

PERSONAL ENRICHMENT VERSUS SOCIAL WELFARE: THE IMPACT OF PUBLIC PROCUREMENT IN SOUTH AFRICA

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ABSTRACT: *The South African Constitution allows preferential procurement to reverse historical economic segregation. Public procurement is a critical part of the state agenda for post-apartheid development, as it is a vital aspect of public service delivery. To date, South African public procurement reforms have aimed to transform public sector procurement as a policy instrument to redress historical injustices and their ongoing effects. However, the strategic public procurement reforms have elicited several challenges and have been critiqued. This paper explores the relationship between affirmative action, such as Broad-Based Black Economic Empowerment (B-BBEE), and social welfare, with a specific focus on the Gauteng Department of Health's public procurement of personal protective equipment (PPE) and the Life Esidimeni tragedy. This study grapples with the question of the extent to which affirmative action in public procurement impacts social welfare. A literature review and analysis of relevant documents are conducted to achieve the research aim.*

KEYWORDS: *public procurement, social welfare, Broad-Based Black Economic Empowerment (B-BBEE), developmental state, South Africa*

INTRODUCTION

It is beyond contention that South Africa is among the most unequal countries in terms of wealth and access to social services worldwide (Chatterjee et al. 2020; Francis–Webster 2019). With a 0.66 Gini coefficient, the highest of all the

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149 countries, South Africa is the most unequal country according to the World Bank (Sulla–Zikhali 2018). This state of inequality remains mainly unchanged in the post-apartheid epoch. For instance, income inequality continues to follow race and gender divides, as Black and female workers are more likely to earn less than their White colleagues in the same form of employment (Espí et al. 2019).

As a developmental state, the post-apartheid government has deliberately chosen public procurement as an instrument of development and transformation (Edigheji 2012). This goal was well articulated in *South Africa's National Development Plan (NDP) 2030*, which states that the government seeks to become a “capable and developmental state able to intervene to correct our historical inequities” (National Planning Commission 2011: 1). The public procurement regime is mostly biased towards dominant groups and classes. For instance, public procurement was biased toward white people during the apartheid epoch (Brunette et al. 2019: 538). Remedying this biased trend was among the priorities of the democratic government, which sought to replace white dominance in public procurement and society at large with an equitable and fair system that deliberately aims to reverse the socioeconomic harms of the past (ibid. p. 538).

The South African government has the greatest purchasing power of any institution in the country and seeks to leverage such influence in reversing the past legacy of injustice and inequality through public procurement that favors the majority, the black population (Shai et al. 2019). The government's Broad-Based Black Economic Empowerment (B-BBEE) strategy is a key public procurement policy instrument via which the state aims to address the ever-existing legacy of apartheid policies. The *1997 Green Paper on Public Sector Procurement Reform* reflected on the use of public procurement as a strategic instrument for achieving socioeconomic objectives. As a result, Black Economic Empowerment (BEE), later renamed B-BBEE, was rolled out as a policy framework to operationalise the government's economic transformation objectives.

While the literature on the evaluation of B-BBEE abounds, the impact on social welfare delivery is yet to receive adequate research attention. Amongst the key contributions of this paper to the literature are its exploration of the nexus between public procurement and social welfare delivery. South Africa, one of the highest spenders on social welfare in the Global South, provides a unique context for understanding inherent challenges and how these can set back the transformation objectives of development policies. Public procurement literature in South Africa has examined the formulation, implementation, dilemmas, successes, and challenges of B-BBEE as a strategic policy instrument of the post-apartheid government (Fourie–Malan 2020; Shai et al. 2019; Brunette et

al. 2019; Bolton 2006). This paper is an attempt to understand the social welfare impact of public procurement with specific reference to personal protective equipment (PPE) and the Life Esidimeni tragedy in Gauteng province.

There are two key limitations of this paper in dealing with the tension arising from public procurement and the pursuit of transformative policies. First, there is no direct evidence that the selections that are addressed were made specifically on the basis of B-BBEE regulations. This is partly the case because there is no way of knowing whether the unsuccessful bidders were Black-owned firms. Second, the B-BBEE regulations are generally aimed at facilitating the economic participation of Black-owned firms in public procurement. However, the cases selected below aim to prompt debate on whether this was the best way to implement the regulations. Managing the tension arising from public procurement in an environment where the Black majority were previously excluded from any meaningful economic participation remains a challenge for the post-apartheid government, three decades after liberation.

