

# Revisiting Vaccine Mandates and Human Rights in South Africa

Slungu Joseph Thobela\*

## Abstract

*Vaccine mandates have consistently sparked intense controversy in discussions about human rights. The issue gained significant visibility during the COVID-19 pandemic, which impacted the entire world in 2020. Countries responded spontaneously and differently to the pandemic; there was no one-size-fits-all approach. Each nation considered its legal framework while designing appropriate responsive measures. Imposing vaccine mandates became one of the most popular strategies in the fight against the pandemic. Like many other countries, South Africa implemented a range of restrictive measures, including lockdowns. Public institutions, such as universities, enforced vaccine mandates for those wishing to access their premises. This raised numerous questions regarding the constitutionality of such mandates. A principal question was whether vaccine mandates complied with the Constitution of South Africa, 1996. Are vaccine mandates a justifiable limitation on human rights in terms of section 36 of the Constitution? This article examines the balance between public health imperatives and individual freedoms, interrogating the proportionality and necessity of such measures. It raises critical issues regarding the interpretation of the right to bodily integrity, the right to freedom of religion, and the right to equality. The broader societal and legal ramifications of vaccine mandates also highlight the tensions between the state's obligations to protect citizens and its duty to uphold constitutional values.*

## Keywords

vaccine mandates, human rights, bodily integrity, religion, conscience

## 1. Introduction

The COVID-19 pandemic, which was declared a global health emergency by the World Health Organisation (WHO) in March 2020, fundamentally reshaped the global approach to public health crises. Governments worldwide adopted unprecedented measures such as lockdowns, travel restrictions, and vaccination drives to curb the virus's spread and mitigate its devastating health and socio-economic impacts. South Africa was no exception, responding swiftly by invoking the Disaster Management Act to implement nationwide lockdowns and enforce public health guidelines. Despite these measures, vaccination campaigns encountered considerable resistance, highlighting the complex interplay between public health imperatives and individual rights in the country.

\* LLB and LLM (University of Limpopo), LLD Candidate (University of Limpopo) <<https://orcid.org/0000-0002-4642-5157>> e-mail: [sjthobela@yahoo.com](mailto:sjthobela@yahoo.com)



Unlike some nations that legislated compulsory vaccinations, South Africa refrained from instituting a national vaccine mandate. Instead, specific institutions, including universities and private-sector employers, imposed their own mandates to regulate access to premises and safeguard public health.<sup>1</sup> This decentralised approach sparked extensive public debate about the legality and constitutionality of vaccine mandates, particularly considering the fundamental rights enshrined in the Bill of Rights of the Constitution, 1996. South Africans are constitutionally guaranteed the rights to bodily integrity (section 12), freedom of religion and belief (section 15) and privacy (section 14).<sup>2</sup> The imposition of vaccine mandates raises questions about whether such measures constitute a reasonable and justifiable limitation of these rights under section 36 of the Constitution, which permits rights to be limited only when necessary and proportionate in an open and democratic society.<sup>3</sup>

Historical and societal factors also inform the resistance to vaccine mandates in South Africa. Decades of systemic inequality, mistrust in governmental institutions, and pervasive misinformation have contributed to high levels of vaccine hesitancy.<sup>4</sup> This hesitancy has manifested in fears about vaccine safety, suspicions about governmental motives and concerns about personal autonomy. These issues, compounded by logistical challenges in vaccine distribution, particularly in rural and under-resourced areas, have hampered vaccination efforts and exacerbated public health disparities.<sup>5</sup>

Globally, vaccine mandates have been a polarising issue, with countries adopting varying approaches based on their legal frameworks and socio-political climates. For instance, countries like Austria and Greece implemented strict vaccine mandates, while others like the United States enforced mandates selectively, targeting specific sectors such as healthcare and education.<sup>6</sup> In contrast, South Africa's more cautious approach reflects its commitment to balancing public health imperatives with the constitutional principles of individual freedom and human dignity. South Africa adopted a careful and measured strategy in managing public health crises, ensuring strict health measures were implemented while respecting constitutional rights such as individual freedom and human dignity. This approach aimed to protect public health without unnecessarily infringing on personal liberties. However, this approach has not shielded it from the ethical and legal dilemmas accompanying vaccine mandates.

The South African legal framework offers a unique lens through which to examine these dilemmas. The Constitution explicitly safeguards against arbitrary intrusions on individual freedoms, requiring that any limitation of rights must be supported by a 'law of

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1 Calitz, T 'Constitutional Rights in South Africa Protect against Mandatory COVID-19 Vaccination' (2021) 1 *STJ* <<http://www.scielo.org.za/pdf/stj/v7n1/35.pdf>> accessed 20 April 2023.

2 Constitution of the Republic of South Africa, 1996.

3 Moodley, K 'Why COVID-19 Vaccines Should be Mandatory in South Africa' (2021) <<https://theconversation.com/why-covid-19-vaccines-should-be-mandatory-in-south-africa-165682>> accessed 10 December 2024.

4 Machingaidze S & Wiysonge CS 'Understanding COVID-19 Vaccine Hesitancy' (2021) 27(8) *Nature Medicine* 1338.

5 Karim & Kruger (note 3) 533.

6 Moodley (note 6).

general application' and must be demonstrably reasonable and necessary.<sup>7</sup> In the absence of such legislation, institutional vaccine mandates have been criticised for lacking uniformity and potentially infringing on constitutional protections. This has given rise to significant legal and ethical questions, including whether such mandates can be justified in the absence of enabling legislation and whether they align with the broader principles of equity and justice enshrined in South African law.

This article investigates the constitutionality of vaccine mandates in South Africa, focusing on their compliance with constitutional provisions and broader implications for public health policy and human rights. By analysing the legal frameworks governing vaccine mandates, including relevant case law and constitutional principles, this study seeks to illuminate the delicate balance between protecting individual freedoms and safeguarding public health in the context of a global pandemic. Furthermore, it considers the socio-political factors that shape public discourse on vaccine mandates, offering insights into how South Africa can navigate these challenges to achieve equitable and effective public health outcomes.

