



16 November 2020

TO: THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

Department of Cooperative Governance & Traditional Affairs
National Disaster Management Centre
Per email: MandisaMB@cogta.gov.za; pamelas@cogta.gov.za

TO: THE MINISTER OF HEALTH

Department of Health
Per email: georgina.sylvester@health.gov.za

TO: HEAD OF CENTRE: NATIONAL DISASTER MANAGEMENT CENTRE

C/o Dr Mmaphaka Tau
Per e-mail: MmaphakaT@ndmc.gov.za

Dear Honourable Ministers Dr Nkosazana Dlamini-Zuma and Dr Zweli Mkhize,

**DEVELOPMENT OF A PLAN TO ENSURE AFFORDABLE ACCESS TO AND
EQUITABLE ALLOCATION OF COVID-19 VACCINES**

Introduction

1. The Health Justice Initiative¹ (HJI) is a dedicated public health and law initiative addressing the intersection between racial and gender inequality with a special focus on access to life-saving diagnostics, treatment and vaccines.
2. We are writing to you in the public interest and do so in the interests of transparency and accountability. We recognise the efforts of our government in

¹ More information about the HJI can be accessed at: <https://www.healthjusticeinitiative.org.za>

attempting to find an equitable response to the Covid-19 pandemic in South Africa. We appreciate too, the legitimate constraints facing the government in determining a response which is reasonable, scientific and evidence-based.

3. We are, however, concerned about the government's readiness in relation to the access and allocation of Covid-19 vaccines. Such concern is predicated on:
 - 3.1. South Africa's ability to access vaccines — once developed — in light of the predicted pricing, global shortage and high demand which may even require rationing.
 - 3.2. The determination of an equitable allocation of such vaccines within South Africa in light of the dual-nature of our unequal health system and the vast disparities in access to the right to healthcare.
 - 3.3. An incomplete medicine pricing and patent framework where local laws that could benefit vaccine access, affordable pricing and equitable allocation, have not yet been passed.
4. Readiness for the allocation of Covid-19 vaccines necessitates a transparent vaccine plan which aims to secure access to sufficient vaccines and to allocate them nationally in accordance with a fair and equitable framework. To our knowledge, the National Disaster Management Centre (National Centre) is the body statutorily mandated to co-ordinate South Africa's response to disasters. In light of this, and in a constructive and cooperative spirit, we raise several queries concerning the nature and extent to which the National Centre and other institutional role-players, in accordance with their statutory obligations, have developed and/or implemented: (i) guidelines in respect of disaster management plans which concern access to and allocation of vaccines, and (ii) any vaccine access and allocation plans.

Concerns underpinning equitable access to and allocation of vaccines

5. 140 world leaders, including the President of South Africa, have advocated for all Covid-19 diagnostics, treatments, and vaccines to be treated as “public goods” and called for a “people's vaccine” that is free of charge.²
6. The World Health Assembly (WHA) has adopted a resolution that calls for “universal, timely and equitable access to, and fair distribution of, all quality, safe,

² See https://www.unaids.org/en/resources/presscentre/featurestories/2020/may/20200514_covid19-vaccine-open-letter

efficacious and affordable essential health technologies and products”, including vaccines.³

7. Despite this, there are growing concerns around global access to vaccines, with the World Health Organisation (WHO) noting that access will be limited by unprecedentedly high demand and short supply.⁴ According to an analysis⁵ conducted by Oxfam International, 51% of the projected doses it investigated at the time were reserved for high-income countries, despite their representing a much smaller percentage of the global population.
8. It is our understanding that at least four vaccine clinical trials are being conducted in South Africa including the VIDA Trial (AstraZeneca - Oxford Group),⁶ the Ensemble Trial (Johnson & Johnson),⁷ the Novavax Trial,⁸ and the Pfizer-BioNTech Trial.⁹ Despite South Africa’s involvement in these trials, we are unaware of any agreement between any pharmaceutical company and any organ of state which secures enforceable and affordable access to vaccines for people in South Africa.
9. Beyond the difficulties regarding access to and affordability of vaccines, we have further concerns regarding the allocation of vaccines in South Africa, when they become available. In light of the skewed allocation of resources and the inequality of access to healthcare, it is of utmost importance to ensure that vaccines are allocated in accordance with a framework which is equitable, fair and transparent. This is predicated on section 27 of the Constitution¹⁰ and the obligation it places on the state to take reasonable legislative and other measures, within its available resources, to realise the right of access to healthcare.

³ 73rd World Health Assembly, COVID-19 response, 19 May 2020, WHA73.1, paragraph 6, https://apps.who.int/gb/ebwha/pdf_files/WHA73/A73_R1-en.pdf and OP13 of the Omnibus Resolution, Comprehensive and Coordinated Response to the COVID-19 Pandemic adopted at the 75th session with 169 votes in favour and 2 against.

⁴ World Health Organisation, ‘WHO Concept for Fair Access and Equitable Allocation of Covid-19 Health Products’, 9 September 2020 available at: https://www.who.int/docs/default-source/coronaviruse/who-covid19-vaccine-allocation-final-working-version-9sept.pdf?sfvrsn=e1d0376_6&download=true.

⁵ In September 2020, Oxfam International analysed available information on deals made for five of the then nine vaccine candidates that were in the final phase (“phase 3”) of clinical trials at that time.

⁶ Vaccine ChAdOx1 nCoV-19, developed by AstraZeneca and Oxford Group. In South Africa, the trial is conducted by Oxford University, the Bill and Melinda Gates Foundation (BMGF), the University of the Witwatersrand and the South African Medical Research Council (SAMRC).

