

Media Release

SA Covid-19 Vaccine Negotiation Records Show Pharma Bullying Amidst Pandemic

*Groundbreaking Access to Documents Show Pharma Giants Bullied South Africa in Covid-19 Vaccine Negotiations – HJI Report “**The Negotiations, One Sided- Part 2**” is now publicly available on the HJI [website](#).*

Cape Town, 16h00, Tuesday 21 May 2024 – Today the Health Justice Initiative (HJI) released the second part of its analysis into the negotiation and procurement of COVID-19 vaccines by the South African Government. Like the [previous report](#) released in September 2023 on the contracts, HJI found in its analysis of the documents released to it in late 2023, per a High Court Order, that even the negotiations that were conducted in a global pandemic, heavily favoured multinational pharmaceutical corporations, over the public interest.

Supported by [Public Citizen and others](#), HJI analysed the documentation relating to the *negotiations* with several companies and entities, and in particular, the negotiation documents with two companies: Moderna and Pfizer. In the end South Africa did not procure vaccines from Moderna but it is clear that it did enter into negotiations, and those negotiations were governed by a binding *Confidential Disclosure Agreement*.

These negotiation records and confidentiality disclosure agreements are what pharmaceutical companies did not want the public to see, worldwide, and it is now clear why. Unprecedented insight into their aims and tactics reveal a profit maximising strategy against a country struggling to keep people healthy, shielding itself from responsibility for any problems associated with deliveries and putting the burden of importing vaccines on the South African Government itself, among others.

Fatima Hassan, Director of HJI believes, “the analysis of the negotiation documents, similar to the previous report into the contracts, reveals a pattern of bullying and attempts to extract one sided terms, especially by pharma giants Moderna and Pfizer all while they profited from a global health emergency. It is inconceivable that companies, their lawyers and CEOs exercised so much power, forcing countries into concessions, when we were most in need for supplies. Additionally, attempts by these companies to extract monopolistic and high prices for life saving vaccines are documented, and now clear for all to see –this must have a bearing on current efforts underway in Geneva to negotiate a global Pandemic Accord – the absurd power that CEOs have in health emergencies must be addressed, with urgency and resolutely”.

“What these documents make clear is that corporations can and will exploit the conditions of public health emergencies to coerce governments, particularly those in low- and middle-income countries, into accepting unreasonable agreements on the supply of life-saving medicines.

International efforts to address future global health emergencies, like the Pandemic Accord, must include robust provisions and safeguards to rein in these corporate interests and ensure the rapid, equitable supply of vital countermeasures for everyone,” says Jishian Ravinthiran, Researcher with Public Citizen.

The negotiation documents and HJI’s analysis thereof shows that Moderna took the most aggressive approach to shield any of its vaccine supply from public accountability. It also demanded:

- An excessive price when compared to other countries, and draconian non-refundability provisions.
- Broad indemnification clauses shielding itself from liability beyond mere *wilful misconduct*.
- That South Africa is solely responsible for the delivery of supplies from Moderna's European sites to South Africa.
- Extreme confidentiality provisions, covering even *any discussion of a supply relationship*.
- The right to override contractual arbitration proceedings.

This, in part, probably explains why South Africa did not, in the end, obtain supplies from Moderna.

On Pfizer, the negotiating documents also show South African officials did try to highlight the one-sided nature of the negotiations and include provisions to mitigate the unfettered power and control Pfizer sought to exercise over the supply agreement, but that was largely unsuccessful in the end. Government officials marked up draft supply agreements with multiple comments including: **“We need to be able to disclose and be accountable...”**.

Pfizer’s universal rejection of proposed amendments is a prime example of concentrated corporate power overriding public interests. It should be frightening to everybody that a private company can bully a country this way. “Private companies being able to operate in the shadows is not good for anyone other than the companies themselves, especially under the soon to be implemented NHI in South Africa”- said Hassan.

Pfizer rejected provisions that would have permitted disclosure of confidential information in emergency circumstances and for bolstering transparency and trust in the vaccination programme. This is despite efforts by South African government officials to revise the ironclad confidentiality restrictions by referencing the World Health Assembly’s (WHA) resolution about *transparency of markets for medicines, vaccines, and other health products*. Additionally, government officials warned that these provisions may hamper oversight from lawmakers and the South African office of the Auditor General.

"The totality of the agreements signed and the negotiation records show that these companies shamelessly wanted secrecy, and no transparency and that they profited at the public's expense during the pandemic," says Hassan.

The report concludes that contractual bullying by monopolistic pharma corporations undermined South Africa's vaccination programme to the detriment of its people. It calls for mandating transparency around procuring lifesaving vaccines and medicines using public funds in any health emergency and especially under the soon to be implemented NHI system, where the state will be responsible for the procurement of all approved NHI medical supplies.

