

COVID-19 VACCINE MANDATES IN NIGERIA: A PROPORTIONALITY ANALYSIS OF PUBLIC HEALTH AND HUMAN RIGHTS¹

ABSTRACT

COVID-19 vaccine mandate in Nigeria raised both legal and ethical questions around the tension between the protection of public health and human rights. This article attempts an examination of COVID-19 vaccine mandate in Nigeria and standard for the derogation and limitation of human rights for the protection of public health in the context of COVID-19 vaccine mandate; and recommends the adoption of the proportionality principle. It is obvious that COVID-19 pandemic is not only a threat to public health but is also a threat to human rights. As public health measures are being taken to contain the spread of the virus, measures should also be taken to protect the rights and dignity of persons. The strict protection of human rights amidst public health emergencies may be detrimental to public health; likewise, the gross abuse of human rights during a public health emergency and global pandemic may grossly violate human rights. This article attempts to analyze COVID-19 Vaccine mandates in Nigeria through the lens of the proportionality principle. This article argues that for COVID-19 vaccine mandate to be justified, the principle of proportionality must be considered to ascertain if the human right limitation is rational and proportionate to the public health threat posed. Vaccine mandate limit human rights; such limitation of rights ought not be left at the discretion and mercy of government or policy makers. There is need to regulate vaccine mandate in Nigeria to avoid abuse.

Keywords: COVID-19, Vaccine Mandates, Proportionality, Public Health, Human Rights, Nigeria

1.0 INTRODUCTION

The World Health Organization declared the outbreak a global pandemic on March 11, 2020. In response to the COVID-19 pandemic, scientists strived to develop vaccinations to help recipients build immunity against the virus and its variants.² New vaccine policies requiring people to get inoculated against COVID-19 virus to keep their jobs, travel, and engage in other activities was announced. This gave rise to legal and ethical controversies and arguments that vaccine mandates infringe upon unvaccinated peoples' human rights and liberties.³ Nigeria just like other countries took steps to contain the spread of coronavirus; these steps include vaccine mandates. The Federal Government of Nigeria made mandatory COVID-19 vaccination declaration in the peak of COVID-19 pandemic; some state government in Nigeria also made mandatory vaccine policies.⁴ Mandating vaccinations for COVID-19 in Nigeria raises complex legal questions concerning the constitutionality of vaccine mandate and the interplay of competing rights and ethics. Opponents of COVID-19 argue that COVID-19 vaccine mandate is a gross violation of human rights.⁵ Restricting people's access to work, transportation, education, social life, based on their COVID-19 vaccination status disproportionately impacts on their rights as human beings.⁶ Proponents of COVID-19 vaccine mandate have argued that COVID-19 vaccine mandate is necessary to protect public health. From the foregoing, it is obvious that COVID-19 pandemic is a threat to public health and in many other ways, to human rights. As public health measures are being taken to combat the spread of COVID-19 virus, measures should also be taken to ensure that the rights of persons are not unjustly violated under the guise of protecting public health and safety, as human rights and health are both very important aspects of human existence. The strict protection of human rights amidst public health emergencies may be detrimental to public health; likewise, the gross abuse of human rights during a public health emergency and global pandemic is also detrimental. The right to autonomy or personal liberty may be limited for the protection of public health and safety; however, the limitation of individual rights must be in accordance with law; and necessary for the protection of public health and safety.⁷ There is need for a balance and a standard to ascertain when it is justifiable

¹ Chidimma Anuli Ewelukwa, Lecturer, Faculty of Law, Nnamdi Azikiwe University, Awka. ac.ewelukwa@unizik.edu.ng

² Maria Conversa, "COVID-19 Vaccine mandates for the public safety or a violation of constitutional rights" (11 March 2022), online: *University of Illinois Chicago Law Review* <lawreview.law.uic.edu/news-stories/covid-19vaccine-mandates-for-the-public-safety-or-a-violation-of-constitutional-rights/>.

³ Sarah Todd, "Do Mandatory Vaccines Violate Human Rights?" (5 August, 2021) online: *QUARTZ* <qz.com/2042743/do-mandatory-vaccines-violate-human-rights/>.

⁴ Abiodun Odusote, "Compulsory COVID-19 vaccination in Nigeria? Why it's illegal, and a bad idea" (8 September, 2021) Online: *The Conversation* <theconversation.com/ca>.

⁵ Wale Odunsi, NBA Official Ubani Declare Compulsory Vaccination Illegal, To sue Nigerian Government (17 October, 2021) online: *Daily Post* <dailypost.ng/2021/10/17/nba-official-ubani-declare-compulsory-vaccinationillegal-to-sue-Nigerian-govt/>.

⁶ *Ibid.*

⁷ The 1999 Constitution of the Federal Republic of Nigeria, s 45.

to invoke and use the protection of public health as justification for the limitation of human rights, particularly in the context of COVID-19 vaccine mandate. The Constitution⁸ allows for limitation of rights, when it is in accordance with law and for the protection of public health where there is real and grave threat to public health and safety.⁹

Vaccine policies is an important tool in the promotion of the right to health, but it needs to be regulated, necessary, proportionate and designed to achieve a clearly defined goal. This paper examines the legal and ethical considerations; and the standard for the justification of COVID-19 vaccine mandate in Nigeria. It defined relevant terms like vaccine mandates, herd immunity, proportionality, and autonomy, to enable readers understand those terms in the context of this paper. Adoption of the proportionality principle will settle the legal and ethical controversy around COVID-19 vaccine mandates in Nigeria. This article adopts the proportionality test to ascertain whether COVID-19 vaccine mandate is necessary and proportionate in Nigeria. It found that COVID-19 vaccine mandate is not proportional. It also made recommendation for the enactment of a legal framework for vaccine mandate in Nigeria.

