



ADVISORY NOTE TO THE CHAIR OF THE PRESIDENTIAL TASKFORCE ON MANDATORY COVID-19 VACCINATION

1.0. CONTEXTUAL BACKGROUND

Malawi, just like many other countries in Africa, continues to be hit hard by Covid-19 pandemic. As of 5th September 2021, Malawi had recorded 60,821 Covid-19 cases including 2,210 deaths representing a case fatality rate of 3.63%. Of these cases, 26,111 were imported infections and 58,210 were locally transmitted, and cumulatively 49,175 cases had now recovered representing a recovery rate of 80.9%, 232 were lost to follow up¹. In terms of Covid-19 vaccination, the country has continued to register low uptake of Covid-19 vaccination despite some awareness initiatives by government through amongst other channels like National Initiative for Civic Education (NICE) and the media. According to Ministry of Health update, as of 5th September 2021 a total of 910,347 vaccine doses had been administered in the country with 479,100 and 218,459 people having received the first dose and second dose of Astra Zeneca respectively while 212,788 people have received Johnson and Johnson vaccine. Due to increasing cases of Covid-19 and fatality rates yet low uptake of Covid-19 vaccine there has been debate on whether government should introduce mandatory Covid-19 vaccine or not. Just a few weeks ago, some private companies and public institutions have already started implementing a “No Covid-19 vaccination no work policy”. These include: Malawi Electoral Commission (MEC), Sunbird Limited, General Alliance Insurance Limited, and TNM just to mention a few. Such actions have ignited a public debate on whether such actions have a legal or human rights basis especially coming against the background, that the position of Government² and the World Health Organization (WHO) has all along been skewed towards voluntary Covid-19 vaccination³. In the midst of these developments, Government has not come out clear on its position on the matter leading to some CSOs petitioning government to declare its position on Covid-19 vaccination. It is therefore against this background that the Malawi Human Rights Commission submits this Advisory Note – from a human right based

¹ Ministry of Health Daily Updates, 5th September 2021.

² “Please take note that COVID-19 vaccines are voluntary and free of charge. No one is safe until everyone else is safe.”- Hon. Khumbize Kandodo Chiponda, 9th May 2021, Nation Online.

³ “World Health Organization (WHO) presently does not support the direction of mandates for Covid-19 vaccination citing it is better to work on information campaigns and making vaccines accessible” – World Health Organization Policy Brief titled: “COVID-19 and Mandatory Vaccination: Ethical Considerations and caveats”, 13th April 2021.

approach, (right to life, right to personal liberties, and right to health) – for the PTF’s attention as the main platform for vaccine management and communication.

2.0. WHETHER COVID-19 VACCINE SHOULD BE MANDATORY OR NOT

The Commission observes that the debate on whether Covid-19 Vaccine should be mandatory or not has revolved around protection and respect of individual rights and collective rights globally. On one hand, there are those who hold the view that individual liberties should not be interfered with in the context of access to Covid-19 vaccine, and any attempt to deny an individual to fully enjoy his or her economic, social and cultural rights (e.g., employment) based on one’s failure to get vaccinated is a violation of the right to privacy and other individual rights as guaranteed by the Constitution. For example, WHO released a statement in April 2021 that “national authorities and conveyance operators should not require Covid-19 vaccination as a condition of international travel”⁴

In July 2021 the South Africa Human Rights Commission, echoed WHO’s position by stating that while it supported the State’s efforts to vaccinate as many people as possible to ensure that the entire population is protected against the further spread of Covid-19, the person’s decision to have the vaccine should be voluntary. Reads part of the statement: “The right to freedom and security of the person, contained in the Bill of Rights, chapter two of the Constitution, includes the right not to be subjected to medical procedures without their informed consent. The commission emphasizes that no person can be forced by anyone, including the state, to be vaccinated”⁵. In Malawi, some health rights activists such as Maziko Matemba (Ambassador on Covid-19) argue that forcing people to be vaccinated is against their right, arguing that Malawi is a democratic State and hence making the jab mandatory can set a bad precedent. He argues that government should instead explore other ways to ensure that a lot of Malawians receive the jab⁶. Matemba argues that, “At the moment it seems the fight has been left to only a few people. If we take everybody on board, we can manage to increase the number of people that are being vaccinated. It seems our strategies as a country have not been well coordinated. Health Surveillance Assistants (HSAs) for example have not been utilized by the Ministry of Health to reduce the impact of Covid-19 pandemic in rural areas.”⁷

On the other hand, there are those who hold the view that Covid-19 vaccination should be mandatory because those who are not vaccinated – under the guise of enjoying individual liberties or rights – interfere with the communal well-being or collective rights by exposing them to risks which can cost their lives hence violating collective or communal rights such as right to life. According to this second view, Covid-19 vaccine remains the best means to mitigate the impact of Covid-19 on individuals and society, as such governments should give serious consideration to

⁴ World Health Organization Policy Brief, 13th April 2021.

