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SCHOOL OF LAW

(A COMPARATIVE LEGAL ANALYSIS OF THE RIGHT TO UNIVERSAL HEALTH CARE IN ZAMBIA. AN EXAMINATION OF THE ZAMBIA NATIONAL HEALTH INSURANCE ACT 2018: LESSONS DRAWN FROM SOUTH AFRICA)

By:

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2025

DECLARATION

I, IREEN CHANDA, do here by declare that this dissertation which titled '**A COMPARATIVE LEGAL ANALYSIS OF THE RIGHT TO UNIVERSAL HEALTH CARE IN ZAMBIA. AN EXAMINATION OF THE ZAMBIA NATIONAL HEALTH INSURANCE ACT 2018: LESSONS DRAWN FROM SOUTH AFRICA'** which is hereby submitted to the University of Lusaka in the School of Law as part of the requirement for the award of the Bachelor of Laws (LLB) degree, is my own work and to the best of my knowledge has not yet been presented for any academic purposes in Zambia and elsewhere. People's work including sources which have been used in the research have been dully acknowledged. I hereby further declare that I have read and understood the regulations which governs the submission of the Bachelor of Laws Degree (LLB) dissertation and also those regards the length and plagiarism, as contained in the rules of the University and also that this dissertation conforms to the outlined regulations.

……*I. Chanda*……

IREEN CHANDA

2025

SUPERVISOR'S RECOMMENDATION

I NGAMBI LAMECK recommend that this dissertation prepared under my supervision by IREEN CHANDA, entitled **A COMPARATIVE LEGAL ANALYSIS OF THE RIGHT TO UNIVERSAL HEALTH CARE IN ZAMBIA. AN EXAMINATION OF THE ZAMBIA NATIONAL HEALTH INSURANCE ACT 2018: LESSONS DRAWN FROM SOUTH AFRICA,** be accepted for examination. I have checked it carefully and I am satisfied that it fulfils the requirement pertaining to the formal laid down in the regulations governing directed research.

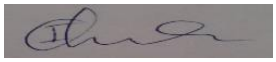
Supervisor: Mr NGAMBI LAMECK

Signature: 

Date: 14th November, 2025

DEDICATION

This dissertation is firstly dedicated to the GOD ALMIGHTY, the Omnipresent and Omniscient, who has been so Gracious and Merciful throughout the process, because it would not have been possible without Him giving me the Gift of life and strength throughout my academic journey. I also dedicate this research to Mr. Deodatus Chanda, my Biological Father (a retired Chemical Engineer), who has been a great source of inspiration because he has always seen education as an equalizer and one of the greatest satisfying goals in life one can ever attain. Thank you to my siblings for their unwavering support. I furthermore dedicate this to my late grandfather Mr. Augustine Chibulamano a retired Presiding Magistrate in the Northern part of Zambia who encouraged me to pursue law via our little conversations many years ago. Last but not the least I am grateful to my dearest friend Mrs. Penny Bwalya Ketani who has been of great help throughout, her encouragement and sincere support is unmatched. Lastly to my husband Mr. Lubesse Kazadi Paul, who has been a pillar and a source of encouragement from my first year of study, I am so grateful to you all and only God will reward your kindness.

Signature: 

Date: 14th November, 2025

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ABSTRACT`

This research is on the comparative analysis of the right to universal health care in Zambia. The purpose of this study is to examine the Zambia national health insurance Act, 2018, examining its existing legal and institutional framework with regards to its role to achieve and attain the right to universal health care.

The objectives of this research is firstly to analyse the legal and institutional framework of Zambia's National Health Insurance Act of 2018, in terms of its capacity to ensure the right to universal health care. Secondly to conduct a comparative analysis of South Africa's National Health Insurance Act, No.20 of 2023, with a focus on its legal and institutional mechanisms for ensuring universal care, and lastly to explore lessons that Zambia can learn from South Africa's national health insurance Act in integrating the right to universal health care within its legal and policy framework.

The methodology of this research was a qualitative mode of research in that data came from statutes, internet sources, journals, text books, cases and articles. Major findings of this research were that the legal and institutional framework lacks a detailed and effective structure of governance and mechanisms in handling universal health care, further that it lacks clarity in the justiciability of rights to health care.

The recommendations emphasized on establishing the clear governance structures and regulations on the State accountability, enforceability of the right to health care within the Zambian constitution as well as the national health insurance act from the lessons learnt from the South African legal and institutional framework. Lastly to amend the Zambian Constitution and the Zambia national health Act, 2018 in order to clearly provide for accountability and enforceability of the right to health care in order to effectively manage the right to universal health care in Zambia.

CHAPTER ONE

1.1 INTRODUCTION

The right to universal health care is increasingly recognized as an essential component of human rights framework worldwide. In the context of Zambia, this right has gained significant prominence with the enactment of the National Health Insurance Act of 2018. As a developing country in the sub-Saharan Africa, Zambia faces numerous health challenges, including high maternal and infant mortality rates, infectious diseases and an overburdened healthcare system. In response to these challenges, the Zambian government has taken strides towards ensuring that health care is accessible to all, irrespective of socio-economic status through legislative reforms such as the National Health Insurance Act. [1]

This national health insurance Act represents a significant policy shift, aiming to provide universal health care (UHC) to all Zambians, while aligning with the global health agenda, particularly the United Nations Sustainable Development Goal 3 (SDG 3), which calls for ensuring healthy lives and promoting well-being for all at all ages. The introduction of the Act is also a key moment in the broader discourse surrounding the intersection of health care, as it seeks to address the inequalities in access to quality health services. [2]

This research presents a comparative legal analysis of the right to universal health care in Zambia, with a particular focus on the Zambia National Health Insurance Act, 2018. It seeks to examine the extent to which this act effectively attains and fulfils the right to universal health care in regard to a number of legal provisions in the Act, by drawing lessons from South Africa's approach to universal health care particularly its advanced universal health care legal system, further aims to identify strengths, gaps and opportunities for legal and policy reforms in Zambia. Through this analysis, this study will

[1] https://www.rbc.gov.rw/publichealthbulletin/articles/in/Original%20Article [accessed 13 April 2025]
[2] United Nations, Health and Population, United Nations Sustainable Development Goals https://sdgs.un.org/topics/health-and-populations#publications [accessed 11 April 2025]

contribute to the ongoing discourse on universal health care, offering insights on Zambia's approach to achieving universal health care through its legislative reforms. [3]

1.2 BACKGROUND OF THE STUDY

From the 1960s to date, consecutive governments have aspired to equitable and universal health care for all Zambians, stakeholders did set their analysis by outlining the efforts and challenges associated with achieving this goal during the past five decades. Inheriting a very inequitable, colonial health system in 1964 provided the impetus for this aspiration, not as an overt expression of human rights to health but from a conviction that all Zambians should be treated equally. There was no separate public policy on health at the time, health was included in the Government of the Republic of Zambia national development plan (GRZ 1966). The health sector was initially centrally governed by a Ministry of Health (MOH) with headquarters in the capital, with some allocation of administrative responsibilities to the provincial level and the larger hospitals. The sector's focus was undoing the inequitable divisions in the health service delivery along racial and geographical lines and involved a significant, and necessary expansion in the health infrastructure. The emphasis was on the provision of basic health services, disease prevention and health education, hospital and out-patient services were also provided for free of charge. The success of these efforts evidenced by the improvements in health indicators (Garene and Gakusi 2006), was founded upon the fast growth of Zambia's market economy during the 1960s. However, that momentum stalled by 1974 as the country experienced economic stagnation.

In 1991, a new government was elected, it criticised the former government for not having been able to address the unequal distribution of health care services, the new government developed Zambia's first national health policy and committed to reducing this disparity (MOH 1991), its vision for the sector was to provide equality of access to cost-effective, quality health care as close as to the family as possible, it emphasised the need to return to the delivery of comprehensive primary health care services and acknowledged the

[3] Afriyie, D. O., Titi-Ofei, R., Masiye, F., Chansa, C., & Fink, G. (2024). The political economy of national health insurance schemes: evidence from Zambia. *Health Policy and Planning*. https://doi.org/10.1093/heapol/czae094

significance of the social determinants of health, which included efforts to integrate disease programmes in primary health services and environmental health (water and sanitation activities) was built to the definition of the basic health care package. Health care equity was sought via the delivery of (primary health care) PHC and the decentralization of authority to district health management teams. District health boards were established in 1993-94 with the objective to match planning and budgeting processes with the realities on ground. [4]

In the efforts to reach universal health care by 2030, Zambia implemented a National Health Insurance Scheme (NHIS) which is a healthcare financing strategy. The NHIS was asserted to as law in 2018, it was operationalized in 2019 and it became accessible by National Health Insurance (NHI) members effective 1st February 2020. The NHI is operated and managed by the National Health Insurance Management Authority (NHIMA) and it is financed by 1% NHI statutory premiums, payroll based from employees and employers in formal sector, and 1% of the declared income from those who are self-employed, those over 65 and under 18years are exempted from paying NHI contributions. NHIMA accredited 129 level 1-3 governments, faith based/mission and non-governmental organizations (NGOs) owned health facilities by December 2019. [5] Mwambazi et.al.[6] States that, Zambia launched the NHIS with the goal of reaching 100% coverage by 2021. Some of those enrolled had reported varying levels of satisfaction with the NHIS services. Understanding patient satisfaction with the NHIS-provided services is therefore essential for improving its implementation and enhancing NHIS patient satisfaction.

1.3 STATEMENT OF PROBLEM

Zambia, through the enactment of the National Health Insurance Act of 2018, seeks to provide a legal and institutional framework for universal health care, aiming to achieve

[4] Zambia National Health Insurance Management Authority. (n.d.). *Background*. https://www.nhima.co.zm/about/background

[5] Aantjes, C., Quinlan, T., & Bunders, J. (2016). Towards universal health coverage in Zambia: impediments and opportunities. *Development in Practice*, *26*(3), 298–307. https://doi.org/10.1080/09614524.2016.1148119

[6] Mwambazi WK, Quitieshat A. Factors Influencing Patient Satisfaction with Zambia's National Health Insurance Scheme: A Systematic Literature Review using Empirical Evidence from Nigeria and Ghana. Patient Experience Journal. 2024; 11 (3):202-214. Doi: 10.35680/2372-0247/1913

comprehensive and inclusive healthcare services for its population. However, challenges persist in the operationalization and implementation of this right, for universal health care to be effective, several other key regulations beyond funding regulations are essential. These may include clear governmental structures, transparency and accountability regulations, workforce and professional regulations, quality and standard regulations, ensuring that health care is accessible to all citizens regardless of their socio status.