1.1 Vaccine Mandate: What does it entail?

1.1.1 Vaccine Mandate

Vaccines are biological products that can be used to safely induce an immune response to confer protection against infection and/or disease on subsequent exposure to a specific pathogen.¹⁰ It is recognized for its importance in the reduction of vaccine preventable diseases, improvement of the quality of life of the entire population; and a proven agent for controlling and eliminating life-threatening infectious diseases by reducing morbidity, mortality and disease complications.¹¹ It has been referred to as the most cost- effective intervention in public health and has created a significant impact on the reduction of diseases globally.¹² Vaccination is a simple, safe, and effective way of protecting the body from harmful diseases.¹³ Vaccine mandate is a public health requirement that a person must be vaccinated against a particular disease, to take a specific action covered by the mandate, such as attend school, work, travel, etc.¹⁴ Despite its name, mandatory vaccination is rarely compulsory; it entail consequences for noncompliance but can be coercive. Vaccine mandate typically requires individuals to receive the vaccine or face some restrictions in the kind of activities they partake in; such activities like travelling, access to public facilities like educational facilities, health facilities, etc. Adverse action or termination of employment or even preventing a person from travelling because of vaccine refusal is considered coercion.¹⁵ COVID-19 vaccine mandate does not necessarily mean strapping a person down to inject him with the vaccine against his will; however, if the controversies surrounding COVID-19 vaccine mandates are not properly looked into and addressed, it may get to the stage of strapping people down and jabbing them with the vaccine against their will in future pandemics and public health emergencies.

Many people have expressed opposition to receiving the vaccination and even greater opposition to being forced to do so.¹⁶ When a large percentage of a population has been vaccinated, herd immunity results; the desire to achieve herd immunity has led to COVID-19 vaccine mandate. Vaccination policies shifted dramatically during COVID-19 pandemic with the population wide vaccine mandates, domestic vaccine passports and differential restriction based on vaccination status.¹⁷ In response to the COVID-19 pandemic, many scientists and

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ Federal Ministry of Health, Nigeria Vaccine Policy, 1st Edition (September 2021) Online: <www.health.gov.ng/doc/Nigeria-Vaccine-Policy-2021.pdf>.

¹¹ *Ibid.*, 14.

¹² *Ibid.*

¹³ Sonia Onyia, Nigeria: "The Legality of the Requirement of the COVID-19 Vaccine" (3 September, 2021) Online: *Kenna Partners* <www.mondaq.com/Nigeria/operational-impacts-and-strategy/1108152/the-legality-of-therequirement-of-the-covid-19-vaccine>.

¹⁴ Alexandra Benisek, "What to know about vaccine mandates" (25 October, 2022) online: WebMD <webmd.com/vaccines/covid-19-vaccine-mandates>.

¹⁵ *Ibid.*

¹⁶ Tom Spiggle, "Could opposition to the coronavirus vaccine be a form of political speech?" (3 Nov, 2021) online: *Forbes* <www.forbes.com/sites/tomspiggle/2021/11/03/could-opposition-to-the-coronavirus-vaccine-be-a-form-ofpolitical-speech/?sh=42c2475e7e7eio>.

¹⁷ Kevin Bardosh, Alex de Figueiredo, Rachel Gur-Arie 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 e00864.doi:10.1136/bmjgh-2022-008684<gh.bmj.com/content/7/5/e008684>.

epidemiologists worked diligently and tirelessly to develop vaccines to help recipients build immunity against the virus and its variants.¹⁸ Many companies and governments announced new vaccine policies, requiring people to get inoculated against COVID-19 virus in order to keep their jobs, travel, and engage in other activities. It has been argued that vaccine mandate infringes upon unvaccinated peoples' human rights and liberties.¹⁹ Mandate represent a policy option that must be balanced with other values, such as individual liberty and autonomy, so their ethical justification will tend to be stronger if they increase the prevention of significant risks of morbidity and mortality and/or promote significant societal or institutional benefits. Individual liberties should not be restricted for longer than necessary to achieve the best balance between the values of protecting the health and wellbeing of the public and individual liberty. Contemporary forms of mandatory vaccination make vaccination a condition of working in a particular jobs or settings such as healthcare, attending school or participating in certain activities; and typically permit a limited number of exceptions.²⁰ Vaccine mandate compel vaccination by either direct or indirect threats of restrictions in cases of noncompliance.²¹ Mandate entail consequences for non-compliance but can be coercive. COVID-19 vaccine mandate typically requires individuals to receive the vaccine or face some restrictions in the kind of activities they partake in; such activities like travelling, access to public facilities like educational facilities, health facilities, etc. Adverse action or termination of employment or even preventing a person from travelling because of vaccine refusal is considered coercion.²² Vaccine mandate has been argued to restrict personal liberty and bodily autonomy. Vaccine mandate is a very powerful public health intervention, which ought to be used sparingly and carefully regulated to uphold ethical norm and avoid abuse. Vaccine mandate, though the most intrusive form of vaccine policy, have been shown to yield high vaccine uptake; however ethical principles suggest that mandatory vaccination policies in adults should usually be the 'last resort'.²³ Mandatory vaccine policies have been used more in emergency situations where outbreaks pose an imminent threat due to consistent low vaccine uptake resulting from voluntary policies.²⁴ It stirred resistance from 'anti-vaccinationists', who argued that governments should not infringe on an individual's freedom to make medical decisions for themselves or their children or claims that proposed vaccinations were dangerous.²⁵ Mandatory vaccination is a difficult policy issue, which requires relevant authorities to balance public health protection with protection of individual liberty. An ethical dilemma may emerge where healthcare providers attempt to persuade vaccine-hesitant families towards receiving vaccinations as it may lead to a violation of their autonomy.²⁶

Irrespective of the importance of vaccination, COVID-19 vaccines have been met with a lot of hesitancies. Vaccine hesitancy is predominantly rooted in concerns about the safety, efficacy and long-term profile and effect of the vaccines, concerns shared in the population. The novelty of the COVID-19 vaccines with the desire for more short- and long-term safety information is the most significant source of hesitancy.²⁷ Many people have expressed opposition to receiving the vaccination and even greater opposition to being forced to do so. COVID-19 vaccine hesitancy and the desire to acquire herd immunity led to COVID-19 vaccine mandate. There is mandatory

¹⁸ Maria Conversa, "COVID-19 Vaccine Mandates for the Public Safety or a Violation of Constitutional Rights?" (11 March. 2022) online: *University of Illinois Chicago Law Review* <<https://lawreview.law.uic.edu/news-stories/covid19-vaccine-mandates-for-the-public-safety-or-a-violation-of-constitutional-rights/>>.

