

# **VACCINE MANDATES, DENIALISM AND FREEDOM OF CONSCIENCE AND THOUGHT: EXAMPLES FROM BELGIUM AND BOTSWANA**

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## **SUMMARY**

Vaccine mandates and vaccine denialism appear to be in stark opposition, but closer analysis will reveal that those who propagate both such ideals are rigid. Public buy-in on matters of public health is an important precondition for healthy social environments inasmuch as informed consent is important to individual autonomy, freedom of conscience and democracy. Botswanan case law provides an example of how vaccine denialism can lead to fatal consequences in the face of religious extremism, while Belgian case law provides an example of how vaccine mandates and their accompanying modalities may be held to be unlawful and discriminatory. Both freedom of conscience and administrative action are subject to the rule of law and every norm that is imposed on the population must be accompanied by liability for those propagating such norms if harm is the result. As South Africa has grappled with whether or not it should make vaccination mandatory, lessons have been noted and recommendations made – in line with the Constitution as the supreme law in the land. (Section 2 of the Constitution of the Republic of South Africa, 1996 affirms the supremacy of the Constitution.)

## **1 INTRODUCTION**

Vaccination and belief systems lead to hostile discussions but consensus may be found if prescription of harmful vaccination ideals leads to liability

(whether for the State, an employer or a religious institution).<sup>1</sup> Ideals on matters of public health are difficult to detect especially concerning vaccine mandates because the principle of individual informed consent to health procedures,<sup>2</sup> and the social preconditions necessary for a shared environment, do not always align.<sup>3</sup> The maxim “public health is the greatest good” is contentious, given that beliefs and opinions strive for traction in law-making processes.<sup>4</sup> The population may have diverse views about what constitutes the common good, given that ideas are financially sponsored in science, religions and corruptible politics; but when consensus has been reached strong leadership is required.<sup>5</sup>

The protection of individual and collective conscientious convictions has been an historic bone of contention where infectious diseases are concerned, given that vulnerable populations were “frequently met with discrimination and gross denials of individual liberty”, as in cases of racially-based immunisation, and sterilisation of women with a history of illness.<sup>6</sup> Failure to immunise and treat children under the care of a guardian is child neglect; if a fatality occurs in such a scenario, the guardian is guilty of homicide. However, does this principle apply to a trusted minister of religion or the leader of a sect?<sup>7</sup> Are religious leaders and consciousness movements within their rights to protest against frequent health tests at one’s personal expense, or against mandatory vaccination from COVID in order to access public facilities or gatherings?<sup>8</sup> The distinction between a child’s guardian and a religious leader in this context appears to be adult autonomy and the population’s willingness to seek treatment in the event of illness. Whether an individual has witnessed the effect of untreated cases, is aware of common symptoms, and understands “the importance of collective action in preserving life”, is both a religious and a scientific issue.<sup>9</sup> The oral traditions, myths and dramatised events involved in religion are more psychologically loaded than scientific explanations of phenomena<sup>10</sup> – with adverse drug reactions often being demonised as the consequence of defying divine order, and successful vaccinations being hailed as a gift from

<sup>1</sup> Ellis “Mandatory Vaccine Policies Will Survive a Constitutional Challenge: Legal Expert Halton Cheadle” (10 November 2021) <https://www.dailymaverick.co.za/article/2021-11-10-mandatory-vaccine-policies-will-survive-a-constitutional-challenge-legal-expert-halton-cheddle/> (accessed 2022-01-22); Nsereko “Religious Liberty and the Law in Botswana” 1992 34 *Journal of Church and State* 843 854.

<sup>2</sup> Torfs “The Permissible Scope of Legal Limitations on the Freedom of Religion or Belief in Belgium” 2005 19 *Emory International Law Review* 637 674.

<sup>3</sup> Parmet *Populations, Public Health, and the Law* (2009) 11.

<sup>4</sup> Parmet *Populations, Public Health, and the Law* 1.

<sup>5</sup> Parmet *Populations, Public Health, and the Law* 1 42.

<sup>6</sup> Parmet *Populations, Public Health, and the Law* 112.

<sup>7</sup> Van der Vyver and Green “Law, Religion and Human Rights in Africa: Introduction” 2008 8 *African Human Rights Law Journal* 337 350.

<sup>8</sup> Wolfe “Belgian Court Declares COVID Vaccine Passports Illegal” (1 December 2021) <https://www.lifesitenews.com/news/belgian-court-declares-covid-vaccine-passport-illegal/> (accessed 2022-01-20).

<sup>9</sup> Parmet *Populations, Public Health, and the Law* 11.

<sup>10</sup> Pelčić, Karačić, Mikirichan, Kubar, Leavitt, Tai, Morishita, Vuletić, and Tomašević “Religious Exception for Vaccination or Religious Excuses for Avoiding Vaccination” 2016 57 *Croat Med J* 516 516; Quansah “Law, Religion and Human Rights in Botswana” 2008 8 *African Human Rights Law Journal* 486 487.

God.<sup>11</sup> Given these complications with ideas about vaccinations, the importance of limited government, corporate or group interference with individual rights and due process cannot be overemphasised when imposing vaccine mandates or preaching vaccine denialism.<sup>12</sup>

Secular law is reluctant to define religious doctrine but vaccine denialism has clear legal consequences.<sup>13</sup> “Belief systems, whether non-conforming, spiritual or humanist in their nature” are protected by international law and personal convictions remain the greatest predictor of uptake of healthy behaviour.<sup>14</sup> Thought, religion and conscientious behaviour is the norm rather than the exception; as the basis of family life and public order, they distinguish between puppets, animals and autonomous human beings who have power of reason.<sup>15</sup> Human beings can change their minds about religion, can have beliefs that are not linked to their religion and can act in unison for the good of the public.<sup>16</sup> Repressive regimes, habitual offenders and anarchists are said to have no respect for the public good, which is the supreme law and is protected by the principles of legality and due process.<sup>17</sup> This article starts by giving a background outlining threats to the rule of law in relation to freedoms and vaccines, then outlines applicable international law principles, then seeks out neutral principles that modern states can agree on about freedoms and vaccines, and finally delineates how they are distorted in practice in order to present lessons for South Africa.

