



17 July 2018

Premier David Makhura

Office of the Premier, Gauteng

Per email: deborah.tshivasa@gauteng.gov.za

Corruption Watch and Treatment Action Campaign Enquiry: Corruption Findings against Gauteng Provincial ANC Chief Whip, Brian Hlongwa

1. We refer to the above matter. We write to you in your capacity as Premier of Gauteng and a senior member of the ANC in the province.
2. Corruption Watch is a registered civil society organisation that opened its doors to the public in January 2012. We are registered as a non-profit company in terms of the Companies Act 71 of 2008. Corruption Watch seeks to expose corruption and the abuse of public funds. We encourage and enable the public to report incidents of corruption to us and we use these reports as an important source of information to fight corruption in South Africa and to hold leaders accountable for their actions. We achieve this through policy interventions, advocacy initiatives, public mobilisation, strategic litigation and select investigations.
3. The Treatment Action Campaign (TAC) is registered both as a non-profit company (registration no. 2000/029181/08) and a non-profit organisation (registration no. 043-770-NPO). The TAC advocates for increased access to treatment, care and support services for persons living with HIV and/or tuberculosis (TB). We campaign to reduce new HIV and TB infections and the improvement of health systems in Gauteng and communities around the country.
4. To this end, both organisations are particularly concerned about the pervasive corruption in the public healthcare system. Our whistleblowers, as well as the media, have highlighted the looting of public funds and resources on a mass scale in the health system, including in the provincial health departments. Corruption in health has a direct impact on the delivery of health services and

may lead to violations of the right to health of those who rely on the public health system. The Constitution of the Republic of South Africa, 1996 places positive obligations on the state to progressively realise the right to access health care services, within the available resources of the state. The state also has a duty to address the conduct of public officials that squander state resources meant for the delivery of health services. Part of this obligation involves investigation and prosecution of crimes involving corruption.

Background

5. We refer you to Proclamation No. R.21: *Special Investigating Units and Special Tribunals Act, 1996* (Act No. 74 of 1996): *Referral of Matters to Existing Special Investigating Unit and Special Tribunal* issued by then Acting President Kgalema Motlanthe on 7 May 2010 ("**the Proclamation**") in terms of which the Special Investigating Unit ("**SIU**") was appointed to investigate ("**the Investigation**") serious maladministration, irregularities, unlawful expenditure of public money and improper conduct by public officials in the Gauteng Provincial Health Department ("**Department**") in the period 1 January 2006 to 14 May 2010. We understand that the final report of the investigation was submitted to President Zuma in March 2017.
6. Following a Promotion of Access to Information request by SECTION27¹ on 14 November 2017, the Office of the Presidency released the final report on 4 May 2018. Corruption Watch and the TAC are currently in possession of the SIU report which forms the basis of this enquiry.
7. The investigation highlights the total unauthorised, irregular, fruitless and wasteful expenditure uncovered by the SIU which amounted to R1 201 681 132.

Allegations against Mr Brian Hlongwa

8. The SIU Report implicates Mr Brian Hlongwa, former MEC of the Gauteng Department of Health (GDoH) and current Chief Whip of the African National Congress (ANC) in the Gauteng Legislature, for his instrumental role in facilitating and abetting corrupt activity at the GDoH. He is the most senior public official implicated in the Report.
9. The Report details the benefits that Mr Hlongwa improperly received, which include:

¹ SECTION27 is a public interest law centre that seeks to achieve substantive equality and social justice in South Africa <http://section27.org.za/>. SECTION27 are the attorneys representing Corruption Watch and the TAC in any legal matters that arise from the outcomes of the SIU Report.

- 9.1. Payments made by private companies, that rendered services to the Department, towards the purchase of Mr Hlongwa's private residential property at 135 Eccleston Crescent, Bryanston;
- 9.2. Non-business related travel paid for by a private company, 3P Consulting, to Durban (March and November 2008), Cape Town (February 2009) and Lusaka (September 2009),
- 9.3. A luxury spa treatment for Mr Hlongwa and his wife, complete with limousine transport, paid for by 3P Consulting;
- 9.4. Donations by various private companies that rendered services to the Department to the Western Rangers Football Club, of which Mr Hlongwa was the chairperson.