## 2. Conceptual framework

### 2.1 Vaccine mandates

A vaccine mandate refers to a governmental or institutional policy requiring individuals to receive vaccinations to access certain rights, benefits or opportunities, such as employment, education or public spaces.<sup>8</sup> It is rooted in public health law and represents an exercise of state power to safeguard public health, often justified under the principle of *salus populi suprema lex* (the welfare of the people is the supreme law).<sup>9</sup> These mandates are typically framed as a response to infectious diseases, especially those that significantly threaten public health. Implementing a vaccine mandate often triggers legal, ethical and social debates, particularly regarding its compatibility with fundamental rights and freedoms.<sup>10</sup>

The implementation of vaccine mandates involves a legal balancing act between public health objectives and individual freedoms.<sup>11</sup> Implementing vaccine mandates requires balancing the government's duty to protect public health with individuals' constitutional rights, such as bodily autonomy and freedom of choice. Courts assess whether mandates are reasonable, necessary and proportionate to the public health risk.<sup>12</sup> In many jurisdictions, including South Africa, this balance is grounded in constitutional frameworks that protect fundamental rights such as bodily integrity, religious freedom, and dignity.<sup>13</sup> For instance,

7 Karim & Kruger (note XX) 533.

8 Gostin, LO *Public Health Law: Power, Duty, Restraint* 3 ed (University of California Press 2000).

9 Ibid.

10 Gostin, LO & Wiley, LF 'Governmental Public Health Powers During the COVID-19 Pandemic: Stay-at-home Orders, Business Closures, and Travel Restrictions' (2022) 323(21) *Jama* 2137.

11 Malone, K & Hinman, A 'Vaccination Mandates: The Public Health Imperative and Individual Rights' (2003) 338(20) *Law in Public Health Practice* 339.

12 Ibid.

13 Mike, JH 'Carrots, Vaccines and Sticks: Critical Reflection of Compulsory Vaccination from a Human Rights Perspective' (2022) 3(1) *Rutgers International Law & Human Rights Journal* 47.

section 36 of the Constitution permits the limitation of rights, provided such limitations are reasonable, justifiable and necessary in an open and democratic society. The courts must assess whether vaccine mandates are proportionate to the public health risks they address and whether less restrictive measures could achieve the same goal.<sup>14</sup>

Vaccine mandates often spark ethical debates about autonomy, informed consent and social responsibility.<sup>15</sup> The principle of autonomy emphasises an individual's right to make decisions about their own body, while informed consent ensures that individuals understand the risks and benefits of vaccination.<sup>16</sup> At the same time, social responsibility underlies the moral duty to protect others, particularly vulnerable populations, from preventable diseases. Vaccine mandates thus raise complex ethical questions about balancing individual freedoms with the collective good, especially when vaccine hesitancy or misinformation influences public perceptions.<sup>17</sup>

Vaccine mandates must consider practical challenges, such as vaccine accessibility, public trust and enforcement mechanisms. Equity is a significant concern, as mandates may disproportionately affect marginalised groups who face barriers to vaccination due to socio-economic factors or systemic inequalities.<sup>18</sup> Governments and institutions implementing mandates must ensure the fair distribution of vaccines, transparent communication about their necessity, and mechanisms for addressing legitimate objections, such as those based on medical, religious or conscientious grounds.<sup>19</sup> Ultimately, the success of a vaccine mandate depends on its design and implementation, and the extent to which it garners public trust and cooperation.<sup>20</sup>

## 2.2 How are vaccine mandates treated internationally?

Vaccine mandates have been a significant and often contentious issue at the international level, particularly in the wake of the COVID-19 pandemic. Countries have approached vaccine mandates in a variety of ways, reflecting differences in political, social and cultural contexts, as well as the varying public health needs and priorities. In general, international bodies such as the WHO do not have the authority to impose vaccine mandates but offer guidance and recommendations to help shape national policies.<sup>21</sup> For example, during the pandemic, the WHO strongly advocated for equitable access to vaccines, but it left the

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14 Ibid.

15 Olick, RS, Shaw, J & Yang, YT 'Ethical Issues in Mandating COVID-19 Vaccination for Health Care Personnel' (2021) 96(12) *Mayo Clinic Proceedings* 2958.

16 Ibid.

17 Ibid.

18 Canning, AG et al 'Ethics and Effectiveness of US COVID-19 Vaccine Mandates and Vaccination Passports: A Review' (2022) 22(2) *Journal of Research in Health Sciences* 546.

19 Ghedamu, TB & Meier, BM 'Assessing National Public Health Law to Prevent Infectious Disease Outbreaks: Immunization Law as a Basis for Global Health Security' (2019) 47(3) *Journal of Law, Medicine & Ethics* 412.

20 Ibid.

21 Odone, A, Dallagiacomma, G & Vigezzi, GP 'Vaccine Mandates in the COVID-19 Era: Changing Paradigm or Public Health Opportunity? Comment on "Convergence on Coercion: Functional and Political Pressures as Drivers of Global Childhood Vaccine Mandates"' (2022) 12(1) *International Journal of Health Policy and Management* 7616.

decision about whether to mandate vaccination in the hands of individual governments. This allowed countries to implement different approaches based on local conditions.<sup>22</sup>

In many Western countries, vaccine mandates were introduced for specific sectors, such as healthcare workers, teachers and government employees, in an effort to curb the spread of COVID-19.<sup>23</sup> For instance, the European Union (EU) and countries like the United States, Canada and Australia implemented strict vaccine mandates for certain groups, arguing that the mandates were essential for protecting public health and maintaining healthcare system capacity.<sup>24</sup> These countries often balanced mandates with options for testing or exemption based on medical or religious grounds. The legal and ethical implications of such mandates led to debates about individual freedoms versus collective responsibility, with some arguing that the mandates were an infringement on personal rights and freedoms, while others saw them as necessary for the greater good.<sup>25</sup>

In other parts of the world, vaccine mandates were either less strictly enforced or they met with more resistance (eg USA and Canada).<sup>26</sup> In some developing countries, where access to vaccines was more limited or logistical challenges hampered distribution, the emphasis was placed on voluntary vaccination campaigns rather than on strict mandates.<sup>27</sup> For example, in many parts of Africa, the focus was on providing vaccines through initiatives like COVAX, a global initiative aimed at ensuring equitable vaccine distribution.<sup>28</sup> Mandates in these regions faced difficulties due to limited vaccine access, vaccine hesitancy and challenges related to public health infrastructure. In some countries, government efforts focused more on raising awareness and promoting voluntary participation rather than enforcing mandates.<sup>29</sup>

Vaccine mandates have also been subject to international diplomacy and trade considerations.<sup>30</sup> For example, the EU initially set up rules requiring travellers from certain countries to be vaccinated or to present a negative COVID-19 test result to enter the region.<sup>31</sup> These requirements were also implemented in other parts of the world to manage the risk of virus transmission across borders. In this context, mandates have influenced travel, tourism and trade relationships between countries, particularly where

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22 Ibid.

23 Politis, M et al 'Healthcare Workers' Attitudes Towards Mandatory COVID-19 Vaccination: A Systematic Review and Meta-analysis' (2023) 11(4) *Vaccines* 880.

24 Ibid.

25 Ayman, Y & Ulloa, L 'Ethical and Legal Debates on Vaccine Infodemics' (2024) 16(1) *Cureus* 1, 10.

26 McCoy, CA 'Adapting Coercion: How Three Industrialized Nations Manufacture Vaccination Compliance' (2019) 44(6) *Journal of Health Politics, Policy and Law* 823.

