



# DULLAH OMAR INSTITUTE

FOR CONSTITUTIONAL LAW, GOVERNANCE AND HUMAN RIGHTS



# NATIONAL HEALTH INSURANCE BILL PRESENTATION

DULLAH OMAR INSTITUTE, UWC

MOTLATSİ KOMOTE

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# INTRODUCTION

# DULLAH OMAR INSTITUTE

The Dullah Omar Institute based at the University of the Western Cape works to realise the democratic values and human rights enshrined in South Africa's Constitution. It is founded on the belief that our constitutional order must promote good governance, socio-economic development and the protection of the rights of vulnerable and disadvantaged groups.

# BACKGROUND: DOI WRITTEN SUBMISSION

- We made a written submission to the PC on Health in November of 2019.
- Our original submission focused on public participation and transparency, governance of the NHI Board (including the composition and the roles of the different stakeholders in the appointment processes) and the role of provinces amongst others.
- We made a series of recommendations based on provisions outlined in the National Health Insurance Bill GG 42598 of 26 July 2019 and our expertise in governance matters.

# KEY MESSAGES

- NHI BOARD PLAYS A CRITICAL ROLE (IMPACT ON THE PUBLIC, FINANCES AND AN OPPORTUNITY TO REDISTRIBUTE HEALTHCARE SERVICES TO RURAL/ NON-URBAN AREAS)
- PARLIAMENT IS THE CONSTITUTIONAL SITE FOR PUBLIC INVOLVEMENT
- THE LEGISLATURE (PARLIAMENT) MUST PLAY A BIGGER ROLE IN THE NHI THAN CURRENTLY ENVISAGED

# MAIN THEMES

- BOARD APPOINTMENT PROCESSES
- TRANSPARENCY
- PUBLIC INVOLVEMENT



“

EACH STATE PARTY TO THE PRESENT COVENANT UNDERTAKES TO TAKE STEPS, INDIVIDUALLY AND THROUGH INTERNATIONAL ASSISTANCE AND CO-OPERATION, ESPECIALLY ECONOMIC AND TECHNICAL, TO THE MAXIMUM OF ITS AVAILABLE RESOURCES, WITH A VIEW TO ACHIEVING PROGRESSIVELY THE FULL REALIZATION OF THE RIGHTS RECOGNIZED IN THE PRESENT COVENANT BY ALL APPROPRIATE MEANS, INCLUDING PARTICULARLY THE ADOPTION OF LEGISLATIVE MEASURES.

”

ARTICLE 12 (1) UN INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS







“

UNIVERSAL HEALTH COVERAGE AS DEFINED CURRENTLY IN THE NHL BILL AIMS TO PROVIDE ***SOUTH AFRICANS*** WITH ACCESS TO DECENT HEALTH CARE THAT IS OF SUFFICIENT QUALITY

”

WE SUPPORT THE CURRENT VERSION OF THE NHI BILL IN PRINCIPLE, HOWEVER WE HAVE CONCERNS...




The image features a dark teal background with a subtle gradient. In the four corners, there are decorative white line-art elements resembling circuit traces or neural network connections, with small circles at the end of the lines. The central text is in a clean, white, sans-serif font.

THE NHI BILL IS PARTLY EXCLUSIONARY

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# PARLIAMENT AND ITS DEMOCRATIC ROLE: CONSTITUTIONAL AND LEGISLATIVE OBLIGATIONS



“ S59(1) THE NATIONAL ASSEMBLY MUST—  
(A) FACILITATE PUBLIC INVOLVEMENT IN THE  
LEGISLATIVE AND OTHER PROCESSES OF THE  
ASSEMBLY AND ITS COMMITTEES... ”

Constitution of the Republic of South Africa, 1996



# DOCTORS FOR LIFE INTERNATIONAL V SPEAKER OF THE NATIONAL ASSEMBLY AND OTHERS

- PROVIDES AN OVERVIEW OF WHAT CONSTITUTES REASONABLE PUBLIC PARTICIPATION IN LEGISLATIVE PROCESSES.
- COVID-19 HAS PRESENTED AN EXTRA LAYER OF CHALLENGES REGARDING PUBLIC ACCESSIBILITY TO THE LEGISLATURE'S.

# TRANSPARENCY IN LEGISLATIVE PROCESSES

- ESSENTIAL FOR PARTICIPATION
- INFORMATION MUST BE ACCESSIBLE (PLATFORMS AND LANGUAGE)
- TIMEFRAMES
- CONSIDERATION OF EXTERNAL CHALLENGES (COVID-19 PANDEMIC)

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# GOVERNANCE IN THE NHI

# BOARD APPOINTMENT PROCESS

## CENTRALISED POWER OF THE MINISTER

BILL PROVIDES FOR **AUTONOMOUS** POWER TO THE MINISTER OF HEALTH TO APPOINT AND DISMISS BOARD MEMBERS AND CHAIRPERSON

DOI RECOMMENDATION: DIFFUSE ROLE OF MINISTER AND INVOLVE OTHER STAKEHOLDERS

DIFFUSING THIS ROLE OF THE MINISTER ALLOWS OR ENSURES THAT THERE WILL BE NO UNDUE POLITICAL INTERFERENCE THAT WE HAVE PREVIOUSLY NOTED IN SOE APPOINTMENTS

