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Human Rights in the Distribution of Vaccines Against Civilians According to International Law: An Analysis of Human Rights Problems in the Acceptance of Vaccines COVID-19 in Philippines

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Abstract

In an effort to boost the Philippines' economic recovery amidst the COVID-19 pandemic, the government made the decision in January 2022 to allow foreign tourists to enter the country without the need for quarantine, as long as they can provide proof of vaccination. However, some Filipinos have expressed discontent with this choice, as unvaccinated individuals continue to face travel difficulties. Addressing this issue, President Rodrigo Duterte has warned that those who choose not to get vaccinated and violate stay-at-home orders may face arrest. Extensive analysis and literature review have revealed that vaccination is a communal right. While the decision to receive a vaccine is a personal choice, legal principles dictate that every individual has the right to choose what substances are introduced into their body. However, in cases where there is a high risk of contagion, such as with Covid-19, governments may mandate the distribution of vaccines for public safety. This conclusion is based on an evaluation of international legal instruments, including the UDHR, ICCPR, ICESCR, and others..

Keywords: COVID-19; human rights; national legislation; pandemic; vaccination

A. INTRODUCTION

The COVID-19 pandemic has presented a multifaceted challenge globally, impacting not only the medical community but also nations as a whole. Disturbingly, Our World in Data reports that as of 2021, the virus has caused over 6.33 million deaths worldwide. Understandably, this high mortality rate has caused widespread concern. To curb the spread of the virus, many countries have had to close down economic activities such as tourism and culinary events.

In general, every country has an obligation to provide its citizens with good and qualified health services, as stated in the Universal Declaration of Human Rights which in Article 25 states that "Everyone has the right

to a standard of living *adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services.*"³

As a responsible government, it is crucial to provide adequate health insurance coverage to our citizens, which includes safeguarding them against the COVID-19 virus. To ensure that our citizens' rights are protected, the state has three fundamental duties: to respect, protect, and fulfill their needs).⁴ In the current scenario, it is imperative for the government to take into account the complete spectrum of citizens' rights that have been affected by the pandemic. While the implementation of health insurance is undoubtedly of utmost importance, it is

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³ Article 25 Universal Declaration of Human Rights

⁴ Office of the United Nations High Commissioner for Human Rights (OCHR), "International Law", <https://www.ohchr.org/en/professionalinterest/pages/internationallaw.aspx>. Retrieved 30 June 2022.

equally crucial to consider the economic rights of those who have been adversely impacted by the virus. A comprehensive approach that takes into consideration the multifaceted repercussion of the pandemic is the need of the hour.

These rights can be enforced by the state through "positive" or "negative" actions.⁵ There are times when the government needs to play an active role in ensuring that everyone can exercise their rights. However, it's just as crucial for the government to balance this with not excessively intruding into the lives of its citizens to protect their rights. A country's failure or refusal to safeguard the rights of its people can be viewed as a breach of Human Rights.

We acknowledge that nations worldwide are taking measures to contain the COVID-19 pandemic by administering vaccines to their populace. It is noteworthy that in December 2020, the initial COVID-19 vaccine was introduced, a mere year after the virus's detection.⁶ As of 2021, COVID-19 vaccines are being shipped and administered worldwide.

The World Health Organization (WHO) is calling on member states to prioritize vaccinating health workers and at-risk groups in low-income countries. This measure is crucial in preventing severe illness and death, ensuring the safety of health workers, and facilitating the reopening of societies and economies.

For over two centuries, vaccines have been instrumental in protecting people from deadly diseases, starting with the first vaccine developed for smallpox. History has shown us that effectively responding to vaccine-preventable diseases requires time, financial

support, and collaboration, as well as sustained attention.

In the context of the COVID-19 pandemic, the distribution of vaccines is aimed at safeguarding citizens and restoring stability to social life. This will allow people to pursue their activities, including work and economic pursuits, with greater freedom. A similar approach is being taken in the Philippines.

In June 2021, the government of the Philippines began promoting a vaccine to combat the spread of Covid-19. At that time the government even urged its citizens to receive vaccines, and threatened to arrest those who did not want to be vaccinated. As has been reported in the Global Health website, the President of the Philippines has threatened to order the arrest of Filipinos who refuse the COVID-19 vaccination and order them to leave the country if they do not cooperate in efforts to end the public health emergency.⁷

After being closed for nearly two years, the Philippines announced in early 2022 that it would lift the ban on the entry of foreign tourists and business people in February 2022.⁸

According to an announcement made by Tourism Minister Berna Romulo-Puyat, the Philippines will be welcoming visitors from more than 150 countries around the globe beginning February 10, 2022. Those who are fully vaccinated will be able to enjoy visa-free privileges and will no longer be required to undergo quarantine upon arrival at government-designated centers. However, specific guidelines must be followed, including vaccination and COVID-19 testing, as well as providing proof of a negative result before entering the country. This information has

⁵ Debby Kristin and Chloryne Trie Isana Dewi, "The Rights of Children Refugee in Transit Country under the CRC, A Case of Indonesia: An Intended Negligence on the Implementation of Non-Discrimination Principle?", *Padjajaran Journal of International Law*, Volume. 5 Number. 1, 2021. Pp. 115.

