONSIDERATIONS RELEVANT TO "VACCINE PASS" AND SIMILAR DOCUMENTS (2021), <https://rm.coe.int/dh-bio-2021-7-final-statement-vaccines-e/1680a259dd>; COUNCIL OF EUROPE CONSULTATIVE COMM. OF THE CONVENTION FOR THE PROT. OF INDIVIDUALS WITH REGARD TO AUTOMATIC PROCESSING OF PERS. DATA, CONVENTION 108 STATEMENT (2021), <https://rm.coe.int/t-pd-bur-2021-6rev2-statement/1680a25713>; *Vaccine Pass: A New Statement Of The Committee On Bioethics Underlined The Human Rights Challenges*, COUNCIL OF EUROPE (May 4, 2021), <https://www.coe.int/en/web/bioethics/-/vaccine-pass-and-human-rights-a->

rights issues with regards to data protection and privacy, the requirement could fall with permissible exemptions where they are deemed important as measures to maintain effective protection against infectious diseases and viruses.<sup>229</sup> Disclosure of confidential medical information is not new.<sup>230</sup> Certain laws require the disclosure of health statutes in limited instances, especially communicable, contagious, infectious diseases that could potentially endanger others if they are exposed or pose greater risk to public health.<sup>231</sup>

The argument against mandatory immunization is further enmeshed in respect for family life and autonomy, especially as it affects children.<sup>232</sup> The issue of whether or not a compulsory vaccination amounted to an interference with the individual's physical integrity and right to respect for private or family life was given consideration in the case of *Vavříčka and others v. the Czech Republic*.<sup>233</sup> Although the court considered that mandatory inoculation policy could interfere with their right to private life, the court, ruled that such interference is justifiable.<sup>234</sup>

### 7. Freedom from Discrimination and Right to Equality Concerns

Another objection to the imposition of compulsory vaccination is that it provides a space for discriminatory treatment against those who are not vaccinated and confers certain privileges to the vaccinated. Countries and businesses that have

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declaration-of-the-committee-on-bioethics; Damien Cottier, *Covid passes or certificates: protection of fundamental rights and legal implications*, COUNCIL OF EUROPE COMM. ON LEGAL AFFAIRS AND HUM. RTS., Doc. 15257, Reference 4574 (Apr. 19, 2021).

<sup>229</sup> See Cottier, *supra* note 227.

<sup>230</sup> Jean O'Connor & Gene Matthews, *Informational Privacy, Public Health, and State Laws*, 101 AM. J. PUB. HEALTH 1840, 1845–50 (2011); Mark J. Taylor, *Legal Bases for Disclosing Confidential Patient Information for Public Health: Distinguishing Between Health Protection and Health Improvement*, 23 MED. L. REV. 348, 348–74 (2015).

<sup>231</sup> See O'Connor & Matthews, *supra* note 229, at 1845-50; Taylor *supra* note 229, at 348-74; *HIV and STD Criminalization Laws*, CENTERS FOR DISEASE CONTROL AND PREVENTION (October 24, 2022),

<https://www.cdc.gov/hiv/policies/law/states/exposure.html#:~:text=HIV%20and%20STD%20Criminalization%20Laws%202022&text=In%2010%20states%2C%20laws%20require,a%20matter%20of%20state%20law>.

<sup>232</sup> Camilleri, *supra* note 221, at 245-267; Giovanni Rezza, *Mandatory Vaccination for Infants and Children: The Italian Experience* 113 PATHOGENS AND GLOBAL HEALTH 291, 291-296 (2019).

<sup>233</sup> See Case of *Vavříčka and others v. the Czech Republic*, App. Nos. 47621/13, 3867/14, 73094/14, 19306/15, 19298/15, and 43883/15 (Apr. 8, 2021), [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-209039%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-209039%22]}).

<sup>234</sup> *Id.*

imposed vaccination regulations or passed legislation often require proof of mandatory COVID-19 certification to indicate vaccination or show evidence of a recent negative test or recovery.<sup>235</sup> One obvious concern is that it exacerbates inequalities and creates a divide between the vaccinated and the unvaccinated. A study on the effect of COVID-19 Mandatory certificate shows that it potentially risks an increase in inequalities among the ethnic or socioeconomic groups that have lower vaccination uptake and trust in authorities.<sup>236</sup> The freedom from discrimination and the right to equality is protected by various human rights instruments.<sup>237</sup> Discrimination occurs when a person is treated less favorably or denied certain privileges.<sup>238</sup> Laws, policies and practices which are seemingly neutral on face value can also be discriminatory when they have a disproportionate effect.<sup>239</sup> The point could be made that everyone, vaccinated or unvaccinated, has the right to interact, work, mingle and access services in a non-discriminatory manner.<sup>240</sup> In particular, no discrimination should occur on the basis of the fact that a person is vaccinated or that they are in violation of a health policy of an invasive nature.<sup>241</sup> Similarly, the right to freedom of movement could likely be breached when an unvaccinated individual's freedom to move is restricted.<sup>242</sup> While undue restriction of movement and discrimination on the basis of personal health choice

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<sup>235</sup> See Cornelia Betsch & Robert Böhm, *Detrimental effects of introducing partial compulsory vaccination: experimental evidence*, 26 EUR. J. OF PUB. HEALTH 378, 378-81 (2016); Melinda C. Mills & Tobias Rüttenauer, *The effect of mandatory COVID-19 certificates on vaccine uptake: synthetic-control modelling of six countries*, 7 LANCET PUB. HEALTH e15, e15-e21 (2022). Denmark, Israel, Italy, France, Germany, and Switzerland have introduced certification.

<sup>236</sup> See Betsch & Böhm, *supra* note 234, at 378-81; Mills & Rüttenauer, *supra* note 234, at e15-e21.

<sup>237</sup> E.g., Karl Josef Partsch, *Discrimination Against Individuals and Groups* in ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 134 (Rudolf Bernhardt, ed., 1st ed. 1981).

<sup>238</sup> CESCR, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, 42d Sess., adopted 2 July 2009, U.N. Doc. E/C.12/GC/20 ¶ 10(a) (2009).

<sup>239</sup> *Id.* at ¶ 10(b).