27 Wouters, OJ et al 'Challenges in Ensuring Global Access to COVID-19 Vaccines: Production, Affordability, Allocation, and Deployment' (2021) 397(10278) *The Lancet* 1023.

28 Ibid.

29 Deal, A et al 'Defining Drivers of Under-immunization and Vaccine Hesitancy in Refugee and Migrant Populations' (2023) 30(5) *Journal of Travel Medicine* 84.

30 Labonté, R & Gagnon, ML 'Framing Health and Foreign Policy: Lessons for Global Health Diplomacy' (2010) 6(1) *Globalization and Health* 1.

31 Bastani, H et al 'Efficient and Targeted COVID-19 Border Testing via Reinforcement Learning' (2021) 599(7883) *Nature* 108.

some countries adopted a more aggressive stance on vaccination, while others were slower to adopt vaccine rollouts or were more resistant to mandating vaccines.<sup>32</sup>

Vaccine mandates have underscored broader international debates on health sovereignty, human rights and governance.<sup>33</sup> While the WHO and other international bodies have emphasised the need for global cooperation and equitable access to vaccines, the enforcement of mandates highlights the tension between global public health goals and national autonomy. International responses to mandates reflect a complex balance between respecting individual rights and promoting public health, with countries taking varied approaches depending on their political systems, legal frameworks and public attitudes toward vaccines.<sup>34</sup> The global handling of vaccine mandates continues to shape how nations approach future health crises and the role of international institutions in coordinating responses.<sup>35</sup>

### 2.3 World Health Organisation

The WHO has consistently emphasised the importance of vaccination as a critical tool in controlling infectious diseases, particularly during the COVID-19 pandemic.<sup>36</sup> The WHO has taken a measured and non-interventionist stance regarding vaccine mandates. It recognises the complexities surrounding vaccine mandates, including ethical, legal and logistical considerations, and instead focuses on promoting equitable access to vaccines, public education and voluntary uptake.<sup>37</sup>

From the start of the COVID-19 pandemic, the WHO advocated for the safe and equitable distribution of vaccines globally.<sup>38</sup> The WHO strongly supported initiatives like COVAX, aimed at ensuring that vaccines reached all countries, particularly lower-income nations that might otherwise struggle with supply.<sup>39</sup> While the WHO pushed for widespread vaccination to combat the pandemic, it did not call for mandatory vaccination on a global scale.<sup>40</sup> The WHO encouraged countries to develop strategies that would maximise vaccine coverage through a combination of public health campaigns, education

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32 Grépin, KA et al 'Evidence of the Effectiveness of Travel-Related Measures During the Early Phase of the COVID-19 Pandemic: A Rapid Systematic Review' (2021) 6(1) *BMJ Glob Health* 4537.

33 Ogugua, JO, et al. 'Ethics and strategy in vaccination: A review of public health policies and practices' (2024) 11(1) *International Journal of Science and Research Archive* 883-895.

34 Jecker, N.S., 'Achieving global vaccine equity: The case for an international pandemic treaty' (2022) 95(2) *The Yale Journal of Biology and Medicine*, 271.

35 Ibid.

36 French, J et al 'Key Guidelines in Developing a Pre-emptive COVID-19 Vaccination Uptake Promotion Strategy' (2020) 17(16) *International Journal of Environmental Research and Public Health*, 5893.

37 Al-Amer, R et al 'COVID-19 Vaccination Intention in the First Year of the Pandemic: A Systematic Review' (2022) 31(1) *Journal of Clinical Nursing* 62.

38 Md Khairi, LNH, Fahrni, ML & Lazzarino, AI 'The Race for Global Equitable Access to COVID-19 vaccines' (2022) 10(8) *Vaccines* 1306.

39 Nhamo, G et al 'COVID-19 Vaccines and Treatments Nationalism: Challenges for Low-income Countries and the Attainment of the SDGs' (2021) 16(3) *Global Public Health* 319.

40 Ibid.

and, where appropriate, vaccination requirements for specific groups (eg healthcare workers), rather than blanket mandates for entire populations.<sup>41</sup>

The WHO's position on vaccine mandates is rooted in its broader principles of respect for human rights and informed consent.<sup>42</sup> The WHO has emphasised the importance of ensuring vaccination campaigns are accompanied by adequate information and transparency.<sup>43</sup> The WHO acknowledges that mandates can effectively increase vaccine coverage, especially in specific high-risk sectors like healthcare, but it also emphasises that these mandates should be accompanied by policies that address vaccine hesitancy and misinformation.<sup>44</sup> According to the WHO, mandates should be seen as part of a larger, more comprehensive public health strategy, which includes engaging communities, improving vaccine access and fostering trust in vaccines.<sup>45</sup>

During the pandemic, the WHO was careful not to impose its will on sovereign nations with regard to mandates.<sup>46</sup> It recognised that each country faces unique challenges, such as cultural attitudes, legal systems and healthcare infrastructure, which shape how mandates might be received or enforced.<sup>47</sup> For instance, in some countries, vaccine mandates were implemented for healthcare workers and other key sectors, but the WHO refrained from issuing any directive requiring mandatory vaccination for the general population.<sup>48</sup> Instead, the WHO focused on providing guidance on best practices for vaccination campaigns and managing vaccine distribution fairly and efficiently.<sup>49</sup>

The WHO has also highlighted the need for ongoing dialogue between governments, public health experts and civil society when discussing vaccine mandates.<sup>50</sup> It emphasises that mandates should not be the sole approach to increasing vaccination rates, but rather part of a broader framework that includes public engagement, access to vaccines and addressing misinformation.<sup>51</sup> This holistic approach ensures that vaccine mandates, when implemented, respect public trust and human rights while achieving public health objectives. Ultimately, the WHO sees the decision to implement vaccine mandates as a national issue, guided by the principles of equity, public health, and respect for individual autonomy.<sup>52</sup>

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41 Tuckerman, J, Kaufman, J & Danchin, M 'Effective Approaches to Combat Vaccine Hesitancy' (2022) 41(5) *The Pediatric Infectious Disease Journal* 243.

42 Reiss, DR & Karako-Eyal, N 'Informed Consent to Vaccination: Theoretical, Legal, and Empirical Insights' (2019) 45(4) *American Journal of Law & Medicine* 357.

43 Ibid.

44 Bardosh, K et al 'The Unintended Consequences of COVID-19 Vaccine Policy: Why Mandates, Passports and Restrictions May Cause More Harm Than Good' (2022) 7(5) *BMJ Global Health* 8684.