Map 1. Provinces of South Africa



Gauteng province is the most populous province in South Africa. Approximately 16,271,911 people, representing 26.6% of the country's population in 2022, live in the province, despite its small size, as shown in the map above. Demographic information allows for better policy planning for resource allocation and procurement. As the economic hub of the country, the province is home to the headquarters of numerous companies. Economically, the province contributes more than one-third of the national output in terms of value-added. Its demographic and economic importance make Gauteng province an ideal setting for understanding the impact of public procurement on social welfare. It has the highest expenditure on public procurement and hence presents unique characteristics pivotal to understanding the application of B-BBEE to public procurement and social welfare impacts. The COVID-19 pandemic created an opportunity to understand South African public procurement mechanisms in practice. Gauteng is the province that awarded the highest number of PPE tenders in terms of value and size. Consequently, most allegations of tender irregularities and abuse of public resources were also recorded in this province.

The Special Investigating Unit (SIU) is a constitutionally established independent body tasked primarily with investigating serious allegations of corruption, malpractice, and maladministration in government institutions, state assets, and public finance, as well as any act that may seriously undermine public interest and trust. The SIU begins an investigation upon receiving an allegation, primarily from whistleblowers, and upon the issuance of a Presidential Proclamation by the President, to whom they submit the report of the findings.

According to the SIU report, the declaration of a State of Emergency as a result of COVID-19 and subsequent deviation "opened the public procurement system up to abuse by unscrupulous individuals who acted with impunity for personal gain" (SIU 2021: 725). The report observes that "the rule of law was subjugated in favor of improper and unlawful personal enrichment and at the expense of the public interest" (ibid. p. 726). The report notes that procurement decisions were made on the basis of expediency rather than fairness and justice. This amounted to an unrelenting attack by unscrupulous parties who see state procurement (and the \$9.7 billion that was set aside for COVID-19-related procurement and relief) as a get-rich-quick scheme, with scant regard for the public interest, the public purse, and the principle of Ubuntu (ibid. p. 726).

Earlier in 2016, the Gauteng Department of Health relocated mental care health users (MCHUs) from Life Esidimeni to various NGOs. Budgetary constraints and deinstitutionalisation were the reasons advanced for the project (Moseneke 2018). Both the Health Ombudsman and arbitration have indicated that most NGOs to which MCHUs were moved were unlicensed, unskilled in caring for the health needs of the respective communities, and unfit for purpose. In the

Ombudsman's report, NGO managers narrated that they were prevailed upon by Gauteng Department of Health to view the relocation of MCHUs as a business opportunity. Some NGOs were residential homes, and families were moved to enable the conversion of their homes into centers of care (Health Ombudsman 2016: 21). All 27 NGOs that participated in the project had serious license-related issues, namely, operating with an invalid license, no license at all, or being licensed for child care while accepting adults with mental health needs. As a result, 95.1% of 144 MCHU-related deaths happened in the NGOs under what the Health Ombudsman described as "unlawful circumstances" (ibid. p. 2).

The paper studies the extent to which affirmative action in public procurement enables or hinders social welfare in South Africa. In doing so, it will briefly describe the methodology and question the social welfare implications of two health-related procurements that were issued and found to contravene *Section 217(1) of the Constitution*, which requires that public procurement be fair, equitable, transparent, competitive, and cost-effective. The theoretical analysis is located within the context of health as a salient social welfare issue.