<sup>240</sup> E.g., Sarah Todd, *Do Mandatory Vaccines Violate Human Rights?* QUARTZ (Aug. 5, 2021) <https://qz.com/2042743/do-mandatory-vaccines-violate-human-rights/>.

<sup>241</sup> See generally B.C.'S OFFICE OF THE HUM. RTS. COMM'R, *A HUMAN RIGHTS APPROACH TO PROOF OF VACCINATION DURING THE COVID-19 PANDEMIC* (2021); *COVID-19 and Mandatory Vaccination: Ethical considerations Policy Brief*, WHO (May 30, 2022), <https://apps.who.int/iris/bitstream/handle/10665/340841/WHO-2019-nCoV-Policy-brief-Mandatory-vaccination-2021.1-eng.pdf?sequence=1&isAllowed=y>; (DH-BIO), *supra* note 227.

<sup>242</sup> See Lynette Mtimkulu-Eyde et al., *supra* note 123; Zhengzong Huang & Zehua Feng, *Public Health and Private Life Under COVID-19 Vaccination Policies in China: A Legal Analysis*, 14 RISK MGMT. HEALTHCARE POL'Y 4627, 4627-38 (2021).

could fall within the range of human rights violations, they may also fall within the justifiable limitations when poised to protect the overriding public health and interest.<sup>243</sup>

While these forgoing human rights arguments are valid, it is trite that human rights are not absolute at all times.<sup>244</sup> This means that the autonomy, liberty, decisions, and rights of an individual are relative and not always binding.<sup>245</sup> They are subject to reasonable restrictions in the interest of the state and for the protection of others, although the rights cannot be arbitrarily curtailed on legislative discretion and bureaucratic whims.<sup>246</sup> The following will examine a counter-argument to these human rights agitations.

### *B. A Legal Response to Human Rights Objections: Protecting Public Health Through COVID Vaccination*

Although human rights law guarantees certain rights, it also provides policy space for the limitation of the rights where it is necessary, objective, and reasonable.<sup>247</sup> Several human rights instruments and laws allow lawful interference as the circumstances warrants thus, human rights are subject to permissible limitations, expressly and impliedly.<sup>248</sup> Regarding compulsory vaccination, testing, and other mandatory measures, several arguments, also grounded in human rights, can be made in its support as follows.

#### *1. Protecting Public Health, Safety, and Security*

Human rights laws and principles are useful in framing public health measures

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<sup>243</sup> Lynette Mtimkulu-Eyde et al., *supra* note 123; Huang & Zehua Feng, *supra* note 241, at 4627-38.

<sup>244</sup> Emily Howie, *Protecting the human right to freedom of expression in international law*, 20 INT'L J. OF SPEECH-LANGUAGE PATHOLOGY 12, 12-15 (2018).

<sup>245</sup> See Sidney F. Engelbrecht, *Can autonomy be limited - an ethical and legal perspective in a South African context?* 32 J. OF FORENSIC ODONTO-STOMATOLOGY 34, 34-39 (2014).

<sup>246</sup> See Omar Grech, *Human Rights and Development: An Act Not a Charity*, in 80-20 DEVELOPMENT IN AN UNEQUAL WORLD 74-93 (Tony Daly, Ciara Regan, & Colm Regan, eds., 7th ed., 2016).

<sup>247</sup> INTER-PARLIAMENTARY UNION AND THE U.N. OHCHR, HUMAN RIGHTS: HANDBOOK FOR PARLIAMENTARIANS N° 26 47-49 (2016).

<sup>248</sup> Wei Liang Wang, et al., *supra* note 211, at 163-74.

and policies that could limit individuals' rights.<sup>249</sup> Although individuals have rights protected by the law, these individual personal rights are not unqualified; they can be restricted where it is reasonably necessary to do so in the interest of public health, safety and order.<sup>250</sup> International human rights conventions have recognized that sometimes, states can take steps to prevent a threat to public health and public emergencies that threaten the life of a nation.<sup>251</sup> The ICCPR expressly subjects certain rights to limitations for reasons of public order and the protection of the rights of others.<sup>252</sup> For example, the freedom to manifest one's beliefs and religious inclinations is subject to limitations that may be prescribed by the law and where necessary to protect public safety, order, health, morals or the freedom of others.<sup>253</sup> Furthermore, Article 4 of the ICESCR categorically allows the adoption of legal and policy measures that may limit the enjoyment of rights recognized in the Covenant for purpose of "promoting the general welfare of a democratic society."<sup>254</sup> In Nigeria, Section 45 of the Constitution provides expansive exceptions where fundamental rights may be restricted to protect other people and the nation from harm.<sup>255</sup> It provides authoritative regulation to restrict human rights on grounds of public health, national security, defense, and public order.<sup>256</sup>

It could, therefore, be argued that mandatory vaccination can be imposed as a legitimate response to a public health emergency, particularly where it is necessary to facilitate herd immunity. In the U.S. case of *Jacobson v. Massachusetts*, the

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<sup>249</sup> See Juana I. Acosta, *Vaccines, Informed Consent, Effective Remedy and Integral Reparation: An International Human Rights Perspective*, 131 VNIVERSITAS 19, 19-64 (2015).

<sup>250</sup> *Id.*; Sophia A. Zweig et al., *Ensuring Rights while Protecting Health: The Importance of Using a Human Rights Approach in Implementing Public Health Responses to COVID-19*, 23 HEALTH AND HUM. RTS. J. 173, 173-86 (2021).

<sup>251</sup> See ICCPR, *supra* note 184, at art. 4. In Article 4 of the ICCPR, the States Parties can derogate from their human right obligation in light of public emergency or exigencies situation that threaten the life of the nation.

<sup>252</sup> *Id.* at arts. 19(3)(a-b).

<sup>253</sup> *E.g.*, CONSTITUTION OF NIGERIA, *supra* note 194, at § 45.

<sup>254</sup> ICESCR, *supra* note 186, at art. 4.

<sup>255</sup> See CONSTITUTION OF NIGERIA, *supra* note 194, at § 45 "Nothing in sections 37, 38, 39, 40 and 41 of this Constitution (*pertaining to fundamental human rights*) shall invalidate any law that is reasonably justifiable in a democratic society (a) in the interest of defence, public safety, public order, public morality or public health; or (b) for the purpose of protecting the rights and freedom or other persons."