⁵<https://www.acdp.org.za/2021/07/28/report-mandatory-vaccinations-to-the-south-african-human-rights-commission/>;<https://www.sahrc.org.za/index.php/sahrc-media/opinion-pieces/item/2586-to-vaccinate-or-not-to-vaccinate-a-human-rights-question> ;

⁶ Malawi News, September 4 2021, “Chiefs Want Mandatory Vaccine”

⁷ Malawi News, September 4 2021, “Chiefs Want Mandatory Vaccine”

compulsory vaccination as a means of reducing the impacts of Covid-19 especially in a context where there is ‘vaccine hesitancy’⁸. For example, one of the champions of this view point Paramount Chief Kawinga was recently quoted in the media⁹ faulting Malawi government for giving Malawians “unnecessary freedom to decide whether to take the Covid-19 jab or not” arguing that matters of health should not be debated as people should simply follow medical prescriptions in order to create a safe environment for them and others. Kawinga argues that, “There is confusion on messages which we are giving to people regarding the Covid-19 vaccine. They (government) are telling us to encourage people to be vaccinated, yet they are also telling the same people through radios that the vaccine is not compulsory. This will not help. Issues of health have no freedoms as is the case with the ongoing Covid-19 vaccines. Government needs to put it on record that all Malawians should go and get the jab without any choice”¹⁰.

While acknowledging the proposal that Covid-19 vaccination should be made compulsory when the vaccine becomes available at scale¹¹, this school of thought holds that voluntary uptake of vaccine cannot be guaranteed even if vaccine is made available for all in a context characterized by ‘vaccine hesitancy’¹². It is therefore premised on this that government – motivated by the interest of protecting the right to life and health of the community or larger society – has the human rights obligation to enforce mandatory Covid-19 vaccination in order to protect both the vaccinated and the non-vaccinated. The pro-mandatory vaccination viewpoint is largely embedded on this popular phrase, “No one is safe until everyone is safe”. In other words, a small percentage of the vaccinated cannot necessarily be said to be safe until the larger proportion of the entire society is vaccinated. The unvaccinated, they argue, pose a threat to the life of everyone including the vaccinated. Therefore, every person must vaccinate to achieve a safer environment for all.

3.0. ACCESS TO COVID-19 VACCINATION CERTIFICATES

The Commission welcomes government’s action to issue an official Covid-19 vaccine certificate to individuals who are fully vaccinated against Covid-19. While the Commission appreciates the digitization of access to Covid-19 certificate, it is of the view that this issue shall in the current form leave a larger section of our society unable to access the service because of lack of internet¹³

⁸https://eprints.whiterose.ac.uk/167958/1/Forsberg_Black_Douglas_Pugh_Compulsory_Vaccination_for_Covid_19_JCHR_written_evidence.pdf

⁹ Malawi News, September 4, 2021 “Chiefs Want Mandatory Covid-19 vaccine”

¹⁰ Malawi News, September 4, 2021.

¹¹ According to the World Health Organization Policy Brief, 13th April 2021, “In order for a mandate to be considered, supply of the authorized vaccine should be sufficient and reliable, with reasonable, free access for those for whom it is to be made mandatory. The absence of a sufficient supply and reasonable, free access would not only render a mandate in effective in achieving vaccine uptake, but also would create an unduly burdensome, unfair demand on those who are required to be vaccinated but are unable to access the vaccine.

¹² World Health Organization (WHO) defines ‘Vaccine hesitancy’ as the reluctance or refusal to vaccinate despite the availability of vaccines. Vaccine hesitancy in respect of Covid-19 may arise because of the influence of anti-vaccination movements, the uneven demographic distribution of Covid-19 morbidity and mortality risks, or the mistaken belief that Covid-19 immunity has already been acquired.

¹³ According to Digital 2021 Malawi Report, internet access in Malawi stood at 17.8% as of January 2021 (in a population of 19.39 million there were 3.45 million users) in a country where 17.6% of the population lives in the urban and 82.4% in rural areas.

as well as some persons with disabilities. The Commission therefore recommends that government should urgently consider issues of accessibility while rolling out the Covid-19 certificates.

