ATTACHMENT: COMMON GROUND

OPINION: NHI: In search of common ground

Marcus Low: Daily Maverick, 26 August 2019

Since the introduction of the National Health Insurance (NHI) Bill, an enormous amount has been written on the subject. Tamar Kahn's article in Business Day provided probably the most balanced and realistic assessment so far. In Daily Maverick, Ferial Haffajee highlighted the very real risk of corruption and Mark Heywood's interview with Health Minister Dr Zweli Mkhize did little to allay those fears. That the Democratic Alliance and the Institute for Race Relations have come out guns blazing against NHI is, of course, not surprising - neither is the uncritical support from labour federation Cosatu and others.

Serious concerns

What should concern all serious people in government, however, is that a wide range of reasonable commentators, people whose values are broadly in line with the principles underpinning NHI, have expressed serious concerns about the workability of the current NHI plans. Many in government might not want to admit it, but there is a real and important difference between those who are ideologically opposed to NHI and those who wish some form of NHI to succeed but have valid concerns with the current plans. The road to NHI would be much smoother if those in government and the ruling party were less defensive about concerns of the latter group. One reason why people are justifiably disappointed with the NHI Bill is that many issues raised regarding the 2018 version of it have not been addressed in the 2019 version. If consultation continues in this half-hearted way, people will quite reasonably start seeing processes such as the Presidential Health Compact, and even the parliamentary hearings and submission process on NHI to come, as mere window-dressing. Apart from real and meaningful consultation probably leading to better law and policy, it will also be good for building public understanding and support for the planned reforms. In addition to concerns about meaningful consultation, there are also various areas of substantive concern.

First, there is a group of people who oppose NHI on mainly ideological grounds - particularly naysayers with a free-market fundamentalist bent. Some political parties might score points with certain minorities by proclaiming their ideological opposition to NHI, but in terms of influencing the future course of NHI, such opposition will be futile. The political maths simply doesn't add up and given that debates about ideology hardly ever go anywhere, it is probably the one area where limited government engagement is justified.

State's capacity

A second, much more serious, set of concerns related to the state's capacity to implement NHI successfully. Here a distinction can be made between those who say that the state cannot possibly implement NHI and therefore shouldn't even try, and those who have concerns about the state's ability to implement, but who believe it may nevertheless be worth trying. One variation of these two positions might be that implementation should happen, but more slowly and more carefully than currently planned. It appears that the bill attempts to address the problem of a lack of state capacity by centralising decision-making. District Health Management Offices, for example, are defined as "national government components". This arrangement might well make it more difficult for healthcare under NHI to be adaptable to local needs. It might also reduce the sense of ownership people feel over NHI and mean there are fewer people to hold accountable at a local level when things go wrong.

Weakness

Why the drafters of the bill did not opt for a more decentralised system, like the United Kingdom's National Health Service (NHS), needs to be explained. Either way, we need

frank and realistic discussions about what the current and potential levels of state capacity mean for NHI. It should also be acknowledged that apart from the financial cost, State Capture, corruption and mismanagement have over the past decade or two destroyed capacity in the public service, specifically the public healthcare system. In this sense, NHI is starting from a position of weakness and needs concrete and specific plans to overcome this weakness. A third connected set of concerns relates specifically to corruption. Here too there is a split between those who believe corruption is so bad as to make NHI unimplementable, and those concerned with corruption, but who believe the risks can be managed. As with state capacity, where people stand on these issues may change as the bill changes. It is, for example, possible that naysayers on the current bill might change their position if it is amended to include stronger anti-corruption measures and more sensible governance arrangements. The 2019 version of the NHI Bill introduces an Office for Health Products Procurement that will facilitate the purchasing of health products, including medicine, medical devices and equipment for both public and private healthcare facilities. In other words, private hospitals in need of new X-ray machines will procure through this entity, rather than through their own procurement processes. On the one hand, this centralisation can lead to better prices due to economies of scale and being the only, or by far the largest, purchaser in the country. On the other hand, just like many other tender processes, this system might be gamed, and contracts might end up going to the politically connected rather than those providing the best quality and value for money. A case could be made that this procurement office should have transparency and accountability requirements defined in law that go beyond what is required by the PFMA - given that the safeguards under the PFMA have offered little resistance to the tide of corruption in recent years.

Scepticism

Either way, the NHI Bill 2019 comes at a time when there is entirely justifiable public scepticism about the state's ability to prevent corruption. Should some key enablers of State Capture be successfully prosecuted, this may change. In the absence of any such convictions, the case for NHI would be strengthened if the bill contained plausible new mechanisms to fight corruption and if the government was more open about the risk of corruption and plans to mitigate it. Simply asking the public to place its trust in those currently in government is not good enough. The fourth set of concerns related to whether we can afford NHI. Here there are no clear answers. The cost of NHI will depend on a wide variety of factors, including what treatments are and are not covered, how effectively prices are negotiated and how much overpayment and wastage there is due to corruption.

Affordability

In a sense, we can afford NHI, but exactly what kind of NHI we get depends on what kind of NHI we can afford. Another complication in trying to calculate the affordability of NHI is the extent to which one assumes current payments to medical aid schemes and out-of-pocket payments for private healthcare will for all practical purposes be reallocated to the NHI fund. It might well be that what most middle-class people pay for healthcare under NHI in new taxes turns out to be roughly the same as they pay now for private healthcare - although it remains to be seen whether people will get the same value for money. The fifth set of concerns relates to the NHI's proposed governance structures and accountability mechanisms. Particularly striking in the bill is the immense power that the Minister of Health will have over key NHI appointments.