<sup>256</sup> *Id.*

Court upheld the states' authority to mandate vaccinations for smallpox for this very reason.<sup>257</sup> The court noted in its opinion that:

...[T]he liberty secured by the Constitution ... does not import an absolute right in each person to be at all times, and in all circumstances, wholly freed from restraint, nor is it an element in such liberty that one person, or a minority of persons residing in any community and enjoying the benefits of its local government, should have power to dominate the majority when supported in their action by the authority of the State.<sup>258</sup>

The jurisprudence of the European Union's court suggests that legitimately pursued mandatory vaccination policies may not necessarily infringe on human rights.<sup>259</sup> The case of *Vavříčka and Others v. the Czech Republic* which was decided in April 2021, is illustrative of the state's duty to compel vaccination against diseases and to also respond to public health needs.<sup>260</sup> This case dealt with the Czech policy of mandatory vaccination of children.<sup>261</sup> In the Czech Republic, children must undergo mandatory vaccination for several diseases and if parents do not comply with this policy, they can be fined and the children would be precluded from attending both public and private schools.<sup>262</sup> The applicant, Mr. Vavříčka, refused to have his two children vaccinated and he was fined (the other applicants were children whose parents failed to comply with the compulsory vaccination scheme and were denied admission to pre-school nurseries).<sup>263</sup> The applicants challenged the sanction in court and argued that such compulsory vaccination policies violate their religious convictions and beliefs, human rights, and the harmfulness of vaccines.<sup>264</sup> With respect to human rights, the applicant argued that the vaccine policy and the interfering sanctions constitute violations of their right to personal autonomy protected under Article 8 of the EU Convention, in making

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<sup>257</sup> *Jacobson v. Massachusetts*, 197 U.S. 11, 22 (1905).

<sup>258</sup> *Id.*

<sup>259</sup> Silvio Roberto Vinceti, *COVID-19 Compulsory Vaccination and the European Court of Human Rights*, 92 ACTA BIOMED 1, 1-5 (2021).

<sup>260</sup> Vavříčka, *supra* note 232 (noting the case was instituted pre-COVID pandemic).

<sup>261</sup> *Id.*

<sup>262</sup> See Zákon o ochrane veřejného zdraví [Act on protection of public health] č. 258/ /2000 as consolidated to 471/2005 Sb. (Czech).

<sup>263</sup> Vavříčka, *supra* note 232 at ¶¶ 23-24.

<sup>264</sup> See *id.* at ¶ 24.

decisions concerning their health, right to private and family life,<sup>265</sup> right to thought and religion in Article 9,<sup>266</sup> as well as the right to the personal development of the children who have been denied access to educational facilities.<sup>267</sup> Conversely, the Czech government managed to persuade the court that their policy is necessary to protect the health of the population.<sup>268</sup> Although the ECHR agreed with the applicants that this policy could interfere with their right to private life, the court thought that this interference is necessary and justifiable.<sup>269</sup> Crucially, the court decided on the basis of the necessity of the measure in curbing health concerns, and the efficacy and safety of vaccinations in question.<sup>270</sup> Moreover, the court agreed that the government is by a positive obligation to protect health and the right to life and the mandatory vaccine scheme was in response to this duty.<sup>271</sup> Furthermore, the interference was proportionate to the legitimate aim of the Czech authorities to facilitate adequate immunization coverage against diseases posing serious health risks hence, there was no violation of human rights.<sup>272</sup>

*Vavříčka* is rich and very useful for the design and implementation of public policies to safeguard public health and can be used as a guide for the new policies in this area. It clarifies the parameter of actions that are necessary to achieve herd immunity and promote public health.<sup>273</sup> COVID-19 is undoubtedly a challenging health crisis that may require the exigent compulsory measure to control and curb. It is worth noting, that the decision of the ECHR to support compulsory vaccination was based on a scientific census of the efficacy of the treatment.<sup>274</sup> The interference was also considered in light of scientific evidence of the safety of the vaccines for “diseases well known to medical science.”<sup>275</sup> It is argued that a compulsory vaccination may only be imposed in cases where the medical intervention is adjudged to be medically safe and effective both in the short term and long term.

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<sup>265</sup> *Id.* at ¶ 3, 160; European Convention on Human Rights art. 8, Nov. 4, 1950, E.T.S. No. 005.

<sup>266</sup> *See* European Convention on Human Rights, *supra* note 364, at art. 9.

<sup>267</sup> *See* *Vavříčka*, *supra* note 232 at ¶ 51.

<sup>268</sup> *Id.* at ¶ 306.

<sup>269</sup> *Id.* at ¶¶ 273-98.

<sup>270</sup> *Id.* at ¶¶ 285, 299-301.

<sup>271</sup> *Id.* at ¶¶ 301-09.

<sup>272</sup> *Id.* at ¶¶ 290-309, 311.

<sup>273</sup> *See generally* *Vavříčka*, *supra* note 232.

<sup>274</sup> *Id.* at ¶ 285.

<sup>275</sup> *Id.* at ¶ 158.

## 2. *Protecting the Rights to Life and Health*

Another crucial point in favor of mandatory vaccination is that human rights laws and constitutions guarantee everyone the right to life, thus, the state has a positive duty to respect, protect, promote, and advance human rights.<sup>276</sup> Within the context of COVID-19, the protection of the right to life is of utmost importance in the obligation of the state to take measures to safeguard the lives of its citizens and everyone within its jurisdiction. COVID-19 is a contagious illness that in a significant proportion leads to serious illness and death.<sup>277</sup> In this respect, the government can impose conditions that would safeguard the lives of the people, even if such measures invariably restrict personal human rights. The primary argument is that the state must vaccinate every person it can reach to prevent death as a part of its positive obligation to protect lives.<sup>278</sup>

In a related manner, the government and health authorities have an obligation to guarantee the right to the “enjoyment of the highest attainable standard of physical and mental health”<sup>279</sup> including “[t]he prevention, treatment and control of epidemic, endemic, occupational and other diseases”<sup>280</sup> as well as the adoption of necessary measures to assure medical services, facilities, and treatments.<sup>281</sup> The rationalization can be made for the fulfillment of this duty through mandatory vaccination and testing schemes as a legitimate response to public health emergencies, particularly where it is necessary to achieve herd immunity, minimize the risk of contracting or transmitting the virus to ultimately curtail the pandemic. The WHO’s Global Vaccine Action Plan of 2013 surmises that “immunization is, and should be recognized as, a core component of the human right to health and an individual, community and governmental responsibility.”<sup>282</sup>

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<sup>276</sup> E.g., Virginia A. Leary, *The Right to Health in International Human Rights Law*, 1 *Health and Hum. Rts.*, 24, 24-56 (1994); JENNIFER HEAVEN MIKE, *WOMEN, MEDICINE AND THE TRIPS AGREEMENT: HEALTH AND HUMAN RIGHTS IN NIGERIA* (2020).