South Africa's National Health Insurance Scheme, passed in 2023, offers a contrasting model aimed at addressing similar issues. Despite both Countries' shared goals of universal health coverage and care, they seem to differ significantly in their approach to health care delivery, funding mechanisms and government structures.

Zambia's national health insurance Act, has specific sections that deal with establishment of roles and responsibilities including government structures, access to health and regulation of services, however, it faces a number of challenges and ambiguities that limit its ability to fully provide universal health care as a human right. **Section 3 (1) of the national health insurance Act**[7] establishes that the Act shall bind the Republic of Zambia. **Section 57 (1) and 57 (2) of the national health insurance Act**[8] provides that the minister by statutory instrument may prescribe anything which is required to be prescribed by the act, further that regulations may provide for services and benefits such as the procedure to apply for registration as a member, to apply for accreditation as a health care provider, different rate of contribution for different benefit packages, investment guidelines for the scheme, standard schedule for fees for items and services provided. **Section 6 (1), 6 (2) and 6 (3) of the national health insurance Act**[9] also provides for the establishment of the board of Authority, further states that, the members shall be nominated by their respective institutions and that the chairperson of the board shall be appointed by the minister from among the members of the board. **Section 7 of the national health insurance Act**[10] also provides for the functions of the board, which includes reviews and approvals of the policy and strategic plan, annual plans and

[7]National Health Insurance Act 2 of 2018, s 3(1)
[8] National Health Insurance Act 2 of 2018, s 57(1) (2)
[9] National Health Insurance Act 2 of 2018, s 6(1) (2) (3)
[10] National Health Insurance Act 2 of 2018, s 7

budgets, evaluating performance, business plans of the authority. **Section 8 of the national health insurance Act**[11] further provides that the board may appoint the committee and that it may delegate any of its functions to the committee. Lastly **Section 11 of the national health insurance Act**[12] provides that the authority with the approval of the board, will progressively establish and maintain provincial and district offices of the authority.

Therefore, this research seeks to conduct a comparative legal analysis of the two health legal frameworks examining the strengths, weaknesses and potential lessons which Zambia can learn from South Africa's NHI model.

1.4 RESEARCH OBJECTIVES

The primary objective is to analyse the legal and institutional framework of Zambia's National Health Insurance.

SPECIFIC OBJECTIVES

i. To analyse the legal and institutional framework of Zambia's National Health Insurance Act of 2018, in terms of its capacity to ensure the right to universal health care.
ii. To conduct a comparative analysis of South Africa's National Health Insurance Act 20 of 2023, focusing on its legal and institutional mechanisms for ensuring universal care.
iii. To explore lessons that Zambia can learn from South Africa's national health insurance Act in integrating the right to universal health care within its legal and policy framework.

1.5 RESEARCH QUESTIONS

i. To what extent does Zambia's national health insurance Act establish a legal and institutional framework capable of ensuring the right to universal health care?

[11] National Health Insurance Act 2 of 2018, s8
[12] National Health Insurance Act 2 of 2018, s11

ii. How does South Africa's Act structure its legal and institutional mechanisms to promote and safeguard the right to universal health care?

iii. What actionable lessons can Zambia draw from South Africa's national health insurance Act in enhancing its legal and policy approach to achieving universal health care?

1.6 SIGNIFICANCE OF STUDY

The importance of this study is that a comparative legal analysis of Zambia's national health insurance Act in relation to South Africa's national health insurance Act offers valuable insights into both countries efforts toward achieving universal health coverage and care.[13] By examining Zambia's and South Africa's National Health Insurance Acts (NHIA), will help to identify similarities and differences in their legal approaches to universal health care, shedding more light on each country's strategy to deliver universal health care services. Some common obstacles will be highlighted informing policy makers about potential pitfalls and best practices. Also, lessons will be drawn from South Africa's NHIA which can be applied in Zambia and beyond African context. [14]

1.7 LITERATURE REVIEW

Access to health care is widely recognized as a critical determinant of individual and societal well-being. Universal health care, which ensures that all individuals receive necessary health services, has become a global discussion about human rights and social justice. This literature explores national health insurance in the framing of universal health care as a human right, analysing scholarly debates, ethical arguments, policy approaches and case studies from different health systems including South Africa. By examining these sources, this review seeks to highlight the central themes, areas of consensus and points of contention that shape the discourse on health care.

Joseph. Kasonde and John. D. Martin[15] outlines widely diversified efforts to implement primary health care in Zambia. By looking at a range of different approaches and

[13] https://zambialaws.com (Accessed: 12 April 2025)
[14] BM Dzapasi (2019). Scholar.sun.ac.za
[15] Kasonde, Joseph M, Martin, John D & World Health Organization. (1994) Experiences with primary health care in Zambia/ edited by Joseph M. Kasonde & John D. Martin. World Health Organization. http://iris.who.int/handle/10665/40523

analysing the reasons for their failures and successes, also provides lessons for realistic goals, develop well-conceived plans and avoid common errors. Zambia's Ministry of health in 2013, in order to attain universal health care provision, came up with a national health policy document which has outlined the strategic vision and objectives for Zambia's health sector, emphasizing the commitment to providing equitable, accessible and quality health services to all citizens[16]

Chansa[17] further discusses how the Zambian government has outlined an ambitious rights-based approach to health care provision as outlined in its national health policy. Stating that the government is determined to achieve universal health coverage and care by providing all its citizens with access to free quality health care services through public health system. The Medical journal of Zambia is also another valuable resource, as it has published peer-reviewed articles on various aspects of healthcare science and policy, including topics related to universal health coverage, these publications collectively provide a nuanced understanding of Zambia's health sector reforms and ongoing efforts to achieve universal health coverage, however this research focuses on analysing the legal and institutional framework of the Zambia's health insurance Act with regards to universal health care focussing on institutional deficits, transparency and accountability in public and private sector engagement as well as institutional preparedness to effectively deliver universal health care services. [18]

Aantje, quinlan, and bunders (2016)[19]also gives an insight into the structural and policy related challenges hindering UHC in Zambia and suggests opportunities for improvement, emphasizing the need for a comprehensive approach that includes social determinants

[16] APA (7th Edition): World Health Organization. (2012), January 23) Zambia national health policy. http:extract.who.int/countryplanningcycles/sites/default/files/country-docs/Zambia/nhp_prepared_23_january_2012.pdf

[17] Chansa, Colins; Workie, Netsanet Walelign; Piattifuenfkirchen, Mortiz Otto Maria Alfons; Matsebula, Thulani Clement; Yoo, Katelyn Jison. Zambia – Health Sector Public Expenditure Review (English). Washington, D.C.: World Bank Group. http://documents.worldbank.org

[18] https://mjz.co.zm/index.php/mjz [accessed 16 April 2025]

[19]Aantjes, C., Quinlan, T., & Bunders-Aelen, J. G. F. (2016). Towards universal health coverage in Zambia: impediments and opportunities. Development in Practice, 26(3), 298-307. http://doi.org/10.1080/09614524.2016.1148119

of health. Masiye et al. (2025)[20], examined the political processes involved in establishing Zambia's national health insurance scheme in 2018.Emphasized the role of political leadership, stakeholder engagement, and public support in the successful implementation of health insurance reforms, however this research further focuses to what extent are some of the regulations in the national health insurance Act affect universal health care in Zambia.

Phiri and Ataguba (2014).[21] Further assessed the socio-economic disparities in the utilization of the public health services, revealing that while primary care services are utilized more by poorer populations, hospital services tend to favour wealthier individuals. Addressing these inequalities is also crucial for advancing towards UHC.

A Chirwa (2020)[22], further observes that Zambia's Constitution embeds socio-economic rights for example the duty of the State to provide adequate medical and health facilities under article 112 (d) of the repealed constitution of 1996 which was within the directive principles of State Policy and emphasised that the character of the Directive Principles is policy oriented and not rights-oriented and that they bind the State in a guiding manner but the constitution explicitly provided that they are not justiciable and shall not be legally enforceable in any court, he further observes that although the state has a constitutional obligation to provide adequate healthcare, individual citizens do not have a constitutional right that can directly be enforced in the courts on that basis, however this research goes further to highlight how the State can be bound by law, comparing the Zambia's approach to justiciabilty with those of South Africa in relation to their Courts being more active in reviewing the social and economic issues including the right to universal health care.

[20] Afriyie, D. O., Titi-Ofei, R., Masiye, F., Chansa, C., & Fink, G. (2025). The political economy of national health insurance schemes: evidence from Zambia. Health Policy and Planning. Advance online publication. http://doi.org/10.1093/heapol/czae094

[21] Phiri, J., Ataguba, J.E. Inequalities in public health care delivery in Zambia. Int J Equity Health 13, 24 (2014). http://doi.org/10.1186/1475-9276-13-24

[22] A Chirwa, The non-Justiciability of directive principles in Zambia (2020) Zambia Law Review 12

M. Mwanawina (2019)[23], addresses the status, challenges and prospects of social-economic rights in the Zambian constitution framework, he further points out that in Zambia's constitution, the fundamental rights that are justiciable are mostly civil and political rights (in the bill of rights), while social-economic rights are either absent from the bill rights and only stated in the directive principles of State Policy. M Mazimba et al. (2023)[24],situate the study in the global context of the call for universal health coverage, the idea that all individuals and communities should have access to the much needed health services without suffering hardship, also assesses how the national health insurance scheme contributes to attainment of UHC in Zambia, Mazimba further argues that socio-economic rights should be treated as enforceable constitutional rights, not merely directive principles of state policy and criticizes the traditional Zambian constitutional model for placing socio-economic rights in Part II of the constitution rather than Part III (bill of rights) and rendering them non-justiciable. However, he furthers draws some comparison with South Africa, Kenya and Uganda, arguing that Zambia lags behind in constitutionalizing these rights and that other African jurisdictions show that such rights can be made justiciable without destabilizing governance, however this research compares how Zambian constitutional structures and other statutes treat social-economic rights in comparison to South Africa and also identifies lessons Zambia could learn and adopt to enhance enforceability.

