



## **THE NHI Bill, NHI HEARINGS AND THE QUESTION OF PUBLIC PARTICIPATION- DOES THE PUBLIC KNOW ENOUGH TO PARTICIPATE?**

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Tlamelo M Mothudi

The National Health Insurance (NHI) Bill seeks to reform healthcare in South Africa and in so doing, bring about the strengthening of the healthcare system to bring about a more equitable system that can benefit all regardless of their socio-economic background.

In line with Sections 42 (3) and (4)<sup>1</sup> of the Constitution<sup>2</sup>, Parliament facilitated public hearings with diverse interest groups and socioeconomic classes to usher in this complex piece of proposed legislation<sup>3</sup>. In light of inability of Parliament to hold public hearings in all nine provinces before 29 November 2019 deadline for comment on the NHI Bill, it is important to interrogate the public participation mandate to facilitate public involvement in the legislative process and the extent to which it has been achieved.

As rightfully outlined in the decided case of *Doctors for Life International v Speaker of the National Assembly and Others*<sup>4</sup>, democracy includes as one of its basic and fundamental principles, the principle of participatory democracy<sup>5</sup>. The democratic government that is

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<sup>1</sup> Section 42(3) and (4) of the Constitution Act 106 of 1996 confirms that the National Assembly and National Council of Provinces are elected to represent the people and ensure government by the people under the Constitution by providing a national forum for public consideration of issues.....

<sup>2</sup> Act 104 of 1996

<sup>3</sup> The NHI public hearings took place in the following Provinces in 2019:

- **Mpumalanga Province from the 25-28 October 2019**
- **Northern Cape Province from 1-4 November 2019**
- **Limpopo Province from 15-18 November 2019**
- **Kwa-Zulu Natal province from 23 -25 November**
- **Eastern Cape Province from 29 November -2 December 2019**

<sup>4</sup> 2006 (6) SA 416 (CC).

<sup>5</sup> Sections 1 and section 42 (3) of the Constitution of South Africa Act 108 of 1996 outline the importance of public participation. Section 1 states that the Republic of South Africa is one sovereign, democratic states founded on the following values: (a) Human dignity, the achievement of equality and the advancement of human rights and freedoms. (b) ·Non-racialism and non-sexism. ·(c) Supremacy of the constitution and the rule of law. Chapter 1 - Founding Provisions (d) Universal adult suffrage, a national common voters roll, regular elections and a multiparty' system of democratic government, to ensure accountability, responsiveness and openness. Section 42 (3) of the states that the National Assembly is elected to represent the people and to ensure government by the people under the Constitution. It does this by choosing President, by providing a national forum for public consideration of issues, by passing legislation and by scrutinizing and overseeing executive action.

contemplated is partly representative and partly participatory, is accountable, responsive and transparent and makes provision for public participation in the law making processes<sup>6</sup>.

According to Parliaments Public Participation Model, the stages in effective public participation include informing/educating, consulting, involving, and collaborating with the public about the NHI Bill and the reforms it wishes to bring about<sup>7</sup>. Educating means making information pertaining to the Bill accessible for all to read, understand and engage with. The Constitution of South Africa<sup>8</sup> currently recognises 11 official languages. English is spoken by 8.1% of the population and is the 6<sup>th</sup> most common home language and 2<sup>nd</sup> most common spoken language outside the household according to Statistics South Africa ([STATS SA](#)).

The NHI Bill was made available to the public in one official language; English. The complexities of what the Bill proposes combined with the amendment to existing legislature which had to be cross referenced to the Bill meant that by its very nature, it excluded a large majority of the population who would be affected by the proposed legislature. This much is clear from STATS SA and was evident during the hearings, which took place in New Brighton, Port Elizabeth on the 29 November.

With a brief introduction outlining that the NHI Bill sought to bring about universal healthcare for all, the floor was then opened to the public for comments and/or questions. Besides comments from Afriforum and COSATU addressing the NHI Bill directly, other members of the public saw the hearings as an opportunity to bring service delivery issues to the attention of the Parliamentary representatives.