<sup>277</sup> See Marco Cascella et al., *Features, Evaluation, and Treatment of Coronavirus (COVID-19)*, STATPEARLS (2022), <https://www.ncbi.nlm.nih.gov/books/NBK554776/>.

<sup>278</sup> See *supra* notes 234, 245-67.

<sup>279</sup> See ICESCR, *supra* note 186 at art. 12(1).

<sup>280</sup> *Id.* at art. 12(2)(c).

<sup>281</sup> See *id.*

<sup>282</sup> GLOBAL VACCINE ACTION PLAN 2011–2020, WHO (2013) available at [https://cdn.who.int/media/docs/default-source/vaccines-and-immunization/gvap-introduction-and-immunization-landscape-today.pdf?sfvrsn=870c4e4\\_2](https://cdn.who.int/media/docs/default-source/vaccines-and-immunization/gvap-introduction-and-immunization-landscape-today.pdf?sfvrsn=870c4e4_2).



### 3. *Protection of Individuals and Society from Harm*

Another argument in the vaccine debate is that human rights give everyone the right to be safeguarded against harm.<sup>283</sup> One of the oldest justifications for establishing and maintaining a government is to protect the rights and lives of the people.<sup>284</sup> As such, everyone is entitled to the protection of the state. Accordingly, it is the obligation of the state to reasonably prevent, monitor, and protect society against existing or imminent danger.<sup>285</sup> This point relies on the assumption that COVID-19 poses a major public health threat that everyone should be protected from, even if they object to the nature of such protection.<sup>286</sup>

The responsibility of any state to protect its citizens and their corresponding obligations to comply with its laws has its roots in the classical social contract theory and early English traditions.<sup>287</sup> Edward Cook, a foremost English jurist and renowned judge, identified the relationship between the sovereign (government) and subjects (citizens) in term of “mutual bond and obligations” where the sovereign “governs and protects his subjects” while the subject promise allegiance and obedience to the sovereign.<sup>288</sup> This mutual obligation is inherent in the role of the government in protecting the people’s lives, health, freedom, and welfare. The state affords this protection through laws and policies, including the provision of benefits that will enhance their lives and health. Indeed, many societies establish a government for the preservation of the citizen’s rights.<sup>289</sup> In many modern democracies, although sovereignty rests with the people, it is exercised through the representative authority of the state and its organs of government. According to Locke, individuals mutually seek and agree to “form a community” for the “mutual preservation of their lives, liberties and estates” (property).<sup>290</sup> In this arrangement,

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<sup>283</sup> E.g., Todd, *supra* note 239.

<sup>284</sup> Alex Tuckness, *Locke’s Political Philosophy*, THE STAN. ENCYCLOPEDIA OF PHIL. (2020), <https://plato.stanford.edu/archives/win2020/entries/locke-political/>.

<sup>285</sup> Jason Brennan, *A libertarian case for mandatory vaccination*, 44 J. OF MED. ETHICS 37, 37-43 (2016); Julian Savulescu, *Good Reasons to Vaccinate: Mandatory or Payment for Risk?* 47 J. OF MED. ETHICS 78,78–85 (2020).

<sup>286</sup> Todd, *supra* note 239.

<sup>287</sup> Steven J. Heyman, *The First Duty of Government: Protection, Liberty and the Fourteenth Amendment* 41 DUKE L. J. 507, 507 (1991).

<sup>288</sup> *Id.* at 513-14.

<sup>289</sup> James A. Dorn, *The Scope of Government in a Free Society*, 32 CATO J. 629, 629-40.

<sup>290</sup> GARY HART, RESTORATION OF THE REPUBLIC: THE JEFFERSONIAN IDEAL IN 21ST-CENTURY America 106 (2002).

individuals donate or give up their natural power of self-preservation to “be regulated by the laws made by the society, so far forth as the preservation of himself and the rest of society shall require.”<sup>291</sup> Thomas Hobbes, Jean-Jacque Rousseau, Immanuel Kant, and other philosophers have also written about individuals giving up certain aspects of their natural freedom to enjoy the benefit of a political order.<sup>292</sup> Scholars have articulated this views of social contract that people gain civil rights by accepting social obligations to respect and defend the right of others, even where they have to surrender some of their freedoms.<sup>293</sup>

The *quid pro quo* social contract theory is not only restricted in its application to the state and the individual’s relationship; it extends to the right and freedom of others.<sup>294</sup> In return for the benefit of society, the individual assumes certain positive duties such as obedience and allegiance.<sup>295</sup> In this social contract arrangement, the subject has the right to protection from his community, in turn, he or she has the obligation to contribute to the protection of other citizens and the community itself.<sup>296</sup> According to the eminent English jurist, legal commentator and judge Sir William Blackstone, this duty typically requires that the individual “contribute, on

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<sup>291</sup> JOHN LOCKE, TWO TREATISES OF GOVERNMENT (OR TWO TREATISES OF GOVERNMENT: IN THE FORMER, THE FALSE PRINCIPLES, AND FOUNDATION OF SIR ROBERT FILMER, AND HIS FOLLOWERS, ARE DETECTED AND OVERTHROWN. THE LATTER IS AN ESSAY CONCERNING THE TRUE ORIGINAL, EXTENT, AND END OF CIVIL GOVERNMENT ¶ 129 (1689).