METHODOLOGY

As a qualitative and exploratory study, a review was conducted of various publications, namely books, academic journals, official documents, and newspapers. This paper adopted a case study method. This approach is considered the most suitable since it allows for the identification of cases in official investigation-related reports on the transactions. Public procurement has primary and secondary roles. Its primary function is to secure goods and services on the most cost-effective terms. The secondary role is to promote broader social, economic, and environmental outcomes (Fourie–Malan 2020: 2). It is the secondary function that drives affirmative action in public procurement. South Africa leans toward the secondary objective, specifically viewing public procurement as an instrument for hastening the social and economic upliftment of historically disadvantaged people in the country. This strategic position is central to understanding the emphasis placed on affirmative action in public procurement. In line with the government's position on using procurement to drive wider socioeconomic redress, preferential procurement is advanced based on the B-BBEE score of companies, which incorporates the degree to which companies contract suppliers with high B-BBEE ratings. This is envisaged to have a trickle-down effect aimed at both demographic and structural transformation.

SETTING THE SCENE

Social justice theory (Rawls 1999 [1971]) and organisational theory are advanced as justifications for B-BBEE. A brief overview of the theories is key to understanding the social welfare impact of affirmative action in public procurement. While social justice theory explains B-BBEE as a restorative instrument, organisational theory sees it as a pathway to economic growth. The former emphasises the need for people to have equal rights irrespective of gender, race, and class, and argues that it is the responsibility of the government to ensure such. The government reserves the right to introduce corrective laws, legislation, and policies to structurally transform the economy to ensure equitable and fair access to economic opportunities (ibid.). This is the foundation on which the South African government applies B-BBEE (Shai et al. 2019: 7).

Organisational theory is similar to the above, but further focuses on the transformation of structures and networks through which economic exclusion occurs (Swedberg 2009). The theory holds that without the deliberate dismantling of established economic structures and networks in a society like South Africa's, economic inclusion will remain elusive. The nature of the negotiated transition to democratic government in 1994 has been blamed for the continuous reverberation of the legacy of apartheid. Structural economic transformation has been in its infancy for nearly three decades. Thus, public procurement seems to be a plausible route for achieving the goals that organisational theory posits. The theory differs from social justice theory in that it urges the private sector to restructure itself by including previously disadvantaged individuals and groups in the economy. The B-BBEE score system provides private sector companies with the incentive to alter both the structure and networks through the diversification of ownership, management, and development of employees and suppliers, thereby making room for new entrants, innovation, and competition, which in turn enhances economic growth (*B-BBEE Act 53 of 2003*).

In the context of South Africa, affirmative action in the form of B-BBEE seeks to promote economic transformation to enable the meaningful participation of black people in the economy (*B-BBEE Act 53 of 2003*). Africans, Colored persons, and Indians are defined in the Act as Black people who were systematically and economically marginalised during the apartheid era. Other specific categories such as women, workers, youth, people living with disabilities, and rural residents, are also targeted for support through the Act. The Act seeks to:

- Achieve a substantial change in the racial composition of ownership and management structures in the skilled occupations [associated with] existing and new enterprises;

- Increase the extent to which communities, workers, cooperatives, and other collective enterprises own and manage existing and new enterprises and increase their access to economic activities, infrastructure, and skills training;
- Increase the extent to which Black women own and manage existing and new enterprises, and increase access to economic activities, infrastructure, and skills training;
- Promote investment programs that lead to broad-based and meaningful participation in the economy by Black people to achieve sustainable development and general prosperity;
- Empower rural and local communities by enabling access to economic activities, land, infrastructure, ownership, and skills; and
- Promote access to finance for Black economic empowerment.

B-BBEE is precisely an economic policy that aims to transform the structure of ownership and control in the economy. However, its emergence as a post-apartheid policy of economic redress does not preclude the expectation of other impacts. Francis and Valodia (2021: 4) observe that the reason for the inadequacy of literature that investigates the nexus between B-BBEE and other areas, such as the labor market, is that the intervention “is not primarily a labor market” policy. This raises an important question: whether economic transformation pursued through B-BBEE is unconnected from social welfare, including health-service tenders. B-BBEE, according to Francis and Webster (2019), is the post-apartheid government’s key policy tool for economic redistribution. This is in line with Southall’s description of B-BBEE as “*a mix of political pressure, government procurement practices, legislation, notably the Broad-Based Black Economic Empowerment Act of 2003, designed to advance black ownership of and control over the economy*” (Southall 2007: 67). The highlighted aspects of the description are important to understanding B-BBEE’s impact on social welfare in the presented case studies.