⁶ World Health Organization, "A Brief History of Vaccination", [https://www.who.int/news-room/spotlight/history-of-vaccination/a-brief-history-of-vaccination?topicsurvey=ht7j2q\)&gclid=Cj0KCQjwwiSIBhD6ARIsAESamp5V0RA20642lySqkD93kLSSo8pPCII7wAg](https://www.who.int/news-room/spotlight/history-of-vaccination/a-brief-history-of-vaccination?topicsurvey=ht7j2q)&gclid=Cj0KCQjwwiSIBhD6ARIsAESamp5V0RA20642lySqkD93kLSSo8pPCII7wAg)

95iAi8o4_bZcFFfvuDXYaAqF4EALw_wcB accessed on 3 July 2023.

⁷ Global Health, "Duterte Threatens To Arrest Filipinos Who Refuse Vaccination", <https://www.npr.org/2021/06/22/1009038842/duterte-threatens-to-arrest-filipinos-who-refuse-vaccination> downloaded on 30 June 2022

⁸ Independent, "Philippines lifts ban on foreign tourists as outbreak eases", <https://www.independent.co.uk/asia/southeast-asia/philippines-tourists-covid-omicron-cases-b2002764.html> downloaded on 30 June 2022

been officially confirmed by government officials.

It has been communicated by President Rodrigo Duterte that non-compliant individuals who refuse to receive vaccinations or violate government orders to stay at home may face detention by authorities. In addition, unvaccinated travelers in the capital city, home to over 13 million people, are not allowed to use public transportation. However, exceptions have been made for citizens with pressing matters, which will remain valid until February 2022.

There was a significant problem in the Philippines as many of its citizens were unwilling to get vaccinated against Covid-19. This situation was further exacerbated when the government made it easier for foreign tourists to enter the country. This has led to widespread dissatisfaction among the local population, who feel that the government is being unfair by imposing complicated policies that restrict their access to various activities, while allowing foreigners to come and go as they please.

There may be varying views regarding the recent warning issued by the Philippine government to its citizens who expressed reluctance to get vaccinated against Covid-19. This is because the issue of whether vaccination is a right or a responsibility within the community remains a subject of debate. Legally speaking, it is widely accepted that every individual possesses complete autonomy over their own life, including the freedom to choose whether or not to receive any particular medication or chemical substance. It is crucial to acknowledge that this decision is a deeply personal one.

The Philippines functions as a democratic nation with a presidential system, representative democracy, and republic governance. The President serves as both the head of state and government in a multi-party system, emphasizing the importance of prioritizing the protection of human rights.

This piece seeks to explore the distribution of vaccines to civilians in the Philippines, with a focus on international law and human rights doctrines. Additionally, the

article will delve into the legality of publicly rejecting the COVID-19 vaccine.

Furthermore, this article serves as a study for future pandemics. Even as the COVID-19 pandemic draws to a close, the piece aims to provide valuable insights and lessons for future outbreaks. The discussion will also examine the history of human rights in receiving vaccines during past pandemics, with the goal of drawing conclusions on the rights and responsibilities of vaccines, particularly in the Philippines.

B. RESEARCH METHODS

In compiling this scientific article, the author uses a descriptive research method through a normative juridical approach which is one of the research methods in normative law. The normative juridical research method is a data collection technique that is carried out by collecting data based on library law research which is carried out by examining library materials or secondary data, for example, such as data contained in books, documents, notes, reports and laws and regulations related to the object being researched by the author. The secondary data used include:

1. Primary Legal Materials
 - a. International law rules: Universal Declaration of Human Rights
 - b. International law rules: International Covenant on Economic, Social and Cultural Rights
2. Secondary Legal Materials

Secondary legal materials are taken from literature, opinions of legal scholars, books and papers, as well as journals that are relevant to the title or previous research that is relevant to the problem being studied.

3. Tertiary Legal Materials

Tertiary legal materials are taken from materials that help from primary and secondary legal materials, such as legal dictionaries and encyclopedias.

This research method uses deductive thinking methods. The deductive thinking method is a way of thinking with the method drawing conclusions which is done by drawing from something general in nature that has

been proven true and then the conclusion is aimed at something special.

Thus the object analyzed uses a qualitative approach, namely a research method that refers to legal norms contained in a statutory regulation.

C. THE CONCEPT OF HUMAN RIGHTS IN VACCINE ACCEPTANCE

In the 20th century, human rights have become a matter of global importance, leading to a multitude of responsibilities for governments, their representatives, non-governmental entities, and individuals to safeguard human dignity. Contemporary viewpoints on human rights emphasize their inherent, inalienable, and inviolable nature.⁹

All human beings possess certain rights inherent to their nature, regardless of their participation in society. However, it is important to recognize that some of these rights are not absolute and may be subject to certain limitations. In a democratic society, the State has three primary obligations towards its citizens: to protect them, to respect their rights and to meet their needs.¹⁰ In order to achieve certain objectives, the government is authorized to enforce certain limitations that are commonly referred to as restricting and eroding human rights. These concepts are believed to be harmful to the rights that are inherent to every individual.¹¹

It is widely acknowledged that access to the COVID-19 vaccine is a fundamental component of the right to health, and it is imperative that all individuals have the opportunity to receive it. However, it is crucial to comprehend the underlying principles of "rights". As Saut P. Panjaitan explains, rights are discretionary roles, whereas obligations are mandatory roles that must be fulfilled. Hence, it is essential to acknowledge that obtaining the COVID-19 vaccine is a right that

should be universally accessible, but it is not an obligation that must be fulfilled.¹²

According to this theory, a "right" is something that can be exercised or not exercised. In other words, we can refer to rights as something that can be taken or not taken. Therefore, if the COVID-19 vaccine is considered a right, then individuals have the right to choose whether or not they wish to receive the vaccine. This means that the decision to take the vaccine is optional and not mandatory. Thus, we can conclude that if a person has the right to receive the vaccine, they also have the right to refuse it.