10. The SIU Report further states that:

"The gratifications as discussed above were to advance the business interests of 3P [Consulting]. In the context of the corrupt relationship between 3P, Baoki [Consortium], the Department's officials and the former MEC, Mr Hlongwa, the payments are seen to have had the effect of further inducing and sustaining the preferential treatment and unlawful conduct by officials of the Department and the former MEC, Mr Hlongwa. Their objectivity was accordingly tainted by the preceding and ongoing corruption."²

- 11. According to the SIU, Mr Hlongwa was involved in corrupt relationships, together with other public officials, with 3P and the Baoki Consortium. The SIU referred evidence of the alleged corruption in which Mr Hlongwa advanced the business interests of 3P to the prosecuting authorities. We have sought clarity regarding the status of the criminal prosecution.
- 12. The SIU also referred Mr Hlongwa's conduct for criminal prosecution in respect of contraventions of the Prevention and Combatting of Corrupt Activities Act 12 of 2004 and for fraud and theft. We have sought clarity regarding the status of the criminal prosecution.
- 13. Not only did Mr Hlongwa allegedly engage in corrupt relationships, but he also failed to declare benefits he received to the Office of the Premier, as required by the Code of Ethics applicable to him in terms of the Executive Members Ethics Act 82 of 1998. The Code outlines the minimum ethical standards of behaviour that South Africans expect of public representatives, including upholding propriety, integrity and ethical values in their conduct. Adherence to the Code is important for the purposes of promoting public trust and confidence in public representatives and those responsible for public spending. Importantly, the Code is intended to be read together with the Prevention and Combating of Corrupt Activities Act 12 of 2004, which provides for criminal offences applicable to corrupt conduct by public officials.

² SIU Report, Chapter five, page 24

14. Under Mr Hlongwa's leadership, public officials in key positions flouted procurement rules and defrauded the GDoH.
15. Corruption Watch and the TAC firmly believe that the current collapse in the GDoH is linked to Mr Hlongwa's tenure as the MEC. Under his leadership, it is evident that a culture of corruption was developed and, to some extent, continues to persist within the Department. On 21 June 2018, Corruption Watch, SECTION27 and the TAC publicly released the SIU Report and called for the removal of Mr Hlongwa as the ANC Chief Whip in the Gauteng Provincial Legislature. The press statement can be accessed [here](#).

Systemic corruption

16. The SIU found multiple instances of failures to comply with legislative prescripts in the procurement of goods and services by the GDoH. For example, in the SIU investigation, it was found that the procurement of an information system and electronic health records system was irregular in a number of respects, including:
 - 16.1. Procurement processes were not fair, equitable, transparent, competitive or cost effective;
 - 16.2. The systems acquired by the GDoH were never implemented;
 - 16.3. The expenditure of R470, 807, 868 in acquiring the system was both irregular and fruitless and wasteful;
 - 16.4. The GDoH irregularly extended the contract to the service provider, which led to irregular, fruitless and wasteful expenditure of a further R14, 325, 045;
17. We understand that to date, GDoH has not implemented an electronic health records system despite the astronomical amount spent on obtaining such a system. We are also aware that the lack of such a system is the cause of inefficiencies in the delivery of health services in the province.

Provincial accountability

18. We note with concern the view that has been taken by the Gauteng Integrity Commissioner, as well as the Privileges and Ethics Committee of the Gauteng Provincial Legislature, to await the outcome of the criminal matter and the finalisation of the preservation order in respect of Mr Hlongwa's private residence before taking any action.
19. In our view, the SIU Report, and the evidence gathered by the relevant prosecuting authorities, constitute prima facie evidence that can be acted on by the Integrity Commissioner and the

Privileges and Ethics Committee, despite ongoing criminal proceedings. It is our view that both the Integrity Commissioner and the Privileges and Ethics Committee can proceed with instituting disciplinary action based on the non-disclosure of benefits, which is in direct contravention of the Executive Members' Ethics Act.

20. The Report also highlights how only a handful of individuals were held accountable for their actions, whereas the vast majority escaped disciplinary action because they were no longer in the employ of the public service. It is therefore critical that Mr Hlongwa, who is the most senior public official implicated in this matter, be held accountable by the provincial structures.

21. We reiterate our call for the removal of Brian Hlongwa as the ANC Chief Whip in the Gauteng Provincial Legislature.

Corruption Watch and TAC Request

22. In light of the SIU Report's findings Corruption Watch and the TAC seek answers to the following questions:

22.1. As Premier of Gauteng, what action will you take against Mr Hlongwa for facilitating and abetting corruption at the GDoH?

22.2. The SIU report contains several recommendations to address the shortcomings in the functioning of the GDoH, including improving the tender processes, compliance with the PFMA, staffing and supply chain management policies and procedures. How does the Office of the Premier intend to address these recommendations?

23. We request a meeting with the Office of the Premier to discuss the findings of the SIU Report.

24. We attach a copy of the Report for your information.

25. Kindly provide us with a response by no later than 24 July 2018.

Yours sincerely,



David Lewis
Executive Director: Corruption Watch



Anele Yawa
General Secretary: Treatment Action Campaign