

BHF requests Ramaphosa's records in NHI court battle

● *Medical schemes say records will provide evidence on whether he considered views that bill was unconstitutional*

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Disclosure of President Cyril Ramaphosa's records to trace his steps in approving the contentious National Health Insurance (NHI) Bill could clarify whether he followed all legal requirements before signing it into law, the Board of Healthcare Funders (BHF) said on Tuesday.

The National Health Insurance Act has been a focal point of the government of national unity. The DA has been pushing against the act's implementation while the ANC's tripartite alliance partners, SACP and Cosatu, have formed a guard to ensure the act is implemented.

The NHI is intended to achieve universal health coverage for all South Africans. Opponents say the act is premature and unconstitutional in restricting freedoms related to healthcare access and it lacks clear assurances for medical professionals on their future roles.

In its submission to the high court in Pretoria, the board queried whether the president applied his mind properly before signing the bill.

The BHF represents more than 40 medical schemes and administrators covering 4.5-million beneficiaries in SA.

Ramaphosa signed the NHI legislation into law on May 15 2024, causing a stir weeks before the 2024 general election. The act has since been contested by companies providing private

healthcare services as well as analysts and opposition parties.

In its court papers, the BHF questioned whether the president considered dissenting views or simply ignored these before signing the bill.

Section 79(1) of the constitution states: "The president must refer any concerns about the bill's constitutionality to the National Assembly for reconsideration."

The BHF said the legislation should have been deliberated on further in parliament before it was signed into law.

UNCONSTITUTIONAL

"The BHF and many other industry stakeholders advised the president that the NHI Bill was unconstitutional for multiple reasons and requested the president to remit the matter back to the National Assembly for reconsideration," the board said in its court papers.

This is the main reason the BHF gave for Ramaphosa's full records to be disclosed in court to trace his steps before signing the bill. The board said the president's records would provide evidence as to whether he considered stakeholders' views.

"The record is expected to reveal the submissions received by the president (including by government departments), which advised that the NHI Bill was unconstitutional, at least in part. It will show how the president handled these submissions," the BHF said in its court



papers. "Crucially, the record should clarify why, despite receiving these submissions, the president still assented to and signed the bill, explaining his disagreement with the concerns raised."

The president's legal team argued the case was at heart a constitutional one, and should be heard by the apex court and not the high court.

It pinned its argument on section 167(4)(e) of the constitution, which stipulates that only the Constitutional Court may "decide that parliament or the president has failed to fulfil a constitutional obligation".

The BHF opposed this contention, saying: "The president's stance is wrong.

"The high court has jurisdiction. The Constitutional Court

has deemed it unnecessary to define what constitutes a 'fail[ure] to fulfil a constitutional obligation' under section 167(4)(e) of the constitution, as the scope of its exclusive jurisdiction may depend on the specific facts and nature of the challenge," said the BHF.

The BHF contends that its case against the president should be heard in the high

court. "In BHF's review of the president's decision to assent to and sign the NHI Bill into law, the court is called upon to adjudicate the legality and rationality of the president's decision (whether the president took all of the necessary steps in terms of section 79(1) ... The court is not called upon to determine the constitutionality of the NHI Bill."

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Key records:

The Board of Healthcare Funders has told Pretoria's high court that President Cyril Ramaphosa's records could be key in clarifying whether he followed all the legal requirements before signing the NHI Bill into law.

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