

Expert Hearing on Reports of Plasmid DNA Contamination in COVID-19 mRNA Vaccines



Contaminated COVID-19 Vaccines, International Human Rights Law and the Voluntary Consent Criterion

27 November
2023

Dr. Willem van Aardt
B-Proc (*Cum Laude*); LLM (UP); PhD (*Doctor Legum*) (NWU)
Extraordinary Research Fellow North-West University
Research Unit: Law, Justice and Sustainability



1. INTRODUCTION

- The discovery by Kevin McKernan and colleagues of plasmid DNA contaminating the COVID-19 vaccines reconfirms that these vaccines are unsafe and that claims of “extreme safety” could never have been made.
- Despite the experimental COVID-19 vaccines being proven to be neither effective nor safe and the World Health Organization’s (“WHO”) data showing almost 2.5 million adverse events by November 12, 2021, mandatory vaccinations were implemented and continued unabated in numerous countries across the globe during 2021 and 2022
- Extreme pressure from governments and large multinational corporations on citizens to get the COVID-19 vaccine ranged from the loss of employment and inability to study or enter shops and restaurants if citizens did not get the vaccine, to monetary payments, free beer, hot dogs, doughnuts and even pickled herrings or a joint of marijuana if citizens got the vaccine.
- On the back of countless assurances by vaccine manufacturers, public health agencies, and the WHO that the vaccines were “extremely safe” and “highly effective,” citizens were required to sign informed consent declarations before getting a COVID-19 shot.
- Important questions that need to be addressed include whether International Human Rights Law (“IHRL”) guarantees the right to free and informed consent, what exactly free and informed consent entails, and whether informed consent was legally obtained given the nondisclosure of known harmful DNA contaminants.

2. INTERNATIONAL HUMAN RIGHTS LAW

- The era of modern IHRL commenced in 1945 with the birth of the United Nations and a transformative vision of human beings as ends in themselves.
- Individuals once considered mere objects of the sovereign were now deemed subjects of international law with positive legal claims to protection, not only from State tyranny and oppression but also from human rights abuses by non-State actors.
- IHRL, unlike classic international law, sees individuals as the main subjects of international law. It is not based on reciprocity but rather on a network of objective legal obligations.
- This framework includes various principles bearing on the interpretation of treaties and the *grundnorm* of treaty law, *pacta sunt servanda*. (Article 26-Vienna Convention on the Law of Treaties)
- Importantly, a State Party cannot discharge itself from the obligations imposed by a IHRL *jus cogens* norm. The unique function of these peremptory norms is to render void any State action that conflicts with such a peremptory norm. (Article 53-Vienna Convention on the Law of Treaties)

2. INTERNATIONAL HUMAN RIGHTS LAW

- **Article 2(1)** of the legally binding International Covenant on Civil and Political Rights (“**ICCPR**”) (ratified by 113 States Parties) determines that “***each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant...***”
- The obligations of the Covenant in general and **Article 2(1)** specifically are binding on every State Party as a whole. It applies to all branches of government (executive, legislative, and judicial - including public health authorities).
- Article 7 of the ICCPR explicitly determines that “**no one shall be subjected without his free consent to medical or scientific experimentation,**” such as the experimental COVID-19 vaccine. Significantly, **Article 7** is specifically listed in **Article 4** as an article from which no derogation may be made even in times of a public emergency that threatens the life of the nation.
- Medical experimentation without free and informed consent is viewed as hierarchically superior ***jus cogens norm*** and is of a class (similar to the prohibition of slavery and torture) from which **no derogation** is allowed.
- Peremptory norms limit the ability (margin of appreciation) of the State to craft legislation, which would contradict ***jus cogens***. Any health policy of the State, contrary to ***jus cogens***, represents a breach of the international legal order.

3. BIOETHICAL NORMS AND STANDARDS

Bioethical norms and standards are explicit regarding the voluntary consent criterion:

- **The Nuremberg Code 1946:** *“The voluntary consent of the human subject is absolutely essential.....without ...any element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion...”*
- **The Universal Declaration on Bioethics and Human Rights 2005:** *“Any preventive, diagnostic and therapeutic medical intervention is only to be carried out with the prior, free and informed consent of the person concerned, based on adequate information.”*
- **The World Medical Association’s Declaration of Helsinki 1948:** *“Participation by individuals capable of giving informed consent as subjects in medical research must be voluntary.”*
- **World Health Organization Guidance for Managing Ethical Issues in Infectious Disease Outbreaks 2016:** The only bioethical basis for the justification of emergency use medical interventions emphasizes *“the ethical principle of respect for patient autonomy – i.e., the right of individuals to make their own risk–benefit assessments”*

4. THE VOLUNTARY CONSENT CRITERION

There are three essential requirements needed for a decision to meet the voluntary consent criterion:

- 1. Freedom from Coercion and Pressure**
- 2. Informed and Educated Consent**
- 3. Healthy Psychological State**

If any one of these desiderata is absent consent is not free and voluntary.