⁷ Vaccine Ad26.COVS-2 developed by Johnson & Johnson. In South Africa, the trial is being conducted by the SAMRC, the University of the Witwatersrand and Desmond Tutu HIV Foundation. More information is available here: https://www.science20.com/news_staff/ad26cov2s_singleshot_covid19_vaccine_successful_in_rhesus_macaques-249704.

⁸ Vaccine NVX-CoV2373 developed by Novavax. In South Africa the trial is being conducted by the SAMRC and the University of the Witwatersrand.

⁹ See: <https://www.clinicaltrialsarena.com/news/pfizer-south-africa-covid-vaccine/>.

¹⁰ The Constitution of the Republic of South Africa, 1996.

10. These concerns are also articulated in a recent report on the global state of vaccine access by the international NGO Human Rights Watch (focusing on transparency, supply and pricing).¹¹

The duty to develop guidelines for Disaster Management Plans

11. The objective of the National Centre is to “promote an integrated and co-ordinated system of disaster management, with special emphasis on prevention and mitigation.”¹² Section 19(a) of the Disaster Management Act 57 of 2002 places an obligation on the National Centre to develop guidelines for the preparation of disaster management plans.
12. Such plans are to be developed and implemented by organs of state and other institutional actors involved in disaster management with the support and assistance of the National Centre. The National Centre is obligated to assist with the preparation and review of the plans¹³ and must help co-ordinate their implementation amongst the various role-players.¹⁴
13. The National Centre is accordingly the body mandated by statute to ensure South Africa has a co-ordinated and effective strategy to respond to a disaster. The affordable, equitable and transparent access to vaccines within the context of Covid-19 falls squarely within this mandate. Accordingly, the National Centre and all relevant institutional role-players responsible for managing this disaster are responsible for the development of disaster management plans and strategies for the affordability and allocation of vaccines.¹⁵
14. Additionally, the National Centre is responsible for giving guidance to, among others, non-governmental organisations and communities, to assess, prevent and reduce the risk of disasters, which includes the development and implementation of appropriate prevention and mitigation methodologies.¹⁶

Conclusion and requests

15. In light of these statutory duties placed on the National Centre and institutional role-players, we would be grateful if you would kindly advise on the following:

¹¹ Human Rights Watch: Strengthening Human Rights and Transparency Around Covid-19 Vaccines October 2020. See: <https://www.hrw.org/report/2020/10/29/whoever-finds-vaccine-must-share-it/strengthening-human-rights-and-transparency>

¹² Section 9 of the Disaster Management Act 57 of 2002.

¹³ Section 19(b).

¹⁴ Section 19(d).

¹⁵ See, for example, section 25(1)(a).

¹⁶ Section 20(1)(b) and (c).

- 15.1. Has the National Centre, developed guidelines concerning the development, review and updating of disaster management plans which deal with access to and allocation of vaccines (Vaccine Access and Allocation Plans)?¹⁷ If so, kindly provide us with a copy of the guidelines.
- 15.2. If the National Centre has not developed such guidelines, kindly advise on the steps which will be taken in order to comply with this statutory duty, as well as the proposed timeline.
- 15.3. Is there a plan to budget and prioritise vulnerable groups and key populations in relation to access to and allocation of vaccines? If so, what is the plan? It would be appreciated if we could receive a copy of any such plan.
- 15.4. Which specific institutions and national organs of state have been identified as the key institutional role-players involved in disaster management which would be required to develop Vaccine Access and Allocation Plans as part of their disaster management plans and strategies?¹⁸
- 15.5. Have any of these key institutional role-players developed Vaccine Access and Allocation Plans? If so, kindly provide us with copies of the plans.
- 15.6. What specific steps have been taken by the National Centre to assist with the co-ordination and implementation of these plans if / when they are developed?¹⁹
- 15.7. We assume that to the extent that Vaccine Access and Allocation Plans have been developed, they will be made public in the interest of transparency, accountability, and general good governance. It is in that context that we have requested copies of any guidelines and Vaccine Access and Allocation Plans. If you are for any reason unable to provide copies to us, please advise us as to the reason/s why, and how we may otherwise obtain a copy.
- 15.8. In the event that no Vaccine Access and Allocation Plans have been developed, we would respectfully request that you advise on the proposed timeline for the development of such plans and consider having an urgent multi-stakeholder engagement regarding the factors which should be considered while developing them.

¹⁷ See section 19(a) and (e) of the Disaster Management Act.

¹⁸ See, for example, sections 19(b) and (d) of the Disaster Management Act.

¹⁹ See section 19(d) of the Disaster Management Act.

16. We shall be very grateful for your response at your earliest convenience but by no later than the close of business on **Monday, 30 November 2020**.
17. Please note that in the interests of transparency we may publish this correspondence and any response received.

Yours sincerely,



FATIMA HASSAN
HEALTH JUSTICE INITIATIVE

CC: THE PRESIDENCY: NATIONAL COMMAND COUNCIL

C/o Ms Khusela Diko, Mr Mike Louw and Ms Nokukhanya Jele

Per e-mail: khusela@presidency.gov.za; presidentrsa@presidency.gov.za; njjele@law.co.za

CC: MINISTER OF JUSTICE AND CORRECTIONAL SERVICES

Department of Justice and Correctional Services

C/o Ms Zanele Ndlovu, Mr Bruce Sarela and Ms Kalayvani Pillay

Per e-mail: ZaneNdlovu@justice.gov.za; bsarela@justice.gov.za; KalaPillay@justice.gov.za

CC: MINISTERIAL ADVISORY COMMITTEE ON VACCINES

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ENDS.