

Joint Oral Submission to Parliament on the NHI Bill

SECTION27 & Treatment Action Campaign
1 December 2021



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Who are we?



- National, membership-based organisation of **8000 members** and **235 active branches**
- Active in **eight** of South Africa's **nine provinces**.
- **Premier** HIV and health activist organisation working in the interests of people who most need the public health system to work
- Ritshidze project and TAC monitoring: Community led public healthcare monitoring of **650** facilities. Ritshidze: **400** sites, **27** districts for PLHIV

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Who are we?



- **Public interest law centre** using law in the interest of **human rights**
- **Previously AIDS Law Project**
- Section 27 of the Constitution - **right to health** is a key work area
- Our recent work includes:
 - Health rights education - vaccine literacy training with over 1000 people
 - Health advocacy - support government's TRIPS Waiver
 - Litigation - vaccination for children, school feeding programme
 - Life Esidimeni Inquest - representing families

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Together, TAC and SECTION27 (previously AIDS Law Project) have been working to improve access to quality health care services for two decades.

Our 2019 NHI Bill submission was endorsed by:

The South African Depression and Anxiety Group	The Public Service Accountability Monitor
Lawyers for Human Rights	Cancer Association of South Africa
Sonke Gender Justice	People's Health Movement
Amnesty International	Dullah Omar Institute
The Southern African Litigation Centre	OUTA
National Mental Health Alliance Partnership	South African NCD Alliance

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Who did we engage before our submissions?

We include consolidated inputs from **1280** people, gathered through community dialogues across seven provinces. The breakdown is as follows:

Western Cape	Isivivana, Khayelitsha and Pine Trees, Plettenberg Bay	141 and 77
Mpumalanga	Driefontein Community Hall and Kanyamazane Community Hall	58 and 83
Limpopo	Tabernacle of Grace Church and Revolution Church	148 and 123
KwaZulu Natal	The Napier Pastoral Centre and Mabuyeni Community Hall	31 and 120

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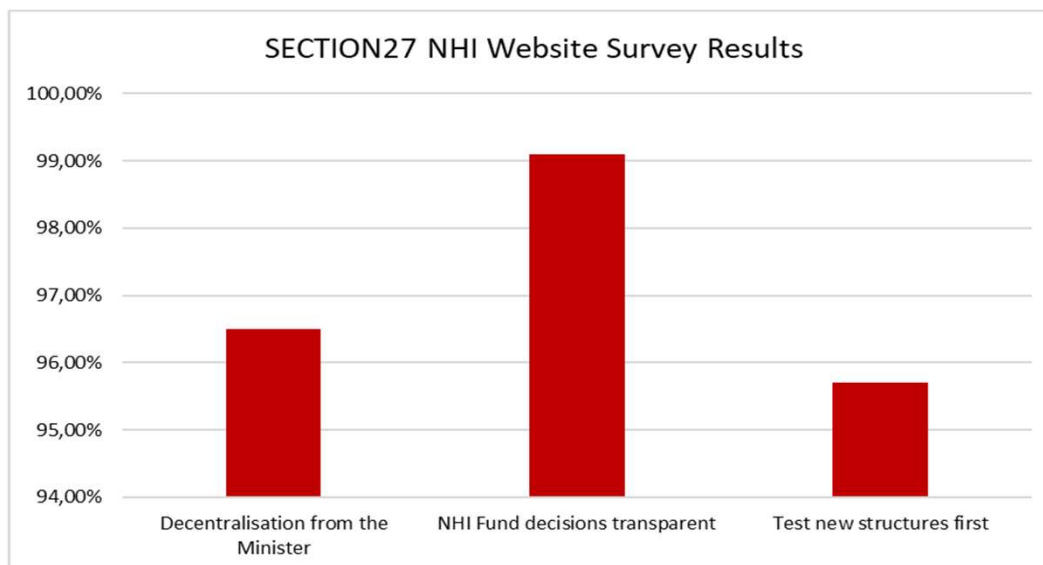
Gauteng	Trinity Church, Boitumelo and Phumula	79 and 90
Free State	Allanridge and Thabo Mofutsanyane	80 and 61
Eastern Cape	East London, Newlife Location and Port St John's	69 and 120

+SECTION27
catalysts for social justice

TAC
TREATMENT ACTION CAMPAIGN

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Online survey



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The principles that inform this submission

SECTION27 and TAC:

- support legitimate efforts toward quality, universal health coverage
- agree on the inequity of current system
- agree that change to health funding is needed
- are adamant that the right to access health care services means that everyone should be able to access quality services on the basis of need

Disagreeing with elements of the NHI Bill does not take away from this

We aim to help you to ensure that health system reforms are implementable and sustainable

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Why are we worried?