Simangolwa et.al. (2024)[25] also did analyse the economic evaluations conducted in Zambia, highlighting the importance of health technology assessments in designing

[23] M. Mwanawina, Social-Economic Rights in the Zambian Constitution (2019) 15 Zambian Journal of Legal Studies 45.

[24] N Mazimbia et al, The National Health Insurance Scheme and the Attainment of Universal Health Coverage in Zambia (2023)

[25] Simangolwa, W.M., Govender, K. & Mbonigaba, J. Health technology assessment to support health benefits package design: a systematic review of economic evaluation evidence in Zambia. BMC Health Serv Res 24, 1426 (2024). https://doi.org/10.1186/s12913-024-11914-z

benefits packages that align with UHC objectives. Rudasingwa et al. (2022). [26]This study utilized benefit incidence analysis to evaluate how health financing policies affect different socio-economic groups, providing insights into the equity implications of Zambia's health financing reforms. Robert Van Niekerk (2016),[27] established the current South African government proposals for establishing a national health service (NHI) in its historical context. Saying that the attempt to create a national health service in South Africa is not a new policy idea, having been preceded by the two prior unsuccessful attempts in the 1940s and 1990s. Adam Fusheini (2016),[28] discussed how universal health coverage in South Africa had emerged as a major goal for health care delivery in the post-2015 development agenda. It is viewed as a solution to health care needs in low and middle countries with growing enthusiasm at both national and global level. However, this study examines how the current national health insurance legal and institutional framework is helping to achieve socio-economic disparities and economic evaluations which were previously conducted. There is a notable gap in understanding how formal legal instruments and institutional frameworks concretely shape Universal Health care in Zambia, this research will critically analyse the National Health Insurance Act (2018), and other healthcare laws to uncover roles, mandates, and enforcement mechanisms.

Dennill K. & T. Rwafa-Ponela (2021)[29] offers an accessible introduction to the principles and components of comprehensive primary health care, also discusses the development and implementation of PHC since the WHO's Alma Ata Declaration in 1978, and examines the South African health system and provides a comparative review of health systems in

[26] Rudasingwa, M., De Allegri, M., Mphuka, C. et al. Universal health coverage and the poor: to what extent are the health financing policies making a difference? Evidence from a benefit incidence analysis in Zambia. BMC Public Health 22, 1546 (2022). http://doi.org/10.1186/s12889-022-13923-1
[27] Robert Van Niekerk. The politics of universal health care in South Africa: history, policy, and institutions. http://transformationjournal.org.za/wp-content/uploads/2018/10/t91_part7.pdf
[28] Fusheini, A., Eyles, J. Achieving universal health coverage in South Africa through a district health system approach: conflicting ideologies of health care provision. http://bmchealthservres.biomedcentral.com/articles/10.1186/s12913-016-1797-4#citeas
[29] K. Dennill & T.Rwafa-Ponela (4th Edition) 2021. Primary Health Care in Southern Africa: A Comprehensive Approach.

the Southern African region. David Sanders et al (2023),[30] critically examined the political and economic determinants of health in underdeveloped regions, and advocated for comprehensive PHC, community health workers, and civil society activism as solutions. Provided insights into the challenges and strategies for achieving health equity in South Africa. However, there remains a critical gap in understanding the institutional and legal frameworks including recent legislative developments (e.g., the National Health Insurance Act), data governance mechanisms (e.g., DTAs (Data Transfer Agreements), DMPs (Data Management Plans) under POPIA (Protection of Personal Information Act)), and the institutional capacity required to translate these visions into practice. This research investigates how formal legal instruments and governance structures shape, enable, or hinder PHC implementation in Zambia and South Africa's decentralized health system.

1.8 RESEARCH METHODOLOGY

1.8.1 RESEARCH APPROACH

The research method that will be used is qualitative. The comparative approach will also be used. The information used in this research will be from primary and secondary sources which will include legislation, textbooks, articles, journals, and other credible internet sources and publications.

1.8.2 RESEARCH DESIGN

For the purpose of this research, the design will be qualitative method and also a comparative study between Zambian and South African legal frameworks governing their national health insurance.

1.8.3 DATA COLLECTION TECHNIQUES

Data collection for this research will be through relevant legislation, textbooks, journal articles, internet sources, legal reports.

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s[30] David Sanders, Wim De Ceukelaire, Barbra Hutton (2nd Edition) 2023. The Struggle for Health: Medicine and the Politics of Underdevelopment.

1.8.4 SAMPLE SIZE

This will be focused on individuals who possess knowledge and expertise which is relevant to the research topic area.

1.9 SCOPE OF STUDY

This study will be limited to analysing the right to universal health care in Zambia. It will examine the national health insurance Act and its limitations with regards this right. The research will also draw lessons from South Africa under national health insurance Act 2023 and some of the strengths which can be applied in Zambia.

1.10 DEFINITIONS OF KEY TERMS

Right to universal health care and coverage; is about ensuring that everyone, especially the most vulnerable, has access to the quality health care they need. [31]

National health Insurance Scheme; national scheme that seeks to provide for a sound and reliable healthcare financing for Zambian households and the entire health sector.[32]

1.11 ETHICAL CONSIDERATIONS

Permission to carry out this research will be obtained from the university of Lusaka ethics committee and all participants. Participants will also be informed of the nature of the study. And the research will be conducted in line with the ethics of the university and in a confidential manner.

1.12 CHAPTER OUTLINE

Chapter 1: Introduction

This chapter will be a general introduction to the research, it will cover the background of the study, the statement of problem, significant of the study, the scope and also the objectives and the research questions of the study in the analysis of the right to universal health care in Zambia and examination of the Zambia national health insurance Act.

[31] http://www.worldbank.org/en/topic/universalhealthcoverage
[32] http://nhima.co.zm

Chapter 2: Analyses the legal and institutional framework of Zambia's National Health Insurance Act, 2018, in terms of its capacity to ensure the right to universal health care.

Chapter 3: Conducts a comparative analysis of South Africa's National Health Insurance, 2023, focusing on its legal and institutional mechanisms for ensuring universal care.

Chapter 4: Explores lessons that Zambia can learn from South Africa's national health insurance Act in integrating the right to universal health care within its legal and policy framework.

Chapter 5: Conclusions and Recommendations.

This chapter summarises findings, proposed legal considerations for improvement of the current national health insurance Act of Zambia with regard the right to universal health care in Zambia, and offers recommendations based on based practices which South Africa has implemented in its national health insurance Act.

CHAPTER TWO

2.0 TO ANALYSE THE LEGAL AND INSTITUTIONAL FRAMEWORK OF ZAMBIA'S NATIONAL HEALTH INSURANCE ACT OF 2018, IN TERMS OF ITS CAPACITY TO ENSURE THE RIGHT TO UNIVERSAL HEALTH CARE.

2.1 INTRODUCTION

The right to universal health care is a fundamental human right recognized globally, serving as a benchmark for health systems to aspire towards equity, accessibility and quality. In Zambia, the National Health Insurance Act of 2018 represents a pivotal step towards realizing this right establishing a legal and institutional framework aimed at enhancing health care access for all citizens. This legislation is particularly significant in a country where health disparities persist, fuelled by socio-economic inequalities and limited resources. **Universal health care** refers to a health care system in which all individuals and communities receive the health services they need without suffering financial hardships. It is based on the principle that access to quality health care should be a basic human right and not a privilege.

The National Health Insurance Act, was enacted by the National Assembly of Zambia with the sole purpose to provide for sound financing for the national health system; also to provide for universal access to quality insured health care services, to establish the National Health Insurance Management Authority as well as to provide for its systems, procedures and operations. The Act's preamble and objects show that universal health care and universal access to insured health care services is a statutory objective. Additionally, in the parliamentary record, it is noted that the national health insurance scheme is a compulsory scheme for all Zambian citizens and legal citizens which is aimed at removing financial barriers to accessing healthcare through the elimination of out of pocket payments.[33]

[33] National Assembly of Zambia, Parliamentary Debates, 17 April 2018 http://www.parliament.gov.zm/node/11080 accessed 1 November 2025

Article 2 of the constitution[34]**,** entails the recognition of human rights; this does broadly guarantee the protection of human rights. **Article 8 of the constitution**[35] , provides for national values and principles, equally in the bill of rights, **Article 52(1) (a) of the constitution**[36]**,** and provides that a person has the right to health care services. Further Article **52(2) of the constitution**[37], does include human dignity, equity, social justice and sustainable development, all of which frame how the right to health should be pursued. The constitution of Zambia does provide for the right to health care, including elements of universal care but it is important to understand the extent and nature of this provision. While Zambia's constitution does not explicitly guarantee an enforceable right to universal health care as some constitutions might, it does recognize the importance of health as a public policy priority, commit the state to progressively improve access to health services, embrace equity and non-discrimination in accessing public services including health, however the right to health is not absolute or immediately enforceable in court, implementation also is subject to availability and government capacity, it is also important to note that universal health care is not explicitly stated in the Zambian constitution.

This chapter aims to analyse the capacity of Zambia's National Health Insurance Act to ensure the right to universal health care, focusing on specific sections of the Act. Each of these sections addresses critical elements of universal health care provision, including eligibility, funding and governance structures as well as justifiability of the social-economic rights such as the right to health. This study seeks to identify the strengths and weaknesses within the act, assessing whether it effectively supports the realization of universal health care in Zambia. This analysis will be framed within the broader context of National health priorities, providing a comprehensive understanding of Act's implications for universal health care.