Most scholarly reviews of the policy focus on assessing whether the intended policy outcomes are indeed realised or realisable. This justified the policy’s critics, who began speaking out after almost a decade of implementation. Moreover, the fact that the policy is aimed at ameliorating an economic quagmire has prompted scholars, mostly leftists, to question its effectiveness in reducing the ever-rising economic inequality in the country.

Since its inception in the early 1990s until 2013, the Act has gone through several reviews and amendments, including the formation of the B-BBEE Commission to “address all known and perceived weaknesses in the previous regulatory framework” (Shai et al. 2019: 5). In the early 1990s, the policy

framework focused mostly on increasing the Black share of ownership in strategic economic entities in the country (Ponte et al. 2007). In effect, Tangri and Southall observe that “BEE has amounted mainly to the transfer of shares, which have been acquired disproportionately by a small number of prominent, politically connected black figures. This handful of persons has amassed large fortunes from empowerment transactions and accompanying directorships” (Tangri–Southall 2008: 701). Consistent with this perspective, Francis et al. (2021) argue that B-BBEE under President Mbeki was an instrument for creating the African bourgeoisie, who emerged not through their ingenuity or ownership of the means of production, but through their proximity to the ruling party. This aligns with an earlier observation by Ponte et al. (2007: 934), who identify the key contradiction of B-BBEE as the provision of “enhanced opportunities” to individuals rather than groups, and the failure to pursue structural economic changes necessary for redistributive justice. As a result, B-BBEE, as the government’s major instrument for economic redress, has been ineffective as the structure and system of capitalism it seeks to correct remain largely intact, with the assimilation of a few Black beneficiaries highlighted to claim a semblance of transformation (Francis– Webster 2019). Other scholars are of the view that B-BBEE was “underpinned by a largely unexamined assumption that diversification of concentration and ownership in the economy will lead to greater equity” (Francis–Valodia 2021: 4). To date, some in society echo Cameron’s (1996) and Luiz’s (2002) position that B-BBEE is the reason for the emigration of Whites. However, this position has been interrogated and found to be unsupported by evidence (Edigheji 2007).

This paper examines the relationship between public procurement and social welfare, with a specific focus on tenders issued by the Gauteng Health Department in recent years. With the declaration of a national state of disaster on March 15, 2020 due to the spread of COVID-19, PPE procurement began. Following the procurement, there were allegations of gross abuse of state power and resources. On July 23, given intensive media coverage, President Ramaphosa signed *Proclamation No. R23 of 2020*, which empowered the Special Investigative Unit (SIU) to investigate the following PPE procurement-related allegations, among others:

- Personal protective equipment was procured at exorbitant prices; and
- Officials disqualified legitimate service providers and replaced them with entities belonging to their friends and/or families.

The SIU report made several observations during the investigation. These included the fact that the declaration of a national state of disaster on March 15, 2020 led to PPE procurement, and that some service providers had registered

their companies less than one month earlier, indicating no demonstrable track record. B-BBEE points were awarded to some companies as Level 1 contributors, for which they were not qualified. Many companies were awarded tenders to supply medical products without a prerequisite license from the South African Health Products Regulatory Authority (SAHPRA). The Special Investigative Unit further observed that “political pressure played a role in the procurement of PPE,” noting that no disclosure of friendships between suppliers, politicians, and officials who awarded PPE contracts was made (SIU 2021: 41).

Two of the three case studies presented below are extracts from the SIU report, which demonstrate that PPE procurements were marred by overpricing, political interference, and the performance of medical-related contracts without a license. These two cases were the most expensive instances of PPE procurement awarded by the Gauteng Department of Health.

CASE STUDIES: GAUTENG DEPARTMENT OF HEALTH

Case study 1: Personal protective equipment (PPE)

Allegation: This matter forms part of the allegations referred to the Special Investigation Unit (SIU) by the Gauteng Office of the Premier on June 5, 2020 and relates to the irregular procurement of personal protective equipment by the Gauteng Department of Health (DoH) from Beadica. The Gauteng DoH awarded contracts with a total value of approximately \$12.5 million to Beadica.

