

FOR IMMEDIATE RELEASE

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The Health Justice Initiative files application to intervene as *amicus curiae* in Solidarity's and Afriforum's urgent application to the Pretoria High Court related to COVID-19 Vaccine Acquisition in South Africa

The Health Justice Initiative (HJI) represented by PowerSinghInc has filed an application to intervene as an *amicus curiae* (friend of the court) in *Solidarity and Another v Minister of Health and 16 Others* (Case number 3623/2) and to seek permission to adduce expert evidence.

The matter concerns the authority of the South African national government to be the sole procurer of COVID-19 vaccines. The applicants, Solidarity and Afriforum, are challenging the constitutionality and legality of the Government's roll-out strategy, as set out in the department's "COVID-19 response" document of 7 January 2021.

Solidarity and Afriforum seek a declaratory order stating that 'any institution in the private sector, as well as any provincial health authority, may procure, distribute and administer COVID-19 vaccines, pursuant to approval by the South African Health Products Regulatory Authority'.

The HJI has had to bring this application because while Solidarity and Afriforum have consented to the admission of HJI, it has not consented to HJI adducing expert evidence and none of the 17 Respondents have indicated their position or consent as yet.

Because COVID-19 vaccines are a matter of key national importance, the HJI has approached the court for permission to be admitted and to present expert public health and other human rights submissions.

Several factors underpin our intervention: South Africa's highly unequal dual health care system, the current global shortage of safe and effective vaccines, the impact of a mutating virus on vaccine selection, and, significantly, vaccine nationalism which should not promote 'queue jumping', coupled with the pressing public health need for prioritisation based on health risk, and not financial means.

As a friend of the court, the HJI intends to make two key submissions:

The first submission is in respect to **the proper interpretation of the constitutional right to health care in the context of a pandemic**, where immediate vaccine supplies are also limited. The HJI will argue that should the private sector and provincial government be authorised to procure vaccines, on their own and in effective competition with the national government, outside of a common national strategy that prioritises those at greatest risk first,

this would further exacerbate the high levels of access inequity in health care in our country, and here, with vaccine access too.

The second submission will be providing the court **with a comparative analysis of the approach adopted in various foreign jurisdictions**, which support centralising vaccine negotiation, procurement, and allocation based on public health risk prioritisation principles and the collective interest. Such an approach is required in pandemic times. It is rooted in globally accepted public health principles and epidemiological needs, and requires the aid and partnership of different sectors of society that can provide useful guidance on the role of national government in securing vaccines for all, on an equitable basis, and in a timely fashion.

The high demand for vaccines and limited supply necessitates the national government to fulfil its constitutional obligations to achieve the progressive realisation of the right to access to health care services, within its available resources. Private sector procurement independent and outside of a national strategy would place vulnerable and marginalised persons at higher risk.

According to Fatima Hassan, the Head of the HJI:

“Any attempt at queue-jumping to access COVID-19 vaccines at the expense of others who need it more, will worsen pandemic outcomes and exacerbate and entrench health inequities in our country. We need ‘One Plan’ for an effective and equitable vaccine roll-out for our country.”

The evidence that the HJI seeks to introduce relies on the following experts:

Dr Tlaleng Mofokeng - the United Nations Special Rapporteur on Health. Her evidence addresses the policy positions of the United Nations and the World Health Organisation on the allocation and prioritisation of vaccine, and vaccine equity, that is especially relevant for our country which has a two-tiered unequal health care system.

Professor Saad Bin Omer - Professor and the Director of the Yale Institute for Global Health, Yale University, USA. His evidence addresses the vaccine rollout strategy which is being implemented in the United States of America.

Professor Leslie London - Professor at the School of Public Health and Family Medicine at the University of Cape Town (UCT). His evidence addresses the “incontrovertible reality” that there is an absolute shortage of vaccine supplies globally, at least at this early stage of the epidemic and he shares several public health reasons for the need for national processes and guidelines to ensure coordination, accountability, and equity during a pandemic.

The matter is set down for hearing on 11-12 March 2021 before the Pretoria High Court. The court papers may be accessed [here](#).

HJI’s amicus application will be argued by Advocates Geoff Budlender SC, Faizel Ismail SC and Lerato Zikalala.

The HJI’s legal team (PowerSinghInc - Michael Power and 'S'lindile Khumalo - and all counsel) act pro bono in this matter.

About the [Health Justice Initiative](#): *the HJI is a non-profit organisation and a dedicated public health and law initiative. The organisation addresses the intersection between racial and gender inequality with a special focus on access to life-saving diagnostics, treatment and vaccines for COVID-19, TB and HIV.*

About [Power Singh Inc.](#): *Power Singh Inc. is a public interest law firm seeking to ensure public and private sector accountability and the full realisation of fundamental rights and freedoms.*

FOR MORE INFORMATION OR MEDIA QUERIES PLEASE CONTACT:

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