<sup>292</sup> See generally PATRICK RILEY, WILL AND POLITICAL LEGITIMACY: A CRITICAL EXPOSITION OF SOCIAL CONTRACT THEORY IN HOBBS, LOCKE, ROUSSEAU, KANT, AND HEGEL (1982); THOMAS HOBBS, LEVIATHAN: OR THE MATTER, FORME & POWER OF A COMMONWEALTH, ECCLESIASTICAL AND CIVILL (1904); Gerald Gaus & Shane D. Courtland, *Liberalism*, THE STAN. ENCYCLOPEDIA OF PHIL. (2022); IMMANUEL KANT, THE METAPHYSICS OF MORALS, PART 1 (1797). See also JEAN-JACQUES ROUSSEAU, THE SOCIAL CONTRACT: THE FIRST AND SECOND DISCOURSES 167 (Susan Dunn, ed., 2002); JEAN-JACQUES ROUSSEAU, OEUVRES COMPLÈTES 361 (Bernard Gagnebin & Marcel Raymond, eds., 1995); JEAN-JACQUES ROUSSEAU, THE COLLECTED WRITINGS OF ROUSSEAU 139 (Roger D. Masters & Christopher Kelley, eds., 2010); JOHN RAWLS, A THEORY OF JUSTICE: REVISED EDITION 266 (1999).

<sup>293</sup> See *supra* note 291. According to Rousseau for example, “Each of us puts his person and all his power in common under the supreme direction of the general will; and in a body we receive each member as an indivisible part of the whole.” ROUSSEAU, OEUVRES COMPLÈTES, *supra* note 291.

<sup>294</sup> Celeste Friend, *Social Contract Theory*, INTERNET ENCYCLOPEDIA OF PHIL., <https://iep.utm.edu/soc-cont/>. The social contract theory essentially follows the view that people agree to cohabit in society in accordance with an established standard of ethical, civil, and political rules. The agreement defines the rights and duties of each person who, in turn, has to conform to certain standards of behaviour set by that society to reap the benefit of that society.

<sup>295</sup> See Heyman, *supra* note 286.

<sup>296</sup> See *id.*

his own part to the subsistence and peace of the society.”<sup>297</sup> People who live close to each other are at higher risk of passing on contagious diseases like COVID-19.<sup>298</sup> Consequently, COVID-19 does not only put an individual’s health at risk, but it exposes those that live in close proximity to him or her to a risk of contracting the virus.<sup>299</sup> One’s refusal to be vaccinated, therefore, cause multiple forms of harm not only to the individual but to society. To protect society as a whole, the state may adopt a compulsory vaccination policy to protect the public from the direct and indirect effects of the pandemic on health, the healthcare system, and other consequential damage. In this manner, an individual’s right may be limited to protect the general populace, since a person’s personal choice could invariably affect the health of other people.<sup>300</sup>

## VI. BUSINESSES AND ORGANIZATIONS

Business owners and private workplace organizations may require workers and patrons to produce vaccine certificates or exemptions.<sup>301</sup> Many organizations could adopt such a policy to maintain a safe and healthy working environment.<sup>302</sup> A fundamental question is whether employers or organizations can extend such directives to their workers or patrons even without their consent.

Where there is an enabling law that gives an organization the power to mandate compulsory vaccination, they can rely on that right to compel such.<sup>303</sup> In Oregon,

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<sup>297</sup> See *id.*; WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND IN FOUR BOOKS. NOTES SELECTED FROM THE EDITIONS OF ARCHIBOLD, CHRISTIAN, COLERIDGE, CHITTY, STEWART, KERR, AND OTHERS, BARRON FIELD’S ANALYSIS, AND ADDITIONAL NOTES, AND A LIFE OF THE AUTHOR BY GEORGE SHARSWOOD. IN TWO VOLUMES. (1893).

<sup>298</sup> See *Modes of transmission of virus causing COVID-19: implications for IPC precaution recommendations: Scientific brief*, WHO (Mar. 29, 2020), <https://www.who.int/news-room/commentaries/detail/modes-of-transmission-of-virus-causing-covid-19-implications-for-ipc-precaution-recommendations>; *Coronavirus disease (COVID-19): How is it transmitted?* WHO (Dec. 23, 2021), <https://www.who.int/news-room/questions-and-answers/item/coronavirus-disease-covid-19-how-is-it-transmitted>.

<sup>299</sup> See *supra* note 297.

<sup>300</sup> Todd, *supra* note 239.

<sup>301</sup> Mark A. Rothstein, Wendy E. Parmet, & Dorit Rubinstein Reiss, *Employer-Mandated Vaccination for COVID-19*, 111 AM. J. PUB. HEALTH 1061, 1061–64 (2021).

<sup>302</sup> *Id.*

<sup>303</sup> Jeff King & Octávio Luiz Motta Ferraz, *Legal, Constitutional, and Ethical Principles for Mandatory Vaccination Requirements for Covid-19*, LEX-ATLAS: COVID-19 (Nov. 1, 2021), <https://lexatlas-c19.org/vaccination-principles/>.

for example, an employer has the right to require a COVID-19 vaccination, although reasonable accommodation can be made for an exception to the vaccination policy.<sup>304</sup>

In the absence of a direct enabling law, employers could make other arguments to provide workplace policies for vaccination of workers.<sup>305</sup> An argument that can be made is that within the context of the law, business owners can determine how to conduct their businesses, adapt business practices accordingly, and shape their business environments.<sup>306</sup> An organization may wish to assure everyone that they are in a safe space when they come into their premises.<sup>307</sup> Moreover, in labor law, it is the duty of an employer to guarantee a safe working environment, prevent risk to health and secure the health of workers.<sup>308</sup> The assertion can also be made that workers have the right to feel safe at work and employers should therefore protect their employees in the best way they can, as a legal responsibility. A mandatory COVID-19 policy is a shield from a potential legal action bordering on claims of negligence or occupational liability for failure to safeguard against diseases arising in the course of employment.<sup>309</sup> Businesses may protect their business and financial interests since an employee who tests positive or comes in close contact with someone with COVID-19 must isolate from work, leading to a shortfall of workers and low productivity. A place of business also risks temporal shutdown in connection with COVID-19.<sup>310</sup>

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<sup>304</sup> *COVID Vaccinations and the Workplace*, OR. BUREAU OF LAB. & INDUS., <https://www.oregon.gov/boli/workers/Pages/covid-vaccine.aspx> (last visited Dec. 22, 2022).

