



14 May 2020

To: President Cyril Ramaphosa

Per email:

presidentrsa@presidency.gov.za;

khusela@presidency.gov.za;

malebo@presidency.gov.za

Dear Honourable President Ramaphosa,

1. The Fix the Patent Laws (FTPL) campaign was co-founded by SECTION27, Treatment Action Campaign (TAC) and Doctors Without Borders (MSF) in 2011. It is a coalition made up of 40 patient advocacy groups and civil society organisations who work on a wide range of diseases, including HIV, tuberculosis, hepatitis, cancer, diabetes, and various other non-communicable diseases and mental health conditions. Together we campaign for improved access to medicines, whilst focusing on reforming South Africa's patent laws to ensure that everyone in South Africa has access to medical innovations and to the benefits of scientific progress, a right enshrined in Section 27 of the Constitution and in international human rights law.

2. We write to you in your capacity as President of the Republic of South Africa and as Chairperson of the National Command Council on COVID-19 to highlight our concerns about South Africa's ability to access future COVID-19 related health products as they become available — including diagnostics, vaccines, treatments, medical devices, and personal protective equipment. We commend the government's efforts in responding swiftly and decisively to the COVID-19 pandemic. The country-wide lockdown is expected to proceed along the Risk Adjustment Strategy, however, in looking forward, it is imperative to put in place measures which will allow the government to procure and distribute sufficient quantities of COVID-19 related health products, as they are proven safe and effective. This includes diagnostics to detect the coronavirus, effective medicines to treat and cure people with COVID-19, vaccines to prevent new infections, medical devices to provide hospital care, and the personal protective equipment to safeguard our health workforce.

3. At present, global research and development (R&D) to find effective diagnostics, vaccines, and treatments for COVID-19 is taking place at an unprecedented scale and speed. However, without safeguarding access to any new or re-purposed COVID-19 products that are proven safe and effective, these efforts will be futile. We are concerned that in its current form, South Africa's outdated patent system will not be able to realise access to these products.

4. Currently, access to medicines and other health products in South Africa is hampered by a patent system that allows for the granting of an excessive number of unwarranted patent monopolies. This results in exorbitant and arbitrary pricing by multinational pharmaceutical companies to make a profit at the expense of those in need. This has been evident for HIV and resulted in the delay in the scale-up of lifesaving treatment, and the loss of countless lives. It remains true across a range of diseases today. Without swift action, we will face a second emergency for COVID-19 as we are prevented from accessing the tools we need to respond effectively.

5. In May 2018, Cabinet adopted the Intellectual Property Policy of the Republic of South Africa Phase 1, (IP Policy), that contained important commitments to reform the country's patent laws to prioritise people's constitutionally guaranteed right of access to healthcare services. It paved the way for a new, progressive intellectual property regime in South Africa, almost two decades after the signing of the Doha Declaration on Public Health — a critical international agreement confirming countries' ability to incorporate pro-public health safeguards in their laws. Many other countries have long since incorporated these public health safeguards into their national intellectual property laws, yet South Africa continues to lag behind as the commitments of the policy are yet to be implemented, and the law reform process remains unfinished.

6. We further note that some countries like Brazil, Chile, Ecuador, Colombia, Spain, Israel, Germany and Canada have taken or are considering steps to override patents and other exclusive rights in anticipation of ensuring the accessibility of future COVID-19-related health products. Not only will these steps allow countries to avoid high prices, but they will also enable them to expand sources of supply, including through domestic manufacturing to help overcome preferential access and hoarding by rich countries of lifesaving COVID-19 health products.

7. In order for South Africa to address the COVID-19 pandemic, it is necessary for the government to eliminate all intellectual property and secrecy barriers to the discovery, expanded production, and affordability of COVID-19-related health products, including diagnostics, vaccines, treatments, medical devices, and personal protective equipment. These steps are needed now more than ever to address the pandemic and to ensure that everyone has equal access to these life-saving health products, when they become available.

8. A first step in achieving this goal is for the Companies and Intellectual Property Commission to put in place a temporary moratorium on the issuance of patents on COVID-19-related medical products or processes. This should be easily accomplished by means of regulations or declaration by appropriate authorities.

9. A second step is for the President and Parliament to cooperate on the announcement and enactment of an automatic compulsory licensing mechanism with respect to granted and pending COVID-19 related patents. These automatic compulsory licenses, patterned on similar legislation pending in Brazil, would allow domestic or foreign supply of licensed COVID-19 related health products without prior notice or negotiation with the right

holder and could provide for adequate remuneration in the form of a royalty of 1.5% based on the initial sales price of the health product. These compulsory licenses could be given to qualified local producers to secure additional and more affordable sources of supply thereby fulfilling our country's industrial development policy and expanding employment. These licenses could also allow supply of non-predominant quantities of COVID-19 health products to our African neighbours as could provision for granting of TRIPS Article 31bis export licenses upon request from countries with insufficient manufacturing capacity.

10. A third step is the immediate publication of legislation incorporating the recommendations of the IP Policy — primarily the amendments to the Patents Act — to be released for public comment immediately and quickly promulgated into law.

11. Whilst COVID-19 highlights the urgency of securing affordable access to diagnostics, treatments and vaccines, this is only one disease amongst many. People across the country suffering from diseases ranging from cancer and TB, to epilepsy, and mental illness are all affected by similar access problems as a result of patent barriers. It is the widespread nature of this issue that makes the finalising of patent law reforms all the more urgent.

12. We urge you to continue to demonstrate leadership in the response to the COVID-19 pandemic by assuring accelerated access to sufficient quantities of affordable and vitally needed health products. We look forward to your positive response and will avail ourselves to discuss these matters with yourself and the relevant personnel at the Department of Trade, Industry and Competition at any time.

Sincerely,

The **Fix the Patent Laws coalition** including:

Treatment Action Campaign (TAC)

Doctors Without Borders (MSF)

SECTION27

Cape Mental Health (CMH)

Diabetes SA

Epilepsy SA

Health Global Access Project (Health GAP)

Marie Stopes South Africa

Stop Stock Outs Project (SSP)

Schizophrenia and Bipolar Disorders Alliance (SABDA)

South African Depression and Anxiety Group (SADAG)

South African Federation of Mental Health (SAFMH)

South African Non-Communicable Diseases Alliance (SANCD Alliance)

Cancer Alliance including:

Advocates for Breast Cancer

AmaBele Project Flamingo

Ari's Cancer Foundation

Breast Course 4 Nurses (BCN)

Breast Health Foundation (BHF)

Cancer Association of South Africa (CANSA)

Cancer Heroes

CanSurvive Cancer Support (CanSurvive)

Care for Cancer Foundation

Childhood Cancer Foundation of South Africa (CHOC)

Gladiators of Hope

Hospice Palliative Care Association (HPCA)

Lymphoedema Association of South Africa (LAOSA)

Look Good Feel Better (LGFB)

Love Your Nuts (LYN)

Men's Foundation

National Council Against Smoking

National Oncology Nursing Society of SA (NONSA)

People Living With Cancer (PLWC)

Pink Parasol Project

Pink Trees for Pauline (Pink Trees)

Rainbows and Smiles

Reach for Recovery (R4R)

South African Oncology Social Workers' Forum (SAOSWF)

The Sunflower Fund (TSF)

Wings of Hope (WoH)

For more information and further discussion please contact Umunyana Rugege, Executive Director of SECTION27 on 083 458 5677 or rugege@section27.org.za