Tacit admission

Apart from placing NHI at risk of capture through future health ministers, this arrangement sends a signal that political control over NHI and the NHI fund is preferred to the establishment of a technocratic institution accountable to the people through Parliament. Oddly, this insistence on maintaining political control can be read as a tacit admission that the government itself is not fully committed to the underlying principles of how systems like NHI should work. There are similarly valid concerns about the lack of accountability mechanisms at the level of district health management offices and contracting units for primary healthcare (CUPs). Unfortunately, the bill does not say much about how these critically important entities will be governed. Will all complaints be sent to an office in Pretoria? Or will there be empowered and accountable decision makers in your district who you can go to when things go wrong? What happens if a CUP unfairly gives preference to one private provider over another? Put another way, there are credible fears that the system of centralised control currently envisaged will result in a lack of responsiveness and adaptability at a local level. This presents a major lost opportunity since much of the promise of NHI is precisely that lawyers, accountants and other professionals used to private healthcare will not settle for poor-quality service under NHI and thus create greater accountability than what we currently have in public healthcare. The bill should be designed in such a way as to empower rather than hamper such increased public accountability.

Where, then, are we heading?

One response to all this is to attempt to stop NHI altogether. Given South Africa's extreme inequality, the state of much of the public healthcare system and the ANC's majority in Parliament, such attempts are unlikely to succeed. Some temporary victories may or may not be won in the courts, but ultimately the courts will not be able to reject NHI and naysayers can at most hope to delay its implementation. After all, similar schemes do work well in other developing countries that do not have our progressive Constitution and there is nothing inherently unconstitutional in the idea of NHI, although the changed roles of provinces in the current bill may present problems. Opposition parties may nevertheless choose to fight a losing battle against NHI since it will activate a certain segment of their support base. However, just like the ANC's populist rhetoric around NHI, such a course is likely to polarise the debate further in a way that may serve short-term political ends on both sides, but that in the long-term will do little but spread distrust and lower the level of engagement with the substance of how we reform our healthcare system. A second approach would be to accept that some form of NHI is inevitable and, instead of trying to stop NHI, try to engage constructively in shaping it into something that works. Pointing out that it's not a good idea for the minister to appoint the NHI board is good, suggesting an alternative means in which the board can be appointed is better. While constructive engagement with the bill is probably the most useful approach, some might be sceptical about how much interest there really is from the government's side in such engagement. On the one hand, the government has, through the Presidential Health Compact process and other means, gone out of its way to get different organisations to publicly declare their support for NHI. On the other, the government ignored most comments made on the 2018 version of the bill. Fairly, or unfairly, there is a perception that if you want to be in the inner circle, you need to support NHI uncritically and not rock the boat. That is not a good starting point for building something as ambitious and far-reaching as NHI. The ethos of "you are either with us or against us" has already destroyed our public service and likely contributed to the culture of not rocking the boat that was so central to the capture of the state at various levels.

Making the road to NHI more inclusive

If the government wishes to build a stronger public consensus on NHI, it must start communicating in a more inclusive and less defensive manner about NHI and the very real challenges of implementing it in our current context. It should show in its actions that implementing NHI is really about making people's lives better and not just about politics. It should show that people's concerns are taken seriously. For example, it is natural that people who can currently afford medical scheme cover are concerned about their own and their family's futures under NHI. Yet, in the first few days after the bill was introduced into Parliament, there was hardly any acknowledgement of these concerns. If the Minister is sure middle-class people will have the same quality of care under NHI as they have now, he should say so and explain why he is sure of it. If he is not sure, he should explain why a decrease in quality for some is justifiable. By not spelling things out, and not taking reasonable concerns seriously, the government is seeding valuable bandwidth to naysayers who stand ready to fill the gaps with people's worst fears.

Workable NHI possible

And yet, despite a flawed bill and a worryingly defensive and populist attitude from the government, a workable and relatively successful NHI, though politically extremely difficult, is nevertheless still possible. It is both possible and difficult in the same way that it is possible and difficult that President Cyril Ramaphosa's "new dawn" will generally succeed in rebuilding state capacity and that the key architects of State Capture will be convicted. Both a successful NHI and the building of a more capable state requires a major course correction and a reckoning with our recent past, that despite the important work of the Zondo Commission of Inquiry into State Capture, we have not yet had. We probably have enough qualified and committed people in South Africa to implement a reasonably effective NHI that is also more decentralised than what is envisaged in the current bill. The problem is that for the past two decades many of these people have been driven out of the public healthcare system and the public service. One challenge that government is clearly underestimating is how difficult it will be to bring more good people back into the system and to get rid of people who are corrupt or appointed for political reasons rather than their ability to effectively serve the public. We most likely also have the money to implement a reasonably functional and effective NHI. Here too, however, the big but is the distrust people have in the state's ability to spend money effectively. Whether the government has the stomach for the fights it will have to fight to win back the public's trust is still in doubt. Either way, there is a long way to go. A good start, however, would be if the government could snap out of its defensive mindset and start taking people's fears and concerns about NHI more seriously.

Low is the editor of Spotlight, a print and online publication monitoring South Africa's response to TB and HIV