<sup>305</sup> King & Ferraz, *supra* note 302; Alan Bogg & Nicola Countouris, *Mandatory Vaccinations in the Workplace: constitutionalising the managerial prerogative*, LEX-ATLAS: COVID-19 BLOG SYMP. ON MANDATORY VACCINATION (May 7, 2021), <https://lexatlas-c19.org/mandatory-vaccinations-in-the-workplace-constitutionalising-the-managerial-prerogative/>.

<sup>306</sup> King & Ferraz, *supra* note 302; Bogg & Countouris, *supra* note 304.

<sup>307</sup> King & Ferraz, *supra* note 302; Bogg & Countouris, *supra* note 304.

<sup>308</sup> King & Ferraz, *supra* note 302; Bogg & Countouris, *supra* note 304; ICESCR, *supra* note 186, at art. 7(b). According to Article 7 (b) the ICESCR, everyone has the right to work under safe and healthy working conditions.

<sup>309</sup> See Dayo Adu & Halima Aigbe, *Nigeria: Covid-19: Can Employers Mandate Compulsory Covid-19 Vaccination In Nigeria*, MONDAQ (Apr. 9, 2021), <https://www.mondaq.com/nigeria/health-safety/1056214/covid-19-can-employers-mandate-compulsory-covid-19-vaccination-in-nigeria>.

<sup>310</sup> Alexander W. Bartik et al., *The impact of COVID-19 on small business outcomes and expectations*, 117 PNAS 17656, 17656-66 (2020); Bright Nana Kwame Ahia et al., *The Effects of Temporal Shut Down: A Proposed Mitigation on COVID-19 Perspectives*, 8 OPEN J. OF SOC. SCI. 95, 95-107 (2020).

A strong reference can be made to any government policy in this respect. In Nigeria, the federal government issued a directive for the enforcement of the COVID-19 vaccine mandate in civil service establishments to control the transmission of the pandemic.<sup>311</sup> Although such regulation applied only to the public service sector, private organizations can also rely on the rationale for this policy to establish their own workplace policy. The point can be made that such government policy shows the state is amenable to controlling the virus within the workplace.

It is the view of this author that mandatory vaccination is imposed only as a last resort, thus, private organizations and business owners should consider other safety actions in controlling the spread and risk of contracting the virus in place of compelling vaccinations. Other safety protocols such as washing of sanitizing/hands, disinfecting the workplace, wearing masks, social distancing, remote working, etc. can be utilized as workplace health practices before mandating vaccinations.

## VII. RECOMMENDING CONDITIONS FOR IMPOSING COMPULSORY VACCINATIONS AS A LEGAL RESPONSE TO PUBLIC HEALTH CRISES

The arguments for and against the virus have been laid down and one thing that has been established is that compulsory vaccination could be imposed in response to the pandemic with justifiable reasons. Diseases such as COVID-19 have distinguishing deadly characteristics, including their evolving variants,<sup>312</sup> thus, it is likely to be relevant to any argument in favor of mandating a vaccination. There are, however, a myriad of issues that need to be considered when developing a mandatory vaccination policy.

### *A. Necessity and Objective Rationale*

At the government level, any action to limit human rights has to be “in accordance with law,” i.e., it is “necessary in a democratic society” and for the

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<sup>311</sup> Nike Adebawale, *COVID-19: Nigerian govt makes vaccination mandatory for civil servants*, PREMIUM TIMES (Oct. 13, 2021), <https://www.premiumtimesng.com/news/headlines/489749-just-in-covid-19-nigerian-govt-makes-vaccination-mandatory-for-civil-servants.html>.

<sup>312</sup> *E.g.*, Aleem, *supra* note 48.

“protection of health [...] or rights and freedoms of others.”<sup>313</sup> Any measure must be “proportionate,” which involves proving that individuals who are unvaccinated pose a significant risk to the public.<sup>314</sup> The Siracusa Principles, adopted by the United Nations Economic and Social Council in 1984 provide an authoritative guide for the restriction of human rights to pursue the legitimate objectives of protecting public health and for reasons of national emergency.<sup>315</sup> Accordingly, all measures in respect of a national emergency must be limited to the duration of the emergency, while also taking into account the impact on a specific population or marginalized groups.<sup>316</sup> Since infectious disease threatens the health and welfare of others, any legitimate means to restrict people’s liberties and freedoms in order to protect others in the public health community will have little resistance as individuals realize the state owes greater responsibility to public health and the right to life.

### *B. Scale and Severity of the Threat to Public Health*

The scale and severity of the pandemic should justify the mandate. The high risk of an unregulated environment, the *laissez faire* approach of the people, the ineffectiveness of other safety protocols, and the transmission rate should guide any policy consideration.<sup>317</sup> Where the virus is not prevalent, it will be difficult to sustain a compulsory directive if it does not pose serious health risks or can be controlled by less invasive health and safety protocols. Likewise, any compulsory policy should be limited to the period of its virility. According to the standards laid down by the Siracusa Principles, such restriction measures must be targeted at a legitimate objective of national interest; must be based on scientific evidence and neither arbitrary nor discriminatory in the application; and must have regard to respect for human dignity and be periodically reviewed.<sup>318</sup>

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<sup>313</sup> CONSTITUTION OF NIGERIA, *supra* note 194, at § 45.

<sup>314</sup> WHO, *supra* note 125.

<sup>315</sup> *See generally* HUMAN RIGHTS DIMENSIONS OF COVID-19 RESPONSE, HUM. RTS. WATCH (2020), [https://www.hrw.org/sites/default/files/supporting\\_resources/202003covid\\_report\\_0.pdf](https://www.hrw.org/sites/default/files/supporting_resources/202003covid_report_0.pdf).

<sup>316</sup> U.N. Comm. on Hum. Rts., *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, adopted 28 September 1984, U.N. Doc. E/CN.4/1985/4 (1984).

<sup>317</sup> *See supra*, sections I(B), V(A)(1), VI.