¹⁹ Sarah Todd, Do Mandatory Vaccines Violate Human Rights? (5 August, 2021) online: *QUARTZ* <qz.com/2042743/do-mandatory-vaccines-violate-human-rights/>.

²⁰ World Health Organization, COVID-19 and Mandatory Vaccination: Ethical Considerations Policy Brief (30 May 2022) online: *WHO* <www.who.int/publications-detail-redirect/WHO-2019-nCoV-Policy-brief-Mandatoryvaccination-2022.1>.

²¹ Katie Gravagna et al. Global Assessment of National Mandatory Vaccination Policies and Consequences of Non-compliance (17 November, 2020)online: *Vaccine*. 2020 Nov 17; 38:7865-7873. Doi: 10.1016/j.vaccine.2020.09.063.Epub 2020 Oct 21. PMID:33164808; PMCID: PMC8562319<pubmed.ncbi.nlm.nih.gov/33164808/>.

²² *Ibid.*

²³ Anna C Mastroianni, Jeffrey P Kahn & Nancy E Kass, "Public health programs and policies: ethical justifications. In: Mastroianni AC, Kahn JP, Kass NE, (eds)The Oxford Handbook of public health ethics" (8 January, 2019) online: *Oxford Handbooks* <doi.org/10.1093/oxfordhb/9780190245191.001.0001>.

²⁴ Katie Attwell & Mark C Navin, Childhood vaccination mandates: scope, sanctions, severity, selectivity, and salience (16 September, 2019) online: *Milbank Q* 2019 Dec; 97:978-1014.doi:10.1111/1468-0009.12417. Epub2019 Sep 16. PMID: 31529546;PMCID: PMC6904257<www.ncbi.nlm.nih.gov/pubmed/31529546>.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid.*

COVID-19 vaccination requirement where a public law makes vaccination legally compulsory; or where a state or non-state policy requires proof of vaccination to enjoy a benefit or access a venue.

1.2 Autonomy

Autonomy is the capacity to make an informed, uncoerced decision. Respect for autonomy is one of the principles of medical ethics.²⁸ Autonomy is expressed as the right of competent adults to make informed decisions about their own medical care. This right of choice is not limited to decisions which others might regard as sensible. It exists regardless of the rationality or irrationality of the choice.²⁹ In medical context, an autonomous decision is seen where the individual has the capacity to make the relevant decision, has sufficient information to make the decision, and does so voluntarily.³⁰ Autonomy entails allowing patients to make their own decisions about which health care interventions they will or will not refuse. The principle involves the requirement to seek the consent of the patient before any medical intervention. Ordinarily, a person has the right to personal autonomy, and the ultimate decisionmaking responsibility for their own treatment. This extends to the right to decide what goes in and out of his or her body, and by extension the right to decide whether to take the COVID-19 vaccine or not. Respect for autonomy is very important such that those who would override it bear the burden of persuasion. Mill³¹ summarized the essence of the right to autonomy and the circumstance where the right to autonomy may be limited as follows:

‘The only purpose, of which power can be rightfully exercised over any member of a civilized community against his will, is to prevent harm to others. His own good, either physical or moral, is not sufficiently warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because in the opinion of others, to do so would be wise or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him, or visiting him with evil in case he does otherwise. To justify that, the conduct from which it is desired to deter him be calculated to produce evil to someone else...., each is the proper guardian of his own health, whether bodily, or mental and spiritual.’³²

Mill⁴¹ buttresses the point that the only justification for limiting a person’s autonomy or personal liberty is the prevention of harm to others. The common law right of patient autonomy was popularized in the American case of *Schloendorff v Society of New York Hospital*³³, where Justice Cardozo stated that every human being of adult years and sound mind has the right to determine what shall be done with his own body, and a surgeon who performs surgery without his patient’s consent commits an assault for which he is liable in damages. In *Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo*,³⁴ the court held that failure to extract a patient’s informed consent before administering a blood transfusion on him constituted an infraction on his fundamental human right to privacy under section 37 of the Constitution and the right to freedom of religion and conscience under section 38 of the Constitution. The Supreme court held that the Constitutional right to object to medical treatment is founded on fundamental rights protected by the relevant provisions of the Constitution; particularly section 37 and 38 of the

Constitution.³⁵ The Court held that the right to privacy implies a right to protect one’s thought, conscience or religious belief and practice from coercive and unjustified intrusion; and one’s body from unauthorized invasion. The right to freedom of thought, conscience or religion implies a right not to be prevented, without lawful justification, from choosing the course of one’s life, fashioned in what one believes in, and a right not to be coerced into acting contrary to religious belief. A forced medical intervention violates a person’s personal

²⁸ Jukka Varelius, "The Value of Autonomy in Medical Ethics" *Medicine, Health Care and Philosophy* (2006) 9:3 PMC 377-388. doi:10.1007/s11019-006-900-z <www.ncbi.nlm.nih.gov/pmc/articles/PMC2780686>.

²⁹ *Re T (Adult)* [1992] 4 All ER 649. Per Lord Donaldson

³⁰ *Ibid*

³¹ John S Mill, *On Liberty* (New York: Everyman edition, 1859) 72.

³²

Ibid.

⁴¹

Ibid.

³³ *Schloendorff V Society of New York Hospital* [1914] 105 NE 92, online: <www.quimbee.com/cases/schloendorffv-society-of-the-new-york-hospital>.

³⁴ *Medical and Dental disciplinary tribunal V Okonkwo* [2002] AHRLR 159.

³⁵ Constitution Federal Republic of Nigeria, 1999, Section 37; guarantees the right to privacy; Constitution, Section 38 guarantees the right to freedom of thought, conscience, and religion.

autonomy, which manifests as personal liberty and right to dignity under the Nigerian Constitution.³⁶ Vaccination is a medical intervention and vaccine mandates limits a persons' right to personal liberty and autonomy.

1.3 COVID-19 Vaccine Mandates in Nigeria: Legal and Ethical Considerations

1.3.1 COVID-19 Vaccine Mandates in Nigeria: Legal Consideration

The Federal Government of Nigeria declared COVID-19 vaccination compulsory for all its employees.³⁷ All Federal Government employees by this declaration were required to show proof of COVID-19 vaccination or present a negative COVID-19 PCR test result done within 72 hours.³⁸ Airlines This led to a lot of controversies on the legality and justification of such declaration.