- The NHI Bill envisages the establishment of a complex and large fund that will be complicated to manage and tempting to loot from.
- Contracts will be created that require skilled HR capacity to manage.
- New structures will be created with overlapping functions and unclear relations to each other.
- How excess capacity will be leveraged from the private sector remains opaque.
- How the underlying political and governance challenges that are the sand in the gears of our public service will be addressed remains unclear.

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Considerable work is needed to make the proposals of the
NHI Bill comprehensive, coherent, coordinated and
reasonably conceived

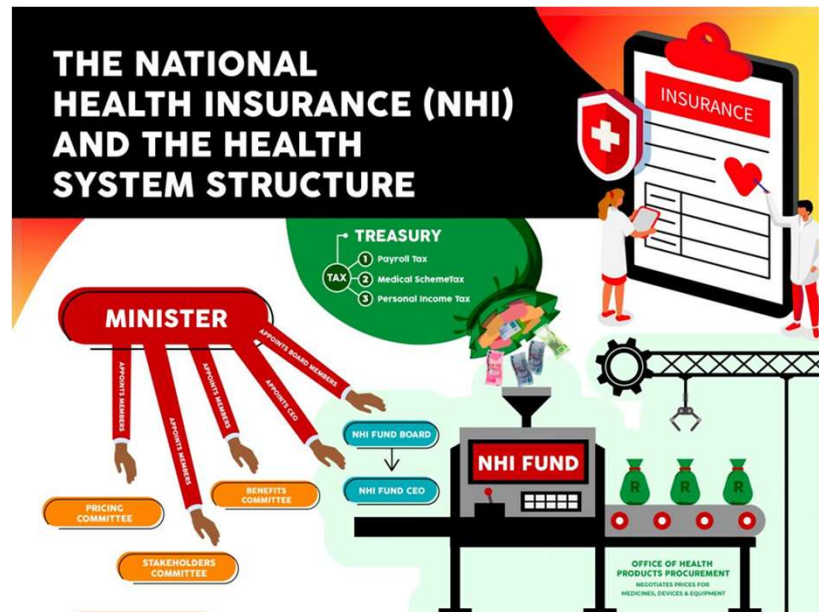
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The main issues

- A. Governance under NHI**
- B. Corruption**
- C. Principles put into practice: the rule of law, participation, transparency
and universality**
- D. Financing NHI**
- E. NHI and Competition Law**

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A. Governance under NHI



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Centralisation of power of the Minister is a real threat

- Independence of the Board - must be stipulated in s12 [written submission para 20]
- Appointment of Board members - s13 [written submission para 22-25]
 - Transparent process for appointment
 - Advisory panel composition
 - Principles for appointment
 - Knowledge, skills, experience, honesty, integrity and expertise
 - Diversity in composition of the Board
- Removal from the Board and dissolution of the Board [written submission para 28]

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- Functions and powers of the Board
 - Advise the CEO on operational matters and the Minister on governance matters [written submission para 31-32]
- Advisory committees of the Fund [written submission para 33-37]
 - Appointment
 - Membership
 - Specification of roles

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Corruption

- Corruption is an existing and persistent problem:
 - Negative impact on health public healthcare delivery
 - Example of COVID-19
- Currently the Bill:
 - Lacks detail on the prevention of corruption
 - Renders health more vulnerable to corruption
- The Bill needs stronger mechanisms to prevent corruption for example:
 - current gaps in procurement systems
 - poor management of suppliers

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Principles put into practice

- **Health system revolution through legislation**
 - How does health system change happen, really?
 - What should be included in legislation? [written submission para 45]
- **Participation** [written submission para 52]
 - Participation of health service users is a key pillar of UHC. This is not about representivity - no decision (even a technical one) is value-neutral.
 - Stakeholders Advisory Committee
 - Inclusion of health care users in other committees
 - Patient centred feedback mechanism
- **Transparency** [written submission para 61]

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- **Universality** [written submission para 71]
 - UHC must be universal
 - exclusion of asylum seekers and undocumented migrants is a regression in access to services.
 - no testing and treatment for HIV

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Financing NHI

- Investment in healthcare yields economic growth
- Must be affordable and sustainable
- Investment must be balanced with management of existing resources
- Clarity and transparency in relation to the funding of NHI is desperately needed
- Austerity interferes with the success of NHI
- Medical scheme tax credits is an inefficient funding model and will likely fail

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Competition law and the NHI

- Competition law doesn't apply to "transactions under the Act"
- Unintended consequences:
 - Collusion by companies tendering for the Fund
 - Medical and pharmaceutical equipment industries are particularly susceptible to collusion
 - The Fund could abuse its dominance
- There are ways of making it work within current competition law.