All individuals possess inherent human rights, regardless of their race, gender, nationality, ethnicity, language, religion, or any other status. These rights are derived from the United Nations Declaration of Human Rights and encompass fundamental freedoms such as the right to life and liberty, freedom from slavery and torture, and the right to express oneself and hold opinions. Additionally, these rights include the right to work and receive an education, among others. Universal human rights apply to everyone and must be upheld without discrimination. The United Nations General Assembly established the Universal Declaration of Human Rights on November 10, 1948, in Paris, France. Since 1950, this declaration has been commemorated annually as Human Rights Day.

The Universal Declaration of Human Rights was created to protect the freedom of individuals worldwide. Each country has also established its own human rights policies. The Declaration of Human Rights outlines many fundamental rights, including recognition as an individual before the law, equality before the law, protected freedoms, and the right to privacy, movement, safe living, expression, rest, and leisure.

Considering the UN's Declaration of Human Rights, the COVID-19 vaccination

⁹ DV Siegfried, "Moral Philosophy" in *The Oxford Handbook of International Human Rights Law*, Philosophy, United Kingdom: OUP, 2013, ch. 3, pp. 17-33.
¹⁰ Strategic Advisory Group of Experts on Immunization, "Report of the SAGE Working Group on Vaccine Hesitancy" World Health Organization, Geneva, Switzerland.

¹¹ B. Gordon Brown, "Limitation and Derogation" in *The Universal Declaration of Human Rights in the 21st Century: A Living Document in a Changing World*, Cambridge, England: OPB, 2016, ch. 3, pp. 57-60.

¹² Saut P. Panjaitan, *Fundamentals of Law (Principles, Definitions, and Systematics)*, (Palembang: Publisher of Sriwijaya University, 1998), p. 81.

should be offered on a voluntary basis. Citizens should never face coercion or punishment that could violate their rights. According to CNBC Indonesia, the World Health Organization has confirmed that the COVID-19 vaccination is not mandatory for the entire population. Even the United States and France have not made this vaccine a requirement.¹³

According to a recent article on Merdeka.com, Amnesty International Indonesia has expressed concern that imposing sanctions, particularly administrative ones, on individuals who refuse to receive the COVID-19 vaccine may infringe upon their human rights. Although vaccination is a valuable program that can enhance the immune system, it is not the sole method of halting the spread of the virus. Instead, emphasis should be placed on fortifying immunity rather than eradicating the virus from the body.

This has sparked controversy, with many individuals losing faith in the government due to its perceived authoritarianism and lack of regard for citizens' rights while implementing policies. As a result, the government's legitimacy is being called into question.

It's important to note that human rights encompass three core philosophical principles: rights, morality, and ethics.¹⁴ The concepts of rights and morals are abstract, while the ethics of life are related to human actions in real life. Refusing to take the COVID-19 vaccine is considered a moral and ethical choice that allows for personal freedom and autonomy based on rational thinking.¹⁵ In this case, vaccine refusal is a highly debated and controversial matter among many parties.

The individual responsible for this text asserts that mandating vaccines via government sanctions could potentially cause individuals to reject the vaccine, as has happened in the Philippines. With this in mind, the author recommends prioritizing international legal frameworks that uphold human rights and are supported by relevant

theories. The author refrains from analyzing the specific laws of the Philippines to avoid reaching a conclusion that may perpetuate a dualistic perspective. Instead, the author poses an important inquiry regarding whether vaccine mandates, such as those enforced in the Philippines, violate human rights according to international law.

D. DISCUSSION ON HUMAN RIGHTS INSTRUMENTS

The objective of the author is to conduct an in-depth analysis of several international legal instruments in order to comprehend the rights of individuals in terms of accepting or refusing the COVID-19 vaccine. This analysis will be focused specifically on the Philippines. Additionally, the author seeks to determine which legal instruments can validate Philippine policies that pertain to permitting or prohibiting access to foreign tourists entering the country. A few of the instruments that are currently under consideration for analysis are listed below.

1. Universal Declaration of Human Rights (UDHR)

The Universal Declaration of Human Rights (UDHR) is a globally recognized legal instrument that was adopted by the UN General Assembly in 1948. Its purpose is to establish fundamental human rights that are inherent to all people. Article 1 of the UDHR emphasizes that every human being is born with fundamental freedoms and rights, regardless of their social status or background. This critical article reinforces the idea that human rights are an integral part of our very nature, and cannot be taken away. Furthermore, Article 25 of UDHR states that, "*Everyone has the right to a standard of adequate living for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of*

¹³ Andre Bagas Saputra, "COVID-19 Vaccination Right or Obligation?", <https://law.uui.ac.id/blog/2021/09/06/vaccination-covid-19-hak-atau-kewajiban/> downloaded on 30 June 2022

¹⁴ Triyo Rachmadi, "Protection of Healthcare Workers' Rights To Refuse the COVID-19 Vaccination in Kebumen District", Volume 3, Issue 2, December 2021, p. 208.

¹⁵ *Ibid.*

unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control".¹⁶ This provision requires ratifying countries to provide healthcare services, even in adverse or unpredictable conditions.

The outbreak of COVID-19 is a situation that no one can control, and it is unpredictable. Therefore, every citizen has the right to be protected from this uncontrolled and unpredictable epidemic. This right should be accommodated by their respective countries as life is an inherent right of every human being. To sustain life, everyone must maintain good health.