<sup>318</sup> *Id.*

### *C. Enabling Legal Instrument*

As a compulsory mandate is a justifiable restriction of human rights, it must be imposed by legislation or a comparable legal instrument to be lawful.<sup>319</sup> The legislation should disclose with certainty the rationale for the interference with human rights, the scope of such mandate and any reasonable accommodation. Such an instrument could be justified based on the peculiarity of the deadly virus.

### *D. Efficacy and Proof of Safety*

Compulsory vaccination should not be contemplated unless the vaccines are proven to guarantee protection against transmission and are accessible to all. The State must show that the vaccines are safe and effective, having undergone all strict clinical trials, standards and safety checks before compelling the public to access them. Likewise, the reverent health authorities must regularly monitor the effectiveness, standard, and safety of the vaccinations. For all vaccinations, the 1996 devastating impact of the Pfizer antibiotic meningitis medication, Trovan, which subsequently led to the boycott of the polio vaccine in Nigeria should serve as a lesson for the government to ensure that all drugs for vaccination are safe and effective.<sup>320</sup>

### *E. Campaigns and Desensitization*

As a starting point, the government should undertake rigorous desensitization/advocacy campaigns to persuade people to voluntarily get vaccinated. The people should be educated on the importance of vaccines as the benefits far outweigh any associated adverse effects or the risk of contagious transmission.<sup>321</sup> Any myth or propaganda should be dispelled through targeted awareness campaigns.

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<sup>319</sup> See King, Ferraz, & Jones, *supra* note 13, at 220–22.

<sup>320</sup> See Ayodele Samuel Jegede, *What Led to the Nigerian Boycott of the Polio Vaccination Campaign?*, 4 PLOS MED. 0417, 0417-22 (2007).

<sup>321</sup> Flanigan, *supra* note 156.

### *F. Sanctions for Breach*

The seriousness of the sanctions for violation of vaccination policies should be considered when designing vaccination policies. Restrictions from accessing public places, workplaces, social activities, travel, suspension of certain privileges, and soft fines may be easy to justify. High fines may prove to be counterproductive as it could generate more resistance to vaccination or decrease the uptake of future public health care measures. Imprisonment of violators may also prove to be harmful and detrimental to public health as it could further expose the individuals to health risk. On the other hand, moral persuasions may be more effective than sanctions. Mandatory vaccination or sanctions should be used sparingly and carefully where there are justifiable reasons to impose this to achieve herd immunity and protect the rights of everyone.<sup>322</sup> It is important that policies are designed and enforced with regard to the rights of the people. Hence, forceful administration of vaccines should not be considered.

### *G. Ensuring Vaccine Equity, Availability, and Access*

Guaranteeing equitable, free, and sustainable access, as well as availability of vaccines is the starting point for any government that is serious about addressing health challenges. This is also key to the acceptance of any mandatory policy. Undoubtedly, pandemics typically stretch public health systems.<sup>323</sup> Particularly, it exposes the gaps in healthcare for the poorer populations, the underserved, the geographically disadvantaged, and the vulnerable, including older persons.<sup>324</sup> For example, people with poor or inadequate access to medical care who experience COVID-19 symptoms may defer or refrain from being tested, or may only turn to medical care in advanced stages, resulting in poorer health outcomes.<sup>325</sup> This may potentially also put their families and communities at risk. Vaccination could attenuate the spread of the virus,<sup>326</sup> however, there must be an efficient, timely, fair,

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<sup>322</sup> WHO, *supra* note 125.

<sup>323</sup> *E.g.*, ANNA SAGAN ET AL., HEALTH SYSTEMS RESILIENCE DURING COVID-19: LESSONS FOR BUILDING BACK BETTER (2021).

<sup>324</sup> *See generally* Rodrigues & Plotkin, *supra* note 116.

<sup>325</sup> Efrat Shadmi, et al., *Health equity and COVID-19: global perspectives*, 19 Int'l J. for Equity in Health 1, 1-16 (2020).

<sup>326</sup> Savulescu, *supra* note 284, at 78–85.



and reliable distribution of vaccines. Ideally, the cost of any mandatory requirement should be covered by public health institutions.

To achieve the overriding/overarching goal of any vaccine policy, vaccination programs should target marginalized and undeserving communities. Strict surveillance is also vital to ensuring that overlooked communities are identified and sufficiently covered. According to the WHO, the absence of sufficient supply, free access and meaningful burden free opportunities to the vaccinated would render any mandate redundant and ineffective.<sup>327</sup> It would also create an undue burden, unfair demand and unreasonable mandate on those who are required to be vaccinated but cannot easily access the vaccines. Compliance with mandatory policy could be easily met through community engagement and community ownership of vaccinator initiatives. Similarly, galvanizing the support of traditional and religious leaders could help secure trust and commitment to vaccination policies.<sup>328</sup> Leveraging public/community consultation could present a more sustainable approach and cooperation, while reversing the tide of mistrust.

#### *H. Guaranteeing the Efficacy of Vaccines*

All available vaccines should be subjected to rigorous multi-stage trials and testing to ascertain efficacy, safety, quality, and possible side effects by national health agencies. Were the government to make the intake of vaccines mandatory, then compensation should be offered to patients who suffer injury from manufacturing defects, side effects, and reactions.

#### *I. Reasonable Exemptions and Accommodation*

Under human rights and disability laws, it is important that regulations are designed in a manner that is still sensitive to the rights of the people. Hence, any

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<sup>327</sup> WHO, *supra* note 125, at 3.

