

# COVID-19 child vaccinations: Promoting children's right to equality, education, food and health

Z Sujee, LLM; S Ndlela, LLM

SECTION27, Johannesburg, South Africa

**Corresponding author:** Z Sujee (zeenat@section27.org.za)

The pandemic has adversely impacted children. The vaccine roll-out to children aged 12 - 17 years is important to curb the spread of the virus and allow children to revert to some form of normality. Children's rights to equality, education, health and food have been impeded during the pandemic. However, there is a persistent hesitancy towards the vaccine roll-out. This is apparent from a case before the High Court in Pretoria, in the pending matter between the African Christian Democratic Party and others v The Minister of the National Department of Health: Dr M Phaahla and Others. SECTION27's intervention as *amicus curiae* highlights the importance of vaccines, and provides evidence to illustrate the adverse impact of the pandemic on learners' rights to equality, education, food and health. Further, the evidence illustrates the inequalities that exist among learners.

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The impact of COVID-19 continues to be felt throughout the world. With the constantly mutating virus and the Omicron variant now upon us, the vaccine is the only path to obtain a semblance of normality. Following the South African Health Products Regulatory Authority (SAHPRA)'s approval of the Pfizer vaccine for use in children between the ages of 12 and 17 years, the Minister of Health announced the National Department of Health (NDoH)'s decision to roll out the vaccine to this age cohort. Despite calls from scientists, the World Health Organization and the state, there is still resistance in some quarters to the roll-out of vaccines to children. The organised resistance includes an internal appeal against SAHPRA's decision to approve the use of the vaccine between children of this age group, and an urgent court application to prevent the NDoH's roll-out of the vaccine to this age cohort.

## The ACDP's argument: The risk of possible side-effects outweighs the benefit of protection from COVID-19

The African Christian Democratic Party (ACDP), Free the Children – Save the Nation NPC, Caring Healthcare Workers Coalition and COVID Care Alliance (the applicants) recently brought a case against the Minister of Health, the Acting Director-General of Health and SAHPRA. The applicants seek to interdict the NDoH from rolling-out the Pfizer vaccine to 12 - 17-year-olds on the basis that it threatens children's best interests and their Constitutional right to bodily integrity. The applicants have relied on the expert evidence of two scientists in the USA and UK who submit that the vaccine would carry a high potential risk of myocarditis in children, and that there is only a small chance of children being infected, suffering serious illness or dying as a result of COVID-19. The applicants further argue that the benefits to children of taking the vaccine are outweighed by the harms that could be occasioned by it. In the circumstances, they conclude that because there is minimal if any benefit to children taking the vaccine, the

vaccination programme is essentially using children as shields for the protection of adults.

## Government's response: The vaccine is safe and works to protect children

The application is being opposed by the Minister of Health and the Acting Director-General of Health and SAHPRA. The Department of Health argues that children's rights are promoted and protected by the roll-out of the vaccine. The department has refuted the applicants' allegations and, supported by the expert evidence of world-renowned Prof. Salim Abdool Karim, it provides an in-depth analysis of the advantages of the vaccine to children, and the rare possibility of myocarditis occurring (in fact, there is more risk of myocarditis from COVID-19 than from the vaccine). The department has also argued that its decision to roll out the vaccine to children between the ages of 12 and 17 years is based on, among other factors, the recently released National Institute of Communicable Diseases (NICD)'s 'COVID-19 in children surveillance report' that showed an increased rate of persons aged <19 years being infected with, hospitalised for and dying as a result of COVID-19.

SAHPRA argues that it approved the vaccine for use on the basis of its safety, quality and efficacy. The approval followed a rigorous process of investigation and research in which the potential side-effects of the vaccine were considered. SAHPRA notes that the vaccine may cause blood-clotting, myocarditis, pericarditis and neurological conditions, but this is rare and treatable. The side-effects must, however, be compared with the unpredictable impact of COVID-19 on one's body, and the possibility of severe illness and death.

## SECTION27's intervention: A rights-based approach

SECTION27 has made an application to intervene in the proceedings as an *amicus curiae*, a friend of the court, to provide evidence

illustrating the COVID-19 pandemic's adverse socioeconomic impact on children, particularly those who are already disadvantaged. With the assistance of Prof. Tom Moultrie (director of the Centre for Actuarial Research), Dr Sara Muller (Centre for Education Rights and Transformation) and Dr Shaheda Omar (director of the Teddy Bear Clinic), SECTION27 advances a rights-based argument that the roll-out of the vaccine protects and promotes children's Constitutional rights, specifically their rights to equality, basic education, basic food and health. The arguments in respect of these rights are set out below.

Section 29(1)(a) of the SA Constitution<sup>[1]</sup> provides for everyone's right to basic education. Over the 20 months since the beginning of the pandemic, the basic education sector has been hard hit. In 2020, at least 60% of the education year was lost as a result of the disruptions caused by the closure of schools and rotational learning. The roll-out of vaccines to children between the ages of 12 and 17 will promote this right by helping to prevent further losses in learning. The evidence that SECTION27 will place before the court will include evidence of the overcrowded and under-resourced state of schools that make it difficult for social distancing measures to be adhered to, and therefore necessitate rotational learning that leads to loss of learning. In the circumstances, the roll-out of the vaccine would mitigate the risks that are associated with children's physical attendance, and allow for less learning time to be lost.