The 1999 Constitution of the Federal Republic of Nigeria made provision for fundamental human rights. Personal autonomy is grounded in the right to dignity and personal liberty. It³⁹ provides that every person shall be entitled to his personal liberty and no person shall be deprived of such liberty except in accordance with a procedure permitted by law in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty; by reason of his failure to comply with the order of a court to secure the fulfilment of any obligation imposed upon him by law; for the purpose of bringing him before a court in the execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence; in the case of a person who has not attained the age of eighteen years for the purpose of his education or welfare; in the case of a person suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community or; for the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating to it.⁴⁰ The right to freedom of thought, conscience, and beliefs also relates to personal autonomy. A person's freedom to determine what should be done with his or her own body can be based on the person's thoughts, conscience and beliefs.

COVID-19 vaccine mandates attempt an improvement of vaccine uptake and the protection of the community from COVID-19 infection; however, it has to be regulated and done in accordance with the law. Freedom of movement is another right affected by the government's mandatory vaccine policy. Freedom of movement in Nigeria entails the right to move in Nigeria freely, leave and enter Nigeria. The requirement of COVID-19 vaccine proof before a person is allowed entry into Nigeria or any public place in Nigeria constitutes a violation of the freedom of movement of such persons. The Constitutional provision does not mean that the right to autonomy is absolute and limitless. These rights may be limited for the protection of public health. The Constitution⁴⁰ provides that nothing in section 37⁴¹, 38⁴², 39,⁴³ 40⁴⁴ and 41⁴⁵ shall invalidate any law that is reasonably justifiable in a democratic society in the interest of defense, public safety, public order, public morality or public health or for the purpose of protecting the rights and freedom of others.⁴⁶ This protects and guarantees the validity of laws that are reasonably justifiable for the protection of public health; this in essence will include enactments on vaccine mandates. The Nigerian Constitution placed some limitations on the enjoyment of a person's personal liberty,

³⁶ *Ibid.*

³⁷ Joseph Erunke, "COVID-19: FG approves vaccine mandate policy for all staff" (27 November, 2021) <www.vanguardngr.com/2021/11/covid-19-fg-approves-vaccine-mandate-policy-for-all-staff/amp/>.

³⁸ *Ibid.*

³⁹ Constitution Federal Republic of Nigeria, 1999, s 35

(1). ⁴⁹ *Ibid.*

⁴⁰ Constitution Federal Republic of Nigeria, 1999, s 45 (1).

⁴¹ *Ibid*, section 37 guarantees the right to privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications.

⁴² *Ibid*, section 38 guarantees the right to freedom of thought, conscience, and religion, including freedom to change religion or belief, and freedom to manifest and propagate his religion or belief in worship, teaching, practice and observance.

⁴³ *Ibid*, section 39 guarantees the freedom of expression and the press. It provides that every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.

⁴⁴ *Ibid*, section 40 guarantees the right of every person to assemble freely and associate with other persons. This includes forming or belonging to any political party, trade union or any other association for the protection of his interests.

⁴⁵ *Ibid*, Section 41 guarantees the right of every citizen of Nigeria to move freely throughout Nigeria and to reside in any part of Nigeria, without being expelled from Nigeria or refused entry or exit.

⁴⁶ *Ibid.*

including where a person is suffering from an infectious or contagious disease, for the purpose of his care or treatment or the protection of the community. The Constitution⁴⁷ provides that an act of the National Assembly shall not be invalidated by reason only that it provides for the taking during period of emergency measures that derogate from the provisions of section 33 or 35 of the Constitution, but no such measures shall be taken in pursuance of any such act during any period of emergency except to the extent that those measures are reasonably justifiable for the purpose of dealing with the situation that exists during that period of emergency.⁴⁸ The period of emergency is described as any period during which there is in force a proclamation of a state of emergency declared by the President in exercise of the powers conferred on him under section 305 of this Constitution.⁴⁹ At the time of the declaration of COVID-19 vaccine mandates in Nigeria, there was no declaration of a state of emergency in Nigeria. Therefore, the administrative mandatory vaccination directives not backed by law to the extent that it limits the rights of persons can be said to be unconstitutional.

The National Health Act⁵⁰ provides that every health care provider shall give a user relevant information pertaining to his state of health and necessary treatment relating to the user's health status, except in circumstances where there is substantial evidence that the disclosure of the user's health status would be contrary to the best interests of the user; the range of diagnostic procedures and treatment options generally available to the user; the benefits, risks, costs and consequences generally associated with each option; and the user's right to refuse health services and explain the implications, risks or obligations of such refusal. The health care provider shall where possible, relay the information in the language the user understands, while considering the user's level of literacy.⁵¹ The right to medical autonomy also includes the right to informed consent. Since COVID-19 vaccination is a medical intervention, there is still that duty on medical professionals and health care providers to fulfil the requirements of obtaining informed consent. Mandatory COVID-19 vaccine policies may increase health and economic inequalities, detrimental long-term impacts on trust in government and scientific institutions and reduce the uptake of future health measures, including COVID-Vaccines as well as routine immunizations.⁶² Restricting peoples' access to work, education, transportation, and social life impinges on human rights.⁵²

Given the global nature of the COVID-19 pandemic, there is an obligation to protect public health. Mandatory vaccination may be a valuable tool for carrying out this obligation; however, to be justified, vaccine mandates must be necessary and proportionate.