## 2 CAUSE OF INQUIRY

The controversial rule by “virologists” has led to a technocracy and a departure from the rule of law.<sup>18</sup> There are also growing concerns that politicians have become passive in the making of laws and comfortable with taking recommendations from medical experts, failing to look at their broader social consequences and leading to despondency and strong opposition by societal groupings.<sup>19</sup> Globally religious groupings have led the bulk of negative reactions to COVID 19 interventions – in particular to the limitation of freedom of association and movement. Attending religious gatherings unless in possession of a COVID Safe Ticket was criminal in Belgium. The COVID Safe Ticket was a legal document equivalent to a pass law in Belgium.<sup>20</sup> This law may seem to have been justifiable at face value.

<sup>11</sup> Pelčić *et al* 2016 *Croat Med J* 518.

<sup>12</sup> Quansah 2008 *African Human Rights Law Journal* 499.

<sup>13</sup> Torfs “Religion and State in Belgium” 2015 17 *Insight Turkey* 97 102; Pelčić *et al* 2016 *Croat Med J* 516.

<sup>14</sup> Hill “Locating the Right to Freedom of Religion or Belief Across Time and Territory” in Ferrari, Hill, Jamal and Bottoni (eds) *Routledge Handbook of Freedom of Religion or Belief* (2021) 6.

<sup>15</sup> Quansah 2008 *African Human Rights Law Journal* 491.

<sup>16</sup> Art 1 of United Nations *Universal Declaration of Human Rights* (1948).

<sup>17</sup> Parmet *Populations, Public Health, and the Law* 1.

<sup>18</sup> Praet “Reflections on the COVID-19 Restrictions in Belgium and the Rule of Law” 2021 30 *Juridica International* 194 204.

<sup>19</sup> *Ibid.*

<sup>20</sup> Szucs “Belgian Court Rules COVID Pass Illegal in Wallonia” (2 December 2021) <https://www.aa.com.tr/en/middle-east/belgian-court-rules-covid-pass-illegal-in-wallonia/2436283#> (accessed 2022-01-20).

However, the frequent vaccinations or COVID tests involved in renewing the COVID Safe Ticket were held to be arbitrary, intrusive and unsustainable.<sup>21</sup> Legal accountability mechanisms and democratic engagement are features of an organised society, and attempts to silence strong voices in medical states of disaster create disorder in both socio-cultural and socio-economic institutions.<sup>22</sup> Interpersonal interaction and the possibility of meaningful engagement on matters of health have lost traction owing to the controversial nature of COVID restrictions. People who have lost their way of life as a result of this threat can view all COVID mandates and restrictions as suspect.

Most religions encourage holistic thought and humanistic approaches to problems, linking them closely to human rights, which are interrelated and difficult to apply selectively.<sup>23</sup> Human rights, like the human conscience, are inalienable:

“[T]hey have not been granted by any earthly authority; neither by Parliament nor by the head of state. They are inherent nature. They are born with.”<sup>24</sup>

At its core, freedom of conscience and thought requires negotiation – the primary negotiation being by individuals within religious societies and the secondary negotiation being within democratic institutions that use conventional reasoning.<sup>25</sup> Both negotiations can end in hostility, but the decisions taken by such institutions should lead to respect for individuality. Liberal views also present a challenge in conscience-based debate because it is difficult to separate spiritual matters from factual matters<sup>26</sup> – for example, science cannot provide generic solutions that “includ[e] those who cannot be vaccinated because of medical contraindications or have been vaccinated but without adequate immunogenic response.”<sup>27</sup> The individual who is the subject of treatment in most cases can weigh prior knowledge of such risks and conclude on whether it is more beneficial than prejudicial. However, where a vaccine mandate is imposed by the State, for example, “the European Court of Human Rights and the Italian Court both ruled that if a government wanted to make vaccines mandatory there had to be some compensation for those who suffered adverse effects”.<sup>28</sup> These judgments reinforce the saying that “freedom is the norm, restrictions are the exception,” and restrictions should only be imposed in circumstances where they are unavoidable, justifiable and proportionate.<sup>29</sup>

<sup>21</sup> Zweig, Zapf, Beyrer, Guha-Sapir and Haar “Ensuring Rights While Protecting Health: The Importance of Using a Human Rights Approach in Implementing Public Health Responses to COVID-19” 2021 23 *Health and Human Rights* 173 182.

<sup>22</sup> Micklitz “The COVID-19 Threat: An Opportunity to Rethink the European Economic Constitution and European Private Law” 2020 11 *European Journal of Risk Regulation* 249 250.

<sup>23</sup> Pelčić *et al* 2016 *Croat Med J* 518.

<sup>24</sup> Nsereko 1992 *Journal of Church and State* 844.

<sup>25</sup> Hill in Ferrari *et al Freedom of Religion or Belief* 5.

<sup>26</sup> Pelčić *et al* 2016 *Croat Med J* 518.

<sup>27</sup> Pelčić *et al* 2016 *Croat Med J* 517.

<sup>28</sup> Ellis <https://www.dailymaverick.co.za/article/2021-11-10-mandatory-vaccine-policies-will-survive-a-constitutional-challenge-legal-expert-halton-cheddle/>.

<sup>29</sup> Torfs 2005 *Emory International Law Review* 637.

International human rights law is underpinned by the view that the public good is served by not offending most religious and cultural sensibilities, hence the call for an absolute “minimum of state interference in religious matters”.<sup>30</sup> Public order is universally recognised as requiring a limitation of freedom of thought.<sup>31</sup> Although law has its ethical foundations in the collective conscience, popular sensibilities require a measure of material engagement to avoid sensationalism spiralling out of control.<sup>32</sup> This speaks to the “mutual interdependence of church and state” with a reasonable measure of separation.<sup>33</sup> Both public order and public health require limitations to freedom of thought and freedom of movement, so it seems counterintuitive for governments to risk violent anti-vaccine protests over avoidable vaccine mandates.<sup>34</sup> Rather than publicly engaging minority religious views, governments justify their sternness and fail to acknowledge dissenting views from religious groupings despite religious extremists’ willingness to die for their convictions. This autocratic behaviour compounds the feeling of alienation of minority religions.<sup>35</sup> Matters that cannot be subject to democratic or at least purposeful engagement under the guise of public health are resonant of the eugenic movement.<sup>36</sup>

Failure to accept disagreements and exceptions to any set norm shows absolute trust in it; an exclusive embrace of science without human rights considerations can seldom stand up to the muster of legality.<sup>37</sup>

“The laudable goal of public health protection has often been misapplied, or even abused, to subvert other critical values held by our legal system, such as equality and due process ... it should suffice to recall that eugenicists relied on the claim of public health, as well as the credibility of science, to justify the involuntary sterilisation of thousands of poor, disenfranchised, young women.”<sup>38</sup>

A culture of justification is required when laws that limit individual freedom are enacted for public health reasons. Laws that are vague, disproportionate to the goal pursued, and arbitrary, must fail. For example, the COVID Safe Ticket was granted to both vaccinated people and those who could prove they had had COVID in the past six months.<sup>39</sup> Apart from acting as legal checks and balances against the arbitrary use of power, religious institutions must strengthen solidarity with individuals who have been exposed to the harsh side effects of vaccines, and fund research into the likely causes thereof.<sup>40</sup>

<sup>30</sup> Hill in Ferrari *et al* *Freedom of Religion or Belief* 1–2; Quansah 2008 *African Human Rights Law Journal* 499.