According to the SIU report, Beadica submitted a quotation on 28 April 2020 for the delivery of 3,000,000 3-ply surgical masks, 300,000 N95 face masks, 100,000 FFP2 face masks, and 250,000 jumpsuits to the Gauteng DoH, for a total value of \$8.5 million. Following receipt of the quotation, and without any cost-effective tender process, Gauteng DoH sent a Commitment Letter to Beadica for a total value of \$8.5 million for the supply of items. The company claimed to have delivered \$4 million worth of goods for the order before the commencement of the investigation. A second Commitment Letter was issued to Beadica on June 17, 2020 following its second quotation submission for 1,546,000 surgical masks, 300,000 N95 face masks, and 100,000 FFP2 face masks for a total value of \$3 million. Thus far, Beadica has purportedly delivered goods valued at \$175,320 in respect of this second order.

After investigating the above allegation, the Special Investigation Unit found that two contracts of a total value of \$12.5 million (\$8.5 million and \$4 million)

were irregularly awarded to Beadica by Gauteng Department of Health simply based on the unsubstantiated decision of Ms. Lehloenya (the former CFO) and Ms. Pino (the Chief Director Supply Chain and Asset Management) at Gauteng DoH, and without adherence to cost-effective tender processes. Beadica was found not to be registered or licensed to supply medical-related materials by SAHPRA, and there was no traceable record of it having been registered or licensed in the past. At the time Gauteng DoH sent Beadica the Commitment Letter, the company was neither a PPE manufacturer nor licensed by SAHPRA to import or sell medical products. This phenomenon was repeatedly identified in the investigation. For instance, entities registered as construction companies tendered for the supply of personal protective equipment and were awarded contracts (SIU 2021).

It is uncontentious that the quotation was seamlessly approved just one day after the supplier registered as a supplier of PPE-related goods on the Central Supplier Database (CSD) of Gauteng DoH. In addition to the suspicion, the Special Investigation Unit found that Beadica had supplied non-medical-grade masks instead of the medical-grade masks for which it was contracted. The investigation further found that a \$1,475,733 payment was made to Beadica by Gauteng Department of Health for non-medical-grade masks that could not be used by the DoH. As was common among other PPE suppliers, Beadica was found to have “overstated its prices by overcharging \$923,733” for the supply of masks (ibid.).

Case study 2: Personal protective equipment (PPE)

Allegation: This allegation relates to the procurement of, and contracting for the provision of 1,000,000 units of 3-ply surgical masks, 500,000 units of N95 face masks, 500,000 units of FFP2 face masks, and 100,000 units of latex, powder-free examination gloves by Zakheni to the Gauteng Department of Health. The value of the contract awarded is \$6,918,8000.

Just a day after receipt of the quotation for the supply of personal protective equipment from Zakheni on April 19, 2020, Ms Kabelo Lehloenya, the Gauteng CFO, issued the company with a Commitment Letter. In the letter, Zakheni was awarded a contract to supply PPE worth \$6,918,800. The Special Investigation Unit found the transaction to be unlawful, for there was no adherence to procurement processes and prescripts, as “the PPE contract was, single-handedly, procured and awarded by the CFO” (SIU 2021). The prices quoted by Zakheni were found to be “evidently excessively over the maximum price”

set by *National Treasury Instruction No. 3 of 2020/21: COVID-19 PPE Price List* dated April 28, 2020, which the Gauteng Department of Health was well aware of. Based on the goods delivered at the time of SIU investigation, Zakheni was found to have made “an excessive profit of \$2,415,216.” (ibid.). During the investigation, it was revealed that the Director of Zakheni, Mr Tembile Sangoni (now late), was the husband of Ms Khusela Diko, who, at the time of the transaction, was the Presidential Spokesperson. Mr Tembile Sangoni was also “a close friend and business partner of the wife of the then Member of Executive Council (MEC) responsible for Health within the Gauteng province (i.e., MEC Masuku).” In her affidavit, Ms Pino (Chief Director of Supply Chain and Asset Management at the Gauteng DoH) stated that Ms Lehloeny, in her response, said that “the MEC wants his people [to supply the goods].”