2.2 BRIEF OVERVIEW OF THE NHIS AND UHC IN ZAMBIA

NHIS (national health insurance scheme) was established by the Act, creating the national health insurance management authority to oversee it. The board of NHIMA was

[34] Act No 2 of 2016, art 2
[35] Act No 2 of 2016, art 8
[36] Act No 2 of 2016, art 52(1)(a)
[37] Act No 2 of 2016, art 52(2)

inaugurated in March 2019 and the implementation began on October 1, 2019. NHIMA is responsible for operating the NHIS and managing its fund as well as accrediting health care providers, registering members, issuing membership cards, designing and managing the NHIS benefits package. The NHIS aims to eliminate financial barriers to healthcare, replacing out-of-pocket payments with pooled contributions adjusted by income, including subsidies and exemptions for vulnerable groups. The members average contribution per family of seven per month receive services such as outpatient and inpatient care consultations, diagnostic, surgery, maternity and neonatal services, eye and dental health, essential pharmaceuticals and physiotherapy.

2.3 THE OBJECTIVES AND SCOPE OF THE NATIONAL HEALTH INSURANCE

The Authority is governed by a board constituting members of the republic and private sector. it is headed by the Director General as Chief Executive officer of the Authority. The objective of the scheme is to provide universal access to quality insured health care services and the functions of the Authority are to, among others implement, operate and manage the scheme, accredit healthcare service providers, manage the national health insurance fund, register and issue membership cards, facilitate access by the poor and vulnerable to insured healthcare services and to protect the poor and vulnerable against deprivation of health services. [38]

(Masebo, 2024), [39]stated that access to good and quality health care for all citizens and established residents is the vision of the government under the leadership of his excellency, the president of the republic of Zambia, Mr. Hakainde Hichilema. The minister is spearheading the agenda by ensuring that all the good people of Zambia are provided with quality services as near as possible to where they live, go to school and work without

[38] http://corpus.co.zm

[39] Masebo, S. (2024) *Ministerial Statement: The implementation of the National Health Insurance Scheme (NHIMA)*. Statement delivered to the National Assembly, 11 July. Lusaka: Republic of Zambia, Ministry of Health. [Accessed on 5th September 2025]

encountering any financial hardships. She further stated that there are reforms that are being embarked on to ensure that all citizens and established residents are registered onto the scheme, and that scheme remains solvent in meeting its obligations. Access to services for all members and their registered beneficiaries is uniform and is not limited to how much a member has contributed. When the new dawn government came into power, the membership of NHIMA stood at 1.6 million members and beneficiaries as of June 2024, and NHIMA members currently stands at 4.6 million. This is clear reflection of the new dawn government administration's aspiration of leaving no one behind. Although the current membership of 4.6 million mentioned, represents only 23 percent of Zambian population. The goal of the government through NHIMA and Ministry of Health is to ensure that all citizens and established citizens are registered and covered. In this regard, the government has embarked on nation-wide registration exercise which was launched on 5th July, 2024 in Ndola District. The mass campaign is aimed at increasing membership to the scheme in the drive towards universal health care. The registration of members is being done at all public hospitals, NHIMA offices country wide and online through NHIMA website to ease the process. NHIMA has also put in place a toll free line 8000, where members and the public can call for assistance regarding registration to NHIMA. In order to encourage registration of more members, NHIMA in July 2024 introduced a special waiver, where those who register and make their monthly contributions will not have to wait for the mandatory four months, which is required currently, in order to access services. The contribution for those in informal sector is at an average of 50ZMW per household, per month to cover up to 7 members of that family. Access to services for all members and their registered beneficiaries is uniform and is not limited to how much a member has contributed. [40]

2.4 ANALYSIS OF THE LEGAL AND INSTITUTIONAL FRAMEWORK

BINDING NATURE OF THE ACT

Section 3 (1), 3(2) and 3(3) of the national health insurance Act[41] establishes that the Act shall bind the Republic of Zambia. The Minister may prescribe health care services

[40] http://parliament.gov.zm
[41] National Health Insurance Act 2 of 2018, s 3 (1)(2)(3)

that are not covered by the act, further that the Minister by statutory instrument, may extend the categories of individuals to whom the act applies.

LEGAL AND INSTITUTIONAL IMPLICATIONS:

POSITIVE POTENTIAL:

1. The Act binding the Republic establishes a **clear obligation** on the part of the government to implement the provisions of the NHIA.
2. It recognizes health care as a national responsibility.
3. Flexibility in extending coverage allows for inclusion of vulnerable or previously excluded populations, aligning with equity goals under UHC.

CONCERNS AND LIMITATIONS:

1. Ministerial power to exclude health services in (Section 3(2)) may undermine comprehensive coverage. If not checked, it could result in essential services being excluded, limiting access.
2. There are no clear criteria or participatory processes laid out for how the Minister determines which services or populations to include or exclude.
3. The discretionary nature of these powers can introduce inconsistency and potential for politicization.

BINDING EFFECT ON THE STATE

JUSTITIABILITY OF THE RIGHT TO HEALTH; this entails that individuals can take legal action if their right to health is violated, essentially that this right is enforceable in courts. Justiciability refers to the capacity of a matter to be examined and determined by a court of law. A justiciable right is one whose violation can be remedied through judicial process as defined and explained in the Oxford constitutional law.[42] Justiciable means suitable for judicial resolution, a controversy appropriate for court determination as stated in the

[42] Oxford Constitutional Law, Justiciability (OUP, 2023)

Black's law dictionary[43].This is also very critical in helping to achieve universal health care because it gives legal power and accountability to health rights.

M. Tushnet (2018), stated that the justiciability of rights determines whether a court may adjudicate upon the alleged infringement of such rights. Socio-economic rights are often considered non-justiciable, leaving their realization to political rather than judicial process[44].When the right to health is justiciable, governments can be legally held accountable for failing to provide adequate health care services, Courts can also compel States to expand access to health services, improve funding and infrastructure, also to remove discriminatory health policies. Under the Zambian Constitution (as amended) the right to universal health care is not expressly guaranteed as justiciable fundamental right in the Bill of Rights. Instead, justiciability of such rights were only provided for in the Directive Principle of the State Policy under the repealed law in the 1996 Zambian constitution, for example, we had **Article 101 (1) of the constitution[45]** which provided that the directive principles shall guide the executive, the legislature and the judiciary in the development of national health policies making and the enactment of the law and the application of the constitution and any other law. **Article 110 (2) of the constitution[46]** qualified that the application of the directive principles could be observed only in so far as the State resources are able to sustain their application, or when the general welfare of the public so unavoidably demands as may be determined by the Cabinet. **Article 111 of the constitution[47]** further stated that these directive principles of the State policy were n not to be justiciable and thereby, by themselves could not be legally enforceable in any court, tribunal, administrative institution at that and in future. **Article 112 of the constitution[48]** provided a list of the directive principles to include among others; the State shall endeavour to provide clean and safe water, adequate medical and health facilities, and decent shelter for all persons and also take measures to constantly improve such

[43] Black's Law Dictionary, 11th ed., 2019, p. 1001
[44] M. Tushnet, Advanced Introduction to Comparative Constitutional Law (2nd ed., Oxford University Press, 2018).
[45] Act No 18 of 1996, art 110(1)
[46] Act No of 1996, art 110(2)
[47] Act No 18 of 1996, art 111
[48] Act No 18 of 1996, art 112

facilities. further in the same repealed law, **Article 112(d) of the constitution**[49], further stated that the duty is framed as part of the directive principles and not fundamental rights and explicitly non justiciable. Therefore, from a constitutional perspective in Zambia, the state's obligations regarding health care can be said to be one which is aspirational and policy oriented rather than rights enforceable because they are not provided for in the constitution.

A further analysis of Section 3(1) of the national health insurance act is not clear in terms of ensuring state accountability, for example it is not clearly stated as to what extent the Republic is bound to the Act as well as enforceability of health rights and state duty. Although in some cases for the example in the case of ***Mwewa and another v Zambia Attorney General***[50], on voluntary detention under mental health law, has resulted in declarations or orders about treatment in mental health institutions, which shows some legal accountability but in the narrow scope, individuals do have some remedies under non-health specific constitutional rights for example the right to dignity, non-discrimination and equality, which sometimes intersect with health issues but no constitutional legal basis to force government to deliver universal health care services in full. Another example is the case of ***Peter Mwanza and Melvin Beene v Attorney General***[51], which concerned whether the State's failure to provide adequate nutrition to HIV- Positive prisoners violated the right to life and other rights? The High Court and later the Supreme Court found that the nutrition and sanitation issue was just one which was rooted in the directive principles (art 112 (d)) and held that the rights claimed were non- justiciable in themselves as the amended constitution is concerned.

REGULATORY POWER

Section 57 (1) and 57 (2) of the national health insurance Act[52] provides that the minister by statutory instrument may prescribe anything which is required to be prescribed by the act, further that regulations may provide for things such as the procedure to apply

[49] Act No 19 of 1996, art 112(d)
[50] (2017/HP/204) ZMHC 515
[51] (153/2016) [2019] ZMSC 33
[52] National Health Insurance Act 2 of 2018, s57 (1) (2)

for registration as a member, to apply for accreditation as a health care provider, different rate of contribution for different benefit packages, investment guidelines for the scheme, standard schedule for fees for items and services provided.

LEGAL AND INSTITUTIONAL IMPLICATIONS:

POSITIVE POTENTIAL:

1. The broad regulatory authority provides flexibility to respond to changing health system needs.
2. Ability to set different contribution rates allows for progressive financing, potentially reducing the burden on lower-income groups.
3. Regulatory powers to standardize fees and benefits can reduce financial barriers to access.

CONCERNS AND LIMITATIONS:

1. The concentration of regulatory powers in the executive, with limited mention of public consultation or oversight, could undermine accountability and transparency.
2. Absence of mandatory guidelines for setting these rates and standards may lead to inequities or arbitrary decisions.

3. There is no explicit reference to rights-based principles (like equity, non-discrimination, or affordability) in these regulations.

GOVERNANCE STRUCTURE

Section 6 (1), 6 (2) and 6 (3) of the national health insurance Act[53] also provides for the establishment of the board of Authority, further states that, the members shall be nominated by their respective institutions and that the chairperson of the board shall be appointed by the minister from among the members of the board.