4.1 THE VOLUNTARY CONSENT CRITERION: Freedom from Coercion and Pressure

- The ultimate case of coercion is one in which the State physically arrests you and medical officers forcibly inject you against your will. You resisted but without success. In that case, it is not your act at all but the act of the person who forced you.
- More often, coercion consists not of overt physical action but of the threat of it or some other adverse ramification for non-compliance: *“If you do not take the COVID-19 vaccine you will not be able to keep your job”* or *“If you do not take the COVID-19 vaccine you will not be able to study.”*
- Unlike the first case, in threat cases, there is a choice. But it is not very much of a choice. Getting the COVID-19 vaccine to be able to provide for your family is not a choice we would have made except for the coercion.
- Many COVID-19 paternalists are willing to call it coercion only if there is physical harm or threat of physical harm, but this is much too narrow.
- Any kind of pressure put on you interferes, **impedes, and therefore nullifies the voluntariness** of your decision, irrespective of the degree.

4.2 THE VOLUNTARY CONSENT CRITERION: Informed and Educated Consent

- The decision must be well-informed, based on all the pertinent facts, and purged of false and misleading information. If a con man sells a lady what he promised to be a “pink diamond” when it is worthless pink glass, and she pays the price of a rare pink diamond, her decision to pay is not voluntary. It is not that she was coerced; she was defrauded; she was provided with false and misleading information in making her decision.
- If a public health official offers a person what he promises to be a 99.9% “effective” and “extremely safe” COVID-19 vaccine that prevents neither infection nor transmission and has deadly side effects, the decision to receive the vaccine is not voluntary.
- It is indeed a textbook case of “fraud in the inducement” that occurs when a party tricks a counterparty into entering an agreement to their disadvantage by using fraudulent statements and misrepresentations. Since fraud invalidates the “meeting of the minds” needed for a contract, the injured party can seek damages.
- If a vaccine manufacturer materially misrepresents (*dictum et promissum*) the safety of their product due to a complex manufacturing process resulting in known plasmid DNA contamination, consent has also not been obtained given the “fault in the conclusion of the contract.” (*culpa in contrahendo*).
- When a patient agrees to be injected new type of COVID-19 mRNA vaccine – even if the patient is not threatened, not pressured – but if some of the potentially harmful side effects have been hidden from him or her, one would not be able to argue that the patient consented voluntarily to take the novel mRNA vaccine.

4.3 THE VOLUNTARY CONSENT CRITERION: Healthy Psychological State

- An individual might not be under coercion and might be fully informed of the pertinent facts and yet may make a decision in an unsound, psychological state of mind. A schizophrenic, or a person in a demented, senile, inebriated, or critical state of manic depression, cannot be labeled as “fully informed.”
- It is similarly the case where individuals are suffering from mass delusion in a nation subjected to large-scale government propaganda (“menticide”) designed to influence emotions, motives, objective reasoning, and behavior, such as what occurred in Nazi Germany.
- Joost Meerloo explains that: “...*he who dictates and formulates the words and phrases we use, he who is master of the press and radio, is master of the mind... repeat mechanically your assumptions and suggestions, diminish the opportunity for communicating dissent and opposition. This is the formula for political conditioning of the masses.*” (Meerloo, 1956, p.47)
- This was also the modus operandi of the transnational pharmaceutical industry, governments, public health authorities, and other COVID-19 political and financial profiteers, who manipulated the public into being injected with an experimental COVID-19 injection.

5. CONCLUSION

- COVID-19 era vaccine mandates significantly infringed on the individual's right to medical self-determination in violation of Article 7 of the ICCPR and IHRL *jus cogens* norms.
- The issue is not that there were no IHRL norms or bioethical rules to follow or that these rules were ambiguous but rather that numerous governments, corrupt public health agencies, multinational pharmaceutical companies, and conflicted “philanthropic foundations” maliciously contravened clear bioethical rules, and IHRL *jus cogens* norms for political and financial gain.
- To contend that citizens were able to give “informed consent” to the experimental COVID-19 vaccines (while at the same time not disclosing known plasmid DNA contamination and potential harmful side effects) is preposterous and makes a mockery of medical ethics and the law.
- There needs to be a substantive judicial reckoning at both national and international levels with all public and private officials who violated IHRL. If the officials in charge of these abuses are not held accountable, at some point, a repeat and escalation of these violations at the expense of human rights protections are all but guaranteed.