Two important observations made in the SIU report are worth noting. First, certain people in authority within the Provincial Government distrust procurement processes defined by the National Treasury and suspect that they are in place to “create monopolies in public sector procurement, which excludes fair opportunity for local, provincial, black empowerment and/or SMMEs (i.e. small, medium and micro enterprises) suppliers or service providers to compete fairly for such contracts.” In line with this perspective, some persons in authority thought that the declaration of a ‘national state of disaster’ meant that all procurement is automatically now conducted on an ‘emergency’ basis, and without compliance with any of the normal prescripts regulating public sector procurement, but without realizing that even ‘emergency’ procurement must still be conducted following certain minimum prescripts to ensure (in as far as possible) that such processes remain fair, equitable, transparent, competitive and cost-effective, as prescribed by *Section 217 (1) of the Constitution*. In a way, the declaration seems to have provided an excuse to undo what these actors believed, though wrongly, to be procurement-related injustices perpetuated by the National Government.

Case study 3: Life Esidimeni

On March 31, 2016, the contract between the Gauteng Department of Health and Life Esidimeni Health Care Centre was formally terminated, and a three-month extension also expired on June 30, 2016. Between April 1 and June 30, 2016, an estimated 1371 users of chronic mental health care services were hurriedly transferred from the Life Esidimeni Health Care Centre to NGOs in Gauteng province. A year before this rushed relocation, only 160 patients had been transferred from Life Esidimeni to NGOs between April 1, 2015 and

March 31, 2016. The Department of Health thus ensured an exponential increase in transfers, from 13.3 patients per month in 2015 to 457 per month for three months in 2016. This sudden rise was captured in the name of the program: the Gauteng Mental Health Marathon Project.

This paper is interested in the procurement of the NGOs that participated in the Gauteng Mental Health Marathon Project, under whose care 95.1% of 144 patients died in “unlawful circumstances.” The process of relocating the patients was considered “chaotic or a total shambles,” given that it was done in “a hurry/rush’ ... in an environment with no developed, no tradition, no culture of primary mental health care community-based services framework and infrastructure” (Health Ombudsman 2016: 1). According to the Health Ombudsman, “all patients who died in these NGOs died under unlawful circumstances” (ibid. p.1). The readiness of the chosen NGO is clarified in the following extract:

Newly-established NGOs were mysteriously and poorly selected, poorly prepared, and ‘not ready,’ their staff was not trained, not qualified, and was unable to distinguish between the highly specialized non-stop professional care requirements of ‘assisted’ Mental Health Care Users (MCHU) from LE and a business opportunity; there were often mismatches between MCHU functionality with NGO fitness for purpose. (Health Ombudsman 2016: 2)

Despite the lack of expertise, experience, and managerial capacity, Gauteng Department of Health issued Letters of Designation to the NGOs (ibid. p. 19) to function as institutions for mental health care. As a result of the procurement, the Ombudsman found a correlation between “higher or excess” deaths in these NGOs and unsuitable conditions, a lack of basic competence, and a lack of experience in highly specialised professional care needed by the patients. Some of them became what Judge Moseneke described as “sites of [the] death and torture of mental health care users under their care” (ibid. p. 24). During the investigation, the managers of the NGOs informed the Ombudsman that they were “prevailed upon” in September 2015 by highly placed officials, such as Dr Manamela, in the Gauteng DoH, to see the project as a business opportunity to increase their income. The extract below is insightful:

The NGO managers during the interviews stated that the NGOs were invited to attend a meeting held by Gauteng DoH and were informed about the opportunity of housing mentally ill patients. Some of the NGOs were residential homes, and families moved out and relocated

to accommodate the conversion of their homes into centers of care because they saw a business opportunity in the transfer project. (Health Ombudsman 2016: 21)

No procurement process was followed in the selection of the NGOs, even though a \$3,395,142 initial payment was made. Older NGOs were encouraged to expand their infrastructure, and others were told to seize this empowerment opportunity by modifying their homes to accommodate patients (Moseneke 2018: 25). In a way, it seemed like a B-BBEE opportunity. Yet, given how the NGOs were selected, most lacked a license to take in mental health care users. For instance, El Shaddai and Precious Angels, two of the NGOs, received licences to operate five months *after* they had taken in patients. Even at the time, the licensing process was flawed because an unauthorised official signed the documents, no inspection of compliance was conducted, and the issued licences were not specific to the service requirements (Health Ombudsman 2016: 19).