[53] National Health Insurance Act 2 of 2018, s6(1) (2) (3)

Section 7 of the national health insurance Act[54] also provides for the functions of the board, which includes reviews and approvals of the policy and strategic plan, annual plans and budgets, evaluating performance, business plans of the authority.

Section 8 of the national health insurance Act[55] further provides that the board may appoint the committee and that it may delegate any of its functions to the committee.

LEGAL AND INSTITUTIONAL IMPLICATIONS:

POSITIVE POTENTIAL:

1. Institutionalizes a multi-stakeholder governance structure, which can enhance expertise and sectoral representation.
2. Delegation to committees allows for specialized focus and potentially quicker decision-making.

CONCERNS AND LIMITATIONS:

1. Ministerial appointment of the Chair risks politicizing the leadership of the Board.
2. No clear mechanisms for accountability to the public or beneficiaries.
3. Lack of explicit representation of civil society or beneficiaries may reduce responsiveness to public needs.
4. Delegation of functions, while efficient, could create ambiguities in responsibility without clear reporting lines.

DECENTRALIZATION AND ACCESSIBILITY:

Section 11 of the national health insurance Act[56] provides that the authority with approval of the board, will progressively establish and maintain provincial and district offices of the authority.

[54] National Health Insurance Act 2 of 2018, s7
[55] National Health Insurance Act 2 of 2018, s8
[56] National Health Insurance Act 2 of 2018, s11

LEGAL AND INSTITUTIONAL IMPLICATIONS:

POSITIVE POTENTIAL:

1. Suggests a decentralized model, critical for equitable geographic access and responsive service delivery.

CONCERNS AND LIMITATIONS:

1. Use of the term “progressively” without timelines or standards makes it difficult to hold institutions accountable.
2. Dependence on Board approval may delay implementation, especially in under-served areas.

3. Vague obligations reduce enforceability and may lead to unequal implementation across provinces and districts.

2.5 CONCLUSION

The analysis of Zambia's National Health Insurance Act reveals a legal and institutional framework with both promising foundations and significant gaps in relation to achieving Universal Health Care (UHC). The Act's binding nature, as outlined in Section 3, affirms the State's responsibility in health provision and signals the potential for a rights based approach to health care. However, the broad discretionary powers granted to the Minister particularly in defining benefit packages and determining who is included or excluded pose a risk to the consistency, equity, and universality that UHC aspires to uphold. The absence of clear, participatory, and transparent processes for these decisions further compounds this concern.

Moreover, the regulatory powers under Section 57 offer necessary flexibility to adapt to evolving health needs but are weakened by a lack of safeguards such as public oversight, rights-based benchmarks, and procedural fairness. Similarly, while the governance structure provides for multi-sectoral engagement through the Board, its independence

and accountability are undermined by ministerial control and limited representation of civil society and beneficiaries.

The decentralization provision in Section 11 suggests a commitment to geographic equity, yet the vague language around timelines and deliverables coupled with dependency on Board approvals risks slow or uneven implementation across regions.

Ultimately, while the NHIA establishes a legal basis for advancing UHC in Zambia, its institutional architecture requires stronger checks and balances, clearer standards for inclusion and accountability, and a more deliberate alignment with equity and human rights principles. Legal enforceability, transparency in regulatory decisions, and inclusive governance mechanisms will be essential to translating the Act's potential into practical, equitable, and sustainable health outcomes for all Zambians.

The State in Zambia can be said to be bound by statute (NHIA 2018) to establish a national health insurance scheme with the objective of universal access to insured health care. The constitution provides a policy obligation via the directive principles for the State to endeavor to provide adequate medical and health facilities but that obligation is not justiciable which means that, individuals cannot sue just based on the directive and is subject to state resources. In practice the enforceability depends largely on the statute and its implementation rather than on a constitutional right to health.

The next chapter will analyze how South Africa has effectively utilized its legal and institutional mechanisms to attain universal health care.

CHAPTER THREE

A COMPARATIVE ANALYSIS OF SOUTH AFRICA'S NATIONAL HEALTH INSURANCE ACT, 2023. FOCUSING ON ITS LEGAL AND INSTITUTIONAL MECHANISMS FOR ENSURING UNIVERSAL CARE.

3.1 INTRODUCTION

The South Africa's health system has long been characterised by deep inequalities; a well-resourced private sector serving a minority of the population and an overburdened public sector serving the majority. The move towards national health insurance is framed as part of the Government's commitment to the right to health. The process for NHI dates back to many years; a white Paper was published in 2015, laying out the vision for a unified health system. The 2017 policy direction provided more concrete detail for implementation. The NHI Bill was approved by Cabinet on the 10th July 2019 and was tabled in Parliament on the 26th July 2019. The Portfolio committee on health later on in 2023 adopted its report on the Bill. The Bill was passed by the National Council of Provinces on 6th December 2023.[57]

The National Health Insurance Act of 2023 was assented to by the President on 15th May 2024 and gazetted on the 16th May 2024. The implemented of the Act is a phased approach, it is stated in the act that Phase 1 begun in 2023 and runs to 2026, phase 2 will be run from 2026 to 2028. Although the policy begun earlier, 2023 was pivotal year for the following reasons;

1. The Bill's adoption by the National Assembly: Backbone legislative approval.
2. Refinement and passage of the amendments in Parliament in 2023
3. Marking the transition from policy intention to legislative commitment; the Act's legal validity anchored the reform.

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[57] National Department of Health (2023) National health insurance for South Africa: White Paper. http://knowledgehub.health.gov.za/system/files/elibdownloads/2023-04/National%252520health.

4. Signalling to Stakeholders (public, private, providers, and insurers) that the reform is moving from proposal to preparation for implementation.

The pursuit of Universal Health Care (UHC) which ensures that all individuals receive necessary health services without financial hardship is a global imperative and a constitutional mandate in South Africa under Section 27 of the Constitution, affirming the right to access universal health care and obligating the State to take progressive measures within available resources.

To address entrenched inequalities within its bifurcated health system where an overburdened public sector caters to approximately 84% of the population while a small proportion benefits from superior private care, the South African government enacted the **National Health Insurance Act No. 20 of 2023**. This legislation officially received presidential assent in May 2024 following approval by Parliament.[58]

Central to the Act is the establishment of a National Health Insurance Fund (NHI Fund) designed to serve as the single purchaser and payer of health services. This framework is structured to pool public revenue, streamline funding mechanisms, facilitate strategic purchasing of services, and eliminate fragmentation between public and private sector.

The Act outlines key institutional mechanisms to govern and operationalize the NHI model:

- Advisory committees, which are codified to shape service benefits (Benefits Advisory Committee), pricing (Health Care Benefits Pricing Committee), and stakeholder representation (Stakeholder Advisory Committee).

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[58] South African Government, 'National Health Insurance Act 20 of 2023' (16 May 2024) https://www.gov.za/documents/acts/national-health-insurance-act-20-2023-english-afrikaans-16-may-2024

- Funding is intended to come from general taxation, a surcharge on personal income tax, payroll contributions, and reallocated medical scheme tax credit.
- Implementation is slated to be phased between 2023–2026 (Phase 1) and 2026-2028 (Phase 2), allowing for systemic reforms including public private integration and infrastructure strengthening.[59]

The transformational prospects of the Act have drawn both commendation and criticism. The institution such as World Health Organization and United Nations in South Africa have praised the legislation as a landmark step toward equitable health access aligned with Sustainable Development Goal 3.8.

Conversely, a broad array of stakeholders including the Democratic Alliance, Trade Unions, Private Healthcare Associations (e.g., SAMA (South Africa Medical Association), HASA (Hospital Association of South Africa), BHF (Board of Healthcare Funders), and Business groups have mounted some legal challenges. They allege that the Act is fiscally unsustainable, undermines patient choice, threatens quality of care, lacks transparent funding models, and concentrates excessive power without adequate oversight.[60]

3.2 BINDING NATURE OF THE ACT AND THE STATE and CONSTITUTIONAL FOUNDATIONS

[59] Republic of South Africa, *Constitution of the Republic of South Africa, 1996*, s 27 https://www.justice.gov.za/legislation/constitution/SAConstitution-web-eng.pdf

[60] Tamsin Metelerkamp, 'On What Grounds Are Legal Challenges Against the NHI Act Being Fought?' *Daily Maverick* (23 April 2025) https://www.dailymaverick.co.za/article/2025-04-23-on-what-grounds-are-the-legal-challenges-against-the-contentious-nhi-act-being-fought/

The **preamble** of the National Health Insurance Act explicitly connects **Section 27(1) (a) of the Constitution of the Republic of South Africa,**[61] which guarantees the right to access health care services and emergency treatment. The **Constitution of the Republic of South Africa, 1996 section 7 (1) and (2),**[62] which states that the Bill of Rights is a cornerstone of democracy in South Africa, does enshrine the rights of all people in the country and also affirms the democratic values of human dignity, equality and freedom. Further that the State must respect, protect, promote and fulfil the rights in the Bill of Rights. **Section 8 of the Constitution of the Republic of South Africa, 1996**[63] also provides that the Bill of Rights applies to all law, and binds the Legislature, the Executive, the Judiciary and all Organs of the State. Section 8 further ensures that the national health insurance act is bound by and must conform to the **bill of rights' legal framework.**

REVIEWABILITY AND JUSTICIABILITY

Courts have affirmed that the president's assent to legislation, including the NHI Act, is reviewable, thereby reinforcing accountability and the Rule of Law. This upholds the justifiability of the act and executive action, meaning that affected parties can challenge constitutional and procedural propriety in Court. In the ***Board of Healthcare Funders v President*,**[64] The Gauteng High Court confirmed its **jurisdiction** to hear challenges against the President's decision to assent to a bill, finding that such an act forms part of the legislative process rather than being agent-specific (which would fall under the exclusive domain of the Constitutional Court under **section 167(4)(e) of the constitution**,[65] the Court held that the **President's assent to and signing of the NHI Bill is reviewable**, invoking the **principle of legality** and the **rule of law** as constitutional constraints even on executive actions derived directly from **sections 84(2) and 79 of the Constitution**.[66] Court also emphasized that the President must apply his mind,

[61] Constitution of the Republic of South Africa, 1996, s 27, as amended by the constitution Seventeenth Amendment Act, 2012. S27(1) (a)
[62] Constitution of the Republic of South Africa, 1996, s 7
[63] Constitution of the Republic of South Africa, 1996, s 8
[64] (2025)
[65] Constitution of the Republic of South Africa, 1996, s 167 (4)(e)
[66] Constitution of the Republic of South Africa, 1996, s 84(2), 79

objectively assess constitutionality, and act rationally not arbitrarily when assenting to a bill. Moreover, the Court required the **production of the record of decision** under its inherent powers in section 173 of the Constitution) in order to ensure transparency and accountability. In the ***Pharmaceutical Manufacturers Association v President*,**[67] the Constitutional Court affirmed that **presidential conduct** including bringing legislation into force is **not immune from judicial review**. The Court held that even high-level executive actions must comply with the Constitution and the principle of legality, including being rationally related to their purpose. Further **Section 79**; The President must either assent to a bill or refer it back to Parliament if there are reservations about constitutionality; if doubts remain, the President must refer the bill to the Constitutional Court for a final decision. **Section 80** provides also that; Members of the National Assembly have the right to apply to the Constitutional Court to declare an Act unconstitutional within 30 days of presidential assent. South African jurisprudence firmly establishes that **all public power must conform to the Constitution**, including rationality and procedural rationality. This foundational principle supports the justiciability of executive decisions even where not classified as traditional administrative actions.