<sup>31</sup> Art 18(3) of the UN General Assembly *International Covenant on Civil and Political Rights* (ICCPR) 999 UNTS 171 (1966).

<sup>32</sup> Hill in Ferrari *et al* *Freedom of Religion or Belief* 1–2.

<sup>33</sup> Torfs 2015 *Insight Turkey* 98.

<sup>34</sup> Art 18(3) and art 21 of the ICCPR.

<sup>35</sup> Nsereko 1992 *Journal of Church and State* 845.

<sup>36</sup> Parmet *Populations, Public Health, and the Law* 2–3.

<sup>37</sup> Praet 2021 *Juridica International* 196.

<sup>38</sup> Parmet *Populations, Public Health, and the Law* 2–3.

<sup>39</sup> Parmet *Populations, Public Health, and the Law* 113.

<sup>40</sup> Pelčić *et al* 2016 *Croat Med J* 517.

Routine vaccinations have been proved to “reduce infectious disease burden” and are commonly done in the “first 1 000 days of life”,<sup>41</sup> thus leading to the stereotype that they are for children. Measures such as social distancing, personal hygiene and quarantines have proved to be not as effective as vaccines, especially in poor communities.<sup>42</sup> Social status alone is not an adequate basis for vaccine mandates given that all social classes interact daily, from banking queues to grocery stores. Although diverse socio-cultural beliefs are held by large groups in a population, they are not bound to clash with public health policy<sup>43</sup> – for example, if religious exceptions to certain vaccines are respected by finding culturally acceptable alternatives to them.<sup>44</sup> Accommodating diversity in public health policy will not inevitably cause friction. Keeping the population’s perspective in mind in public health policies is critical.<sup>45</sup>

### 3 INTERNATIONAL HUMAN RIGHTS AND WHEN THEY APPLY

#### 3.1 Public health law and interpretive paradigms

Public health law presents both benefits and costs to individuals and the population at large, but it carries the full force of law and is not merely a set of suggestions.<sup>46</sup> Criminal offences committed in the course of exercising a religion find barely any sympathy in the eyes of the law. Although both religion and law are institutions of social control, the law maintains sovereign command of the population at large. Restrictions on the right to practise a religion (which is an internationally enshrined human right) are subject to being necessary and proportionate to the protection of health, which is difficult to establish during debate.<sup>47</sup>

Parment prefers to define public health as:

“the health of the population as a whole, especially as monitored, regulated, and promoted by the state (by provision of sanitation, vaccination, etc.).”<sup>48</sup>

Excessive monitoring and surveillance on the part of public health officials given the recent COVID crisis may be framed as a skilful way to detach the population from gathering and holding common beliefs.<sup>49</sup> Those whose convictions would oppose the new normal and vaccines are by no means

<sup>41</sup> Nandi and Shet “Why Vaccines Matter: Understanding the Broader Health, Economic, and Child Development Benefits of Routine Vaccination” 2020 16 *Human Vaccines and Immunotherapeutics* 1900 1901.

<sup>42</sup> Parment *Populations, Public Health, and the Law* 112.

<sup>43</sup> Parment *Populations, Public Health, and the Law* 113.

<sup>44</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, 2000 par 12b.

<sup>45</sup> Parment *Populations, Public Health, and the Law* 21–22.

<sup>46</sup> Parment *Populations, Public Health, and the Law* 2.

<sup>47</sup> Praet 2021 *Juridica International* 201.

<sup>48</sup> Parment *Populations, Public Health, and the Law* 7.

<sup>49</sup> Praet 2021 *Juridica International* 204.

unreasonable given the continuous compromise of natural freedoms they have had to endure.<sup>50</sup> The demand that COVID Safe Tickets be acquired by the population to attend religious gatherings and to board public transport, may seem justifiable on the grounds that an individual is a danger to self and others; yet, it has odd connotations to other related rights and can be disproportionate and discriminatory to non-conforming individuals. The limitation of religion on grounds that are “prescribed by law ... protect[s] public safety, order, health, or morals or the fundamental rights and freedoms of others”, must be necessary,<sup>51</sup> not merely ritual vaccinations that have a short-term immunogenic response. The exclusion of people who do not get vaccinated, from social and religious endeavours, seems to be a natural part of social life, given that “public health ... is a precondition to social life” to the extent that vaccination is necessary to achieve interaction.<sup>52</sup> Given the possibility of COVID infection post-vaccination and the multiplicity of environmental determinants of health, it is difficult to silence alternative notions about vaccines without conducting several risk and impact studies and presenting acceptable alternatives.<sup>53</sup> It is necessary to accept that there is a possibility for science to strengthen the human body’s immunogenic response to any disease without a direct vaccine.

The highly technical nature of finding feasible alternatives to existing public health initiatives has led to a technocracy, comprised mainly of individuals who give insufficient weight to human rights when making determinations.<sup>54</sup> Public health experts to some extent doubt the efficacy of human rights as a doctrine and equate the concept to a set of debatable norms and standards not worthy of being the grand norm.<sup>55</sup> Freedom of worship is essential to health because health cannot be narrowly defined as medicine and treatment of patients, given that the constitution of the World Health Organisation (WHO) includes “social well-being” in the definition of health.<sup>56</sup> Therefore, the role of collective ideas and “collective efforts undertaken to improve health” cannot be undermined.<sup>57</sup>

The traditional mode of government in Commonwealth countries is parliamentary sovereignty, which places trust in a legislative assembly to make prescriptions concerning the population’s health. From a healthcare perspective this means broad vaccine mandates need to be tested for efficacy and safety by a representative group. In health matters, however decisions made considering group efficacy may overlook individual harm and lead to lawsuits concerning individual harm and autonomy, because the side-effects of a drug must be made clear and must be agreed to by the end user.<sup>58</sup> If any person immutably imposes a health standard on a person in such a way that their personal thoughts are suppressed, they consider the

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<sup>50</sup> *Ibid.*

<sup>51</sup> Art 18(3) of the ICCPR.