*One participant outlined, "That in his area, there was a shortage of healthcare personnel and asked that the clinic please be fixed".*

*Another participant asked "how the NHI would benefit the Khoisan people in the Eastern Cape"?*

Due to the comments brought forward during the hearings, a parliament representative concluded the hearing acknowledging that the "citizens understanding of the NHI Bill is not at the level that they thought it was". This comment is concerning especially in light of what was held by the court in the decided case of *Matatiele Municipality v President of the Republic of South Africa*<sup>9</sup>. In *Matatiele*, the court held the more discrete and identifiable the potentially affected section of the population, and the more intense the possible effect on their interests, the more reasonable it would be to expect the Legislature to be astute to ensure that the potentially affected section of the population is given a reasonable opportunity to have a say<sup>10</sup>.

While the [Public Service Accountability Monitor \(PSAM\)](#) was able to submit its comment on the NHI Bill to Parliament focusing on the question of governance and exclusions, one questions how many individuals out of the 14.8% of the population that speaks IsiXhosa at home were able to access the Bill, read and interpret it and then comment. Especially in rural Eastern Cape.

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<sup>6</sup> *Ibid* para 116.

<sup>7</sup> [https://www.parliament.gov.za/storage/app/media/Pages/2019/august/19-08-2019\\_ncop\\_planning\\_session/docs/Parliament\\_Public\\_Participation\\_Model.pdf](https://www.parliament.gov.za/storage/app/media/Pages/2019/august/19-08-2019_ncop_planning_session/docs/Parliament_Public_Participation_Model.pdf)

<sup>8</sup> Act 104 of 1996.

<sup>9</sup> 2007 (6) SA 477 (CC).

<sup>10</sup> *Matatiele Municipality v President of the Republic of South Africa* 2007 (6) SA 477 (CC) para 68.

By the end of the public participation process, all parties interested in legislation should feel that they have been given a real opportunity to have their say, that they are taken seriously as citizens and that their views matter and will receive due consideration at the moments when they could possibly influence decisions in a meaningful fashion<sup>11</sup>. Public participation should not be a compliance exercise but an opportunity to engage citizens especially in cases where they might be fundamentally affected by proposed pieces of legislation.

#### Recommendations:

1. In future, at the very least, measures must be taken by Parliament's Public Participation and Petitions office to ensure that complex pieces of legislation are compressed and summarised outlining key points.
2. These summaries must be taken and translated into six of the eleven official languages and distributed in electronic and hard copy formats to the general public through the use of media and social media platforms.
3. The Parliament and Legislature must create a stakeholder list which comprises of experts, institutes, academics and other professionals. The second is for community-based organisations, community-based interest groups, that is, parent-teacher associations, workers' associations, that is, police officer unions, teacher unions, and other similar bodies that are beneficiaries of a particular service.
4. The liaison and co-ordination of civil society groups must spearheaded by the Parliament to ensure that there is sufficient involvement of the people through publicising information around the NHI bill, the legislative reform it seeks to bring about and how it will affect members of society.
5. Community radio station must be approached and question and answer sections organised which would enable interaction with members of the public.

It is important that when the question of public participation is raised, it can be answered in the affirmative on the basis of the population understanding the fundamental aspects of the legislation in question.

Tlameo M Mothudi  
Health Researcher : Public Service Accountability Monitor (PSAM)  
School of Journalism and Media Studies  
T: +27 (0) 46 603 8828 Cell: 071 256 8254  
16B Prince Alfred Street, Grahamstown, 6139  
PO Box 94, Grahamstown, 6140, South Africa  
[www.psam.org.za](http://www.psam.org.za) Twitter: @PSAM\_AFRICA

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The views expressed are her own.

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<sup>11</sup> Doctors for Life International v Speaker of the National Assembly and Others 2006 (6) SA 416 (CC) para 235.