1.3.2 COVID-19 Vaccine Mandates: Ethical Considerations

Traditional medical ethics focus on the individual's health with very little or no interference, using the ethical principles characterized by Beauchamp and Childress: autonomy, beneficence, nonmaleficence, and justice.⁵³ Autonomy entails respect for individual's rights and choice; beneficence entails doing good; non-maleficence entails avoiding harm; and justice entails fairness. Public health ethics focus more on collective, beneficence, nonmaleficence and justice over individual autonomy. Under the principles of beneficence and nonmaleficence there is a duty to promote health and ensure safety. Vaccine administration however requires informed consent; unfortunately, vaccine mandates eliminate the right to informed consent. There is need for dynamic justification of vaccine mandates. The relative weightiness of reasons for mandating vaccines varies under different circumstances and epidemiological conditions.⁵⁴ Where other options are available, Vaccine mandates may not be ethically warranted; as public health ethics suggest that mandatory vaccination policies in adults should usually be the last resort.⁵⁵ The principles of beneficence and nonmaleficence create a duty to promote health and ensure safety. Autonomy entails that persons have intrinsic and unconditional worth and should have the power to make rational decisions and moral choices, and each should be allowed to exercise his or her capacity for self-

⁴⁷ *Ibid*, section 45(2).

⁴⁸ *Ibid*.

⁴⁹ *Ibid*, 45(3).

⁵⁰ *National Health Act, 2014*, s 23.

⁵¹ *Ibid*.

⁵² Kevin Bardosh 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 1 at 6 online: gh.bmj.com/content/7/5/e0086847:e0008684.

⁵³ Tom L Beauchamp & James F. Childress, *Principles of Biomedical Ethics* (New York, Oxford, Oxford University Press, 2001).

⁵⁴ *Ibid*.

⁵⁵ Anna C Mastroianni, Jeffrey P Kahn & Nancy E Kass, *Public Health Programs and Policies: Ethical Justifications*, (Oxford: Oxford University Press, 2019).

determination.⁵⁶ It has been affirmed that every human being of adult years and sound mind has a right to determine what shall be done with his own body.⁶⁸ This also entails the right to decide whether he or she wants to be vaccinated or not. The principle of autonomy supports informed consent for medical or surgical interventions. Informed consent involves being competent enough to understand and decide; having full disclosure and comprehending the disclosure; voluntary consent to proposed action. It is agreed that the right to autonomy may be limited for the protection of public health, however the focus is on the determination of the yardstick to measure when it is appropriate for the right to autonomy to be limited to protect public health. Where other options are available, Vaccine mandates may not be ethically warranted. Public health ethics suggest that mandatory vaccination policies in adults should usually be the last resort.⁶⁹

Ethical debate on vaccine mandates suggests that unless all other reasonable means have failed or likely to fail to increase vaccine uptake or reduce transmission of disease, mandates should not be implemented.⁵⁷ The ethical acceptability of vaccine policies are dependent on factors like disease severity, vaccine effectiveness, safety, target population and other social, cultural and political considerations.⁵⁸ Vaccine mandates may be ethically justified if it benefits the person being vaccinated; minimizes harm to vaccinated individuals; vaccination benefit outweighs any potential burden; and is the most effective and least risky way of preventing the spread of disease. These include the allotment of scarce resources. Each of the principles of medical ethics is to be considered a prima facie obligation that must be fulfilled, except where it conflicts with another principle. The more obvious ethical conflict is seen in the conflict between beneficence and autonomy. Pellegrino and Thomasma⁵⁹ argue that beneficence can include autonomy as the best interests of persons are intimately linked with their preferences.

Mandatory COVID-19 vaccination policies compel people to receive a largely unproven vaccine that might not be safe and efficacious and may even increase the severity of the disease.⁶⁰ Therefore strong evidence-based justification would be needed before the infringement of autonomy with a vaccine that may be potentially harmful.⁶¹ The ethical and prudent course will be to adopt voluntary vaccination programs to encourage and persuade vaccine uptake; including effective presentation of developing vaccine information with targeted educational efforts; making vaccines easily accessible; and committing to respect the right to informed consent. Public health ethics accepts that it is permissible to restrict individual freedom for the protection of the society and to prevent harm to others; however, it should strive to implement the least restrictive intervention when possible. It suggests that mandatory vaccine policies should be used as a last resort.⁶² Mandatory vaccination may involve justifiable limitations on human rights especially the right to autonomy for the protection of public health and safety. Public health ethics generally accept that it is permissible to restrict individual freedom to protect society and prevent harm to others; however, in doing this they should strive to implement the least restrictive intervention when possible. Vaccine mandates are the most restrictive and intrusive form of vaccine policy. The World Health Organization advocates for information campaigns and ensuring accessibility of vaccines, rather than vaccine mandates.⁹⁵ The World Health Organization advocates that focus be placed on educational campaigns and universal availability of vaccines.⁶³ The Organization issued a statement that national authorities and conveyance operators should not require COVID-19 vaccination as a condition of international travel.⁶⁴ It recommends that mandatory vaccination should only be considered if it is necessary for and proportionate to the achievement of one or more important societal or institutional objectives. If such objectives can be achieved with

⁵⁶ Paul Guyer, "Kant on the Theory and Practice of Autonomy" (2003) 20:2 Social Philosophy and Policy 70-98. ⁶⁸ Schlendorff vs the Society of the New York Hospital, (1914) 105 NE 92. ⁶⁹ *Supra* note 71.

⁵⁷ Mark C Navin, et al "Vaccine mandates, value pluralism, and policy diversity" (2019) 33:9 Bioethics 10421049<online: doi:10.1111/bioe.12645 pmid:http://www.ncbi.nlm.nih.gov/pubmed/31389050>.

⁵⁸ Hagai Boas, et al, "Between individualism and social solidarity in vaccination policy: the case of the 2013 OPV campaign in Israel." (2016) 5:64 Isr J Health Policy Res 1-11 online:<doi:10.1186/s13584-016-0119ypmid:http://www.ncbi.nlm.nih.gov/pubmed/28031784>.

⁵⁹ Edmund D Pellegrino, *For the Patient's Good: The Restoration of Beneficence in Health Care*, (New York: Oxford University Press, 1988) .

⁶⁰ Jiang S. Don't rush to deploy COVID-19 vaccines and drugs without sufficient safety guarantees. *Nature* 2020; 579: 321.

⁶¹ *Ibid*.

⁶² *Ibid*, 28.

⁶³ *Ibid*.