Therefore, access to the COVID-19 vaccine is a fundamental human right that the state must provide for its people. Whether this right is absolute will be discussed in the next sub-chapter.

2. International Covenant on Economic, Social and Cultural Rights (ICESCR)

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was ratified by the Philippines on June 7, 1974.¹⁷ In Article 12 paragraph 1 of this instrument, it is stated that, "*The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*".¹⁸ This means that the Philippines as a country that has ratified this instrument, needs to accommodate the rights to physical and mental health of its citizens. In this case, protection against the spread of the COVID-19 virus is an effort that must be taken to avoid damaging one's physical health.

As for paragraph 2 of this instrument, namely "*1. Each State Party to the present Covenant undertakes to take steps....by all appropriate means, including particularly the adoption of legislative measures.*"

Paragraph 2 of the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* explains that the country can apply policies to fully realize the rights of its citizens in accordance with the first paragraph. However, to apply it, there are several things that become requirements. One of the requirements contained in the instrument as we can see in letter c is, "*The prevention, treatment and control of epidemic, endemic, occupational and other diseases*".

This means that the inability to control the outbreak or the COVID-19 pandemic is one of the points that fulfills the requirements of a country to take certain actions with the aim of "...to achieve the full realization of this right.. "as stated in paragraph 2.

In this case, the authors consider that this article has provided legitimacy for the Philippines to require the COVID-19 vaccine for its citizens.

3. International Covenant on Civil and Political Rights (ICCPR)

The ICCPR was ratified by the Philippines in 1986. This instrument consists of 53 articles divided into 6 sections. From this instrument, we can carry out an analysis of 2 things, namely the human rights of receiving the COVID-19 vaccine in the Philippines and opening the tap for foreign tourists to enter the Philippines for tourism purposes.

It has been previously understood that COVID-19 is a rampant outbreak that cannot be easily controlled and is being treated as an emergency by many countries. In contrast, the Universal Declaration of Human Rights (UDHR) and other international legal instruments have obligated states to ensure the right to public health. Therefore, it is important to consider the right to receive the COVID-19 vaccine as a crucial aspect of public health,

¹⁶ Article 25 Universal Declaration of Human Rights

¹⁷ Fivi Fajar Iryana and Handojo Leksono, "A Policy Analysis of President Duterte Carrying out Extrajudicial Killing in Eradicating Drugs in the Philippines Based on the

1998 Rome Statute", *Belli ac Pacis*. Vol. 4. No. 1 June 2018, p. 45.

¹⁸ Article 12 paragraph 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)

as mentioned in article 25 of the UDHR, "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family.. " It is the government's responsibility to fulfill the community's rights. However, due to the challenges posed by Covid-19, the government may struggle to meet this obligation. As a result, the government may need to reduce its efforts to accommodate people's rights in certain areas, such as limiting the right to mobilize. Additionally, in an emergency situation like this, the community's right to refuse vaccination may also be limited.

This is in line with what is stated in the ICCPR in Article 4 " *In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation*". This means that the government can reduce its obligations, including to fulfill community rights such as the right to mobilize or the right to 'refuse to be vaccinated'.

It is important to consider that while reducing the obligation, certain requirements mentioned in Article 4 must be adhered to. These requirements include ensuring that the measures taken are not inconsistent with other obligations under international law and do not discriminate on grounds of race, color, sex, language, religion, or social origin. This implies that the reduction of the obligation in question cannot be done in a discriminatory manner. Therefore, the Philippine government should treat both foreign tourists and local residents equally, without showing any preference to either group.

According to Article 12, paragraph 3 of the Philippine Constitution, individuals have the right to freely move and choose their place of residence. However, this right

may be subject to legal limitations in cases where it is deemed necessary to safeguard national security, public order, public health, morals, or the rights and freedoms of others, as recognized by the current Covenant. Consequently, the government may opt to restrict or allow foreign tourists' entry into the Philippines, depending on the prevailing circumstances".¹⁹

Within this article, we examine the jurisdiction of the Philippine government in regulating the influx of foreign tourists. While it is their prerogative to enforce visa restrictions, the policy of permitting visa-free travel has stirred debate, as it contrasts with the requirement for Filipino citizens to obtain inoculation before traveling domestically. While overseas visitors must provide evidence of vaccination, they are afforded greater ease in their movements, as quarantine measures are waived when travelling within the Philippines.

E. LIMITATIONS ON HUMAN RIGHTS IN INTERNATIONAL LEGAL INSTRUMENTS

According to the explanation provided by Point C, it is clear that individuals have the right to receive the COVID-19 vaccine as a voluntary choice, rather than being forced to do so. It is crucial to respect an individual's decision when it comes to medication. However, it's important to recognize that the concept of rights isn't entirely optional, and there are certain limitations to them. Rights can be classified as "derogable rights" that can be reduced and "non-derogable rights" that are absolute, such as the right to life.

In order to understand the practical application of a particular law in a country, let's take the example of Indonesia. The Indonesian constitution has established Article 28J, paragraph 2 which states that every citizen must comply with the legal restrictions when exercising their rights and freedoms. This is necessary to ensure that the rights and freedoms of others are respected and upheld, and to fulfill just demands in a democratic

¹⁹ Article 12 of the International Covenant on Civil and Political Rights (ICCPR).

society while considering moral, religious, security, and public order considerations.