<sup>52</sup> Parmet *Populations, Public Health, and the Law* 11.

<sup>53</sup> Parmet *Populations, Public Health, and the Law* 20.

<sup>54</sup> Parmet *Populations, Public Health, and the Law* 3.

<sup>55</sup> *Ibid.*

<sup>56</sup> World Health Organization *Constitution of the World Health Organization*, 1946.

<sup>57</sup> Parmet *Populations, Public Health, and the Law* 9.

<sup>58</sup> Lloyd, Haussman and James “Religion, Health Care and Africa” in Lloyd, Haussman, and James *Religion and Health Care in East Africa* (2019) 16.

other person to be a legal object and unequal in reasoning capacity to them. Deeper meanings will be given to informed consent, and the public health limitations on freedom of conscience as time passes and further discourse takes place given that judges and lawyers have the freedom of interpretation.<sup>59</sup>

The international law tradition of dualist and monist states either requiring an act of incorporation to use international law norms, or automatically integrating international law into their domestic systems, is being gradually blurred as multilateral treaty bodies and intergovernmental agencies become more visible when health concerns are addressed.<sup>60</sup> Sovereign states have the continued duty to monitor what gets into their borders and to hold pharmaceutical companies to account in the clarification of groups of people that may have contra-indications to drugs and weakened immunogenic responses.<sup>61</sup> The test for legality in public health mandates should follow existing laws – either international human rights or domestic law – and not only be recognised as a limitation on freedom of conscience, thought and religion.<sup>62</sup> African nations' drive for homegrown laws and "African solutions for African problems" (a common political mantra) denotes, at the very least, distrust in foreign interventions, given the sad history of colonisation and the dumping of defective goods in Africa. Administering treaty obligations, and keeping up with the facade of compliance with international standards, may place an undue burden on African states, which are accountable to African law and religion.<sup>63</sup>

Written laws, such as a supreme constitution and other instruments that limit the authority of governments, are necessary for the "incremental realisation of human rights, including economic and social rights".<sup>64</sup> Failings of parliamentary sovereignty and popular rule led to constitutionalism, and checks and balances, that would hold leaders to account by making sure that laws are procedurally and substantively correct and compliant with human rights standards.<sup>65</sup> Human rights are neutral norms. The neutrality of human rights makes them easy to overlook but repressive regimes that ignore them usually find elections, political opposition, and judicial activism offensive.<sup>66</sup> In an egalitarian society, there should be room for adults to disagree with vaccine mandates without disenfranchisement. The clash of conscience-related positions among liberal individuals, governments and religious groupings is inevitable. However, all three players have points they can agree on and which can be maximised.<sup>67</sup>

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<sup>59</sup> Parmet *Populations, Public Health, and the Law* 5.

<sup>60</sup> Torfs 2005 *Emory International Law Review* 638; Parmet *Populations, Public Health, and the Law* 31.

<sup>61</sup> Pelčić *et al* 2016 *Croat Med J* 517; Kumar "Customary Law and Human Rights in Botswana" 2009 52 *Human Rights and Human Welfare* 2.

<sup>62</sup> Torfs 2005 *Emory International Law Review* 638.

<sup>63</sup> Kumar 2009 *Human Rights and Human Welfare* 2.

<sup>64</sup> Nsereko 1992 *Journal of Church and State* 843.

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*

<sup>67</sup> Hill in Ferrari *et al Freedom of Religion or Belief* 4.

## 3 2 Global human rights and perspectives

“All human rights are universal, indivisible, interdependent and interrelated”, according to the Vienna Declaration and Programme of Action.<sup>68</sup> They contribute to the experience of a person feeling fully human and being truly represented, recognised and empowered to participate in social, religious, cultural, political and economic endeavours.<sup>69</sup> The Universal Declaration of Human Rights<sup>70</sup> provides that “all human beings are born free and equal in dignity and rights”, but this would be incomplete without their personal health choices being recognised and respected by their elected representatives and peers with diverse views. Misrecognition, misrepresentation, and disenfranchisement of people based on health choices does not mean they do not have rights, but it does invite political and legal resistance to vaccine mandates.<sup>71</sup> It is important to note that not all discrimination is unfair, and without discrimination or limitation of rights it would be difficult to address public health concerns.

Religious and consciousness movements are not born out of human rights; it is the struggles of such movements that led to rights recognition and social harmony.<sup>72</sup> In the legal order of things politics precede rights and legitimate religious expectations precede politics. Laws are therefore an expression of the values the populace hold. Social rights, human agency and autonomy are conditions necessary for securing the population’s health.<sup>73</sup> Human beings are rational and capable of making their own health choices despite “political, economic and cultural systems” and secular governments must endeavour to protect, promote and fulfil this capacity by providing health information.<sup>74</sup> Informed choices and conscious risk-taking are the backbone of legitimate health choices.

The ICCPR<sup>75</sup> stipulates that “no one shall be subject to coercion which would impair his/her freedom to have or to adopt a religion or belief of his/her choice”, which entrenches volition as an essential element of “the right to freedom of thought, conscience and religion”. “The right to freedom of thought, conscience and religion” is recognised by all states with a Constitution that elevates human rights to supreme law, and by monist states, where the highest norms are found in international authority, making religious freedom not only a norm but a measure that limits states’ authority in imposing mandates.<sup>76</sup> Religious freedom is a neutral norm, which implies that a measure of trust is afforded to religious norms and that the secular state does not bother itself with the content of religious norms, while religion

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<sup>68</sup> Part I par 5 of UN General Assembly *Vienna Declaration and Programme of Action* A/CONF.157/23 (1993).

<sup>69</sup> Quansah 2008 *African Human Rights Law Journal* 489.

<sup>70</sup> Art 1 of Universal Declaration of Human Rights.

<sup>71</sup> Nsereko 1992 *Journal of Church and State* 844.

<sup>72</sup> Quansah 2008 *African Human Rights Law Journal* 489.

<sup>73</sup> Parmet *Populations, Public Health, and the Law* 114.

<sup>74</sup> Part I par 5 of Vienna Declaration and Programme of Action.

<sup>75</sup> Art 18(2) of the ICCPR.