⁶⁴ World Health Organization: Interim position paper: Considerations regarding proof of COVID-19 vaccination for international travellers. Geneva: World Health Organization; 2021 <www.who.int/news-room/articles-detail/interimposition-paper-considerations-regarding-proof-of-covid-19-vaccination-for-international-travellers>.

acceptable less intrusive policy interventions like public information campaigns, community mobilization campaigns, etc, and within an acceptable time frame, the ethical justification for a mandate would be weaker. Their ethical justification will be stronger if they increase the prevention of significant risks of morbidity and mortality and/or promote significant societal or institutional benefits. There should be available data to demonstrate the vaccine, being mandated is sufficiently safe in the populations for whom the vaccine is to be made mandatory. When safety data are lacking or when they suggest the risks associated with vaccination outweigh the risks of harm without the vaccine, the mandate would not be ethically justified.⁶⁵ Policy makers must ensure that vaccines meet an evidentiary threshold for safety sufficient for a mandate; as exposure of the population to a potentially harmful product via a mandate would violate the ethical obligation to protect the public from unnecessary harm if the harm caused by the product outweighs the degree of harm that might exist without the product.⁶⁶ For a vaccine mandate to be imposed, it is necessary that it is legally and ethically justified. The ethical and prudent course will be to adopt voluntary vaccination programs to encourage and persuade vaccine uptake; including effective presentation of developing vaccine information with targeted educational efforts; making vaccines easily accessible; and committing to respect the right of informed consent.

1.4. Applying the Proportionality Principle to COVID-19 Vaccine Mandates in Nigeria

The proportionality principle provides an appropriate analytical framework for determining whether limitations on fundamental rights imposed during public health emergencies are legally and ethically justified. Rather than treating public health and human rights as mutually exclusive interests, proportionality seeks to reconcile them by ensuring that restrictions on individual rights are justified, necessary, and proportionate to the legitimate public objective pursued. In the context of COVID-19 vaccine mandates, the principle requires an assessment of whether the interference with individual autonomy, liberty, dignity, and freedom of movement is justified by the need to protect public health. The principle of proportionality is a well-established doctrine in constitutional and international human rights law. It serves as a safeguard against arbitrary governmental interference with fundamental rights by requiring that restrictions pursue a legitimate objective, be rationally connected to that objective, be necessary because no less restrictive alternative is available, and maintain a fair balance between the public interest and the rights of affected individuals. Proportionality is a test to determine whether an interference with a *prima facie* right is justified. It is a general principle in law; and a core principle in international law, which provides that the determination of the legality of an action shall depend on the respect of the balance between the objective and the means and methods used, as well as the consequences of the action. The principle of proportionality is at the heart of many human rights claims. It is one of the key principles that enables and fosters a debate on the limitations of the right to autonomy. Proportionality is a doctrinal tool for the resolution of conflicts between a right and a competing right, at the core of which is the balancing stage that requires the right to be balanced against the competing right or interest.⁶⁷ The proportionality principle implies that the policy interfering with the right must pursue a legitimate goal; must be a rational connection between the policy and the achievement of the goal; the law must be a suitable means of achieving the goal; there is no less intrusive but equally effective alternative; and the law must not impose a disproportionate burden on the right holder.⁶⁸ The history of the general principles of proportionality can be traced to Aristotle's theory that the just is a ratio (proportion) between two parties, mediated by an abstract principle.⁶⁹ Proportionality entails that State action must be a rational means to a permissible end, which does not unduly invade fundamental human rights. Today, the general principle of proportionality is a worldwide principle of law.⁷⁰ It is found in both common law, civil law, national and transnational courts.⁷¹ It is a key organizing principle of contemporary legal thought. The well-defined abstract theoretical principle became concretized by Cicero in the positive law.⁷² Cicero describes law as the *recta ratio naturae congruens*,⁷³ which means 'the right ratio', the proper proportion. This was further refined by Aquinas in

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ Kai Moller, 'Proportionality: Challenging the Critics' *International Journal of Constitutional Law*, 10: 3. July 02, 2012. 709-731, <doi.org/10.1093/icon/mos02 published 02 July 20>

⁶⁸ *Ibid.*

⁶⁹ Aristotle., W.D. Ross, & Brown, L. *The Nicomachean ethics*. (Oxford; New York, Oxford University Press, 2009).

⁷⁰ Alec Stone Sweet & Jud Matthews, *Proportionality Balancing and Global Constitutionalism*, 47 COLUM. J. TRANSNAT'L L. 72,96 (2008)

⁷¹ Margherita Poto, The Principle of Proportionality in Comparative Perspective, 8 GERMAN L.J 835 (2007)

⁷² H.F. Jolowicz & Barry Nichols, A Historical Introduction to the Study of the Roman Law 104-105 (3rd ed.1972)
A Arthur Schiller, Roman Law: Mechanisms of Development 374-375 (1978)

⁷³ Marcus Tullius Cicero, *De re publica; De Legibus*, 1928, Cambridge University Press

the law of self-defense of states. Aquinas presented Aristotle's concept into the proportionality procedure.⁷⁴ In the law of self-defense, Aquinas argued that there are conditions that must exist for the use of force to be just; force must be necessary and must not be excessive; it must be proportional and exercised by the sovereign in accordance with rules. Modern proportionality emerged as a general principle of law. In common law, the principle of proportionality found its earliest expression in the areas of police powers; punishment must be proportional to the crime.⁷⁵ Proportionality examines the relationship between the value of the right invaded and the extent of the invasion of that right. An interference with a basic right is warranted only if it pursues a legitimate objective compatible with the treaty and is justified by overriding reasons of public interest. It must be suitable to secure the attainment of the objective which it pursues and not go beyond what is necessary to attain it. The proportionality principle requires an articulate relationship between means and ends of state action with respect to private rights in accordance with the nature of things. The means adopted by an administration must be suitable and appropriate, and not restrictive as necessary to achieve a lawful end. Proportionality is an inquiry into whether the state's power is exercised in the least invasive manner possible.⁷⁶ The principle of proportionality requires policy makers considering an interference with a right to balance the severity of the interference with the intensity of the need for action; in essence, they must decide whether interference with a person's right is justified. Proportionality is targeted at the protection of individuals from arbitrary decisions. The State must not act disproportionately to achieve a legitimate aim. The test of proportionality demands evidence of the necessity of interference with human rights. In testing proportionality, the legitimacy of the aim to be achieved and the necessity of the means used to achieve that aim are considered. The reasons for restricting a person's right; the likelihood that the restriction will lead to a reduction in the problem; whether the restriction involve a blanket policy or allows for different cases to be treated differently; whether a less restrictive alternative exists; and whether sufficient regard has been paid to the rights and interests of those affected, and whether safeguards exist against error or abuse.⁷⁷ Proportionality ensures that state power is exercised within legal limits and that emergency measures do not become instruments of excessive governmental control.