45 Larson, HJ et al 'Addressing the Vaccine Confidence Gap' (2011) 378(9790) *The Lancet* 526.

46 Ginsburg, T & Versteeg, M 'The Bound Executive: Emergency Powers During the Pandemic' (2021) 19(5) *International Journal of Constitutional Law* 1498.

47 Brinkerhoff, DW 'Accountability and Health Systems: Toward Conceptual Clarity and Policy Relevance' (2004) 19(6) *Health Policy and Planning* 371.

48 Ibid.

49 Ibid.

50 Kieslich, K 'Addressing Vaccination Hesitancy in Europe: A Case Study in State-Society Relations' (2018) 28(3) *European Journal of Public Health* 30.

51 Ibid.

52 Mike (note 16) 47.

## 2.4 Cases from other countries and regions

The approach to vaccine mandates has varied significantly across different countries and regions, influenced by local public health priorities, legal frameworks and societal attitudes towards vaccination.<sup>53</sup> In the EU, for example, several countries have implemented or considered vaccine mandates in response to the COVID-19 pandemic, while others have opted for alternative strategies.<sup>54</sup> These differences highlight the diverse ways in which governments balance the need for public health protection with individual freedoms. By examining cases from the EU and other regions, we can understand how vaccine mandates have been enacted and the factors that shape their success or challenges.<sup>55</sup>

In *Vavříčka and Others v The Czech Republic*,<sup>56</sup> the European Court of Human Rights held that mandatory vaccination laws, including those that require children to be vaccinated to attend school, are legitimate and do not violate the Convention. The court held that such mandates serve a legitimate aim of protecting public health and are proportionate to the threat posed by vaccine-preventable diseases. The court decided that governments have some flexibility (a “margin of appreciation”) in protecting public health, including mandatory vaccinations. This means each country can choose suitable measures based on its own needs. The goal is to safeguard the wider population from health risks.<sup>57</sup>

In *Grzelak v Poland*,<sup>58</sup> the European Court of Human Rights upheld Poland’s vaccination mandate, emphasising that the country had a legitimate aim in enforcing vaccination laws, particularly to protect public health. The court noted that vaccination policies were not disproportionate and that the refusal to grant an exemption was justified to prevent the spread of contagious diseases.<sup>59</sup>

## 3. The constitutional and statutory framework in South Africa

### 3.1 The human rights affected by vaccine mandates

#### 3.1.1 Religion

Religious and conscientious objections lie at the heart of debates over vaccine mandates, reflecting a broader tension between individual autonomy and collective welfare. In South Africa, these objections draw on constitutional guarantees of freedom of religion, belief and conscience, enshrined in section 15 of the Constitution. These rights protect individuals’ ability to live according to deeply held beliefs, fostering a pluralistic society where diverse worldviews are respected. However, such freedoms often clash with public

53 Attwell, K & Hannah, A ‘Convergence on Coercion: Functional and Political Pressures as Drivers of Global Childhood Vaccine Mandates’ (2022) 11(11) *International Journal of Health Policy and Management* 2660.

54 Ibid.

55 Da Silva, JA ‘Mandatory COVID-19 Vaccines Versus Personal Freedoms: An Imperfect Balance’ (2022) 37(4) *Oman Medical Journal* 378.

56 *Vavříčka and Others v The Czech Republic* [GC] – 47621/13, <[https://hudoc.echr.coe.int/fre#%22itemid%22:\[%22001-209039%22\]](https://hudoc.echr.coe.int/fre#%22itemid%22:[%22001-209039%22])> accessed 17 November 2023.

57 Ibid.

58 *Grzelak v Poland* (2010) 7710/02.

59 Ibid.

health imperatives, particularly in emergencies like the COVID-19 pandemic, where vaccine mandates are deemed critical to curbing the spread of disease.<sup>60</sup>

Some conceptualise conscience as a cognitive faculty akin to intellect and will, serving to discern moral truths and guide ethical decision-making.<sup>61</sup> According to this view, freedom of conscience becomes paramount, akin to a moral compass directing one's actions towards perceived moral truths.<sup>62</sup> For many, this compass may oppose actions that they perceive as incompatible with their moral or spiritual beliefs, including mandatory vaccinations. Similarly, religious objections often stem from theological doctrines that may view medical interventions such as vaccinations as inconsistent with divine principles or the sanctity of the human body.<sup>63</sup>

In South Africa, these objections gained prominence during the implementation of COVID-19 vaccine mandates. Religious organisations such as the International Federation of Christian Churches voiced strong opposition, arguing that mandates infringe upon constitutionally protected freedoms of belief and worship.<sup>64</sup> Similar debates on conscientious objections to vaccine mandates have unfolded globally, with comparisons drawn between approaches in the USA and Europe.<sup>65</sup> Ethical concerns form the basis of these debates, balancing the need to safeguard public health with the risk of compelling individuals through mandatory measures.<sup>66</sup>

### 3.1.2 Limitation of the right to religion and conscience

Balancing the right to religious and conscientious objections with vaccine mandates requires a nuanced approach that considers individual freedoms, public health imperatives and ethical principles. While the Constitution upholds religious freedom, this right may be subject to limitations in certain circumstances, as seen in restrictions imposed during the COVID-19 pandemic, where law enforcement intervened in gatherings that contravened lockdown regulations, including religious services. Such interventions sparked debates about the equitable treatment of religious institutions compared to other sectors permitted to operate during restrictions.<sup>67</sup> In January 2020 law enforcement acted against a gathering

60 Gostin, L *Global Health Law* (Harvard University Press, 2021)

61 Leach, D 'Transcendent Professionalism: Keeping Promises and Living the Questions' (2014) 89(5) *Academic Medicine* 699.

62 Symons, X 'Two Conceptions of Conscience and the Problem of Conscientious Objection' (2017) 43(4) *J Med Ethics* 245.

63 Currie, I & De Waal, J *The Bill of Rights Handbook* 6 ed (Juta 2016).

64 Mudzuli, K 'Religious Leaders Reject Covid-19 Restrictions Allowing 50% Church Capacity if Fully Vaccinated' (2022) <<https://www.iol.co.za/pretoria-news/news/religious-leaders-reject-covid-19-restrictions-allowing-50-church-capacity-if-fully-vaccinated-892c58cf-dcdd-499d-a56f-33d9b543d8ef>> accessed 10 December 2024.

65 Madera, A 'Mandatory Vaccination Conscientious Objections: A Comparative Analysis between the US and the European Approach' (2023) <[https://www.boe.es/biblioteca\\_juridica/anuarios\\_derecho/abrir\\_pdf.php?id=ANU-E-2023-10012900188](https://www.boe.es/biblioteca_juridica/anuarios_derecho/abrir_pdf.php?id=ANU-E-2023-10012900188)> accessed 21 November 2023.