<sup>76</sup> Quansah 2008 *African Human Rights Law Journal* 488–489; Torfs 2005 *Emory International Law Review* 638.

must acknowledge the existence of formal laws.<sup>77</sup> Religion and health information belong in the private domain as much as they exist in the public domain, but private health correspondence may not be “subjected to arbitrary or unlawful interference”,<sup>78</sup> such as police demanding COVID Safe Tickets at funerals of loved ones. Public authorities must draw a line when restrictions to religion are avoidable or are dangerous to public order, given that “religious freedom is an internationally recognised norm and restrictions are an exception”.<sup>79</sup>

Reference to “public safety, order, health or morals” in the ICCPR was not made in subjective terms but is to be understood in the context of a democratic society that is subject to the rule of law – such as South Africa, for example, which has a supreme constitution.<sup>80</sup> “A sanitary crisis” brings about several dramatic consequences for the infringement of public health rights by either governments or religious leaders, but equal weight should be given to the harm that may be caused by both institutions, and human rights must prevail in any natural disaster.<sup>81</sup> The United Nations Commission on Human Rights and the International Commission of Jurists put extensive work into the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights.<sup>82</sup> The emphasis is on necessity, proportionality, curative health services, preventative measures against communicable diseases and deference to the World Health Organisation as they are best suited to providing evidence in a health crisis; but the principles expressly forbid “vague or arbitrary limitations ... when there exist adequate safeguards and effective remedies against abuse”.<sup>83</sup> State and employer liability in the case of a vaccine mandate that causes adverse drug reactions is not an effective remedy against adverse drug reactions. State liability is not fully “compatible with the nature of the rights protected” and it is indefensible in the absence of informed consent that is “consistent with other obligations under international law”.<sup>84</sup> Vaccine mandates costs toward the State may end up being outweighed by lawsuits for adverse drug reactions, which is an undesirable state of events.

The nature of the right to health presupposes mainly provision of goods “rather than restraint on the part of government”, thereby tempting governments and other like-minded individuals such as employers and

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<sup>77</sup> Torfs 2015 *Insight Turkey* 98.

<sup>78</sup> Art 17(1) of the ICCPR.

<sup>79</sup> Torfs 2005 *Emory International Law Review* 637.

<sup>80</sup> Arts 18(3) and 21 of the ICCPR.

<sup>81</sup> Praet 2021 *Juridica International* 198.

<sup>82</sup> United Nations Commission on Human Rights *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights* E/CN.4/1985/4 (1984).

<sup>83</sup> Art 34 of the Siracusa Principles on the Limitation and Derogation Provisions.

<sup>84</sup> Par 28 of UN Committee on Economic, Social and Cultural Rights (CESCR) *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)* E/C.12/2000/4 (2000); Art 4 of the ICCPR and Art 4 of the UN General Assembly *International Covenant on Economic, Social and Cultural Rights* (ICESCR) 993 UNTS 3 (1966). Adopted: 16/12/1966; EIF: 03/01/1976.

intergovernmental organisations to impose vaccines that do not satisfy individual preferences.<sup>85</sup> The ICESCR<sup>86</sup> provides:

- “1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
  - ...
    - (c) the prevention, treatment and control of epidemic, endemic, occupational and other diseases;
    - (d) the creation of conditions which would assure to all medical service and medical attention in the event of sickness.”

The right to health is a constant pursuit and “the highest attainable standard” of health invariably includes determination of mental, social, cultural and religious elements that set up a “social framework in which populations live, face disease and injury, and die”.<sup>87</sup> Life cycle requirements such as vaccinations are now a culturally engrained precondition to facing disease but where that is not the case for a particular adult vaccine, it is doubtful that a vaccine mandate would fulfil human rights requirements.<sup>88</sup> Health risk factors include not only physiological “factors that are intrinsic or unique to an individual” but also “the individual’s social environment” and physical environment, which can make it convenient to access health care in the event of sickness, in the absence of vaccines.<sup>89</sup> Healthy social environments include missionary churches and other civic organisations that build hospitals.<sup>90</sup> Toxic social environments include civic organisations that preach denialism and demonise health seeking by allopathic means.

#### **4 IDEALISING VACCINE MANDATES, DENIALISM AND FREEDOM OF CONSCIENCE AND THOUGHT**

The rule of law for purposes of this work is a value-neutral grounding theory that ensures law’s predictability, encourages accountability to set norms and ensures mandates are both substantively and procedurally legitimate.<sup>91</sup> Neither vaccine mandates nor vaccine denialism is ideal at law and sponsoring religious or technocratic tyranny cannot pass muster in a state with an independent judiciary that guarantees “equality before the law”.<sup>92</sup> Where questions of vaccine mandates and possible judicial activism arise, the foundations of liberalism, individualism, necessity, evidence, proportionality and non-discrimination remain as the rule, rather than the exception.<sup>93</sup> Judicial activism is only problematic if the rule of law is not a

<sup>85</sup> Parmet *Populations, Public Health, and the Law* 111.

<sup>86</sup> Art 12 of the ICESCR.

<sup>87</sup> Parmet *Populations, Public Health, and the Law* 31.

<sup>88</sup> *Ibid.*

<sup>89</sup> Parmet *Populations, Public Health, and the Law* 20.

<sup>90</sup> Hill in Ferrari *et al Freedom of Religion or Belief* 5.

<sup>91</sup> Praet 2021 *Juridica International* 196.

<sup>92</sup> *Ibid.*

<sup>93</sup> UNCHR *The Siracusa Principles on the Limitation and Derogation Provisions*.

priority and judges blindly oppose government for philosophical reasons, that cannot find expression within the existing legal framework. However, where due process is subverted in imposing vaccine mandates without parliamentary ratification the judiciary can be used as a necessary check against technocratic rule.

The technical and advisory wings of governments do not hold unchecked power. They are bound by the positive laws set by parliaments, constitutional assemblies and incorporated international human rights.<sup>94</sup> Positive laws ensure that “the normal rules of decision making” are followed and that the role of parliaments is not subverted to conform to the preferences of scientists who fulfil advisory functions in states of emergency.<sup>95</sup> Deferring matters of a scientific and religious import to Parliament is fairer than deferring to a technically staffed executive that has a material interest in maintaining the status quo that caused a challenge.<sup>96</sup> The role of the judiciary is not to protect the executive.