<sup>328</sup> Afolabi Gambari, *COVID-19 vaccination: Traditional and religious leaders hold the aces*, THE CABLE (Sept. 23, 2021), <https://www.thecable.ng/covid-19-vaccination-traditional-and-religious-leaders-hold-the-aces>; Wilhelmina L. M. Ruijs, et al., *The role of religious leaders in promoting acceptance of vaccination within a minority group: a qualitative study*, 13 BMC Pub. HEALTH 511, 511 (2013); Stephanie Desmon, *Engaging Religious Leaders to Boost COVID-19 Vaccination*, JOHNS HOPKINS CTR. FOR COMM'C'N PROGRAMS (May 2, 2022), <https://ccp.jhu.edu/2022/05/02/religious-leaders-covid/> (providing examples of faith leadership's involvement and COVID-19 related collaboration).

mandatory policy will have to address the issue of exemption and accommodation for individuals based on proven need. vaccination law or policy should specify what qualifies for exemption, whether on medical (contra-indication, allergic reaction, medical condition, etc.), philosophical or religious grounds, due to pregnancy or lactation, or disability. There should also be due consideration as to whether vaccination is required for children, especially infants. In a recent article, it was stated that there are four pivotal things that must be considered before making the vaccine mandatory—one of which is that there must be evidence that the vaccine is safe for children, with an acceptable level of risk associated with it.<sup>329</sup> Furthermore, the responsible party for deciding who will be exempted and the proof of exemption should be clear and objective.

#### *J. Businesses and Organizations*

To impose a mandatory vaccination requirement, it is proper that due notice is given to employees or patrons. Employers can also adopt the option of inserting a vaccination requirement in a contract of employment as a part of the terms of employment.<sup>330</sup> Such conditions for work will be legally binding on employees as parties to a contract of employment are legally bound by the express terms of their contract.<sup>331</sup> Where there is a strong unionized workforce with a collective bargaining agreement objecting to the mandatory workplace, it can present a challenge to insert this term in a contract or employment.<sup>332</sup> In the same vein, it will be difficult for employees to insert such a condition for specific types of workers or where there are contractual limitations. For patrons, the terms of any policy or condition of service should be boldly displayed and made known prior to accessing the business. Several factors will determine whether or not an organization should impose a mandatory vaccination directive. The factors include: the high rate and risk of transmission among employees in the work environment without the vaccination, prevalent rate and community transmission, any vulnerable employees/customers (e.g., care homes), the role of employees and the nature of such employment (e.g., essential workers who come in contact with infected

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<sup>329</sup> See Douglas J. Opel, Douglas S. Diekema & Lainie Friedman Ross, *Should We Mandate a COVID-19 Vaccine for Children?*, 175 JAMA PEDIATRICS, 125, 125-26, (2021).

<sup>330</sup> E.g., Rothstein, *supra* note 300, at 1061–64.

<sup>331</sup> *Id.* at 1063.

<sup>332</sup> *Id.* at 1062-63.

people), proven safety and efficacy of the vaccination.<sup>333</sup> Employees should also consider offering vaccine incentives to encourage voluntary vaccination. Any workplace direction would need to consider anti-discrimination laws, labor rights and data privacy issues. Employers who make mandatory conditions of vaccinations will be assuming any risk and legal liability from the harmful effect or reaction to any vaccine.<sup>334</sup> Furthermore, to enforce such a policy, they will have to partner with a health provider or authorized entity to ensure the availability of vaccines.

### CONCLUSION

Following the advent and severity of the COVID-19 virus, health authorities, and scientists worked assiduously to find effective remedies and protection against the spread and severity of the disease.<sup>335</sup> In addition to other health safety measures, vaccines have been identified as significant predictable means to control the spread of the deadly virus, contain its effect on the human body and limit other consequential damage to society.<sup>336</sup> National health authorities, supported by international organizations such as WHO have subsequently secured safe and efficacious vaccines to protect people and encouraged everyone to get immunized.<sup>337</sup> Yet, some have rejected the call to be inoculated against the virus.<sup>338</sup> Vaccine hesitancy is fueled by ideological, religious and superstitious reasons, myths, perceived low benefits and long-term consequential damage, mistrust, and other personal views.<sup>339</sup> These strong feelings have increased as vaccine mandates are implemented by governments and employers/businesses to enhance herd immunity and protect the health of others.<sup>340</sup> Oppositions argue that mandates violate several human rights prescriptions and ethical considerations.<sup>341</sup> It has been argued, however, that it appears compulsory immunization requirements against

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<sup>333</sup> MANDATORY VACCINATIONS IN THE WORKPLACE: WHERE ARE WE NOW IN ASIA PACIFIC?, BAKER MCKENZIE (2021), <https://www.bakermckenzie.com/-/media/files/insight/publications/2021/12/workplacevaccinationarticle.pdf>.

<sup>334</sup> Rothstein, *supra* note 310, at 1062-63.

<sup>335</sup> Wouters, *supra* note 9, at 1023-34.

<sup>336</sup> *Id.*

<sup>337</sup> *Id.*

<sup>338</sup> *E.g.*, Wolfe & Sharp, *supra* note 132.

<sup>339</sup> *Id.*

<sup>340</sup> *E.g.*, WHO, *supra* note 125.

<sup>341</sup> *E.g.*, King et al., *supra* note 13, at 10321.

serious viruses and diseases such as COVID-19 may not inherently infringe people's rights, especially in light of the real public health threats that they pose.<sup>342</sup> Mandatory vaccination is not new, it has been used severally to secure public health and save lives.<sup>343</sup> When necessary, the state can impose certain mandatory measures to protect health and control the spread of infectious diseases.<sup>344</sup> However, such policies and rules must be sensitive to the needs of the people from a human rights-based, reasonable, and ethical perspective. Such policies must carefully balance the competing duty to protect public health on the one hand and the intrusion into the lives of people on the other.<sup>345</sup> Factors such as the scale of the virus, availability of safe, effective vaccines, equitable access, especially for the most vulnerable, alternative persuasion measures, effectiveness of other non-invasive health measures and reasonable exemptions must be taken into account before imposing mandatory vaccinations. Lastly, while vaccines are an effective healthcare strategy, they alone cannot control public health emergencies without the support of other mitigation measures such as social distancing, sanitizing and hygienic practices and other mitigating procedures.

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<sup>342</sup> *E.g.*, ICESCR, *supra* note 186, at art. 4.

<sup>343</sup> Flanigan, *supra* note 156, at 5–25.

<sup>344</sup> Lawrence O. Gostin & Lindsay F. Wiley, *Governmental Public Health Powers During the COVID-19 Pandemic: Stay-at-home Orders, Business Closures, and Travel Restrictions*, 323 *JAMA* 2137, 2137-38 (2020).

<sup>345</sup> *E.g.*, ICESCR, *supra* note 186, at art. 4.