66 Giubilini, A et al 'Vaccine Mandates for Healthcare Workers Beyond COVID-19' (2023) 49(3) *Journal of Medical Ethics* 211.

67 Fritz, E 'What Has Kant Got to Say about Conscientious Objection to Reproductive Health in South Africa?' (2023) <<https://onlinelibrary.wiley.com/doi/full/10.1111/dewb.12416>> accessed 21 November 2023.

of approximately 250 individuals who defied regulations by assembling for a church service in Sebokeng.<sup>68</sup> Two leaders of the church were apprehended for violating level 3 lockdown regulations. Rev Kenneth Meshoe, the leader of the ACDP, expressed unhappiness, stating that it was unjust for churches to be prohibited from operating, while casinos, restaurants, movie theatres and shopping malls were permitted to open.<sup>69</sup> The restriction on churches should have been proportionate and evidence based. If similar or riskier activities were permitted while churches were closed, this raised concerns about unfair discrimination and an arbitrary application of regulations. However, if the restrictions were based on scientific evidence and public health considerations, they could be justified under the limitations clause. A more balanced approach would have been to apply uniform safety measures across all sectors rather than prohibiting religious gatherings outright while permitting commercial activities.

### **3.1.3 Justifiability of vaccine mandates as a limitation on the right to religion and conscience**

In navigating the intricacies of COVID-19 vaccine mandates in South Africa, the lens of religious and conscientious objections adds further complexity to the discourse, prompting considerations of individual liberties, public health imperatives and ethical principles. Debates surrounding vaccination often evoke contentious viewpoints, yet avenues for common ground emerge when accountability for advocating harmful vaccination principles is upheld, whether by governmental bodies, employers or religious institutions.<sup>70</sup>

Historically, conflicts over infectious diseases have underscored the delicate balance between safeguarding personal and collective conscientious beliefs and addressing public health imperatives. Instances of discrimination and violations of individual freedom in vulnerable communities, such as racially motivated immunisation or forced sterilisation, serve as poignant reminders of the nuanced ethical considerations at play.<sup>71</sup>

International human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR), enshrine the right to freedom of thought, conscience and religion, emphasising the significance of volition in religious and conscientious beliefs.<sup>72</sup> While religious freedom is upheld as an impartial standard, legal regulations must still be acknowledged in religious contexts.<sup>73</sup>

In South Africa, the debate over mandatory COVID-19 vaccination intersects with constitutional and moral issues. While the European Convention on Human Rights

68 Ibid.

69 Bhengu, C 'From Church Gatherings to Alcohol – 5 Lockdown Rules, that've Left You P\*\*Sed' (2021) <<https://www.timeslive.co.za/news/south-africa/2021-12-23-from-church-gatherings-to-alcohol--5-lockdown-rules-thatve-left-you-psed/>> accessed 22 November 2023.

70 Estelle, E 'Mandatory Vaccine Policies Will Survive a Constitutional Challenge – Legal Expert Halton Cheadle' (2021) <<https://www.dailymaverick.co.za/article/2021-11-10-mandatory-vaccine-policies-will-survive-a-constitutional-challenge-legal-expert-halton-cheadle/>> accessed 22 November 2023.

71 Parmet, WE *Populations, Public Health, and the Law* (Georgetown University Press 2009) 112.

72 Article 18(2) of the ICCPR.

73 Torfs, R 'Religion and State in Belgium' (2015) 17(1) *Insight Turkey* 99.

(ECHR) recognises limitations on the right to physical integrity for the protection of health,<sup>74</sup> South African courts have yet to rule on compulsory vaccinations. Religious objections to vaccine mandates have sparked legal challenges, with religious organisations contesting mandates as violations of constitutional guarantees of religious freedom.<sup>75</sup>

The tension between religious freedom and public health imperatives is evident in cases such as *Mohamed and Others v President of the Republic of South Africa*,<sup>76</sup> which was heard in the North Gauteng High Court on 30 April 2020. The applicants, Muhammed Bin Hassim Mohamed, Anas Mohammed Chothia and the Saadiqeen Islamic Centre, sought a declaration that the COVID-19 regulations that prohibited religious gatherings were overbroad, excessive and unconstitutional. The applicants argued that the regulations violated their right to freedom of religion, movement and association.<sup>77</sup> The court held that the COVID-19 regulations that prohibited religious worship in places of worship were a reasonable and justifiable limitation on the rights to freedom of religion, movement and association, as they were implemented to limit the spread of the coronavirus. The court emphasised that the COVID-19 pandemic was a disaster, calling for drastic and urgent measures, and that the government had done all it could in a short time to issue the regulations concerning the lockdown.<sup>78</sup> The court dismissed the application.<sup>79</sup> Similarly, in *Minister of Health of the Province of the Western Cape v Goliath and Others*,<sup>80</sup> the court mandated tuberculosis treatment for the surviving respondents, even against their will. These verdicts illustrate that the public interest can outweigh individuals' right to bodily and psychological integrity in certain situations.<sup>81</sup>

The ethical and legal landscape surrounding vaccine mandates is complex and multi-faceted. While proponents argue for the ethical justification of mandates based on minimising harm and maximising public health benefits, critics raise concerns about coercion, discrimination and unintended consequences. Understanding the cultural, ethical and legal implications of vaccine mandates is crucial in striking a balance between individual autonomy and the public good.

Examining the potential impact of vaccine mandates on bodily integrity requires a nuanced consideration of ethical, legal and cultural factors. While some argue for the ethical justification of mandates in promoting public health, others caution against potential harms and the erosion of core principles of public health ethics. Ultimately, finding a balance between individual autonomy and public health imperatives is essential in navigating the complex terrain of vaccine mandates.

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74 See Arts 3 and 15 of the European Convention on Human Rights, read together with *Pretty v United Kingdom* (1997) 24 HRR 423.

75 Flescher, A 'How Well Do Religious Exemptions Apply to Mandates for COVID-19 Vaccines?' (2023) 14(5) *Religions* 569.

76 *Mohamed and Others v President of the Republic of South Africa and Others* 2020 (5) SA 553 (GP).

77 *Ibid* at para 15.

78 *Ibid* at para 75-77.

79 *Ibid* at para 79.

80 *Minister of Health v Goliath* 2009 (2) SA 248 (C).

81 *Ibid* at para 61-63.