DISCUSSION AND CONCLUSION

The extent to which affirmative action in public procurement is expected to link with social welfare is relatively inadequately established in the literature. With a specific focus on the public procurement by Gauteng Department of Health for personal protection equipment and Life Esidimeni mental health care users, this paper has attempted to establish the linkage. Health is key to social welfare, and it is a fair expectation that public procurement in the health sector is generally intended to support the public good, especially during a pandemic. The death of 144 patients and the consequences of the supply of non-surgical-grade face masks on health care professionals in the Gauteng Department of Health are a testament to the social welfare impact of public procurement. Attempting to establish social welfare impacts from public procurement, irrespective of whether affirmative action is pursued or not, should be grounded in and reinforce *Section 217(1) of the Constitution*, which states that the contracts the government enters into on behalf of the people of South Africa must be fair, equitable, competitive, transparent, and cost-effective. While the primary function of procurement is to procure goods and services on the most cost-effective terms, the promotion of broader social and economic goals is its secondary role (Fourie–Malan 2020: 2). In a country as unique as South Africa, with a history of socio-economic discrimination, there is bound to be tension concerning which function to prioritise in every given public procurement

process. Unfortunately, as shown in the case studies, the government officials at the Gauteng Department of Health did not engage with this critical question. Some seem to believe it is time to use public procurement to pursue economic justice, regardless of whether the companies involved can deliver.

This paper goes beyond addressing improprieties in the name of affirmative action in public procurement to question whether there are grounds for pursuing social welfare impact through preferential processes. The importance of this question lies in the fact that none of the prosecutorial processes, such as those pertaining to the incidents mentioned above, can undo the damage. For instance, no action will restore the lives lost due to the “mysterious” procurement of the unqualified NGOs in whose care 144 patients died in “unlawful circumstances.” Accordingly, a watchful eye is needed over procurement that directly influences social welfare, at least for ensuring the cost-effectiveness of the goods and services procured. Such vigilance seems to be lacking in the Gauteng Department of Health, as an obscure understanding and implementation of the Broad-Based Black Economic Empowerment is upheld at the expense of the social welfare of even the most vulnerable in society.

Political pressure, a lack of licences, and non-adherence to public procurement institutions are the pronounced patterns identified in the cases. B-BBEE seems to be the only explanation for why the patterns were manifest even during procurement in response to a pandemic. According to the investigation of the Special Investigation Unit, some government officials interpreted the declaration of a “national state of disaster” as automatically suspending procurement processes. This became a justification for failing to follow rules and simple “rubber-stamping” by politicians. As a result, licensing, as a regulatory mechanism, was intentionally ignored, and deaths followed. These unfortunate realities detract from South Africa’s status as a developing state. As shown in the cases, what prevailed was the self-enrichment of individuals in the name of affirmative action. However, the sector in which this happened means the impacts were detrimental to social welfare.

In conclusion, this paper has raised the question of the extent to which affirmative action in public procurement impacts social welfare. Studying the public procurement of Gauteng Department of Health, as done through the case studies, was critical for understanding the impact and the relationship between public procurement and social welfare delivery. As is evident from the cases that were presented, political pressure, a lack of licences, and deliberate infractions occurred under the guise of B-BBEE to derail social welfare deliveries during the COVID-19 pandemic. The strategic socioeconomic position of the Gauteng province suggests that similar procurement practices may be the case in other provinces and at the national level. Such practices not only undermine

South Africa as a development-focused state but also negatively impact social welfare. Managing the tension between the first and second functions of public procurement properly seems vital if countries in the global South wish to achieve the United Nation's Social Development Goals for social welfare. This is because promoting development and welfare seems impossible without the cost-effective procurement of goods and services for the public interest. If public procurement processes occur without appropriate oversight, as was the case in South Africa during the COVID-19 pandemic, politicians in collusion with government officials will misinterpret affirmative actions such as the Broad-Based Black Economic Empowerment to justify practices that are the antithesis of social welfare.

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