However, HJI believes that making public the contracts and negotiations sets an important legal precedent that publicly funded medical supplies cannot be contractually buried in corporate secrecy during health crises.

"People's lives must come before pharma secrecy and profiteering," Hassan says. "This conduct was unethical; it went against our Constitution and cannot be allowed in future health emergencies nor under the NHI in South Africa."

All negotiating documents handed over by the State; and HJI's Analysis thereof can be found [here](#).

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Media Queries

For media queries and interview requests contact info@healthjusticeinitiative.org.za

About [Health Justice Initiative](#)

The HJI is a dedicated public health and law initiative addressing the intersection between racial and gender inequality. The HJI uses the law, research, and advocacy to tackle the factors that shape inequity in health access, and work towards ensuring access to lifesaving diagnostics, treatment, and vaccines. The HJI is represented by [Power and Associates](#) in this case.

Notes to editors

Pandemic Profit margins:

<https://peoplesvaccine.org/resources/media-releases/big-pharma-spent-almost-as-much-enriching-shareholders-as-on-research-and-development-during-pandemic/>

1. Moderna's profit margin was approximately 50%.
2. Moderna's CEO made \$393 million in 2022, Moderna handed over \$4 billion to shareholders during the COVID-19 pandemic, after extracting more than \$10 billion from US taxpayers. [May 2023](#).
3. "Moderna's revenue in 2022 alone is equivalent to the combined health budgets of 68 countries. Already, the company expects to make more from the vaccine in 2023 than the combined health budgets of 42 countries." [Feb 2023](#).
4. Moderna considering plans to raise COVID-19 vaccine cost to a 4000% mark up above cost. [Jan 2023](#).
5. Moderna's earnings described as 'lucrative smash and grab operation' after Q2 earnings. [Aug 2022](#).
6. Pfizer, BioNTech and Moderna – are making combined profits of \$65,000 every minute, at a time when Moderna had delivered just 0.2% of vaccines to LICs. [Nov 2021](#).

Pandemic period supply stats:

1. Analysis of vaccine orders and projected production found that estimated 36% of Moderna's projected 113 million new generation Omicron-specific vaccines to be shipped to high-income countries. [June 2022](#)
2. Only one in every seven promised doses being delivered to developing countries, and only 12% of doses promised to COVAX. [Oct 2021](#).
3. Moderna has delivered only 0.2% of total vaccine supply to low-income countries. [Oct 2021](#).

4. Monopolies make cost of vaccinating world against COVID five times more expensive than it could be. [July 2021.](#)

The HJI Court Case:

1. On 18 February **2022** in Gauteng, South Africa, the HJI launched legal proceedings in the Pretoria High Court in South Africa for the disclosure of all Covid-19 vaccine procurement contracts and all negotiation records with relevant companies and institutions.
2. This follows an access to information request in July **2021** to the National Department of Health which was refused. Specifically, HJI asked for the following:
 - a. Copies of all Covid-19 vaccine procurement contracts, and memoranda of understanding, and agreements (we refer to this as “part 1”)
 - b. **Copies of all Covid-19 vaccine negotiation meeting outcomes and/or minutes, and correspondence** (we refer to this as “part 2”).
3. This case was heard by Millar J in the Pretoria High Court on Tuesday, **25 July 2023**.
4. On **17 August 2023**, the Pretoria High Court (Millar J) ruled in our favour in our bid to compel the National Department of Health to provide access to the COVID-19 vaccine procurement contracts. **The Court ordered that all COVID-19 vaccine contracts must be made public**, and the costs of the case were awarded in HJI’s favour.
5. The Court ordered the disclosure of:
 - a. Copies of all Covid-19 vaccine procurement contracts, and memoranda of understanding, and agreements (we refer to this as “part 1/a”) and
 - b. **Copies of all Covid-19 vaccine negotiation meeting outcomes and/or minutes, and correspondence (we refer to this as “part 2/b”)** – within ten court days of the Judgment (being 31 August 2023).
6. The Minister of Health did not pursue an application for leave to appeal the Judgment. The Department’s legal representatives, however, requested an extension until 29 September 2023 for the handover of the “part 1/a” and “part 2/b” documents.
 - a. **HJI granted the extension for the “part 2/b” documents (negotiation meeting outcomes, minutes, and correspondence) but did not grant it for the “part 1/a” documents (Contracts, MoU, and Agreements).**
 - b. On Thursday, 31 August 2023 there was a handover of documents from the National Department of Health to HJI’s legal representatives. The Department claimed that the documents were “Contracts, MoUs, and Agreements” (part 1/a) with three companies (Jansen/ J&J, Pfizer, SII, and with one not-for-profit initiative – GAVI (for COVAX). The documents were not redacted.
 - c. **The HJI received the “part 2/b” documents on 29 September 2023 and 17 November 2023.**