

Why Covid-19 vaccines should be mandatory in South Africa

By [Keymanthri Moodley](#)

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In recent months, the question of mandatory Covid-19 vaccination or limitations on those who choose not to be vaccinated has become a hot topic. In many countries, healthcare professionals and care home workers in facilities for the aged or disabled [must be vaccinated](#) as an occupational requirement. They are duty bound to accept a vaccine because of their non-negotiable pledge to avoid harm to patients, colleagues and their own families.



Vaccine mandates are being debated all over the world. Brenton Geach/Gallo Images via Getty Images

Other occupational groups who work in proximity to the public or in large indoor venues also have a responsibility to adhere to a mandatory vaccine policy. Likewise, barring medical contra-indications, civil society has a reciprocal duty to accept vaccinations to protect healthcare and other essential workers.

Where specific policies enforcing vaccination do not exist, other measures are being used to encourage vaccination or to nudge the unvaccinated. Incentives are being provided in some contexts for those who opt for vaccines. These include [monetary incentives](#) or food vouchers, retail discounts and [lower life or medical insurance premiums](#). Less attractive measures are being implemented in other settings, such as weekly Covid-19 testing for the unvaccinated. Some countries are [restricting access](#) to venues like cinemas, nightclubs, concert halls and indoor restaurants.

Travel regulations are tightening up globally. Vaccine passports are [increasingly being required](#) for international flights. And in a minority of places, among them Indonesia's capital Jakarta, [fines](#) of up to \$357 are levelled against those who refuse vaccinations.

Paradoxically, throughout the pandemic, the voices of those clamouring for individual rights and civil liberties have rung loudly and abrasively, constantly attempting to crowd out calls for the common good and public interest, constantly attempting to overpower calls for herd immunity via Covid-19 vaccines.

South Africa, too, is grappling with the question of vaccine mandates. As a bioethicist, I have no doubt: ethically, vaccine mandates are justifiable on multiple levels, based on the common good and a public health ethics framework. This framework, which has been outlined by researchers, is based on [the principles](#) of solidarity, effectiveness, efficiency, proportionality and transparency. It intends to achieve three things in a public health emergency. First, to save lives. Second, to use limited resources efficiently. And, finally, to create social cohesion in the public interest and to build public trust.

It is no longer a matter of whether vaccine mandates should be introduced in South Africa, but when. The country's Constitution and several pieces of legislation provide for this, in certain circumstances and with several factors taken into account.

Policy and principle

In 1985 the United Nations' Economic and Social Council adopted the [Siracusa principles](#) on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights. These principles are now firmly enshrined in international human rights law and standards. They require that any restriction on human rights must be based on law.

These principles are reflected in Section 36 of the [South African Constitution](#), which deals with the limitation of rights. The [National Health Act No. 61](#) of 2003 also applies, – it contains regulations relating to notifiable medical conditions. So too does the [Disaster Management Act](#).

Restrictions on individual rights imposed via vaccination are not arbitrary. South African law requires that they be based on a legitimate objective and must be strictly necessary for the achievement of the policy objective. In the case of Covid-19, the objective of preventing transmission of infection is unambiguously in the public interest. The least restrictive and intrusive means must be used and the burden of justifying a limitation of human rights lies with the South African government.

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The [South African Bill of Rights](#) (section 36) specifies that any limitation must be “reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom”. It also requires that the restriction be proportional to the purpose of the limitation. So the bigger the risk to public health, the larger the restriction may be on individual rights.

Most importantly, such restrictions must be based on scientific evidence. They should not be arbitrary, discriminatory or unreasonable. Billions of Covid-19 vaccine doses have been administered globally and have [demonstrated good safety data](#), with protection from severe disease and death in most cases. Serious side-effects have been experienced [only by a minority with underlying risk factors](#). The majority of deaths in the United States currently are occurring [among the unvaccinated](#). A [similar trend](#) has been noted in South Africa. Given this data, mandatory vaccination satisfies the requirement for being reasonable.

It is clear that, based on its existing legal framework, South Africa can legitimately introduce a mandatory vaccination policy for specific occupational environments and leisure activities.

Section 23 of the Constitution, for instance, states that “everyone has the right to fair labour practices”. A mandatory vaccine policy could be regarded as a fair labour practice – it prevents harm to all. Everyone has a right to a safe working environment. Employees who are vaccinated may legitimately object to having unvaccinated employees in their working environment.

The [Disaster Management Act Covid-19 regulations](#) are important to highlight. Specifically, regulation 14(3) states that any person “who intentionally exposes another person to Covid-19 may be prosecuted for an offence, including assault, attempted murder or murder.”

No luxury of time

Going forward, improving health literacy is a critical prerequisite to enhance vaccine acceptance. It must be accelerated and expanded rapidly to reach all communities.

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However, there is no luxury of time during a public health emergency to engage in prolonged community education efforts. In parallel with counselling, and vaccine literacy efforts, mandatory vaccine policies in high-risk environments are indispensable.

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