Some medical practitioners dispute whether “rights are necessary or at least conducive to public health”.<sup>97</sup> The interventions that medical practitioners take need to be “correctly established by law and strictly proportionate to the protection of health”.<sup>98</sup> When establishing health mandates, the legal test of necessity and proportionality is incomplete without further enquiry into the environmental factors that lead to disease, such as people’s background education and beliefs.<sup>99</sup> These factors are commonly referred to as social determinants of health and they point to the “indivisibility, interdependency, and interrelatedness” of human rights and often give meaning to overlooked factors in decision making.<sup>100</sup> Parliaments maintain their elected mandate during sanitary emergencies and they need periodically to review restrictive measures.<sup>101</sup> International law reporting and accountability bodies also need to be more vigilant in reviewing actions taken by governments in times of crisis.<sup>102</sup> Crisis amplifies society’s collective vulnerability to state action, increasing the need for judicial review of administrative action for both procedural and substantive fairness.<sup>103</sup>

The question of whether a vaccine mandate supports public health is subjective and the public narrative of which health beliefs people follow in private is influenced by environmental determinants and personal exposure.<sup>104</sup> Public health mandates or directives need public buy-in to be successful. The free exchange of opinions, beliefs, facts and historic accounts of events must enter the public space and social institutions in a

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<sup>94</sup> Praet 2021 *Juridica International* 196.

<sup>95</sup> Praet 2021 *Juridica International* 197.

<sup>96</sup> Parmet *Populations, Public Health, and the Law* 42.

<sup>97</sup> Parmet *Populations, Public Health, and the Law* 116.

<sup>98</sup> Praet 2021 *Juridica International* 201.

<sup>99</sup> Parmet *Populations, Public Health, and the Law* 116.

<sup>100</sup> Parmet *Populations, Public Health, and the Law* 116; 56; Torfs 2005 *Emory International Law Review* 647; Zweig *et al* 2021 *Health and Human Rights* 182.

<sup>101</sup> Zweig *et al* 2021 *Health and Human Rights* 182.

<sup>102</sup> *Ibid.*

<sup>103</sup> Praet 2021 *Juridica International* 197.

<sup>104</sup> Parmet *Populations, Public Health, and the Law* 54.

democratic manner. The extent to which social entities facilitate individual agency is limited, given that beliefs are dogmatic and are collectively constructed through experience.<sup>105</sup> Public health law's emphasis on populations usually causes problems,<sup>106</sup> as the side effects or ineffectiveness of a vaccine can be generalised and resisted in solidarity by social and religious institutions.<sup>107</sup> Public health law has much more realistic application for the distribution of desirable goods and the improvement of living conditions for underprivileged populations than the imposition of unwanted vaccines.<sup>108</sup> Vaccine mandates in particular, as a law, are problematic because they negate the value of participants as "subjects and agents of human events".<sup>109</sup>

For formalistic individuals, society follows "the law as it is not how it ought to be". The law, however, stops to make sense to human beings when it is not grounded in public morals such as freedom of conscience. Justice is immutable law and mandates are not. Failure to tolerate different forms of thinking on the grounds of neutrality is mischievous and usurps other individuals' freedom of thought and conscience.<sup>110</sup> This is true even of leaders of religious sects who forbid their members to interact with persons of diverse views or to receive treatment from allopathic medical practitioners.<sup>111</sup> Responsible religious practices may include tolerance and respect of other religious views, even those who change religion or act in line with a "multifaith adherence".<sup>112</sup> Mockery of religious values has historically been a cause of many conflicts but the failure to acknowledge flaws in science (both hard science and social science) endangers the public. The public domain remains open to scientific opinions and the regulation of harmful religious practices, notwithstanding that; history, experience, and drama hold greater power to convince than hard science in the face of controversy.

## 5 VACCINE MANDATES, DENIALISM AND FREEDOM OF CONSCIENCE AND THOUGHT IN PRACTICE

The unhappy history of public health initiatives, from the eugenic movement to the era of vaccine mandates, is not without sound scientific backing or without actual supporters in the form of utilitarian thinkers who can quantify harm and discrimination in the sight of a potentially fatal vaccine.<sup>113</sup> Public health initiatives seldom need defence given the historical and progressive advancement of effective medical science in the twentieth century.<sup>114</sup> The

<sup>105</sup> *Ibid.*

<sup>106</sup> Parmet *Populations, Public Health, and the Law* 19.

<sup>107</sup> Pelčić *et al* 2016 *Croat Med J* 517.

<sup>108</sup> Parmet *Populations, Public Health, and the Law* 19.

<sup>109</sup> *Ibid.*

<sup>110</sup> Nsereko 1992 *Journal of Church and State* 846.

<sup>111</sup> Nsereko 1992 *Journal of Church and State* 858.

<sup>112</sup> Nsereko 1992 *Journal of Church and State* 850–851; Quansah 2008 *African Human Rights Law Journal* 488.

<sup>113</sup> Parmet *Populations, Public Health, and the Law* 2–3.

<sup>114</sup> Parmet *Populations, Public Health, and the Law* 42.

law's attention has shifted to health care law, where questions of service delivery, desirability, medical risks and patient management dominate, all of which pursuits are fundamentally of a commercial nature.<sup>115</sup> Pharmaceuticals are among the top trading firms globally and the commercialisation of opinions in government and science is an unavoidable phenomenon. What may seem to be a technocratic imposition of vaccines by virologists can stem in fact from powerful commercial players. The rule of money is most evident in vaccine nationalism, which has meant that Africans were the last recipients of COVID vaccines and drug stockouts of any drugs proven efficacious against COVID by rich nations.<sup>116</sup> Pillay and Kramers-Olen<sup>117</sup> liken this phenomenon to "colonial mentality" targeting medicine.

Human rights law seems to be at odds with science; many believe in science in the absence of human rights and morality. Compounded by capitalism being the norm even in healthcare crisis, which makes legal checks and balances against commercialised vaccines unpopular.<sup>118</sup> There have been protests against vaccine mandates, all these were met with repressive measures and censoring of the internet, which may serve to justify the reluctant uptake of vaccine mandates.<sup>119</sup> Political opposition on the matter of vaccine mandates is taken to be populism and tension in the relationship between globalisation, public order and public health concerns has in some instances been used to limit participation in protests.<sup>120</sup> Also, the volume of human and physical resources dedicated to fighting the scourge of COVID has seemed to overshadow all other medical pursuits and has caused delayed detection, prevention, or treatment of other diseases.<sup>121</sup> It seems to the observing public, and to the public health system, that the urgent vaccination drive is an unavoidable priority.