JUSTICIABILITY AND CONSTITUTIONAL OVERSIGHT

The South Africa's constitutional framework ensures the justiciability of social economic rights and related legislation. **Section 34 of the constitution of the Republic of South Africa**;[68] provides that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or where appropriate another independent and impartial tribunal or forum, this guarantees access to courts enabling litigants to enforce rights and challenge acts through judicial review. However, Mondaq and Helen Suzman[69] Foundation have raised constitutional questions around the act's content, especially regarding the infringement of the rights related to

[67] (2000)
[68] Constitution of the Republic of South Africa, 1996, s 27, as amended by the constitution Seventeenth Amendment Act, 2012.
[69] The Helen Suzman Foundation, *'The Helen Suzman Foundation Confirms Its Support for Universal Health Coverage but Points Out the Inadequacy and Shortcomings of the NHI Bill'* (presentation to Parliamentary Portfolio Committee on Health, 28 July 2021). (Accessed on 08 September, 2025)

health care access and clarity. Mondaq “The NHI Act: A Flawed Execution of a Laudable Idea” (12 March 2025);

- **Clarity and Implementation Gaps:** The Act is described as a skeleton framework with insufficient detail on how it will be implemented making it impossible to assess its consequences. This vagueness itself is unconstitutional and irrational.
- **Procedural Concerns**: Authorities allegedly overlooked stakeholder input from constitutionally mandated public participation processes.
- **Constitutional Duties Ignored:** The President is deemed to have violated sections 79 and 84(2)(a) (c) of the Constitution by assenting to the Act despite serious doubts about its constitutionality rather than referring it back to Parliament.
- **Rights Infringement:** The Act is said to infringe multiple rights:
    - Access to healthcare individuals, particularly private patients, could be forced into an underperforming public system.
    - Property rights medical schemes and providers risk losing value and autonomy.

Helen Suzman Foundation (HSF) – Policy Briefs & Submissions

a. ***Press Statement on the NHI Bill*** **(28 July 2021):**

- While supporting universal health coverage, HSF flagged essential preconditions:
    - A functional public healthcare system.
    - Well-regulated private health services.
    - Meaningful stakeholder consultation.
    - Continued allowance for private medical insurance paying subscribers.
    - Full clarity on NHI cost and state affordability.

b. ***Policy Brief “Insufficient Detail on Crucial Aspects”*** **(HSF, brief series):**

- The Bill lacks necessary detail, delaying crucial implementation mechanisms to Ministerial regulations issued at the Minister’s discretion amounting to a “blank cheque”.

- This undermines the Constitution's requirement for valid public consultation in relation to (section 59(1) (a), since meaningful participation demands sufficient information.
- Allows coercive exclusion of private medical schemes without justification, which can be unreasonable and irrational.

Other Analyses & Reports

a. NHI Litigation Inevitable **(Mondaq article):**

- Enumerates additional constitutional challenges:
    - Flawed consultation process stakeholder input treated as mere formality.
    - Restriction on medical schemes allowed only to offer complementary services, limiting freedom of trade and access to healthcare.
    - Possible infringement on freedom of association by forcing individuals to register as NHI users in order to access care.[70]

b. ***Politics web Report – Economic and Rights-Based Concerns*****:**

- The NHI could reduce access to care for 9.1 million medical scheme members, violating section 27 (2) of the constitution, requirement that measures taken to realize the right to healthcare must be reasonable because it undermines existing access.
- Blocking private healthcare mechanisms is described as unconstitutional, and not necessary to reach equity goals.[71]
- The report advocates a hybrid model: NHI combined with private schemes.

3.3 GOVERNANCE STRUCTURES

[70] Prelisha Singh, Martin Versfeld and Alexandra Rees, *'The NHI Act: A Flawed Execution of a Laudable Idea'* (12 March 2025) Mondaq (South Africa, Healthcare)**.** (Accessed on 29th August 2025)

[71] Jason Felix, *'NHI will not improve SA's poor healthcare services, says Helen Suzman Foundation'* (News24, 28 July 2021).

ESTABLISHMENT OF THE NHI FUND

Section 9 of the national health insurance Act,[72] establishes the National Health Insurance Fund as an autonomous public entity per **schedule 3A.** The entities listed in the Schedule are subject to specific financial oversight mechanisms issued by the National Treasury.

Section 10 of the national health insurance Act[73], does outline the Fund's functions, including pooling resources, strategic purchasing, contracting service providers, ensuring equity, setting payment rates, managing data and safeguarding user's rights.

Section 11 of the national health insurance Act,[74] further specifies the fund's powers which includes empowering staff, investing, entering into legal agreements, managing property, defending litigation and advising the Minister and enacting regulations.

ADVISORY COMMITTEES

The act establishes three key advisory committees, each with critical roles in oversight and policy guidance. These include the **Benefits Advisory Committee** which determines service coverage and treatment guidelines as established in **Section 25 of the national health insurance Act**.[75] The **health Care Benefits Pricing Committee** which recommends payment rates for benefits as stated in **Section 26 of the national health insurance Act.[76]** Lastly the **Stakeholder Advisory Committee** which comprises representatives from health professions, public entities, labor, civil society, providers and patient groups as provided in **Section 27 of the national health insurance Act**.[77]

USERS' RIGHTS AND FACILITATION OF ACCESS

[72] National Health Insurance Act 20 of 2023, s 9
[73] National Health Insurance Act 20 of 2023, s 10
[74] National Health Insurance Act 20 of 2023, s 11
[75] National Health Insurance Act 20 of 2023, s 25
[76] National Health Insurance Act 20 of 2023, s 26
[77] National Health Insurance Act 20 of 2023, s 27

USER REGISTRATION AND COVERAGE

Section 4 of the national health insurance Act; [78]defines the categories of the individuals covered under the act which includes, citizens, permanent residents, refugees, certain foreigners, children and also mandates free at the point of care for registered users.

Section 5 of the national health insurance Act;[79] details user registration requirements. **Section 7 and 9 of the national health insurance Act**;[80] also does address service coverage and cost responsibilities and also ensures certain services are free for users.

REFERRAL AND PORTABILITY

Users must initially access services via primary healthcare and referral pathways are clearly outlined. The act ensures service portability allowing users to move between providers if necessary as provided in **Section 7 (3) of the national health insurance Act**. [81]

3.4 STRENGTHS AND LIMITATIONS OF THE KEY PROVISIONS

STRENGTHS

CLEAR GOVERNACE ARCHITECTURE; Section 9 to 11 of the national health insurance Act and committee structures sets out robust institutional framework for oversight, planning and execution.

CONSTITUTIONAL ALIGNMENT; There is explicit linkage to constitutional rights especially section 27 of the constitution which strengthens legitimacy and legal defensibility.

[78] National Health Insurance Act 20 of 2023, s 4
[79] National Health Insurance Act 20 of 2023, s 5
[80] National Health Insurance Act 20 of 2023, s 7,9
[81] National Health Insurance Act 20 of 2023, s 7(3)

CENTRALISED, EQUITY FINANCING; Strategic purchasing and pooling of public revenue which aim to demonstrate access and reduce fragmentation in healthcare funding.

BUILT IN ACCOUNTABILITY; Obligations to account to the Minister, to conduct audits, and to enforce compliance are clearly and well defined.

JUSTICIABILITY ENSUERED; Courts retain jurisdiction to review actions under the Act for example the Presidential assent, regulatory implementation.

LIMITATIONS

LACK OF DETAIL AND AMBIQUITY; The Act provides limited specifics and defers critical elements for example the funding mechanisms, reimbursement rates to future regulations, which undermines clarity and accountability.

INFRINGEMENTS OF RIGHTS; the provisions may limit private healthcare and medical schemes. Section 33 of the national health insurance Act may also infringe on freedom of trade and access to preferred care, potentially clashing with constitutional rights.

EXECUTIVE OVERREACH AND DELEGATION RISKS; broad delegation powers to committees in section 23 of the national health insurance act may dilute oversight and transparency.

RISK OF CENTRAL OVER-CONTROL; the centralized nature of planning for example, the scheme under older legislation has been constitutionally challenged and struck down, suggesting similar vulnerabilities for NHI mechanisms.

FUNDING MODEL CONCERNS; Financial sustainability of the fund whereby relying on tax, reallocations, payroll levies and Government appropriations is said to be contested and unclear in implementation which fuels legal and policy critique.

3.5 CONCLUSION

The 2023 phase (leading into legal enactment) of South Africa's NHI is a landmark in the Country's health policy trajectory. It reflects a commitment to universal, equitable health access. However, the real test lies ahead, the translation of the legal framework into functioning services, sustained financing and system-wide integration. The reform offers opportunity but it also carries significant risks of misimplementation under funding or unintended consequences.