### 3.1.4 Bodily integrity

Section 15 of the Constitution guarantees the right to freedom of conscience, religion, thought, belief and opinion. This includes the freedom to express one's beliefs publicly or privately, including religious practices in state or state-supported institutions, provided that they adhere to regulations established by relevant public authorities. The convergence of these rights becomes apparent in situations where individuals make decisions about their bodies based on their religious or conscientious convictions. For example, the right to religious freedom and conscience might influence choices regarding reproductive health, medical treatments or engagement in medical procedures, showcasing the intricate interplay between personal convictions and bodily autonomy. Overall, the Constitution acknowledges and safeguards both the right to freedom of conscience, religion, thought, belief and opinion, and the right to bodily integrity, emphasising the significance of individual autonomy, decision-making and the expression of beliefs within the framework of human rights and legal safeguards.

In examining the intersection of vaccine mandates and human rights in South Africa, the right to bodily integrity is a critical aspect to consider. This fundamental right asserts an individual's autonomy and control over their own body, safeguarding them from unwanted interference or intrusion by external forces.<sup>82</sup> It emphasises the principle that every person has the authority to make decisions about their body, including medical treatments and procedures, without coercion.

In the South African context, the tension between individual autonomy and the broader public good becomes pronounced when assessing the implications of vaccine mandates on bodily integrity. The Constitution upholds the right to physical integrity, affirming every individual's prerogative to make decisions about their health, including the acceptance or refusal of vaccines.<sup>83</sup> Section 12(2) of the Constitution underscores the right to bodily and mental well-being, granting individuals the autonomy to maintain control over their bodies and make informed choices about medical interventions.<sup>84</sup>

A notable legal precedent illustrating the significance of bodily integrity is *Stransham-Ford v Minister of Justice and Correctional Services and Others*.<sup>85</sup> In this landmark case, the court ruled in favour of a terminally ill patient's right to choose their medical care, including the option to refuse treatment or seek euthanasia under specific circumstances. This decision emphasised the importance of respecting patients' autonomy and their right to make decisions about their own bodies.<sup>86</sup> The right to bodily integrity extends beyond healthcare settings, encompassing informed consent for any procedure that affects one's body. Cases like *Castell v De Greef*<sup>87</sup> highlight the significance of informed consent in medical interventions, emphasising the need for patients to control their treatment decisions.

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82 Fenwick, H & Kerriga, K *Civil Liberties and Human Rights* (Routledge 2017).

83 Adegbite, O.B 'Vaccine Hesitancy, Mandatory Covid-19 Vaccination and the Right to Personal Autonomy in Nigeria: A Constitutional Analysis' (2021)1(2) *UCC Law Journal* 239.

84 Section 12 of the Constitution.

85 *Stransham-Ford v Minister of Justice and Correctional Services and Others* 2015 (4) SA 50 (GP).

86 *Ibid.*

87 *Castell v De Greef* 1993 (3) SA 501 (C).

In the discourse about vaccine mandates, Nienaber emphasises the pivotal nature of the right to bodily integrity in healthcare contexts.<sup>88</sup> The author argues that forced treatment contradicts this fundamental right and underscores the ethical duty to respect patient autonomy. Nienaber contends that individuals should have the final say in their medical care, and their decisions to refuse treatment should stand unless compelling reasons justify intervention.<sup>89</sup> The right to bodily integrity plays a crucial role in shaping discussions around vaccine mandates and human rights in South Africa. It underscores the importance of respecting individuals' autonomy and decision-making authority over their bodies, particularly in healthcare settings. As the country navigated the complexities of vaccine mandates during the COVID-19 pandemic, it had to ensure a balance between public health imperatives and fundamental human rights.

### 3.1.5 *Limitation of the right to bodily integrity*

In the areas of human rights and governmental regulations, it is widely recognised that the right to bodily integrity, among others enshrined in the Bill of Rights, can be subject to limitations or restrictions in certain circumstances.<sup>90</sup> However, such curtailments must be justified and regulated to ensure accountability and adherence to constitutional principles. Section 36 of the Constitution serves to safeguard individual rights by stipulating the conditions under which limitations on rights can be deemed lawful.<sup>91</sup>

Section 36 delineates that rights in the Bill of Rights may only be limited by law of general application, and such limitations must be reasonable and justifiable in an open and democratic society. This assessment considers several factors, such as the nature of the right, the reason for the limitation, how far the limitation extends, and how well it serves its intended purpose. Section 36 mandates the exploration of less restrictive means to achieve the intended purpose of the limitation.<sup>92</sup>

A significant legal precedent illustrating the application of section 36 is *Harksen v Lane*.<sup>93</sup> The case revolved around Glen Harksen, an insolvent individual who challenged the constitutionality of certain Insolvency Act provisions<sup>94</sup> on the grounds of discrimination.<sup>95</sup> In this case, the Constitutional Court established a two-step procedure for determining whether a statute or other provision improperly discriminates. The applicant had to prove in the first phase that the law makes distinctions between individuals or groups of individuals. In the second phase, the court had to decide if this kind of differentiation amounted to unfair discrimination.<sup>96</sup>

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88 Bailey, K & Nienaber, A 'The Right to Physical Integrity and Informed Refusal: Just How Far Does a Patient's Right to Refuse Medical Treatment Go' (2016) 9(2) *South African Journal of Bioethics Law* 472.

89 *Ibid.*

90 *Ibid.*

91 *Ibid.*

92 *Ibid.*

93 *Harksen v Lane* 1998 (1) SA 300 (CC).

94 Insolvency Act 24 of 1936.

95 *Harksen v Lane* at Paragraph 28.

96 *Ibid.*

While South African courts have yet to rule on compulsory vaccinations, they have addressed issues related to the limitation of rights, particularly the right to bodily integrity. *S v Orrie*<sup>97</sup> involved two brothers who were charged with two counts of murder, housebreaking to commit murder, and robbery with aggravating circumstances. The legal issues in this case concerned the admissibility of evidence obtained by taking blood samples from the accused.<sup>98</sup> The court considered the right to bodily integrity in the context of the reasonableness of taking fresh blood samples and the admissibility of evidence obtained in violation of an accused's constitutional rights.<sup>99</sup> The court's principles included considering whether the admission of the evidence obtained in violation of an accused's constitutional rights would render the trial unfair or detrimental to the administration of justice, as stipulated in section 35(5) of the Constitution.<sup>100</sup>

The court also considered the rule that the admission of evidence obtained in violation of an accused's constitutional rights would render the trial unfair, and found guidance in recent Canadian cases, keeping in mind the similarities between section 35(5) of the Constitution and its Canadian counterpart.<sup>101</sup> The court held that, although it amounted to a limitation of the accused's bodily integrity, drawing blood without the accused's consent was a minimal infringement of that right. The court also held that the limitation was justified in the circumstances, as it was necessary to procure potential evidence and thus in the interests of justice and sanctioned by legislation.<sup>102</sup>

In *Minister of Health v Goliath*<sup>103</sup> the respondents had all been diagnosed with XDR-TB, which was resistant to 'first-line drugs' and certain other drugs. They were all contagious and had failed to comply with the voluntary treatment regimen prescribed for them.<sup>104</sup> The Minister of Health applied for an order compelling the surviving respondents to be detained in a specialist tuberculosis hospital for treatment.<sup>105</sup> The respondents, in turn, claimed that their detention represented a violation of their rights in terms of section 12 of the Constitution, including their rights to freedom and security of the person and bodily integrity.<sup>106</sup> The court considered various factors, including the Minister of Health's duty to prevent and control the spread of communicable diseases; that the respondents were capable of spreading the disease, but had failed to adhere to the voluntary programme; and the toxicity and associated side effects of the drugs necessary to treat XDR-TB.<sup>107</sup> Judge Griesel ruled, based on these considerations, that the detention and treatment of the respondents, although a breach of their section 12 rights, were both necessary and mandated by section 7(1)(d) of the National Health Act because of the public interest.<sup>108</sup>

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97 *S v Orrie and Another* 2005 (1) SACR 63 (C).