International and regional human rights bodies have consistently relied on proportionality when assessing whether limitations on rights are compatible with human rights obligations. The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights provide authoritative guidance on the circumstances under which states may lawfully restrict human rights during public health emergencies. They recognize that the protection of public health may justify limitations on certain rights where there is a serious threat to the health of the population. The International Covenant on Civil and Political Rights (ICCPR) provides that states may restrict certain rights during public health emergencies that threaten the life of the nation to the extent that they are strictly required by the exigencies of the situation.⁷⁸ the siracusa principles is a foundation to build state restriction on rights in emergencies, these are only justified when they support legitimate aim and are provided for by law, strictly necessary, proportionate, of limited duration and subject to review against abusive applications.⁷⁹ In the proportionality principle, limitations must be based on reasonable grounds to achieve the intended purpose of the limitation or emergency standard that threatens the life of each country. No limitation on the exercise of human rights shall be made unless provided by national law consistent with the Covenant and is in force at the time the limitation is applied.⁸⁰ Laws that impose limitations on the exercise of human rights shall

⁷⁴ Thomas Aquinas. *Summa Theologica*. Second Part of the Second Part O.40 (Benziger Bros. ed. 1947) <www.ccel.org/a/aquinas/summa/SS.html>.

⁷⁵ The Eight Amendment, Proportionality, and the Changing Meaning of Punishment, 122 HARV. L. REV. 960, 960 (2009)

⁷⁶ Eric Engle, *The History of the General Principle of Proportionality: An Overview* (2012) 10 Dartmouth Law Journal 1at11.

⁷⁷ Scottish Human Rights Commission, *Equality & Human Rights Impact Assessment*. Online: <eqhria.scottishhumanrights.com/eqhriatrainingproportionality.html>:

⁷⁸ International Covenant on Civil and Political Rights (ICCPR), G.A. Res. 2200A (XXI) (1966), Art. 4. Available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

⁷⁹ International Commission of Jurists, *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*. (1984). Available at <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>.

⁸⁰ International Commission of Jurists, *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*. (1984). Available at <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>, 15

not be arbitrary or unreasonable.⁸¹ Legal rules that limit the exercise of human rights shall be clear and accessible to everyone.⁸² With adequate safeguards and effective remedies provided by law against illegal or abusive imposition or application of limitation on human rights.⁸³ it also provides that public health may be invoked as a ground for limiting certain rights in order to allow a state to take measures dealing with a serious threat to the health of the population or individual members of the population. These measures must be aimed at preventing disease or injury or providing care for the sick and injured.⁸⁴ State parties may take measures derogating from its obligations under the International Covenant on Civil and Political Rights only when faced with a situation of exceptional and actual or imminent danger which threatens the life of the nation; however, no state party shall, even in time of emergency threatening the life of the nation, derogate from the Covenants's guarantees of the right to life; freedom from torture, cruel, inhuman or degrading treatment or punishment, and from medical or scientific experimentation without free consent; freedom from slavery or involuntary servitude; the right not to be imprisoned for contractual debt; the right not to be convicted or sentenced to a heavier penalty by virtue of retroactive criminal legislation; the right to recognition as a person before the law; and freedom of thought, conscience and religion. These rights are not derogable under any conditions.⁸⁵ The Siracusa Principles impose strict conditions. Restrictions must be prescribed by law, pursue a legitimate objective, be strictly necessary to address the public health threat, employ the least restrictive means available, remain proportionate to the risk involved, be limited in duration, and be subject to judicial oversight and review.

Proportionality requires the state to demonstrate that mandatory vaccination is genuinely necessary, supported by scientific evidence, prescribed by law, and represents the least restrictive means of achieving the intended public health objective. Applying the proportionality test to Nigeria's COVID-19 vaccine mandates requires consideration of whether the measures pursue a legitimate objective? No doubt, protecting public health and reducing COVID-19 transmission constituted legitimate governmental objectives. Also, were the vaccine mandates rationally connected to achieving those objectives? Vaccination is recognized as an effective public health intervention capable of reducing severe illness and mortality. Therefore, a rational connection existed between vaccination policies and the objective of protecting public health. There is need for government to demonstrate not only that vaccine mandates were effective but also that equally effective and less rights-intrusive measures were unavailable. In Nigeria, there were concerns about vaccine availability, unequal access, public confidence in vaccine safety, and widespread misinformation. These raise legitimate questions regarding whether mandatory vaccination represented the least restrictive means of protecting public health. Proportionality requires balancing the benefits of mandatory vaccination against the severity of restrictions imposed on individual rights. Measures restricting access to employment, public services, transportation, education, or other aspects of daily life engage fundamental rights protected under the Constitution and international human rights law. Such restrictions require compelling justification. An essential element of the proportionality analysis is whether less restrictive measures could have achieved substantially the same public health objective. Mandatory vaccination should ordinarily be regarded as a measure of last resort. There are other alternatives which include extensive public education campaigns to address vaccine hesitancy, transparent dissemination of scientific information, improved community engagement, voluntary vaccination programmes, incentives to encourage vaccine uptake, expanded vaccine availability across the country, and targeted interventions directed at high-risk populations. Vaccine hesitancy in Nigeria was influenced by misinformation, distrust of government institutions, and concerns regarding vaccine safety. Addressing these concerns through sustained public education and improved access may have increased voluntary vaccination

⁸¹ International Commission of Jurists, *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*. (1984). Available at <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>, 16

⁸² International Commission of Jurists, *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*. (1984). Available at <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>, 17

⁸³ International Commission of Jurists, *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*. (1984). Available at <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>, 18

⁸⁴ International Commission of Jurists, *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*. (1984). Available at <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>, 25

⁸⁵ International Commission of Jurists, *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*. (1984). Available at <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>, 58

