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RE: CLARITY REGARDING EMERGENCY PROCUREMENT OF COVID-19 VACCINE

Introduction

1. Corruption Watch (CW) is a registered non-profit company in terms of the Companies Act 71 of 2008 and an independent civil society organisation with no political or business alignment. CW fights against the abuse of public funds and has a vision of a South Africa where citizens are able to report corruption without fear of reprisal, and the offences are investigated without favour or prejudice.
2. As an accredited Transparency International chapter, CW places specific emphasis on the promotion of transparency and accountability within the private sector and state institutions. This transparency and accountability – alongside the promotion and protection

of the rule of law and good governance – is essential to protect the beneficiaries of public goods and services, and ensuring the public service operates with efficacy and integrity.

3. CW notes that given the extent of the impact of the Covid-19 pandemic on the lives of residents of South Africa as well as on the country's economic outlook, securing an effective vaccine is a matter of intense public interest. The vaccine rollout, besides being a public health matter, also has public finance and governance dimensions that need to be addressed.
4. In April 2020, we wrote to National Treasury to raise our concerns about the risks posed by the lack of transparency of procurement information and consequent inability to monitor emergency procurement during the pandemic.
5. We have followed the steps taken by National Treasury, which include the publishing of Covid-19 related procurement information and making a dashboard available. We welcome these developments. We are certain that National Treasury will nevertheless agree with us that many of the corruption risks associated with Covid-19 related public procurement during the first wave remain. We note how the corruption associated with emergency PPE procurement has affected public trust levels. As you will be acutely aware, leakage through corruption is not desirable in this fiscal climate.
6. CW writes once more to raise concerns about the risk of corruption – this time in the vaccine procurement process. The urgency to save lives must be prioritised. At the same time (and in no way at odds with the imperative of saving lives) the rule of law and compliance with section 217 of the Constitution – which requires public procurement by all organs of state to be in accordance with a system which is fair, equitable, transparent, competitive and cost-effective – must be respected in the vaccine procurement process.
7. Vaccine that is well-suited to the South African context needs to be secured at a cost-effective price, so that the available budget is used in a manner that sees health professionals and frontline workers being protected and as many residents as possible of South Africa, at all levels of society, receiving the vaccine.
8. We strongly advocate that National Treasury conduct a public briefing, in a similar manner to the way the Health Ministry has briefed the nation about the vaccine rollout, on how emergency procurement in general works, and the specific procurement system to be

applied in relation to the proposed vaccine procurement, including what actions National Treasury has taken, or will be taking, to support the Department of Health with the best possible technical advice. This briefing must include what oversight measures are being taken to ensure that the rule of law, the requirements of section 217 of the Constitution and the applicable requirements of the PFMA will be upheld in the process of procuring vaccines. We believe that this will help to improve public trust levels.

9. We appreciate that the pandemic affects everyone including officials working at National Treasury, whose work schedules have come under additional pressure due to the response required. We believe that taking the time to provide this information is an important act of trust-building with both civil society and the public.
10. Corruption in the process of procuring PPE, provision of poor-quality PPE, and poor implementation has, in some of the worst and most unacceptable cases, resulted in healthcare professionals being left without PPE and succumbing to COVID-19 – their lives were sacrificed unnecessarily. We are therefore concerned that there should not be a repeat when it comes to vaccine.
11. We also request clarity on specific questions as outlined below.

Vaccine rollout plan

12. On 2 January 2021, a range of eminent scientists and doctors wrote an opinion piece¹ which was published in the *Daily Maverick*.
13. On 3 January 2021, the Minister of Health held a briefing to provide the media and the public with information on the arrangements for a national vaccine rollout². A Ministerial Advisory Committee advisory³ on South Africa's vaccine strategy was also put in the public domain on 3 January. The National Department of Health has since undertaken follow-up engagements.