This limitation on human rights is included in the Universal Declaration of Human Rights (UDHR). In Article 29 of the UDHR, it is stated that "*In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society*".²⁰

As we exercise our rights, it's important to also adhere to existing legal restrictions. With the ongoing COVID-19 pandemic, the government has been granted the authority to limit citizens' rights in the interest of public safety. Such restrictions may involve limitations on travel and other activities. In particular, the government holds the power to regulate citizens' decisions regarding vaccination.

This is in line with the presentation of Article 12 of the ICESCR, which states that, "*The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*",²¹ which means the inability to control the outbreak or the Covid 19 pandemic, is one of the points that fulfills the requirements of a country to take certain actions with the intention of "... to achieve the full realization of this right..", as stated in paragraph 2 namely "*1. Each State Party to the present Covenant undertakes to take steps , individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means , including particularly the adoption of legislative measures; 2. The States Parties to*

the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status; 3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals." In this case, the authors consider that this article has provided legitimacy for the Philippines to require the COVID-19 vaccine for their citizens.

When it comes to imposing restrictions on human rights, there are certain principles that must be taken into account. In this scenario, it is recommended that the government follows the Syracuse Principles, which outline the necessary criteria for implementing human rights restrictions. These principles require that any restrictions placed on human rights are in compliance with legal standards, based on evidence, proportionate, and implemented gradually, as stated in the ICCPR.²²

In the Syracuse principles themselves, namely in the 'Limitation Clauses' section, it is explicitly explained that "Whenever a limitation is required in terms of the Covenant to be "necessary," this term implies that the limitation: (a) is based on one of the grounds justifying the limitations recognized by the relevant article of the Covenant; (b) responds to a pressing public or social need; (c) pursues a legitimate aim; and (d) is proportionate to that aim."²³

In order to restrict individuals' rights, certain objective conditions must be met. In the case of the public's right to refuse vaccinations, this right can be limited as it does not conflict with any article in the ICCPR. Furthermore, this restriction is deemed a "social need" due to the fact that COVID-19 is

²⁰ Article 29 Universal Declaration of Human Rights (UDHR)

²¹ Article 12 paragraph 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)

²² KW Todrys, E. Howe, and JJ, " *Failing Syracuse: governments' obligations to find the least restrictive*

options for tuberculosis control ", Public Health Action, Volume 3, Number 1, 2013.

²³ Syracuse Principle on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, Limitation Clauses, p. 6.

not only an individual concern, but a matter of public interest. Unlike smallpox, which is less contagious, mere contact with COVID-19 can transmit the virus. Therefore, the right to refuse vaccinations can be restricted to serve the greater good.

Moreover, this restriction on the right to refuse vaccinations is considered legitimate and legal if the rules are enforced by the Philippine government in writing or announced publicly. This fulfills the third criterion of "pursuing a legitimate aim", as stated by the President in a speech.

Finally, it is crucial that this restriction on the community's right to refuse vaccinations remains proportional in order to prevent it from infringing upon other fundamental rights such as freedom of expression and the right to life.

In addition, in ICCPR General Comments No. 37 on the right of peaceful assembly, in paragraph 45, states in essence that "*The protection of "public health" may exceptionally permit restrictions to be imposed. One for example where there is an outbreak of an infectious disease and gatherings are dangerous. This may in extreme cases also be applicable where the sanitary situation during an assembly presents a substantial health risk to the general public or to the participants themselves.*".²⁴ This shows that there is always resistance for human rights not to be implemented when it comes to the safety of the people themselves. Even in that statement, one specific example is given, namely the existence of a virus or an infectious disease. This allows for the limitation or limitation of human rights.

From a logical standpoint, the prevalence of infectious diseases, epidemics, viruses, and other health concerns has made them a matter of public safety rather than individual issues. As such, it is within the authority of governments to limit the right of citizens to choose whether to be vaccinated or not. Obliging vaccines for the public is well within the government's purview, and sanctions may be imposed should the

community refuse to comply. The President of the Philippines has stated that Filipinos who refuse COVID-19 vaccinations may face arrest and deportation if they do not cooperate with efforts to end the public health emergency. In 2021, President Rodrigo Duterte even warned that local officials would be penalized for failing to meet the country's COVID-19 vaccination targets.²⁵

In cases where public health and the prevention of COVID-19 is at stake, it may be permissible to impose limitations on individual rights, provided that such action is taken in good faith and complies with existing legal principles. When imposing such limitations, governments are bound to adhere to the Siracusa Principles, which outline the conditions under which human rights restrictions can be justified. One such condition is the principle of proportionality, which requires that restrictions be balanced against the rights being limited. Additionally, restrictions should be implemented gradually, in stages, to ensure that they are proportionate to the situation at hand.

F. COMPARISON WITH PANDEMIC CASES THAT HAVE BEEN PASSED

Throughout the course of human history, infectious diseases have plagued people for centuries, as evidenced by the lengthy history of the plague. Research has revealed that infectious diseases have been present since prehistoric times. However, as humans lived simply, nomadically, and in small groups, diseases did not become epidemics as the chance of transmission from one group to another was minimal.

As humans settled and built communities, infectious diseases became a larger concern. The spread of diseases was facilitated by empire building, commerce, and war. There have been at least seventeen pandemics throughout human history, several of which will be specifically discussed in this text. Moreover, policies for receiving vaccines during epidemics will be addressed.:

²⁴ General comment No. 37 (2020) on the right of peaceful assembly (article 21), Paragraph 45.