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Implementation of the Health Market Inquiry Recommendations

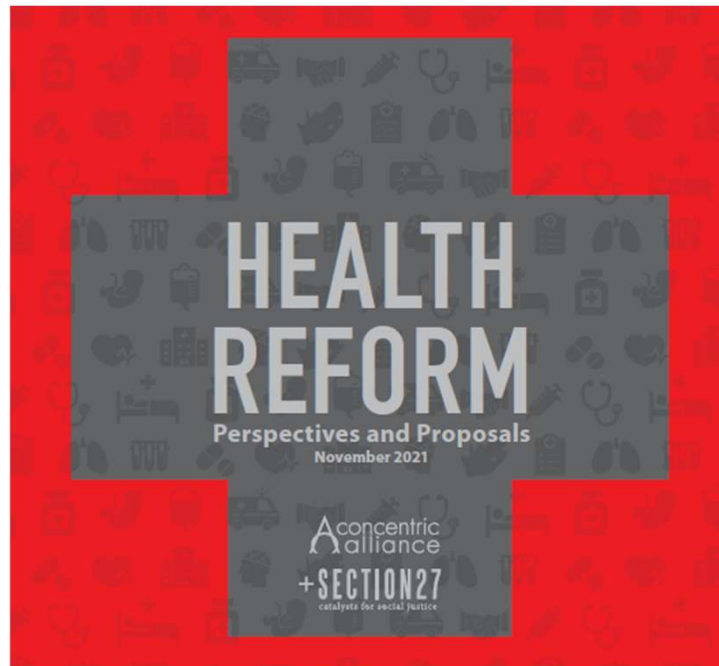
- Reform of the private sector is desperately needed.
- Such reform could contribute to UHC through standardisation and quality monitoring.
- The HMI recommended:
 - Standardised base packages of services by medical schemes
 - The development of a supply-side regulator
 - Quality measurement piloting in the private sector
- The private sector cannot be left in a state of dysfunctional regulation until NHI is completely implemented

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Where to now? Our proposals

- Our written submission contains detailed proposals for amendments to the NHI Bill to render it constitutionally compliant and to meet the concerns that we have raised. The written submission is here: <https://section27.org.za/2019/11/56382/>
- HEALTH REFORM report:
 - **33** stakeholders across the health system including the NDoH, and national government, provincial departments of health, academia, unions, civil society, medical schemes, private health providers, health journalists, regulators, and public tertiary hospital managers
 - Aim: to establish what the areas of agreement and disagreement really are

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What did we find?

- While there are some areas of profound disagreement, there are also areas of surprising agreement.
- **EVERYONE** said that the foundation of the health system is the right to access health care services
- **EVERYONE** agrees that there is a need for health system reform
- **EVERYONE** agrees that there are governance, accountability and management issues that must be attended to urgently
- **EVERYONE** agrees that there is a need for, and the possibility of, collaboration

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- **Many** respondents agree on the need to try different mechanisms for harnessing private sector capacity to service the public sector and for establishing the systems to support more rational referral progresses.
- **Many** agree on the need to monitor health outcomes and to orientate the health system to respond to them.
- **Most** agree with the need to better regulate the private sector, including the pharmaceutical industry.

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The recommendations

- **Path 1:** Take action on areas of agreement
- **Path 2:** Go deeper into consensus seeking to guide the way forward on areas of disagreement

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Path 1: areas for action now

- True piloting of contracting and referral mechanisms in a province or a series of districts, experimenting with alternative options for delivery
- National health projects to be pursued by government, collaborating with civil society and private sector: ICT integration; procurement; infrastructure and logistics management
- Establish health outcomes indicators for measurement across sectors (pre- and post-natal care are good options)
- Implement key HMI recommendations
- Explore the possibility for procurement reform with NDoH, dti, trade unions, pharma, universities and possible investors

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Path 2: consensus building

- The role of medical schemes
- How to produce and retain sufficient and appropriately qualified HRH
- The roles of national and provincial DoH in relation to each other and to other structures

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Both paths work towards the same result: improving the health system for the benefit of the people that need it while reconciling the inputs of the various stakeholders needed to make health system reform work.

The paths are not alternatives and should be pursued simultaneously

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Conclusion

What should this committee do?

- a) Require that the problems with the NHI Bill are attended to
- b) Recommend that government take action on areas where there is consensus to secure improvements and build trust
- c) Recommend real and good faith engagement in a consensus-building process across the system to resolve some of the matters that could stall health system reform indefinitely

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Thank you