The National Health Insurance Act, 2023 represents a bold and constitutionally anchored stride towards universal health care by transforming South Africa's deeply inequitable two tiered healthcare system. Through the establishment of the NHI Fund, comprehensive governance structures, referral protocols and a grounding in section 27 of the constitution, the act embodies an ambitious vision of equity, social solidarity and legal accountability. However, the Act's implementation journey is beset with profound challenges. Critically, it is said to lack clarity on fundamental operational details such as funding mechanism, defend benefit packages, procurement processes, and medico-legal protections raising concerns over fiscal feasibility, administrative efficacy and transparency.

Consequently, multiple legal challenges have been lodged by a wide array of healthcare stakeholders including the South African Medical Association (SAMA), Board of Healthcare Funders (BHF), Hospital Association of South Africa (HASA) and Western Cape Government, questioning the Act's constitutionality, procedural legitimacy and impact on private medical schemes, patient choices and provincial authority importantly, the ongoing litigations underscores the justiciability of the Act. Courts have also affirmed that the President's assent and the Act's provisions are open to judicial review, thereby reinforcing principles of legality and constitutional oversight. This legal accountability is vital for ensuring that the Act aligns with democratic governance and respects social-economic rights. [82]

[82] *SAMA's legal challenge against 'significant flaws' in the National Health Insurance Act*, IOL (10 April 2025). *HASA Launches NHI Legal Challenge* (Hospital Association of South Africa, 28 January 2025)

In the, while the NHI Act's aspirational core advancing equitable, universal healthcare is compelling and constitutionally resonant, its current form falls short in operational detail, stakeholder trust and legal solidarity. Its future will depend on judicial outcomes, regulatory clarification, stakeholder engagement and the state's capacity to translate the Act's vision into meaningful, equitable healthcare outcomes for all South Africans.

CHAPTER FOUR

EXPLORE LESSONS THAT ZAMBIA CAN LEARN FROM SOUTH AFRICA'S NATIONAL HEALTH INSURANCE ACT IN INTEGRATING THE RIGHT TO UNIVERSAL HEALTH CARE WITHIN ITS LEGAL AND POLICY FRAMEWORK.

4.1 GROUNDING UNIVERSAL HEALTH CARE IN CONSTITUTIONAL AND LEGAL RIGHTS and SOUTH AFRICA'S APPROACH AND LESSONS LEARNT.

1. The NHI Act does give effect to section 27 of the South African Constitution, which does guarantee the right to access healthcare and mandate state measures for progressive realization of this right. The judicial interpretations such as in ***Soobramoney v Minister of Health***[83] does establish limits to emergency treatment under constitutional rights and reinforce the requirement for reasonable legislative and other measures within available resources.

LESSONS FOR ZAMBIA

1. Embed UHC in the constitutional and legislative mandates; clarifying obligations and timelines.
2. Clarification of the extent of entitlement; for example, emergency care vs. comprehensive services so as to mitigate legal ambiguity and also to manage resource limits.

[83] BCLR 1696 (27 November 1997)

4.2 STRUCTURAL AND INSTITUTIONAL ARCHITECTURE OF THE NHI and THE SOUTH AFRICA'S MODEL

The NHI Act does establish several bodies;

1. National Health Insurance Fund (single purchaser/payer)
2. The Benefits Advisory Committee, Healthcare Benefits Pricing Committee
3. District Health Management Offices, contracting units for PHC (CUPS (contracting units for primary health care)).
4. Health Products Procurement Unit managing national essential medicines and supply chains.

LESSONS FOR ZAMBIA

1. Zambia may consider to build a holistic institutional framework with district roles which clearly outlines governance, pricing, contracting and logistics.
2. Ensure structural clarity in order to prevent gaps, confusion and duplication of functions

GOVERNANCE, ACOUNTABILITY AND DECENTRALIZATION

SOUTH AFRICA'S CHALLENGES

1. Centralization risks power concentration and weak oversight; NHI critiques argue excessive influence resides with the Health Minister.
2. Pilot districts revealed poor performance, inadequate infrastructure, delayed spending guidance and dysfunctional community participation structures.

LESSONS FOR ZAMBIA

1. Promote decentralized governance; empower district level offices with authority, oversight and accountability.
2. Strengthen transparency and anti-corruption mechanisms, including citizen engagement and public disclosure of contracts.
3. Support capacity building of district managers for effective implementation of decentralized systems.

PUBLIC PRIVATE INTEGRATION AND STRATEGIC PURCHASING

SOUTH AFRICA'S STRATEGY

1. The NHI enables contrasting with both the public and private providers, which aims to address misdistribution and enhance equity. For example, like COVID-19 vaccines and chronic medicines distribution does demonstrate effective public private collaboration.

LESSONS FOR ZAMBIA

1. Design explicit framework for public private contracting; learning from successful pilots.
2. Use of strategic purchasing to redress disparities and expand service delivery especially in the underserved areas.

RIGHTS OF USERS; CLARITY, PROTECTION AND ACCESS SPECTRUM

SOUTH AFRICA'S NHI: Rights in Legislation

1. Constitutional Foundation; the NHI Act explicitly gives effect to Section 27 of the South African Constitution, which enshrines 'everyone has the right to have access to health care services, including reproductive health care, no one may be refused emergency medical treatment.
2. User Eligibility and Access; the Act establishes who qualifies; the citizens, permanent residents, refugees, certain foreign categories, inmates, children and also provides care free at the point of service, contingent upon registration with NHI Fund. Also enforces referral pathways while allowing service portability if users cannot access their assigned facility.

CHALLENGES AND CONSTRAINTS

1. Vague Benefits and Procedures; Stakeholders have flagged uncertain scope around benefits, ambiguous procurement rules and unclear Medio-legal safeguards for private providers.

2. Restrictions on patient choice; legal challenges emphasize that mandatory registration at a single facility, rigid referral pathways and limitations on private insurance may infringe on freedom to choose and access.

Lessons for ZAMBIA

1. Legislate clear, rights based access provisions which define who qualifies, what services are covered including emergency care, user mobility and exceptions.
2. Ensure transparency and comprehensiveness; articulate the benefits package, procurement rules and legal protections for users and providers.
3. Safeguard patient choice; allow flexibility where feasible while maintaining system coherence.

STATE BINDING AND JUSTICIABILITY; ENSURING ENFORCEABLE RIGHTS

SOUTH AFRICA'S CONSTITUTIONAL CONTEXT

1. The rights guaranteed by section 27 originates from the bill of rights which binds the state and to an extent, private actors.
2. The constitution furnishes broad standing in section 38 and access to courts section 34 enabling individuals or groups to claim rights enforcement.

LEGAL VULNERABILITIES OF THE NHI Act

The NHI Act has faced numerous constitutional challenges, arguing that it;

1. Undermines private medical schemes limiting their scope.
2. Erodes professional freedoms and dignity.
3. That it was enacted without robust public consultation.
4. Centralizes power, potentially undercutting democrats. And that such limitations underscore the judicial nature of health rights and governance under the constitution, reflecting the Act's contested legitimacy.

LESSONS FOR ZAMBIA

1. Legislate UHC within a firmly constitutional framework, striving to ensure the right to universal healthcare and access to emergency treatment is explicitly binding on the state actors.
2. Institutionalize procedural rights; ensure transparent, inclusive public consultation processes and provide provisions for review or redress if implementation deviates from laws.
3. Design for justiciability; allow for legal accountability, users, professionals and civil society should have standing to challenge implementation gaps or rights violations.

There are also a number of some key South African cases and scholarly works which addressed the justiciability of social-economic rights including health rights for example the case of ***South Africa and Others v Irene Grootboom and Others***[84] which confirms that social-economic rights to some extent are justiciable under the South African Constitution, the core issue in this case was whether economic-social rights were justiciable which is capable of being enforced by the courts or whether they were policy matters reserved for the legislature and executive? The Government in this case argued that the courts should not interfere in such policy-laden areas, invoking the separation of powers doctrine, the constitutional court led by Justice Yaccob, affirmed the justiciability of social-economic rights and held that; these rights were expressly included in the bill of rights and that they cannot be said to be merely aspirational and that the constitution requires that they be honoured and enforced. The court in this case rejected the argument that social-economic rights are non-justiciable, holding that the constitution itself imposes judicially enforceable obligations on the state, however the court also clarified that these rights do not require the State to provide health care on demand, instead the State must take reasonable legislative and other measures within available resources to progressively realise these rights, thus the court introduced the **reasonableness standard**, the court's approach sought to balance enforceability and institutional competence, ensuring that social-economic rights were not illusory while respecting the executive's role in policy formulation. The judgement established the constitutional legitimacy of judicial enforcement of social-economic rights and rejected the notion that

[84] (CCT 11/00) [2000] ZACC 19; 2001 (1) SA 46 (CC).

such rights are merely programmatic or political confirming that they create legally enforceable duties. However, by adopting a reasonableness test rather than a minimum core obligation approach, the court limited the scope of direct enforcement, maintaining judicial restraint. This approach was later reaffirmed in the case of ***Minister of Health and Others v Treatment Action Campaign and Others,*** where the court again relied on reasonableness to hold that the government's refusal to provide anti-retroviral drugs to pregnant women was unconstitutional. The case of ***Mazibuko and Others v City of Johannesburg and Others***[85], this case was a crucial test following earlier social-economic rights in the previous cases above, this case also reaffirmed that social-economic rights are justiciable while refining the standard of judicial review. It also addressed the appropriate standard of judicial review and what it should be in evaluating government measures for the progressive realisation of these rights. The constitutional Court still reaffirmed that social-economic rights such as right to health as a universal health care issue are justiciable under the South African Constitution, however, it rejected the core argument holding that the Courts should not dictate policy choices to the executive and emphasised that the constitution requires the State to take reasonable legislative and other measures to achieve the progressive realisation of each of these rights and that the task of determining what is reasonable in any given case was context-dependent. The court in this case also explicitly rejected the notion that social-economic rights are non-justiciable policy aspirations in South Africa, thereby confirming that they impose enforceable constitutional obligations on the State, the Court's reasoning illustrated the balance between enforceability and institutional competence.

