



# HUMAN RIGHTS OBLIGATIONS IN MASS VACCINATION CAMPAIGNS FOR CHILDREN

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## BACKGROUND

Vaccination campaigns that aim to protect populations from major infectious diseases are critical to realizing individual and community enjoyment of the right to health. However, human rights, including the right to health, concern not just aims but also processes. As with other medical interventions, a failure to implement the proper safeguards in mass vaccination campaigns can threaten human rights and impede effectiveness. This document sets out the relevant human rights standards applicable to mass vaccination campaigns for children.

The standards detailed below address:

- 1) **Informed consent**,
- 2) **Duties of care and remedy**, and
- 3) **Duties of various actors**, including states and international organizations

## INFORMED CONSENT

A human rights-compliant mass vaccination campaign **respects and protects the right of individuals to give informed consent and make voluntary medical decisions.**

- The **right to the highest attainable standard of health**<sup>i</sup> requires informed consent to medical procedures and includes the right to refuse treatment.<sup>ii</sup>
- The **right to informed consent** is required to fulfill several other human rights critical to bodily integrity, including: the right to security of person, the right to privacy, the right to have one's inherent dignity respected,<sup>iii</sup> the right to be free from torture and other cruel, inhuman, or degrading treatment,<sup>iv</sup> and the rights to access information<sup>v</sup> and expression<sup>vi</sup> in the medical context.

### *Protecting a patient's rights to informed consent requires health professionals to:*<sup>vii</sup>

1. **Obtain** and **document** informed consent before conducting any medical procedure.
2. **Provide information** on the medical procedure, including benefits, risks, and alternatives.
3. **Prevent possible coercion** or undue influence on patient's decision-making
4. Take steps to **limit influencing the patient** due to the power imbalance between patient and health care professional
5. **Respect voluntary patient decisions** even if they conflict with professional advice.

*Note: even in public emergencies, the right to informed consent must be respected, and the government may only interfere with this right in extreme circumstances.*<sup>viii</sup>

### Informed Consent for Children

To guarantee respect for children's right to informed consent in medical interventions such as vaccination, the Committee on the Rights of the Child<sup>ix</sup> has outlined the following rights:

- ❖ Child's **right to consent**
  - ◆ States and medical professionals must respect the capacity of each child to provide informed consent regardless of their age.
  - ◆ Although states may set the age of consent at a fixed age, they should ensure that consideration is given to the view of children below the fixed age of consent to who have capacity to express informed opinions on medical treatments.<sup>x</sup>
  - ◆ Where medical professionals believe that an individual child may not have the capacity to consent to medical treatment, they must prove that

incapacity in an individualized determination.<sup>xi</sup>

- ❖ Child's **right to have their views heard**
  - ◆ Health professionals must have “respect for the child’s right to express his or her views,” which is required regardless of capacity of consent.<sup>xii</sup>
  
- ❖ Child's **right to have their best interest taken as primary consideration**
  - ◆ States, parents, caregivers, and medical professionals should protect and act in accordance with a child’s best interests.<sup>xiii</sup>
  - ◆ Only if the intervention is in the best interest of the child should medical professionals administer a vaccine.
  
- ❖ Child's **right to receive appropriate and accessible information**
  - ◆ States and health services should make information easily understandable to both children and caregivers.<sup>xiv</sup>
  - ◆ Information and services should be child-friendly, in physically accessible format, and available in the appropriate languages for its audience.<sup>xv</sup>

*Note: Informed consent requires respect for legal capacity, which is “generally determined by the ability to comprehend, retain, believe and weigh information provided in arriving at a decision.”<sup>xvi</sup>*

## DUTIES OF CARE AND REMEDY

### *Duties of care:*

In addition to informed consent, the right to health requires the provision of health services that meet the following criteria: *availability, accessibility, acceptability, and quality.*<sup>xvii</sup>

In the immunization context, States must:

- ❖ **Maintain proper cold storage.** Delivery of “quality” health services requires proper maintenance of cold storage facilities: “medicines be maintained at the required temperature and according to labeling requirements, and stored in clean, dry, and well-sanitized areas.”<sup>xviii</sup>
- ❖ **Monitor adverse reactions to vaccines.**<sup>xix</sup>
- ❖ **Train health personnel.** States have an obligation to provide training for health personnel who administer treatments.<sup>xx</sup>
- ❖ **Provide follow-up care.**<sup>xxi</sup>

### *Duty to provide adequate remedy for harms*

The Convention on the Rights of the Child guarantees the right to an adequate remedy for harms suffered. States must:

- ❖ Provide “appropriate reparation, including compensation.”<sup>xxii</sup>
- ❖ Remedies and procedures should be child sensitive, effective, and supportive of child participation.
- ❖ Domestic law should be sufficiently detailed to provide effective remedies.<sup>xxiii</sup>

## DUTIES OF VARIOUS ACTORS

### *States*

- ❖ Duty to ***respect, protect, and fulfill*** the right to the highest attainable standard of health<sup>xxiv</sup>
  - ◆ **Respect**: states **must not**:
    - market unsafe drugs
    - coercively apply medical treatments
    - censor or withhold health-related information; and
    - prevent people's participation in health-related matters
  - ◆ **Protect**: states have a duty to:
    - Control marketing of medical equipment and medicines by third parties
    - Ensure medical practitioners and other health professionals meet appropriate standards of education, skills, and ethical conduct.
    - Prevent third parties from limiting access to health-related information
  - ◆ **Fulfill**: states have a duty to:
    - Ensure appropriate training of doctors and other medical professionals
    - Ensure provision of health services that are culturally appropriate
    - Ensure that health-care staff are trained to recognize and respond to the specific needs of vulnerable or marginalized groups
    - Support people in making informed choices about their health
- ❖ Duty to ***enact legislation to train and to hold accountable*** medical professionals<sup>xxv</sup>

*Note: participation by affected communities and empowerment of rights-holders are key elements of a human rights-based approach. Participation should be long-term, sustained engagement—not token participation or mere consultation.*<sup>xxvi</sup>

### *Health Care Professionals*<sup>xxvii</sup>

- ❖ All health care providers, including those unaffiliated with the state, must apply the rights of the child to the design, implementation, and evaluation of their programs.
- ❖ Health care providers must act in compliance with the rights of the child and ensure compliance by any partners who deliver services of their behalf.

### *International Organizations (IOs)*

- ❖ IOs have a responsibility to respect human rights, as outlined in the International Law Commission's Articles on Responsibilities of International Organizations.<sup>xxviii</sup>
- ❖ IOs are internationally responsible for any "internationally wrongful act."<sup>xxix</sup>
- ❖ IOs are in breach of their international obligations if they:
  - Fail to act in conformity with international obligations, including those they hold toward their own members under their own rules
  - Assist a state or another IO in committing an international wrongful act or acts with knowledge of the circumstances of the wrongful act
  - Direct and control or else coerces a state or another IO in the commission of an internationally wrongful act
- ❖ When an IO commits an internationally wrongful act, it owes full reparations for any material or moral damage caused, in the form of restitution, compensation, or satisfaction.

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<sup>i</sup> Comm. on Econ., Soc. & Cultural Rights (“ESCR Committee”), General Comment No. 14 (2000), ¶ 1.

<sup>ii</sup> Anand Grover, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, ¶ 28 (Aug. 10, 2009) (“The right to consent to treatment also includes the right to refuse treatment, regardless of a procedure’s advisability.”).

<sup>iii</sup> International Covenant on Civil and Political Rights (“ICCPR”) pmb.; International Covenant on Economic, Social, and Cultural Rights (“ICESCR”) pmb.; Convention on the Rights of the Child (“CRC”) pmb.; African Charter on Human and Peoples’ Rights pmb., art. 5; African Charter on the Rights and Welfare of the Child pmb.

<sup>iv</sup> ICCPR art. 17; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”) art. 16; CRC art. 37; Juan E. Méndez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment* (Feb. 1, 2013); African Charter on Human and Peoples’ Rights pmb., art. 5; African Charter on the Rights and Welfare of the Child art. 16.

<sup>v</sup> ICESCR art. 12; ESCR Committee, General Comment No. 14, ¶ 12 (Aug. 11, 2000); CRC arts. 13, 17, & 24; *see* Comm. on the Rights of the Child (“CRC Committee”), General Comment No. 3 (Mar. 17, 2003); CRC Committee, General Comment No. 4 (July 1, 2003); CRC Committee, General Comment No. 12 (July 20, 2009); CRC Committee, General Comment No. 14 (May 29, 2013); CRC Committee, General Comment No. 15 (Apr. 17, 2013) interpreting right to access information under the CRC; African Charter on Human and Peoples’ Rights art. 9.

<sup>vi</sup> International Covenant on Civil and Political Rights art. 19; Convention on the Rights of the Child art. 12; *see* Comm. on the Rights of the Child, General Comment No. 3 (Mar. 17, 2003); Comm. on the Rights of the Child, General Comment No. 4 (July 1, 2003); Comm. on the Rights of the Child, General Comment No. 12 (2009) (July 20, 2009); Comm. on the Rights of the Child, General Comment No. 14 (May 29, 2013); Comm. on the Rights of the Child, General Comment No. 15 (2013) (Apr. 17, 2013) on the right to expression under the Convention; African Charter on Human and Peoples’ Rights art. 9; African Charter on the Rights and Welfare of the Child art. 7.