4.0. THE COMMISSION'S RECOMMENDATIONS

In line with its advisory role on all matters of human rights as clearly spelt out in the Human Rights Commission Act and cognizant of the need to strike a balance between individual and collective rights as guaranteed in the Constitution, the Commission makes the following recommendations:

- a) That any government decision to adopt mandatory Covid-19 vaccination or stick to voluntary Covid-19 vaccination should be guided – besides the Law- by sufficient evidence generated on these 6 ethical considerations as recently spelt out by WHO through their recent policy brief¹⁴: necessity and proportionality¹⁵; vaccine safety¹⁶; vaccine efficacy¹⁷ and effectiveness; sufficient supply¹⁸; public trust¹⁹; and ethical processes of decision making²⁰. The generation of such evidence might entail government commissioning independent studies or research as well as embarking on national wide consultations on some of these areas.
- b) That government should review its policy on access to Covid-19 vaccination that should take into account the balance between individual and collective rights. Such a policy should take into consideration practical realities of situations of essential workers (such as health workers, police, teachers and others) in both public and private institutions as well as those

¹⁴ WHO Policy brief titled: "COVID-19 and Mandatory Vaccination: Ethical Considerations and caveats" 13 April 2021 was prepared by World Health Organisation Ethics and Covid-19 Working Group. The document neither endorses nor opposes mandatory Covid-19 vaccination but rather provides 6 ethical considerations that should be born in mind by governments or policy makers who may be considering introducing mandatory Covid-19 vaccination.

¹⁵ This means that "mandatory vaccination should be considered only if it is necessary for, and proportionate to the achievement of an important public health goal (including socio economic goals) identified by a legitimate public health authority. If such a public health goal can be achieved with less coercive or intrusive policy interventions (e.g., public education), a mandate would not be ethically justified. If the low vaccination rates in the absence of a mandate put others at significant risk of serious harm, a mandate may be considered necessary to achieve public health objectives.

¹⁶ This means that data should be available that demonstrates the vaccine being made has been found to be safe in the populations for whom the vaccine is to be made mandatory. In the absence of sufficient evidence, there would be no guarantee that mandatory vaccination would achieve the goal of protecting public health.

¹⁷ This means that data on efficacy and effectiveness should be available that show the vaccine is efficacious in the population for whom the vaccination is to be mandated and that the vaccine is an effective means of achieving an important public health goal.

¹⁸ This means that in order for a mandate to be considered supply of the authorized vaccine should be sufficient and reliable, with reasonable, free access for those for whom it is to be made mandatory. The absence of a sufficient supply and reasonable, free access would not only render a mandate ineffective in achieving vaccine uptake, but would create an unduly burdensome, unfair demand on those who are required to be vaccinated but are unable to access the vaccine. Such a mandate would threaten to exacerbate social inequality in access to healthcare.

¹⁹ This means that policy makers have a duty to carefully consider the effect that mandatory vaccination could have on public confidence and public trust and particularly on confidence in the scientific community and public trust in vaccination generally. If such a policy threatens to undermine confidence and public trust, it might affect both vaccine uptake and adherence to other important public health measures which can have an enduring effect.

²⁰ Transparency and stepwise decision-making by legitimate public health authorities should be fundamental elements of ethical analysis and decision-making about mandatory vaccination. Reasonable effort should be made to engage affected parties and relevant stakeholders, and particularly those who are vulnerable or marginalized, to elicit and understand their perspectives

whose jobs directly expose them to people including the vulnerable groups at greater risk of contracting Covid-19.

- c) In the interim (as government waits for the outcome of its swift implementation of the above recommendations [a], and [b]), government should stick to WHO current position that Covid-19 vaccination is voluntary, and should hence intensify efforts to make Covid-19 vaccine accessible to all as well as demystifying the vaccine through massive civic education and campaigns so that people make informed choices on the vaccine. The Commission recognizes the great efforts so far done by National Initiative for Civic Education (NICE) but there is need to scale up such efforts through the Ministry of Civic Education, NGOs, FBOs, traditional leaders, and CBOs.
- d) Government should work with the Commission to facilitate the debate on the issue as it is apparently clear that the human rights centered debate has been the missing link.

Lastly, as ably put by WHO: *“Governments and/or institutional policy makers should use arguments to encourage voluntary vaccination against Covid-19 before contemplating mandatory vaccination. Efforts should be made to demonstrate the benefit and safety of vaccines for the greatest possible acceptance of vaccination. Stricter regulatory measures should be considered only if these means are not successful. Similar to other public health policies, decisions about mandatory vaccination should be supported by the best available evidence and should be made by legitimate public health authorities in a manner that is transparent, fair, nondiscriminatory and involves the inputs of affected parties”*²¹.

Signed By



Scader Louis

Chairperson

Malawi Human Rights Commission

Date: 7th September 2021

²¹ WHO Policy brief titled: “COVID-19 and Mandatory Vaccination: Ethical Considerations and caveats” 13 April 2021