

Overview of NHI Legal Challenges

The legal resolution surrounding South Africa's **National Health Insurance (NHI) Act** could take **10 to 15 years** to settle fully. The current focus centers on whether the legislative process that passed the act was constitutional, which is currently awaiting judgment in the **Constitutional Court**.

1. Procedural Challenges (Constitutional Court)

Under South African law, challenges regarding **how an act was passed** fall strictly within the jurisdiction of the Constitutional Court. Two key applications were heard:

- **Board of Healthcare Funders (BHF):**
 - **Argument:** The public participation process was deficient and served as a meaningless exercise. BHF submitted 2,000 pages showing that 18 months of public engagement resulted in no substantive changes to the final text.
- **Western Cape Premier (Alan Winde):**
 - **Argument:** The National Council of Provinces (NCOP) rushed its hearings, ignored requests for reasonable extensions, and failed to consider key provincial reports (such as Gauteng's).

Potential Outcomes from the Constitutional Court

1. **Agree with BHF:** Strike down the NHI Act as unconstitutional and return it entirely to Parliament.
2. **Agree with Premier Winde:** Declare the NCOP process deficient and remit the Act specifically back to the NCOP.
3. **Dismiss Both Challenges:** Uphold the legislative process, allowing high court challenges on the substantive merits of the Act to proceed.

2. Substantive Challenges & Interim Stay (High Court)

Challenges to the **contents, clauses, and economic feasibility** of the NHI Act are handled by the High Court (specifically the Gauteng High Court in Pretoria).

The Freeze Order (February 2026 Agreement)

To prevent parallel litigation, the Health Minister, Department of Health, President, and litigating organizations reached a court-ordered agreement:

- **No Implementation:** The Health Minister and President agreed not to proclaim or enforce any provision of the NHI Act until the Constitutional Court rules on procedural matters.
- **Stay of Proceedings:** Litigating entities agreed to hold their High Court applications in abeyance during this time.

Pending High Court Applications

If the Constitutional Court does not strike down the Act, six major High Court applications will

resume:

1. **BHF & SAPPF:** Challenging President Ramaphosa's decision to sign the bill into law without properly applying his mind or addressing serious constitutional concerns.
2. **Hospital Association of South Africa (HASA):** Seeking to set aside the Act (or key sections) as unconstitutional and invalid.
3. **South African Medical Association (SAMA):** Challenging clauses on foreigner exclusions, mandatory user registration, private scheme restrictions, minister powers, pricing/reimbursement, and provider contracts.
4. **Health Funders Association (HFA):** Arguing the Act is irrational, ignores real costs and impacts on existing healthcare providers, and violates members' right to healthcare access.
5. **Sakeliga:** Claiming the Act fails to provide reasonable economic/governance measures, lacks a rational connection to its stated purpose, and violates constitutional rights.
6. **Solidarity:** Highlighting the lack of a sustainable funding model, excessive ministerial powers, and infringement on constitutional, labor, and property rights.
7. **AfriForum:** Challenging the centralisation of healthcare at the expense of provincial authority, restriction of patient/provider choices, and general vagueness.

Key Takeaway

While proponents view the legal challenges as an attempt by private sector interests to protect profits, legal representatives argue that universal health coverage principles cannot override the Constitution or dismantle existing private healthcare without viable alternatives. In the interim, healthcare sector leaders advocate for proactive private-sector solutions to national health challenges while court battles continue.