The rallying points behind vaccine denialism include the unnecessary link between vaccines, work, education, and "sociocultural interaction".<sup>122</sup> The sociocultural appropriateness of vaccines is also in focus because of the history that vaccines have been derived from aborted foetuses in the past,<sup>123</sup> and "the theological claim that epidemics resulted from a community's sin" make vaccines all the more undesirable.<sup>124</sup> These theological claims do not represent the views of all people of faith and the influence of faith seems to be regressing on matters of life and death.<sup>125</sup> Claims of the immutability of clerical views and their unchecked authority are subsiding and the ordinary rules of law are becoming visibly applicable to religious bodies.<sup>126</sup> Individuals are further expected to make sound sanitary decisions when exposed to

<sup>115</sup> *Ibid.*

<sup>116</sup> Pillay and Kramers-Olen "COVID-19, Psychosocial Issues, Politics, and Public Mental Health Care" 2021 51 *South African Journal of Psychology* 293 298.

<sup>117</sup> Pillay and Kramers-Olen 2021 *South African Journal of Psychology* 298.

<sup>118</sup> Praet 2021 *Juridica International* 195.

<sup>119</sup> *Ibid.*

<sup>120</sup> Hill in Ferrari *et al Freedom of Religion or Belief* 4–5.

<sup>121</sup> Zweig *et al* 2021 *Health and Human Rights* 176.

<sup>122</sup> Zweig *et al* 2021 *Health and Human Rights* 174.

<sup>123</sup> Pelčić *et al* 2016 *Croat Med J* 516–517.

<sup>124</sup> Parmet *Populations, Public Health, and the Law* 14.

<sup>125</sup> Torfs 2005 *Emory International Law Review* 250.

<sup>126</sup> Torfs 2005 *Emory International Law Review* 647.

different environments – for example, at work, school, church and entering public space, provided such sanitary standards are not invasive.<sup>127</sup>

There is broad consensus that the laws revoking the legal personality of religious bodies who refuse to submit to medical care in Botswana are good at law.<sup>128</sup> Belgium, however, does “not prevent or forbid the expression of an opinion by a philosophical or religious minority”.<sup>129</sup> International law limitations on freedom of religion are incorporated through the Societies Act of 1972 in Botswana and the preservation of public order, peace and welfare have been allowed as exceptional reasons not to register harmful sectarian religious bodies in Botswana.<sup>130</sup> The discussion on freedom of thought and conscience and vaccine denialism cannot be concluded without practical examples of how it causes legal tension. The examples selected here are from Botswana and Belgium where there is case law that has been largely divergent, but the nuances of the cases can be reconciled.

## 6 SUMMARY OF CASE LAW

The cases in Belgium involve the repeal of the COVID Safe Ticket by a Wallonia regional court and the discretion of medical practitioners to offer blood transfusion to a patient while unconscious despite a conscientious objection by his wife. Circular norms such as the COVID Safe Ticket and blood transfusion in case of injury are decided on state law grounds and where issues of doctrine or religious freedom arise, judges prefer avoiding discussion.<sup>131</sup> The courts are expected to protect vulnerable people in various states of vulnerability,<sup>132</sup> and it is unreasonable to assume that an individual cedes his or her personality to doctrine in matters affecting life and death.<sup>133</sup>

The disputed COVID Safe Ticket gave freedom of movement to three categories of people: the vaccinated; those recently sick with COVID; and those with recent COVID-negative test results.<sup>134</sup> The selective disbursement of the right to freedom of movement was in question before the Wallonia court,<sup>135</sup> and even the science behind facilitating limited human interaction in the face of a sanitary emergency where there is no effective vaccine that stops transmission of the disease.<sup>136</sup> By “curbing individual freedoms in a disproportionate way which does not serve the goal they pursue”,<sup>137</sup> COVID Safe Tickets were found to be unjustified.

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<sup>127</sup> Parmet *Populations, Public Health, and the Law* 56.

<sup>128</sup> Quansah 2008 *African Human Rights Law Journal* 499; Nsereko 1992 *Journal of Church and State* 858.

<sup>129</sup> Torfs 2015 *Insight Turkey* 102–103.

<sup>130</sup> Quansah 2008 *African Human Rights Law Journal* 499.

<sup>131</sup> Torfs 2005 *Emory International Law Review* 651.

<sup>132</sup> Zweig *et al* 2021 *Health and Human Rights* 182.

<sup>133</sup> Torfs 2005 *Emory International Law Review* 651.

<sup>134</sup> Wolfe <https://www.lifesitenews.com/news/belgian-court-declares-covid-vaccine-passport-illegal/>.

<sup>135</sup> *Ibid.*

<sup>136</sup> Szucs <https://www.aa.com.tr/en/middle-east/belgian-court-rules-covid-pass-illegal-in-wallonia/2436283#>.

<sup>137</sup> *Ibid.*

Other commentators on the digitised COVID Safe Ticket have raised issues of accountability in the face of surveillance and protection of personal health information and travel data. The comitology system that designed the COVID Safe Ticket is too distant from democratic processes to regulate human conduct. “Follow the science” is an unfortunate mantra that seeks to get politicians to rubber-stamp the opinions of a group of scientists.<sup>138</sup> The surveillance concerns are twofold: first, regarding the easy collection of metadata concerning individuals by hackers that could lead to a surge in digital crime;<sup>139</sup> and secondly, regarding the automatic assumption that health information and diagnosis of such is not private and is to be objectively determined.<sup>140</sup> Vaccination from COVID does not guarantee inability to contract the disease, hence an individual’s health status cannot be objectively determined by a vaccination card. One of the implications of the COVID Safe Ticket conditions was that the holder of a pass who has recovered from COVID within the last six months was similar to a vaccinated individual.<sup>141</sup> The recovery condition raises questions about health status privacy and discrimination against those who acquired COVID but were asymptomatic. The Wallonia regional court was justified in holding that the COVID Safe Ticket is discriminatory.

The second Belgian case is about the refusal of Jehovah’s witnesses to undergo a blood transfusion and (implicitly) receive vaccines made from genetic material “derived from an aborted foetus”.<sup>142</sup> Adults can clearly decide to forgo such a vaccine if they find it immoral. Children, however, are wards of the State and may be routinely vaccinated.<sup>143</sup> Torfs<sup>144</sup> establishes that “a possible conscientious objection expressed by the parents can never endanger the physical or mental health of the minor of age”. Vaccines that are accessible and appropriate for minors cannot be avoided on grounds of conscience in Belgium unless there is an ethically and medically sound alternative.