Mandatory vaccination is not inherently incompatible with constitutional democracy or international human rights law. In exceptional circumstances involving a grave and imminent threat to public health, compulsory vaccination may be justified where it is authorized by law, supported by compelling scientific evidence, necessary to achieve a legitimate public objective, proportionate to the risk involved, and accompanied by appropriate safeguards and exemptions. The Nigerian experience raises important concerns regarding compliance with these requirements. At the time mandatory vaccination policies were introduced, vaccine availability was limited, public education efforts were inadequate, statutory regulation specifically governing COVID-19 vaccine mandates was lacking, and less restrictive alternatives had not been fully exhausted. These factors undermine the argument that mandatory vaccination satisfied the proportionality test. Although the protection of public health constitutes a legitimate constitutional objective, COVID-19 vaccine mandates in Nigeria cannot be said to be proportionate. Efforts should be made to adopt rational, less intrusive, and proportionate means. Mandatory vaccination may be ethically justified for the protection of public health, where the threat to public health is grave, the confidence in safety and potency of the vaccine is guaranteed, the expected utility of mandatory vaccination is greater than the alternatives and the penalties for non-compliance are proportionate.⁸⁶ Mandatory vaccine policies should be used only as a last resort. To be justified, the intrusion into individual rights for the protection of public health; particularly must be proportionate.⁸⁷ Encouraging voluntary COVID-19 vaccine uptake is unlikely to infringe human rights, but where COVID-19 vaccination is mandated, the proportionality principle should be applied. This is relevant, as COVID-19 vaccination is considered a medical intervention that also affects an individual's right to physical integrity. The impact on a person must be balanced against the public health interest of COVID-19 vaccine mandates. Mandating COVID-19 vaccination infringes on a person's autonomy, and as such requires strong justification for the public health rationale. The proportionality principle provides a practical and reasonable way of resolving the conflict between individual rights and the common good arising in public health ethics and policies. The proportionality test will require that a measure infringing guaranteed rights must be proportionate, necessary, prescribed by law, and pursue a legitimate aim. It is necessary where there is a pressing need, and the measure is rationally connected to that aim and is the least restrictive alternative; and proportionate if it strikes a fair balance between the importance of the goal and the burden it places on the individual. COVID-19 vaccine mandates cannot be said to be the least restrictive measure for protecting public health in Nigeria. The transmission rate in Nigeria, is not enough to trigger vaccine mandate.⁸⁸ Vaccine hesitancy has been linked to lack of vaccine-related information, concerns over the vaccine's safety and effectiveness. Therefore, an intensive COVID-19 vaccine education campaign will be a less restrictive measure that should be explored first, before exploring COVID-19 vaccine mandates. Use of incentives may also encourage voluntary vaccination. At the time the mandatory vaccine declaration was made in Nigeria, the vaccines were not easily available to everybody, and it wasn't reasonable to mandate COVID-19 vaccination. There were no credible exemptions to COVID-19 vaccine mandates. Vaccine education, campaigns, provision for more vaccines for all without discrimination are all viable less intrusive alternatives that may encourage voluntary vaccine uptake, without limiting a person's right to personal autonomy as in vaccine mandates. Less intrusive alternative measures were not exhausted before resorting to COVID-19 vaccine mandates in Nigeria. Mandatory vaccination should be considered only if it is necessary and proportionate for the achievement of one or more important societal or institutional objectives, which in this concept is the protection of public health. Vaccine mandates may be necessary if there is persistent, real, and grave threat to public health. Policy makers should frequently re-evaluate the mandatory emergency policies to ensure it is necessary and proportionate to achieve and actualize the protection of public health. Sufficient data should also be available to demonstrate that the vaccine is safe and effective. When safety data are lacking or when the risks associated with vaccination outweigh the risks of harm without the vaccine, the mandate would not be ethically justified. Policy makers should specifically consider whether vaccines meet an evidentiary threshold for safety sufficient in vaccine mandates;⁸⁹ as exposure of the population to a potentially harmful product via a vaccine mandate would violate the ethical obligation to protect the public from unnecessary harm. If the harm the product might cause outweighs the degree of harm that might exist without the product, there is no justification mandating vaccination.

1.7. Conclusion

In adopting vaccine policies, proportionate and less intrusive vaccine policies should be adopted, and voluntary vaccine uptake encouraged. Unless where all other reasonable means have failed or likely to fail to increase

⁸⁶ Julian Savulescu, "Good Reasons to Vaccinate: Mandatory or Payment for Risk" (2021) 47: 2 BMJ 78 at 80, online: <jme.bmj.com/content/47/2/78>.

⁸⁷ HD Gunnarsdottir et al, 'Applying the Proportionality Principle to COVID-19 antibody testing', Journal of Law and Biosciences 7:1. January -June 2020, Isaa058, <https://doi.org/10.1093/jlb/Isaa058>. 04 August 2020

⁸⁸ Worldometer, Nigeria COVID-Coronavirus Statistic. <www.worldometers.info/coronavirus/country/Nigeria/>

⁸⁹ Gostin LO, Salmon DA, Larson HJ. Mandating COVID-19 vaccines. JAMA. 2020; 325:532-3.

vaccine uptake and/or reduce disease transmission by other means to an acceptable level, vaccine mandates should not be implemented. Mandatory vaccination may be ethically justified for the protection of public health, where the threat to public health is grave, if the confidence in safety and potency of the vaccine is guaranteed, if the expected utility of mandatory vaccination is greater than the alternatives and the penalties for non-compliance are proportionate. Mandatory vaccine policies should be used only as a last resort and must meet the principle of proportionality.⁹ It is important to make statutory provision to regulate vaccine mandates in Nigeria, and prevent abuse in the limitation of human rights. COVID-19 pandemic is not the last public health emergency. Legal and ethical frameworks should be designed to ensure that rights and liberties are still protected even during public health emergencies, especially in the context of vaccine mandates. There is need to confirm the necessity, reasonability and proportionality of COVID-19 vaccine mandates, else vaccine mandates will become the order of the day; and an accepted policy response for future pandemics, irrespective of whether the policies are necessary, proportional, truly effective, legally, or ethically justifiable.