98 *Ibid.*

99 *Ibid* at para 14-16.

100 *Ibid.*

101 *Ibid* at para 23.

102 *Ibid* at para 21.

103 *Minister of Health v Goliath* 2009 (2) SA 248 (C).

104 *Ibid* at paras 16 and 17.

105 *Ibid* at paras 5 and 6.

106 *Ibid* at para 14.

107 *Ibid* at para 27.

108 *Ibid.*

These cases examined the balance between individual rights and the public interest in compelled medical procedures or treatments. These cases highlight the complex interplay between individual autonomy and societal welfare in the legal framework. In the international sphere, the United States Supreme Court's decision in *Winston v Lee*<sup>109</sup> provides further insight into the balancing of individual rights and state interests. The case addressed the constitutionality of surgical intrusion into a suspect's body for evidence, emphasising the need to weigh privacy and security expectations against society's interest in obtaining evidence.

Legislative provisions such as section 7(1)(d) of the National Health Act offer guidance on circumstances where treatment may be administered without consent, particularly in cases posing severe public health or safety risks.<sup>110</sup> The application of such provisions, as seen in *Minister of Health v Goliath*,<sup>111</sup> emphasises the imperative of balancing individual rights with broader public health objectives.

### 3.1.6 Justifiability of vaccine mandates as a limitation on the right

In navigating the complex terrain of human rights and governmental intervention, South Africa must uphold the principles of accountability, proportionality and respect for individual dignity.<sup>112</sup> Adhering to constitutional provisions and legal precedents allows the country to balance protecting individual rights and promoting the common good, particularly during public health emergencies like the COVID-19 pandemic.<sup>113</sup>

In the South African constitutional landscape, the justifiability of limitations on the right to bodily integrity, as delineated in section 36 of the Constitution, has been the subject of extensive legal analysis and judicial scrutiny. The right to physical integrity, enshrined in section 12(2)(b) of the Constitution, serves as the cornerstone for jurisprudence surrounding patient autonomy and the prerogative to refuse medical treatment. In evaluating the permissibility of limitations on rights, the courts play a pivotal role in assessing the proportionality and reasonableness of such constraints, emphasising the imperative of justifiability within the constitutional framework.

A significant procedural framework, exemplified in *S v Zuma*,<sup>114</sup> underscores the meticulous approach adopted by South African courts in adjudicating issues of rights limitations. This seminal case, marking the Constitutional Court's inaugural ruling in 1995, challenged a provision of the Criminal Procedure Act<sup>115</sup> that imposed a reverse onus on defendants in criminal cases. The court's decision, declaring the provision unconstitutional, emphasised the foundational principle of fair trial rights enshrined in the interim

109 *Winston v Lee* 470 US 753 (1985).

110 Section 7(1)(d) of the National Health Act 16 of 2003.

111 *Minister of Health v Goliath* (note 103).

112 Botha, H 'Human Dignity in Comparative Perspective' (2009) 20(2) *Stellenbosch Law Review* 171.

113 Hodge Jr, et al 'COVID's Constitutional Conundrum: Assessing Individual Rights in Public Health Emergencies' (2020) 88(1) *Tenn Law Review* 837.

114 *S v Zuma and Others* 1995 (4) BCLR 401 (SA).

115 Criminal Procedure Act 51 of 1977.

Constitution, laying the groundwork for subsequent jurisprudence safeguarding individual rights in criminal proceedings.<sup>116</sup>

The interpretative process delineated in *S v Zuma* underscores the intricate balancing act undertaken by courts when confronted with conflicting rights and societal interests. While South African courts have yet to address the issue of mandatory vaccinations, their jurisprudence on section 12 illuminates the nuanced approach taken in reconciling individual liberties with broader public welfare concerns.<sup>117</sup>

In *Minister of Safety and Security and Another v Gaqa*,<sup>118</sup> the court grappled with the delicate balance between law enforcement imperatives and individual rights in the context of a criminal investigation. The case, which concerned the surgical removal of a bullet lodged in a suspect's leg, exemplifies the complex interplay between constitutional rights and state obligations. Through a meticulous analysis of relevant legal provisions and constitutional principles, the court ultimately sanctioned the surgical intervention, citing the state's constitutional duty to investigate crimes and the paramount importance of preserving crucial evidence in serious criminal cases.

Drawing on precedent from both domestic and international jurisprudence, particularly the US Supreme Court's ruling in *Winston v Lee*,<sup>119</sup> the court emphasised the contextual nature of rights limitations, highlighting the need for a case-by-case assessment to strike a delicate balance between individual privacy rights and societal interests in law enforcement and justice.

In issuing its final order, the court in *Minister of Safety and Security and Another v Gaqa*<sup>120</sup> emphasised the exceptional circumstances of the case and the compelling state interest in securing evidence vital to the administration of justice, thus justifying the temporary intrusion on the respondent's rights in the pursuit of broader societal objectives.

#### 4. Application of the Constitution to vaccine mandates

The application of the Constitution to vaccine mandates raises important constitutional issues, particularly about the balance between individual rights and public health concerns.<sup>121</sup> The Bill of Rights guarantees fundamental freedoms such as the right to life,<sup>122</sup> bodily integrity<sup>123</sup> and the right to make decisions about one's own health and well-being.<sup>124</sup> These rights are not absolute. Section 36 of the Constitution allows for the limitation of rights under certain circumstances, provided that the limitation is reasonable

116 *S v Zuma* at para 20.

117 Karim, SA and Kruger, P 'Which Rights? Whose Rights? Public Health and Human Rights Through the Lens of South Africa's COVID-19 Jurisprudence' (2021) 11(1) *Constitutional Court Review* 533.

118 *Minister of Safety and Security and Another v Gaqa* 2002 (1) SACR 653 (C).