## LESSONS LEARNT IN SOE PROCESSES

COURTS HAVE DEALT EXTENSIVELY WITH BOARD APPOINTMENT PROCESSES FOR EXAMPLE THE SABC

THERE IS A POSSIBLE DANGER THAT THIS NHI BOARD MAY BE FACED WITH SIMILAR PROBLEMS

THE OECD PROVIDES CLEAR GUIDELINES AND PRINCIPLES WHICH SHOULD BE FOLLOWED FOR GOOD CORPORATE GOVERNANCE

## LESSONS LEARNT (CONT.)

CORPORATE GOVERNANCE PRINCIPLES STRONGLY SUGGEST THAT POWER MUST NOT LIE WITH ONE INDIVIDUAL IN THIS CASE THE MINISTER OF HEALTH IN VARIOUS BOARDS

CONSIDER OTHER MECHANISMS FOR TRANSPARENCY AND PUBLIC INVOLVEMENT



# RECOMMENDATION

- More debates must be held on whether the *Minister/ President* should make the final appointment.
- Other high level processes that have significant public impact have a role for the President instead of a *Minister* (i.e. The Municipal Demarcation Board, Public Protector, JSC)
- In our view, the President should be responsible for the final appointment(s)

# ROLE OF APPOINTMENT STRUCTURES AND THE MINISTER

- CURRENTLY HAVE A LIMITED ROLE FOR THE ADVISORY PANEL IN THE BILL
- DOI IS NOT IN AGREEMENT WITH THE AD HOC ADVISORY PANEL IN ITS CURRENT FORM
- RECOMMENDATION: AN APPOINTMENT STRUCTURE WITH EXTENDED POWERS WHICH WOULD LIMIT THE MINISTER'S ROLE

# COMPOSITION

- Must be impartial
- Have knowledge on the particular matter (i.e healthcare)
- Have the necessary skills and competence

# RESPONSIBILITIES

- CALL FOR NOMINATIONS
- SHORTLISTING
- INTERVIEWS
- RECOMMENDATIONS TO PRESIDENT/OR MINISTER
- ENSURING TRANSPARENCY IN PROCESSES
- ENSURING MEANINGFUL PUBLIC INVOLVEMENT

# CALL FOR NOMINATIONS AND SHORTLIST

- Appointment structure responsible for call for nominations
- Non-negotiables: public access to the call for nominations; adequate time frames
- Shortlisting and interviews must be public and reasons provided
- Make recommendation to Minister/President
- President/Minister makes appointment and provides reasons

# BOARD DISSOLUTION

- In terms of section 13(9)(a)(i) – (ii) the Minister has the power to dissolve the Board of the Fund on *good cause shown*. This is too vague, it is imperative that a list of possible reasons for the dissolution should be provided in the Bill. Further, the Bill must require that the information relating to the reasons for dissolving the Board should be made available for public record and scrutiny to ensure public transparency and accountability. The Bill must include that the Minister may only dissolve a board after presenting arguments for this to Parliament.

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# ADDITIONAL PROBLEM AREAS IDENTIFIED IN THE NHI BILL

# ROLE OF PROVINCES

## COMPETENCY

Concurrence in the role of provinces which is a very big role. Health services are currently current national provincial competency in terms of the Constitution as it stands there's limited clarity in the Bill on the role of the provinces other than their delegation as management agents of the NHI.

## EQUITABLE SHARE

The equitable share provinces receive would be transferred to the NHI fund as per the bill as a form of income.

The plan for the role of provinces needs to be properly articulated-we have seen with the pandemic how challenging providing health services at provincial level can be.

## IMPACT

We are concerned with decisions and how this impacts on the role of a provincial legislature in providing oversight over the funds.

We cannot take away the critical role of the provinces in implementing the NHI.



# DISTRICT HEALTH MANAGEMENT OFFICES

- CONFUSION ON THE ROLE OF DHMOS SIMILAR TO THAT OF THE ROLE OF PROVINCES.
- THE BILL DOES NOT ACCOUNT FOR THE **IMPORTANT** ROLE THAT IS UNDERTAKEN AT A DISTRICT LEVEL IN THE PROVISION OF HEALTHCARE SERVICES.

## AREAS OF CONCERN:

- CLARITY IS NEEDED
- THIS SECTION OF THE BILL MUST BE STRENGTHENED ACCORDINGLY WITH INPUT FROM MEMBERS OF THE PUBLIC.

# ADVISORY COMMITTEES

- THE ROLE OF THE PUBLIC IS IMPORTANT IN ALL ADVISORY COMMITTEES AS STIPULATED IN THE BILL
- THESE COMMITTEES SHOULD INCLUDE CSOs AND MEMBERS OF THE PUBLIC AS HEALTH SYSTEM USERS
- THIS SHOULD NOT MAINLY CONSTITUTE GOVERNMENT AND THE PRIVATE SECTOR

# FINAL REMARKS: ROLE OF PARLIAMENT

- RECOMMENDATION: PARLIAMENT PLAYS A STRONGER ROLE ON THE NHI.
- PARLIAMENT HAS A DUTY AND AN ACTIVE ROLE TO PLAY.
- LESSONS LEARNT HAVE TAUGHT US THAT CORRUPTION, STATE CAPTURE ARE RIFE WHEN MECHANISMS ARE NOT IN PLACE AT ALL STAGES OF PROCESSES.
- CLARITY MUST BE PROVIDED ON OUTSTANDING MATTERS I.E DHMOs, ROLE OF PROVINCES.

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# THANK YOU

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