²⁵ Republika.co.id, "Duterte Threatens Officials to Law If Vaccinations for COVID-19 Are Slow" on June 30, 2022.

1. The Case of the Plague in Athens, Greece 430 BC

The Plague in Athens, is the oldest outbreak of a pandemic in history. The plague occurred in Athens, Greece in 430 BC when the Greek population was involved in the Peloponnesian War. The Peloponnesian War involved Athenian forces fighting the Peloponnesian League. The Peloponnesian War which is thought to have started in Ethiopia and broke out in Athens, just as the Spartans surrounded it. Two thirds of the population died. In the History of the Peloponnesian War (431 BC), Thucydides wrote, *"A plague so severe and deadly, doctors who did not care about it were not only helpless, but they died the fastest because they had the most contact with the sick. In overcrowded Athens, the disease killed about 25% of the population"*.

The plague pandemic had a significant impact on the people of Athens, even causing a decrease in their adherence to religious rules and beliefs.²⁶ However, since there was no vaccine implemented during this pandemic, the authors are unable to make significant comparisons with past cases.

2. The Case of the 1492 Smallpox Plague

The smallpox pandemic is the topic of discussion in this text. The outbreak of smallpox happened when Europeans visited the Americas in 1492. This disease caused the death of around 90 percent of the population living in America at that time. The epidemic indirectly encouraged Europeans to colonize the American continent. Although not clear where the smallpox outbreak started, experts date the disease back to the Egyptian Empire in the 3rd century BC, with evidence of rashes found on mummies. A plague similar to smallpox was also discovered in China in the 4th century AD. Fortunately, this disease

has been eradicated since 1979 with the discovery of a vaccine.

For centuries, smallpox ravaged Europe, Asia, and the Arab world as a highly contagious and lethal disease. Three out of every ten infected people would perish, while the remaining survivors would be left with severe scarring. European explorers brought this devastating illness to the Americas, where the native populations had no defense against it, leading to the deaths of tens of millions in Mexico and the United States alone.

In the seventeenth century, Chinese physicians developed a method of administering smallpox by blowing the virus into a person's nose. This approach resulted in milder symptoms and eventually provided immunity to the body. The technique spread to Europe and America, where it became common to rub infected objects onto the skin.²⁷

In the 18th century, a technique to lessen the severity of smallpox symptoms gained popularity around the world. This method was originally developed by Chinese healers and caught the attention of leaders from various countries. For example, during the American Revolutionary War in 1777, General George Washington required his soldiers to receive smallpox inoculation to stop the spread of the disease.

Over time, this inoculation technique advanced into a more sophisticated vaccination method. In 1796, an English physician named Edward Jenner created the smallpox vaccine. He used weakened smallpox virus powder, which was known to infect cattle. This groundbreaking discovery was a significant milestone in medical history and paved the way for preventing smallpox.

The successful research findings indicate that drinking milk from a smallpox-

²⁶ Ridhoi, MA (2020). History of Pandemics and Epidemics in the World that Triggered Political Upheaval. Katadata.Co.Id.

²⁷ BBC News Indonesia, "The History of Vaccine Obligation and Rejection of It: "Not something new" since the 17th

century Chinese physicians, the American Revolutionary War to Covid-19". Accessed from <https://www.bbc.com/indonesia/vert-fut-60366277> on 3 July 2023.

infected cow can provide immunity against the disease.²⁸ Initially, the smallpox vaccine was developed using exudate and secretions from cows afflicted with the disease. The vaccine was then trialed on 8-year-old boys. Edward Jenner's groundbreaking discovery was later built upon by Louis Pasteur, who applied it to the prevention of rabies. Their achievements were so significant that the government passed a law in the 19th century making vaccines mandatory. Thanks to biotechnology, the medical field has been revolutionized and has proven effective in preventing illnesses like polio and measles.²⁹

The origins of vaccination can be traced back to 1796, when healthcare professionals in the United Kingdom first began administering smallpox vaccines. Despite their efforts, many parents were initially hesitant to vaccinate their children, leading to some families hiding in chimneys to avoid the process. Eventually, the ruler of Lucca and Piombino in Italy, Elisa Bonaparte, made vaccination mandatory for newborns and adults. This policy was later adopted in England and Wales with the introduction of the Compulsory Vaccination Regulations, which required infants to receive smallpox vaccines.

The vaccination initiative was continuously carried out to contain the spread of a dangerous disease in the 1980s. The main goal of immunization was to protect children's health, achieve group immunity, and gain parents' acceptance. The immunization implementation reached a high rate of 97%. According to the World Health Organization, if a large number of people in a community are vaccinated, it is difficult for the pathogen to circulate since most people become immune.

Smallpox was the first epidemic virus to have a vaccine, and it took several

centuries to eradicate it. Finally, in the 1980s, the World Health Organization declared smallpox to be eradicated from the face of the earth. The mandatory vaccination policy for smallpox ended in England in 1947, and the trend of vaccination shifted towards optional vaccinations such as diphtheria. These optional vaccinations were mainly focused on education and persuasion.

3. The Case of the 1961 Cholera Outbreak

The next pandemic that has a vaccine is the cholera pandemic. Cholera is a pandemic that appeared around 1961 and is thought to have originated in the J district of Jessore, India. The World Health Agency, namely the World Health Organization (WHO), gave the name "the forgotten pandemic". The first of seven similar outbreaks of cholera that occurred in about 150 years first appeared in 1817. The disease killed 1 million Russians. At the start of the diagnosis, it was known that people with cholera came from an intestinal infection through the disposal of faeces, which were suspected to be contaminated through water and food consumed by cholera bacteria that infected British troops who were on duty in India at that time, this bacteria managed to kill millions of people. Through the British Navy, these bacteria were transported and then developed in other countries, such as African countries, Spain, Italy, Germany, America, China, Japan and Indonesia.