119 470 US 753 (1985).

120 2002 (1) SACR 653 (C).

121 Karim, SA and Kruger, P 'Which Rights? Whose Rights? Public Health and Human Rights Through the Lens of South Africa's COVID-19 Jurisprudence' (2021) 11(1) *Constitutional Court Review* 533.

122 Section 11 of the Constitution.

123 Section 12 of the Constitution.

124 This right falls under the right to health care, which is enshrined in s 27 of the Constitution.

and justifiable in a democratic society. Therefore, any vaccine mandate must be carefully scrutinised to ensure that it does not unjustifiably infringe on personal freedoms.

The state may justify the imposition of vaccine mandates on the grounds of protecting public health. In the context of a pandemic or infectious disease outbreak, the government has a responsibility to safeguard the health and safety of its citizens.<sup>125</sup> This responsibility is enshrined in section 27 of the Constitution, which guarantees access to health care services, and gives the state the authority to take measures to prevent the spread of diseases. Public health measures, including vaccination campaigns, may be seen as necessary to protect vulnerable populations and maintain the functioning of society. In this context, vaccine mandates can be seen as a justifiable limitation of individual rights if they are proportionate, rational and supported by scientific evidence.<sup>126</sup>

The constitutional right to equality must be considered in the context of vaccine mandates.<sup>127</sup> Discrimination against individuals based on their decision not to take the vaccine could arise if mandates are implemented in a way that unfairly impacts certain groups. For example, if exemptions are not allowed for individuals with valid medical or religious reasons, this could lead to unequal treatment.<sup>128</sup> Any vaccine mandate must ensure that it does not disproportionately affect specific groups and that reasonable accommodations are made for those unable to receive the vaccine. The mandate must also ensure that it does not lead to the social exclusion or stigmatisation of unvaccinated individuals.<sup>129</sup>

The implementation of vaccine mandates must align with the principles of human dignity and personal autonomy.<sup>130</sup> Section 10 of the Constitution guarantees the right to human dignity, which includes the right to make decisions about one's own body. While the state may regulate public health to protect the broader community, it must ensure that the mandates respect individuals' dignity. This means that any policy or law mandating vaccines must be accompanied by robust measures to educate the public about the benefits of vaccination, to address concerns, and to provide a fair process for exemptions.<sup>131</sup> The constitutional framework requires a careful balance between individual rights and collective responsibilities, ensuring that any limitation on personal freedoms is justified, proportionate and fair.<sup>132</sup>

125 Gostin, L and Berkman, B 'Pandemic Influenza: Ethics, Law, and the Public's Health' (2007) 59(1) *Admin Law Review* 121.

126 Flood, CM, Thomas, B and Wilson, K 'Mandatory Vaccination for Health Care Workers: An Analysis of Law and Policy' (2021) 193(6) *Canadian Medical Association Journal* 217.

127 Section 9 of the Constitution.

128 Smith, M and Emanuel, E 'Learning from Five Bad Arguments Against Mandatory Vaccination' (2023) 41(21) *Vaccine* 3301.

129 Maneze, D et al. 'Mandatory COVID-19 Vaccination for Healthcare Workers: A Discussion Paper' (2023) 138(1) *International Journal of Nursing Studies* 104389.

130 Badal-Faesens S 'Moral Permissibility of Mandatory COVID-19 Vaccinations Amongst Healthcare Workers in South Africa' (Doctoral thesis, 2022).

131 Moodley, K 'The Ethics Behind Mandatory COVID-19 Vaccination Post-Omicron: The South African Context' (2022) 118(5-6) *South African Journal of Science* 1.

132 *Ibid.*

## 5. Conclusion and recommendations

The debate about vaccine mandates in South Africa involves complex legal, ethical and public health considerations. While every right in the Bill of Rights can be limited under the law of general application, no such law imposes vaccine mandates. The South African Human Rights Commission has asserted that mandating COVID-19 vaccination would not infringe upon the right to bodily integrity, given the exceptional circumstances of a pandemic.

Section 36 of the Constitution allows for restrictions in the interests of public health. As COVID-19 presented a significant public health risk, mandatory vaccination could be justified to protect the broader community. Yet, the imposition of vaccine mandates must be balanced against individual rights, particularly those of bodily integrity, religion and conscience. Navigating this balance requires clear and comprehensive legislation explicitly addressing vaccine mandates, ensuring transparency and accountability. Prioritising alternative measures, such as incentives and education campaigns, is crucial before resorting to mandatory vaccination. Such an approach aligns with South Africa's constitutional values, which prioritise individual autonomy and rights, especially for vulnerable populations.

The dynamic nature of public health threats requires ongoing evaluation and adaptation of strategies. Governments should proactively assess evolving evidence to ensure that measures remain proportionate, and evidence based. A comprehensive review of existing laws is recommended to address the absence of legislation explicitly limiting rights through vaccine mandates and ensuring compatibility with constitutional principles.

Moving forward, rigorous human rights oversight and inclusive discussions are imperative in implementing vaccine mandates. Societies must engage in respectful dialogue that acknowledges diverse perspectives while seeking common ground in the interest of public health and individual freedoms.

Considering the potential limitations on rights, especially the right to bodily integrity, legislative measures should be explored to temporarily restrict these rights during pandemics. Any such legislation must adhere to the principles of necessity, proportionality and legitimacy, providing a balanced approach that upholds constitutional principles while safeguarding public health.

In the complex interplay between public health imperatives and constitutional rights in South Africa, several recommendations can be made.

Firstly, comprehensive legislation must be enacted, explicitly addressing vaccine mandates and delineating transparent conditions for their imposition, ensuring justifiability, proportionality and temporariness. Prioritising alternative measures, such as incentives and educational campaigns, is crucial in upholding individual autonomy and rights, particularly for marginalised communities.

Secondly, the continuous evaluation and adaptation of strategies are essential, given the dynamic nature of public health challenges. The proactive assessment of evolving evidence and circumstances is necessary to ensure that measures remain proportionate and evidence-based. A thorough review of existing laws is also needed to address the current vacuum in legislative frameworks, ensuring compatibility with constitutional principles, including the right to bodily integrity.

Thirdly, in the context of pandemics, legislative measures should be explored to temporarily limit rights, provided that they adhere to the principles of necessity, proportionality and legitimacy. By striking a delicate balance between public health imperatives and individual rights, these measures aim to uphold constitutional principles while safeguarding public health.

Lastly, a nuanced, inclusive and rights-centric approach is essential, fostering dialogue and collaboration between various stakeholders to develop policies and strategies that are both effective and respectful of individual rights. This inclusive approach will help to build trust, to promote understanding, and to ensure that the voices of marginalised communities are heard, and that their concerns are addressed in the development and implementation of vaccine mandates.

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