In Botswana, failure to vaccinate, or to yield to allopathic care, and instead remain adamant on a shallow spiritism, was held to be malevolent disregard of the laws of the country.<sup>145</sup> Failure to yield to efficacious health solutions, while depending on abstract spiritual powers was held to be child neglect.<sup>146</sup> “Most people in Botswana are as likely, in time of crisis or ill health, to seek help from a traditional healer as they are likely to visit a priest or a hospital.”<sup>147</sup> However, the polytheistic, monotheistic, scientology or humanistic nature of religion does not allow “anybody to practise or propagate their religion in complete disregard of the rights of others or the

<sup>138</sup> Praet 2021 *Juridica International* 204.

<sup>139</sup> Micklitz 2020 *European Journal of Risk Regulation* 254–255.

<sup>140</sup> Praet 2021 *Juridica International* 204.

<sup>141</sup> Wolfe <https://www.lifesitenews.com/news/belgian-court-declares-covid-vaccine-passport-illegal/>.

<sup>142</sup> Pelčić *et al* 2016 *Croat Med J* 516–517.

<sup>143</sup> Torfs 2005 *Emory International Law Review* 674.

<sup>144</sup> *Ibid.*

<sup>145</sup> Quansah 2008 *African Human Rights Law Journal* 497.

<sup>146</sup> *Ibid.*

<sup>147</sup> Quansah 2008 *African Human Rights Law Journal* 498.

laws of Botswana".<sup>148</sup> In Botswana, the precedent is that refusal "to permit medical personnel to treat ... children who contract measles culminating, in their death results in the parent being convicted of homicide".<sup>149</sup> It has yet to be tested whether a priest of an extremist sect of religion would be held blameworthy for propagating homicidal doctrines.<sup>150</sup>

## 7 LESSONS FOR SOUTH AFRICA

To ensure that beliefs do not interfere with practical administrative, labour, socio-environmental and humanitarian concerns, it is necessary to turn to history for lessons. The arrival of anti-retroviral medicines in the fight against HIV/AIDS was met with much scepticism, notably by the Mbeki administration.<sup>151</sup> The population paid the price for such reasoning until the roots of denialism were replaced with positivism through positive experiences.<sup>152</sup> The uptake of vaccines will determine if the population views them as either a positive or negative thing. The mantra "the public will not take the pill if it does not trust the doctor" applies and no measure of coercion will work on those who are self-employed if the power and knowledge gap between the medical and the social fields is not bridged.<sup>153</sup> The issue of vaccine denialism cannot simply be written off as a ploy for populism, and vaccine mandates are not an unassailable indicator of pragmatic leadership.

Religion that is based on "common sense", and on natural remedies such as African traditional religion, may brew scepticism over unnatural events such as adult vaccination to treat a disease that vaccination has yet to show itself to be completely effective.<sup>154</sup> In such schools of thought, scientific excesses are also suspected of triggering adverse drug reactions.<sup>155</sup> It is also common sense that people would detest using a drug that has side effects that include thrombosis and blood clots in a country with a poor health care delivery system. Socio-economic status becomes a factor in vaccine uptake given differing levels of access to health care and trust in the private and public health care systems.<sup>156</sup>

Those who are employed by or are bound to institutions with active vaccine mandates are candidates for coerced vaccination. The protagonists of such mandates argue that employers must "take reasonable and practical steps to maintain and ensure a safe working environment",<sup>157</sup> in fulfilling their obligations to the Mine Health and Safety Act,<sup>158</sup> as well as the Occupational

<sup>148</sup> Quansah 2008 *African Human Rights Law Journal* 497.

<sup>149</sup> Van der Vyver and Green 2008 *African Human Rights Law Journal* 350.

<sup>150</sup> *Ibid.*

<sup>151</sup> Pillay and Kramers-Olen 2021 *South African Journal of Psychology* 298.

<sup>152</sup> *Ibid.*

<sup>153</sup> Parmet *Populations, Public Health, and the Law* 114.

<sup>154</sup> Pelčić *et al* 2016 *Croat Med J* 519.

<sup>155</sup> Bhuda and Marumo "African Traditional Medicine and Healing in South Africa: Challenges and Prospects Before and During Covid 19" 2020 18 *Gender and Behaviour* 16710 16710.

<sup>156</sup> Parmet *Populations, Public Health, and the Law* 13.

<sup>157</sup> Ellis <https://www.dailymaverick.co.za/article/2021-11-10-mandatory-vaccine-policies-will-survive-a-constitutional-challenge-legal-expert-halton-chedle/>.

<sup>158</sup> 29 of 1996.

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Health and Safety Act.<sup>159</sup> Compensatory measures for adverse drug reactions are a condition for the legality of vaccine mandates but the administrative capacity of the courts to accommodate such matters, at a large scale, is questionable.<sup>160</sup> Employers who have vaccine mandates have compensation for adverse drug reactions covered by the Compensation for Occupational Injuries and Diseases Act.<sup>161</sup> Questions remain on how populations such as university students will be covered in the event of adverse drug reactions. At the start of the 2022 academic year, various universities in South Africa imposed mandatory vaccinations for both students and staff; whether this will be successful is a question of fact which only time will tell.

Trust issues are barely eased by the South African Health Practice Regulatory Authority, which regulates products that threaten public health and which registers and monitors health products.<sup>162</sup> Empirical evidence on vaccine safety and efficacy is incomplete without building a relationship of trust between government and the population.<sup>163</sup> There will always be ways to escape an unwelcome vaccine mandate; and it is hard to expect buy-in to improve without a reduction in incidents of adverse drug reactions, and in counterintuitive claims such as scientifically proven immunity for six months after infection.<sup>164</sup> The intuitive and religious sensibilities of people are worth respecting when reporting on health issues. This article has aimed to assist governments – and in particular the South African government owing to its uncertain position on this matter – to prepare arguments that will improve vaccine uptake through addressing the highlighted conscientious concerns.

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<sup>159</sup> 85 of 1993.

<sup>160</sup> Ellis <https://www.dailymaverick.co.za/article/2021-11-10-mandatory-vaccine-policies-will-survive-a-constitutional-challenge-legal-expert-halton-chedle/>.

<sup>161</sup> 130 of 1993.

<sup>162</sup> Parmet *Populations, Public Health, and the Law* 32.

<sup>163</sup> Parmet *Populations, Public Health, and the Law* 115.

<sup>164</sup> Parmet *Populations, Public Health, and the Law* 113.