Cholera has infected nearly 4 million people in a matter of years and causes the death of around 21,000 to 143,000 people each year. The main cause of this disease comes from food or water contaminated with bacteria, so this outbreak is vulnerable to countries with poor populations. From 1852 to 1860, a cholera epidemic quickly spread throughout Asia, Europe, America,

²⁸ Kompas.com, "Smallpox Vaccine, The First Successful Vaccine", accessed via <https://www.kompas.com/skola/read/2020/03/22/080000369/vaksin-cacar-vaksin-pertama-yang-berhasil?page=all#:~:text=The%20smallpox vaccine%20 was later developed%20%20by,UK%20and%20proven%20more%20safe> . On July 3, 2023.

²⁹ Narrative Review: Methods for Analyzing Safe and Halal Vaccine Products Based on 66 Biotechnology Perspectives IJMA: International Journal Mathla'ul Anwar of Halal Issues, Volume 1 Number 1 -March 202

and Africa, causing the death of around 1 million people. In the early 19th century, cholera swept through England, killing tens of thousands of people. Doctor John Snow realized that the disease came from drinking water and convinced the local government to change the Broad Street water source. Cholera infections were reduced immediately. However, cholera is still an infectious disease in other countries due to limited access to clean water. A successful cholera vaccine was made in 1885, but the outbreak continued.

Although some vaccines, such as polio, were initially popular, there is a visible pattern in society. The public will be familiar with government policies in their country in determining or giving them obligations to receive a vaccine for a period that has been determined by the government. The United States has had mandatory vaccination regulations since the 1970s. Then Italy required vaccination for children against several pathogens, for example, vaccination against hepatitis B, diphtheria, pertussis, poliovirus, tetanus, *Haemophilus influenzae* type b, measles, mumps, rubella and varicella.

This is in line with the opinion of Lee Hampton, who is a Gavi paediatrician and epidemiologist at Vaccine Alliance. Hampton said that the mandate in making the mandatory vaccination policy was not really a problem; over time, there would be changes, namely regarding the changing context of what was the real reason for making the obligation so that the regulation could be issued. This pattern is very visible; one of the examples that can be seen is in vaccination mandates such as vaccines for hepatitis B, anthrax, and, of course, now COVID-19. Vaccinations in some countries are also now required as a condition for school enrollment (such as complete basic immunization in schools in Indonesia). Internal organ transplants, which are usually done in some places in the UK,

require kidney transplants, and in one extreme case in Italy, it is a case aimed at retaining child custody. Punishments for those who do not want to vaccinate are usually educational or financial in nature.

According to Hampton, vaccine liability is also typically more common in high-income countries. There is also a link between style or method within a government, whereby "the more authoritarian the government, the more likely there will be mandatory vaccinations". As an example, that illustrates this is the Gambia, West Africa. The State of The Gambia made child immunization mandatory in 2007, during a defined period of authoritarian rule. However, mandatory vaccines are also commonly applied to democratic countries in emergencies, usually carried out at times of high importance, such as a pandemic in New York, states in the United States at that time implemented mandatory flu vaccines for medical workers during a pandemic. flu that broke out in 2009.³⁰

G. CONCLUSION

After analyzing the distribution of the COVID-19 vaccine to civilians in the Philippines, it can be concluded that mandating citizens to receive the vaccine is within the government's authority for the sake of public safety. However, this mandate is considered a limitation of individual rights as it takes away the freedom to choose. When implementing this mandate, the government must adhere to legal principles, like the Siracusa Principles.

The government also has the right to impose sanctions on those who refuse to comply. However, the communication of this mandate to the public, particularly by President Rodrigo Duterte, has been unclear and lacking in socialization. As a result, the Filipino people have developed a negative perception. Additionally, the government's visa-free policy for foreign tourists and their exemption from quarantine measures may aim

³⁰ BBC News Indonesia, "The History of Vaccine Obligation and Rejection of It: "Not something new" since the 17th century Chinese physicians, the American Revolutionary

War to Covid-19". Accessed from <https://www.bbc.com/indonesia/vert-fut-60366277> on 3 July 2023

to revive the economy, but it is not implemented in a socialist and humanist manner. This has left many Filipinos feeling mistreated by their own government.

As we reflect on past pandemics, it is clear that vaccine mandates have been implemented since the creation of the first smallpox vaccine. Some nations have even enforced compulsory vaccination legislation. Nonetheless, it is important to note that these mandates are not permanent. In England, for example, smallpox vaccination ceased in 1947 and the focus shifted towards encouraging optional vaccinations through education and persuasion, such as diphtheria shots.

The authors suggest that the Philippines government may need to consider mandating vaccines and even permitting foreign tourists to enter the country. However, there are several vital factors to take into account. The government must periodically provide information related to the spread of COVID-19 to the public.

