

## **NHI – Blindly creating bureaucratic governance loopholes despite glaring warnings – Part III** Politics 8 November 2018

There has been a small ray of hope amidst the catastrophic state of public healthcare in South Africa, thanks to recent reports from the Presidential Health Summit (the Summit), held on 19 and 20 October 2018.

The Summit was convened to find collaborative solutions to the mammoth challenges facing South Africa's health system and included various health sector stakeholders. According to the Deputy President's closing remarks, short-term outcomes of the Summit included filling critical vacant posts in the health system; developing a sustainable financing model for the health system by National Treasury and prioritising maintenance upgrading of health infrastructure. This initiative speaks directly to the need to promote the constitutional principle of ensuring "efficient, economic and effective use of resources", as required in section 195(1)(b) of the Constitution.

The Summit's outcomes were reiterated in the Minister of Finance's Medium-Term Budget Speech of 24 October 2018, in which he announced that R350 million will "immediately" be reprioritised to recruit more than 2 000 health professions into public health facilities and R150 million to purchase beds and linen for hospitals in dire need.

There is ample evidence of the urgency of the above. In a June 2018 report on public healthcare services in the provinces, the Treatment Action Campaign (TAC), emphasised the critical shortage of human resources and the tendency to freeze vacant posts across most provinces. TAC's Eastern Cape report highlighted that according to the Department of Health, 7 005 of the 46 298 funded posts in the Eastern Cape were vacant - almost 15% of the workforce.

The TAC's own monitoring tool also recorded that 67% of the 27 public healthcare facilities visited in the Eastern Cape had insufficient staff. In passing, one could ask where the competent people to fill the vacancies will come from. It is common knowledge that South Africa suffers from a skills deficit, especially with regard to specialised and technical skills. Will the government be willing to consider appointing the best candidates objectively and fairly and not get stuck with rewarding loyalty?

Weak governance structures were also a glaring weakness highlighted in the recent annual inspection report of the Office of Health Standards Compliance (OHSC), which inspected 696 public health facilities in 2016/17. The OHSC's report indicated that "leadership and corporate governance" at public hospitals had the lowest average performance score of 44%. The Special Investigating Unit report (SIU report) into the affairs of the Gauteng Health Department (released publicly in June 2018) recorded a loss of over R1.2 billion during 2006-2010 and implicated several politicians and civil servants. The SIU report provided abundant evidence of systemic governance flaws - especially feeble oversight in the procurement process.

It also, however, became clear in the Deputy President's written closing remarks at the Summit that the ill-shaped National Health Insurance (NHI) is still central to the State's plan to transform healthcare. This corresponds to the State's vigour in publishing the *Draft National Health Insurance Bill* (NHI Bill) in June 2018. The NHI Bill proposes the establishment of the NHI Fund, which will be the single purchaser and financier of the population's personal health services.

A key concern with the NHI Bill, especially in the current climate, is the proliferation of bureaucratic committees with very little safeguarding against corruption and the over-involvement of the Minister of Health (the Minister).

The NHI Bill envisions that the NHI Fund will be governed by the NHI Board, which is supposed to be "independent" and accountable to Parliament. True independence is questionable, considering that the NHI Board consisting of 10 people must be recommended by the Minister and appointed by the Cabinet. The public will be able to nominate candidates and an *ad hoc committee* appointed by Cabinet will conduct public interviews and forward their recommendations to the Minister. The administrative head of the NHI Board, the Chief Executive Officer (the CEO), is also appointed by the Minister, following recommendations from the NHI Board. The NHI Board in turn has the prerogative to establish committees to delegate its functions to as it seems fit, with very little detail on the composition of such potential committees.

The Minister also has the power to establish various ministerial committees that will determine crucial aspects of the functioning of the NHI - the members of which are also appointed by the Minister. This includes, for instance, the Health Benefits Pricing Committee, who must recommend the prices of the health service benefits to be provided and it appears that 11 of these members will be appointed by the Minister (without required pre-consultation) based on their "special knowledge and experience" in prescribed fields. The NHI Bill also affords the Minister the wide powers of establishing additional technical committees to achieve the objectives of the Act, if needed.

Considering the enormity of the funds the NHI Board will manage, the various committees and expansive functions of the NHI Board, one would assume there would be adequate checks and balances to safeguard against corruption. The NHI Bill, however, only provides that the NHI Fund must "*take all reasonable steps to prevent and discourage corruption, unethical or unprofessional conduct...*". The CEO furthermore has to establish a national investigating unit to investigate corruption and unethical behaviour complaints.

The question remains - what internal measures will be adopted to safeguard against corruption, mismanagement of funds and political involvement? This detail is crucial to gain public confidence considering the massive looting of State-Owned Enterprises (SOEs) in the last few years. For years the Auditor-General of South Africa (the AG) has emphasised the root causes of the financial catastrophe at SOEs, including inadequate financial management controls, weak monitoring and slow response to the AG's recommendations, which required immediate and effective consequences for poor performance and transgressions. However, despite these warnings, the NHI Bill lacks strong checks and balances.

The Summit's outcomes and the State's commitments to address immediately the state of public healthcare, leaves one cautiously hopeful. However, a major re-assessment of the NHI and alternatives to the proposal is needed.

If the governing party is sincere about tackling corruption and providing universal access to healthcare, it will depoliticise the discussion, consider alternatives, address immediate corporate governance concerns and ensure the best candidates for the job are appointed. Lastly, any proposal must contain clear checks and balances to safeguard against bad governance and corruption.

It is crucial that the democratic values and principles of effective use of resources, accountability and transparency in public administration must be seen to be applied. Without these basic democratic values driving the process, the constitutional right to healthcare and the goal of universal healthcare for all - which implies quality healthcare without incurring financial hardship - would be completely defeated.

*Christine Botha is Legal Officer, Centre for Constitutional Rights.*

*\*Part III of health reform series*