<sup>vii</sup> Anand Grover (Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health), *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, ¶ 10, (Aug. 10, 2009).

<sup>viii</sup> *See generally*, United Nations Econ. & Soc. Council, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, ¶ 25 (Sept. 28, 1984). The European Court has found that involuntary medical interferences are only necessary if the “public interest of protecting the health of the population” outweighs the “applicant’s personal integrity.” *Solomakhin v. Ukraine*, Application no.24429/03, Eur. Ct. H.R., para. 36 (2012).

<sup>ix</sup> The treaty monitoring body for the Convention on the Rights of the Child.

<sup>x</sup> CRC Committee, General Comment No. 12 (2009) ¶ 102.

<sup>xi</sup> Juan E. Méndez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, ¶ 27 (Feb. 1, 2013) (“Capacity is a rebuttable presumption; therefore, ‘incapacity’ has to be proven before a person can be designated as incapable of making decisions. Once a determination of incapacity is made, the person’s expressed choices cease to be treated meaningfully.”).

<sup>xii</sup> CRC Committee, General Comment No. 12 (2009), ¶ 98. *See also* Convention on the Rights of the Child, art. 12.

<sup>xiii</sup> CRC Committee, General Comment No. 15 (2013), ¶ 19 (Apr. 17, 2013).

<sup>xiv</sup> *Id.* at ¶ 114(d).

<sup>xv</sup> *Id.* at ¶ 58, 114(d).

<sup>xvi</sup> Anand Grover, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, ¶ 10 (Aug. 10, 2009).

<sup>xvii</sup> ESCR Committee, General Comment No. 14, ¶ 12 (Aug. 11, 2000).

<sup>xviii</sup> Anand Grover, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, Anand Grover, *on access to medicines*, ¶ 55 (May 1, 2013).

<sup>xix</sup> CRC Committee, General Comment No. 15, ¶ 116 (Apr. 17, 2013).

<sup>xx</sup> ESCR Committee, General Comment No. 14, ¶ 44(e) (Aug. 11, 2000).

<sup>xxi</sup> *See Alyne v. Brazil*, where the Committee on the Elimination of Discrimination against Women (CEDAW Committee) found that failing to provide proper care without excessive delay after victim delivered a stillborn fetus was a violation of the victim’s right to health. Although no cases explicitly link post-immunization health care for children, the ESCR Committee has grouped together “maternal and child health care” as a comparable obligation to the core obligation to provide health services. The duty to provide child health care would presumably contain similar requirements for follow-up care.

<sup>xxii</sup> The state should also provide “where needed, measures to promote physical and psychological recovery, rehabilitation, and reintegration, as required by article 39 [of the Convention].” CRC Committee, General Comment no. 5, ¶ 24 (Nov. 27, 2003).

<sup>xxiii</sup> *Id.*

<sup>xxiv</sup> ESCR Committee, General Comment No. 14, ¶¶ 34-37 (Aug. 11, 2000).

<sup>xxv</sup> States responsible for ensuring that government authorities as well as service providers are “held accountable for maintaining the highest possible standards of children’s health and health care until they reach 18 years of age.” CRC Committee, General Comment No. 15 ¶ 90, (Apr. 17, 2013).

<sup>xxvi</sup> World Health Organization, High-Level Working Group on the Health and Human Rights of Women, Children and Adolescents, *Leading the realization of human rights to health and through health: report of the High-Level Working Group on the Health and Human Rights of Women, Children and Adolescents* 41-42 (2017) (“To enable people to demand their rights, their participation must involve more than mere consultation: there must be continuing dialogue between duty-bearers and rights-holders about their concerns and demands... True participation also requires that practical steps be taken to make authorities accountable for commitments made, including provision for remedies and redress when commitments are not met.”).

<sup>xxvii</sup> CRC Committee, General Comment No. 15 ¶ 77 (Apr. 17, 2013).

<sup>xxviii</sup> G.A. Res 66/100, Responsibility of international organizations (Dec. 9, 2011).

<sup>xxix</sup> Defined as an action or omission “attributable to that organization under international law” and “[c]onstitutes a breach of an international obligation of that organization.” G.A. Res 66/100, Responsibility of international organizations, art. 4 (Dec. 9, 2011). Only rarely has the International Law Commission allowed for exceptions to the obligations outlined above, on the basis of necessity.