The Mazibuko decision has however, generated extensive academic debate, critics argue that the reasonable standard is too deferential, failing to offer effective remedies for poor and marginalized groups, scholars such as **Marius Pieterse(2027)**[86] contented that the Court's reluctance to set substantive benchmarks undermined transformative rights, **Eric Christiansen(2007)**[87] also argued that the Court's cautious approach preserves

[85] [2009] ZACC 28;2010 (4) SA 1 (CC) PARA 1
[86] Marius Pieterse, eating social-economic rights: The usefulness of Rights Talk in Alleviating Social Hardship (2007) 29 Human Rights Quarterly 796, 805
[87] Eric C Christiansen, Adjudicating Non-Justiciable Rights: Social Economic Rights and South African Constitutional Court (2007) 38 Columbia Human Rights Law Review 321, 340

institutional legitimacy and ensures the long term sustainability of rights-based adjudication.

4.3 CONCLUSION

South Africa's NHI Act provides a compelling case study, showcasing both progressive design and structural vulnerabilities for Zambia;

1. User Rights-a clear rights-based legislation with defined user eligibility, benefit packages, mobility provisions and patient choice is essential.
2. Governance- avoid over centralization, ensure institutional independence, multi-level governance, robust audit systems and local capacity building.
3. Justiciability-universal health care is grounded in constitutional and legal mandates that are enforceable, transparent, and inclusive, ensuring citizens and stakeholders can hold system architects to account.

The decisions of the court the cases also confirm that social-economic rights are justiciable, enforceable and also subject to judicial review but within a framework sensitive to resource limitations and democratic accountability. The Court's emphasis on reasonableness continues to shape the evolving landscape of social justice litigation in South Africa and beyond.

By learning from South Africa's experiences especially its legal challenges and governance critiques. Zambia can tailor a more resilient, equitable and enforceable UHC framework.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 INTRODCUTION

The objectives of this research are to analyze Zambia's legal and institutional framework for its National Health Insurance (NHI) scheme, particularly with respect to its capacity to guarantee the right to universal health care. To do this, the study focuses centrally on the **National Health Insurance Act, 2018**, examining its provisions and mechanisms. It also explores the **Constitution of Zambia (Amendment) Act, 2016,** to assess how strongly it supports universal health coverage and also whether the NHI Act aligns with constitutional rights and obligations related to health care in Zambia. Further, the study undertakes a comparative assessment with South Africa's legal and institutional framework governing its own National Health Insurance, in order to draw lessons and benchmarks for what might be improved in Zambia. This chapter summarizes the findings of the analysis, proposes legal reforms to enhance Zambia's NHI Act in respect of the right to universal health care, and offers recommendations grounded in South Africa's experience and best practices.

5.2 GENERAL CONCLUSIONS

This research sort to analyse the law which governs the national health insurance Act with regards to its capacity to achieve universal health care in Zambia. This study revealed some gaps and limitations in the national health insurance act and the constitution Acts legal and institutional mechanisms. Firstly, the NHI Act does not clearly define the extent to which the State is bound and does not clarify how the state is held accountable when it fails to meet its obligations with regards universal health care services. The socio-economic rights which include the right to health are not included in the constitution, individuals normally cannot enforce them in the Zambian Courts, and because these rights are non-justiciable, the State's obligations are loosely defined and heavily dependent on resource availability. Further, the policies and laws such as NHIS are often progressive in nature which provides flexibility but also uncertainty for people who seek enforcement. Because the constitution does not guarantee health as a bill of

right, there is less legal pressure on the government to deliver or be accountable in litigation for non-performance in health services. When it comes to implementation and governance, Zambia may have more constraints in the health infrastructure, administrative reach, fewer jaw-bones for demanding transparency, and regulations because of fewer constitutional obligations to compel compliance.

The study clearly demonstrated the need to establish a robust legal and institutional framework that effectively aligns with universal health care. The review of the South African legal and institutional framework and mechanisms indicated that the South Africa's State obligations were more strongly binding because health rights are justiciable under its constitution as people can enforce health rights in Court. South Africa's laws also lays out clearer formal structures in regards to the Board, governance and regulations

5.3 SUMMARY OF CHAPTERS

This study consists of five chapters which analyzes the legal and institutional framework which governs universal health care in Zambia.

CHAPTER ONE

This chapter identified the legal problem, which laid the foundation and basis for this research. Further the background to the study was provided in order have a deeper understanding of past laws which were in effect and an inquiry into past policies and actions for the purpose of actualizing the right to universal health care. This chapter further foregrounded the research objectives which are, first and foremost analyze the legal and institutional framework of Zambia's national health insurance Act of 2018, in terms of its capacity to ensure the right to universal health care, secondly conduct a comparative analysis of South Africa's national health insurance Act of 2023, mainly focusing on its legal and institutional mechanisms for ensuring universal care, lastly explore lessons that Zambia can learn from the South Africa's national health insurance act in integrating the right to universal health care within its legal and policy framework.

CHAPTER TWO

This chapter focused mainly on the analysis of the current national health insurance Act of Zambia in regards it's capacity to ensure the right to universal health care in Zambia. A number of key sections of the Act together with the current amended constitution of Zambia were critically examined to understand to what extent is the right to health justiciable and enforceable in Zambia, as well as the effectiveness of the governance structures, the binding effect of the government of Zambia and regulatory powers for the sole purpose of attaining the right to universal health care. It was therefore concluded that despite having promising foundations such as the State responsibility in health provision, its legal and institutional framework has significant gaps such as a lack of a clear and transparent processes. The regulatory powers despite offering some flexibility to adapt to evolving health needs lack safeguards such as procedural fairness. The governance structures do provide for multi-sectoral engagement through the Board but its accountability is undermined by ministerial control and limited representation thereby making it impossible to attain the right to universal health.

CHAPTER THREE

Chapter three analyzed the South Africa's national health insurance act together with its constitution with a focus on its legal and institutional mechanisms regarding the right to universal health care in South Africa. A comparative analysis was conducted with regards the binding nature of the Act and the State, justiciability of the right to health, as well as the governance structures and to what extent can the citizens and users of the national health insurance can exercise their rights regards enforceability of the right to universal health care in South Africa. It was in this chapter that it was concluded that the national health insurance act has a bold and constitutionally anchored stride towards universal health care, it provides for comprehensive governance structures and legal accountability but also lacks medico-legal protections raising concerns over fiscal feasibility, administrative efficacy as well as transparency.

CHAPTER FOUR

This chapter brought to the fore some valuable lessons which Zambia can learn from the South Africa's national health insurance act with regards justiciability of the right to health, the governance structures, state accountability and enforceability of this right to health in regard to achieving right to universal health care. This chapter concluded that the South Africa's legal and institutional framework has a clear user rights based legislation system, its governance structures are very effective in that they are not over centralized, they provide for independence and have a robust audit system. The universal health care is also grounded in the constitutional and legal mandates which are enforceable, transparent and inclusive thereby ensuring that citizens and stakeholders are able to hold systems architects to account.

5.4 RECOMENDATIONS

Having analyzed the legal and institutional framework and mechanisms in the Zambia's national health insurance and comparative analysis of South Africa's legal and institutional framework, the following are some of the positive recommendations which may help Zambia to achieve a better universal health care system.

5.3.1 CONSTITUTIONAL STATUS OF HEALTH AND SOCIAL ECONOMIC RIGHTS

Since the social economic rights which include the right to health, adequate medical and health facilities were only placed under Directive Principles of the State Policy in the repealed Zambian constitution, they are not in the bill of rights hence them being non-justiciable. There is need to amend the constitution in order to include these rights so that individuals can freely and easily enforce them in the Zambian Courts of Law because as it is, the Directive principles are only binding politically and morally and not enforceable judiciary.

5.3.1 GOVERNANCE AND REGULATORY CAPACITY OF NHI ACT

The implementation and administrative capacity of the national health insurance Act are a constraint, there is need to amend the act in order to have clear legal basis to force government to deliver universal health services in full.

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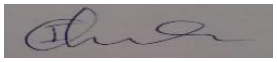
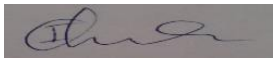
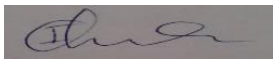
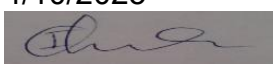
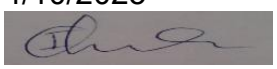
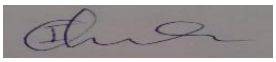
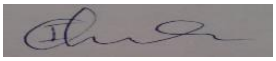
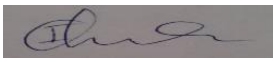
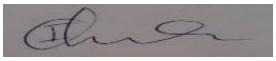
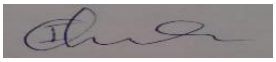
L400B / Dissertation II – DIRECTED RESEARCH (OBLIGATORY ESSAY)

RESEARCH CLEARANCE FORM

NAME: IREEN CHANDA **STUDENT NUMBER: LLB22114555**

SUPERVISOR: MR. NGAMBI LAMECK **TOPIC: A COMPARATIVE LEGAL ANALYSIS OF THE RIGHT TO UNIVERSAL HEALTH CARE IN ZAMBIA. AN EXAMINATION OF THE ZAMBIA NATIONAL HEALTH INSURANCE ACT 2018: LESSONS DRAWN FROM SOUTH AFRICA**

Stage	Supervisor's Comments	Supervisor's Signature & Date	Student's Signature & Date
Research Proposal	**Approved**	1/08/25 	1/08/2025 
Chapter 1 – Introduction	**Approved**	1/08/2025 	1/08/2025 
Chapter 2 –	**Approved**	4/09/2025 	1/09/2025 
Chapter 3 –	**Approved**	4//10/2025 	4/10/2025 
Chapter 4 –	**Approved**	4/10/2025 	4/10/2025 

Chapter 5 – Conclusions & Recommendations	**Approved**	5/10/2025 	5/10/2025 
Abstract, Table of Contents, Bibliography and Appendices	**Amend**	4/10/2025 	4/10/2025 
First Draft	**Amend**	4/10/2025 	4/10/2025 
Second Draft	**Approved**	5/11/2025 	5/11/2025 
Final Draft	**Approved**	**13/11/2025** 	13/11/2025 

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