¹ <https://www.dailymaverick.co.za/article/2021-01-02-vaccines-for-south-africa-now/>

² <https://www.youtube.com/watch?v=vO8LdbbIWE4>

³ <https://sacoronavirus.co.za/2021/01/03/covid-19-vaccine-strategy/>

14. On 7 January, President Ramaphosa held a meeting with progressive civil society on the Covid-19 response and vaccines.
15. CW notes that the Minister of Health advised in his 3 January briefing that emergency procurement will be used, that the department was in talks that were at a sensitive stage with pharmaceutical companies, and that it will write to Treasury to ask for permission to deviate from accepted supply chain management practices.
16. A concern that has arisen in civil society engagements is that publicly to date, it is not clear what active role National Treasury is playing in advising the Department of Health on how emergency procurement is meant to proceed, or conducting oversight to mitigate against the risks which arise from organs of state deviating from generally accepted supply chain management practices. We are aware that National Treasury may well be playing a role, but it is not visible, other than an acknowledgement by Minister Mkhize that National Treasury has agreed to pay for vaccinations and as reported in the press, 'confirmed that it will authorise the necessary deviations to enable procurement'.⁴
17. We therefore write to bring this to your attention, so that National Treasury may consider whether it should make a public statement regarding the steps that it is actively taking to ensure that emergency procurement is not as plagued by corruption as it has been, and the specific procurement system and safeguards that will be applied to the vaccine procurement process. Such a public statement will, in our view, contribute to addressing the concerns raised by members of the public and civil society regarding the lack of transparency in the proposed vaccine procurement process to date.

Clarity about emergency procurement arrangements

18. Aside from the actions that we advocate National Treasury take to ensure financial checks and balances in the vaccine procurement process, and the need to inform the public about how

⁴ *Treasury has arrived at the vaccine party, says health minister*, C Paton, Business Day, 7 January 2021, <https://www.businesslive.co.za/bd/national/2021-01-07-treasury-has-arrived-at-the-vaccine-party-says-health-minister/>

emergency procurement of vaccines will work, we also seek to clarify the specifics of the arrangements to date.

19. We request clarity on the following:

- 19.1. Has National Treasury provided the National Department of Health with input about best practices for emergency procurement as it pertains to vaccine and health products?
- 19.2. Has the National Department of Health requested permission to deviate from accepted supply chain management prescripts in respect of procuring vaccine?
- 19.3. Will the permission to proceed with a deviation be contingent on the regulator providing the appropriate regulatory approvals of vaccine? What metrics will National Treasury be using (or has it used) to satisfy itself prior to granting approval to proceed?
- 19.4. Has National Treasury received any other deviation requests in respect of the vaccine rollout?
- 19.5. What regulations, instruction notes and circulars are relevant or are planned to be issued, in relation to the vaccine procurement process?
- 19.6. What oversight measures are being taken to safeguard the vaccine procurement process from corruption risks, including whether the Auditor-General will be engaged to conduct real-time audits of vaccine procurement?
- 19.7. Will the Auditor-General have access to non-disclosure agreements signed by government with pharmaceutical companies to ensure compliance with South African law and rules around public expenditure?
- 19.8. Besides National Treasury, which other departments / institutions have an oversight function in relation to the vaccine procurement process and is Treasury interfacing with them?
- 19.9. Which programme in the Health Department's budget vote or budget source is being used to fund vaccine procurement?

- 19.10. What type of rigours will procurement of vaccine via the COVAX facility be subjected to, given that COVAX is conducting negotiations as opposed to a tender process of the nature envisaged in the PFMA?
- 19.11. Will the public sector funds to be spent on vaccine be handled via the Solidarity Fund or the Health Department or transferred to a central fund like the NHI fund?
- 19.12. What transparency arrangements is National Treasury and the National Department of Health and other relevant entities making so that there can be public oversight of the vaccine procurement?

Conclusion

20. We reiterate, as we highlighted in April 2020, that the absence of transparency in the procurement process poses a significant corruption risk, and undermines the requirement in section 217 of the Constitution that procurement occurs in accordance with a system which is transparent and therefore constitutionally compliant. The best way to deal with corruption is to prevent it before it happens, but weak internal controls and a lack of transparency do not support that.
21. We respectfully request that you respond to our request for clarity on the items above by **Monday, 18 January 2020.**
22. Please note that in the interests of transparency, we may publish this correspondence and any responses hereto.

Yours faithfully

David Lewis
Executive Director
Corruption Watch
[Unsigned due to electronic transmission]