1. The distribution of vaccines should be reported widely and accompanied by persuasive invitations. This can include information about the benefits of being vaccinated and access to public facilities.
2. Invitations for vaccination should be inviting and not intimidating, with a focus on engaging people. In case of hesitation, the government can consider implementing administrative sanctions instead of arresting individuals as the primary punishment. It is crucial to prioritize non-coercive measures that encourage vaccination uptake amongst the public.
3. Foreign tourists must receive the same treatment as the public in terms of ease of mobilization. Even if necessary, foreign tourists need to be screened again, and access to tourism should not be opened on a large scale.
4. The rules regarding mandatory vaccines must be disseminated massively to the public.

The authors express their hope that the COVID-19 pandemic will soon come to an end worldwide, including in the Philippines, and

people can resume their everyday activities. Furthermore, the authors hope that the government and law enforcement officials work together to implement regulations related to vaccination or other policies aimed at curbing the spread of COVID-19.

As of the time this article was published, COVID-19 was almost subsiding and had entered its final phase around the world. The authors of this paper hope that it can be used as an evaluation material to anticipate policies in future pandemic cases. Although it is uncertain what will happen in the future, by preparing in advance, we can minimize the negative effects that arise, and the government can continue to protect its people, including their human rights.

REFERENCE

Book

Saut P. Panjaitan. (1998). *Dasar-Dasar Ilmu Hukum (Asas, Pengertian, dan Sistematisa)*, (Palembang: Penerbit Universitas Sriwijaya, 1998),

Journal

Kristin, Debby and Dewi, Chloryne Trie Isana. (2021). "The Rights of Children Refugee in Transit Country under the CRC, A Case of Indonesia: An Intended Negligence on the Implementation of Non-Discrimination Principle?", *Padjadjaran Journal of International Law*, Volume. 5 Number. 1.

Iryana, Fivi Fajar and Leksono, Handojo. (2018). "Analisis Kebijakan Presiden Duterte Melakukan Extrajudicial Killing Dalam Memberantas Narkoba di Filipina Berdasarkan Statuta Roma 1998", *Belli ac Pacis*. Vol. 4. No.1.

Rachmadi, Triyo. (2021) "Protection of Healthcare Workers' Rights to Refuse the COVID-19 Vaccination in Kebumen District", Volume 3, Issue 2.

K. W. Todrys, E. Howe, and J. J. (2013). "Failing Siracusa: governments' obligations to find the least restrictive options for tuberculosis control", *Public Health Action*, Volume 3, Number 1.

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Rules

International Covenant on Economic, Social and Cultural Rights (ICESCR)

Universal Declaration of Human Rights (UDHR)

International Covenant on Civil and Political Rights (ICCPR)

Siracusa Principle on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights

Websites

Andre Bagas Saputra, "Vaksinasi COVID-19 Hak atau Kewajiban?", <https://law.uii.ac.id/blog/2021/09/06/vaksinasi-covid-19-hak-atau-kewajiban/> accessed on 30th June 2022.

General comment No. 37 (2020) on the right of peaceful assembly (article 21), Paragraph 45.

Republika.co.id, "Duterte Ancam Hukum Pejabat Jika Vaksinasi COVID-19 Lambat" <https://www.republika.co.id/berita/r1zrx0459/duterte-ancam-hukum-pejabat-jika-vaksinasi-covid19-lambat> accessed on 30 June 2022.

Global Health, "Duterte Threatens To Arrest Filipinos Who Refuse Vaccination", <https://www.npr.org/2021/06/22/1009038842/duterte-threatens-to-arrest-filipinos-who-refuse-vaccination> accessed on 30th June 2022.

HIStory.com, "Pandemics That Changed History" <https://www.history.com/topics/middle-ages/pandemics-timeline> accessed on 28th June 2023

Independent, "Philippines lifts ban on foreign tourists as outbreak eases", [https://www.independent.co.uk/asia/southeast-asia/philippines-tourists-](https://www.independent.co.uk/asia/southeast-asia/philippines-tourists-covid-omicron-cases-b2002764.html)

[covid-omicron-cases-b2002764.html](https://www.independent.co.uk/asia/southeast-asia/philippines-tourists-covid-omicron-cases-b2002764.html) accessed on 30th June 2022.

Kompas.com, "Vaksin Cacar, Vaksin Pertama yang Berhasil", diakses melalui <https://www.kompas.com/skola/read/2020/03/22/080000369/vaksin-cacar-vaksin-pertama-yang-berhasil?page=all#:~:text=Vaksin%20cacar%20kemudian%20dikembangkan%20oleh,Inggris%20dan%20terbukti%20lebih%20aman>. Accessed on 3rd July 2023.

BBC News Indonesia, "Sejarah Kewajiban Vaksin dan Penolakan Terhadapnya: "Bukan sesuatu yang baru" sejak tabib China abad ke-17, Perang Revolusi Amerika hingga Covid-19". <https://www.bbc.com/indonesia/vert-fut-60366277> accessed on 3th July 2023

Office of the United Nations High Commissioner for Human Rights (OCHR), "International Law", <https://www.ohchr.org/en/professionalinterest/pages/internationallaw.aspx>. Accessed on 30 June 2022.

Ridhoi, M. A. (2020). Sejarah Pandemi dan Epidemi di Dunia yang Memicu Gejolak Politik. Katadata.Co.Id.

HIStory.com, "Pandemics That Changed History" <https://www.history.com/topics/middle-ages/pandemics-timeline> accessed on 28th June 2023.

Republika.co.id, "Duterte Ancam Hukum Pejabat Jika Vaksinasi COVID-19 Lambat" <https://www.republika.co.id/berita/r1zrx0459/duterte-ancam-hukum-pejabat-jika-vaksinasi-covid19-lambat> accessed on 30th June 2022.