The roll-out of vaccinations to children aged 12 - 17 would allow for learners to return to schools to access sufficient food and basic nutrition. More than 9 million learners are dependent on the National School Nutrition Programme (NSNP).<sup>[2]</sup> In 2020, the harsh lockdowns impacted the roll-out of the NSNP. SECTION27 and Equal Education Law Centre acted on behalf of Equal Education and two applicant schools who instituted an urgent application requesting that the Department of Basic Education continue with the NSNP roll-out during the pandemic and provide means for learners to have the requisite transport to access the NSNP. The application was successful. The court found that failure to continue with the NSNP roll-out was an infringement of section 27(1)(b) of the Constitution<sup>[1]</sup> regarding the right to sufficient food, and the right to access nutrition in terms of section 28(1)(c). In the judgment, Potterill ADJP stated that the 'continued breach [of Constitutional and statutory duties] by the Minister and MECs [Members of the Executive Council] will leave millions of children hungry through the cold winter and as long as lockdown lasts. Hunger is not an issue of charity, but one of justice.'<sup>[3]</sup>

The right to sufficient food and the right to basic nutrition were not the only infringements endured by learners during the course of the pandemic. As time progressed, with limited school attendance and the absence of opportunities for social development, learners' mental health was adversely affected. As set out in a recently published United Nations Children's Fund (UNICEF) report and in a UNICEF Office of Research – Innocenti report on children's mental health, there are increased levels of depression and anxiety among children as a result of interrupted routines and constant uncertainty brought about by the pandemic.<sup>[4,5]</sup> As SECTION27's expert Dr Shaheda Omar

states in her affidavit, 'many children will continue to remain at risk for as long as they are unable to return to any semblance of a normal life', and that – if vaccinated – they 'are more likely to be able to participate in their normal routines, with less disruptions to school attendance and other activities'.

The pandemic has also affected children's wellbeing. Life in overcrowded settings and abuse at home, inescapable due to school closures, may have contributed to concerning levels of teenage pregnancy. According to figures released by the MEC for Health in Gauteng, more than 20 000 teenage girls gave birth between April 2020 and March 2021.<sup>[6]</sup> Of these, a staggering 934 girls were aged <14 years when they delivered. In addition, 2 976 teenage girls terminated their pregnancies during this same period. Dr Kim Jonas writes in her article 'Teenage pregnancy during COVID-19 in South Africa: A double pandemic' that '[p]regnancies not only have adverse health risks for adolescent mothers and their babies – these problems can persist into the next generation.' This happens, Dr Jonas explains, because 'girls who become pregnant often drop out of school, limiting their future economic opportunities and perpetuating a cycle of poverty.'<sup>[7]</sup>

The adverse impact of COVID-19 on learners is indicative of the poverty and stark inequalities that persist in our society. Ultimately, children living in poverty are most affected, with little to no access to healthcare, food and education. The roll-out of the vaccine to children between the ages of 12 and 17 years presents an opportunity to promote and protect the rights of children in spite of the differential circumstances in which children do and will continue to find themselves. The necessity of the roll-out to this age group appears to be even more compelling as South Africans battle a fourth wave that appears to be dominated by the Omicron variant. Data from the NICD suggest that in contrast to previous waves, the fourth wave has seen the highest rate of child infection thus far. In light of the arguments presented, we hope that the court will endorse the roll-out in the interests of children.

1. Constitution of the Republic of South Africa, 1996.
2. *Equal Education v Minister of Basic Education* 2020 (4) All SA 102 (GP) at para 20.
3. *Equal Education v Minister of Basic Education* 2020 (4) All SA 102 (GP) at para 88.1.
4. United Nations Children's Fund. The state of the world's children 2021 – on my mind: Promoting, protecting and caring for children's mental health. New York: UNICEF, 2021. <https://www.unicef.org/reports/state-worlds-children-2021> (accessed 7 December 2021).
5. United Nations Children's Fund. Office of Research – Innocenti. 'Life in lockdown: Child and adolescent mental health and well-being in the time of COVID-19'. New York: UNICEF, 2021. <https://www.unicef-irc.org/publications/pdf/Life-in-Lockdown.pdf> (accessed 7 December 2021).
6. Mokgethi NE. MEC for Gauteng Department of Health's written response to a request for information made in the Gauteng Provincial Legislature. Pretoria: GDoH, 2021.
7. Jonas K. Teenage pregnancy during COVID-19 in South Africa: A double pandemic. Cape Town: South African Medical Research Council, 2021. <https://www.samrc.ac.za/news/teenage-pregnancy-during-covid-19-south-africa-double-pandemic> (accessed 7 December 2021).

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