

Denying the right to healthcare: South Africa's unemployed doctors at the centre of this crisis

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The public sector provides healthcare access to 84% of patients in South Africa (SA). However, it is severely understaffed, with only 0.3 doctors per 1 000 people – far below the World Health Organization's recommended ratio of 2.5 per 1 000. While the public sector struggles with numerous challenges, including a critical shortage of healthcare personnel, SA has a high number of medical doctors who have completed their mandatory community service yet remain unemployed. The shrinking health budget, rising salaries and high number of medicolegal claims are some of the reasons why the National Department of Health (NDoH) cannot afford to employ these professionals. In addition, corruption has severely impacted available resources, creating dangerous conditions in public hospitals. During the State of the Nation Address, the SA President announced the development of new healthcare facilities, but buildings alone do not deliver healthcare – people do. If the NDoH is already struggling to fill posts in the public sector, how can communities trust that adequate human resources have been budgeted for new facilities? Without proper staffing, these new facilities could exacerbate existing workforce shortages. The fundamental right to access healthcare is affirmed in the Constitution; however, its implementation is riddled with impediments. Although the issue of unemployed doctors is part of a bigger crisis within the SA healthcare sector, it is imperative that it is tackled first in order to avoid the further collapse of the healthcare system. This article highlights the government's constitutional imperatives to the people of SA with regard to the right to access healthcare. It also brings to light certain factors that have accounted for the current state of healthcare in SA, and offers some recommendations toward urgent intervention. The article concludes by highlighting the need for strategic interventions that result in the integration of unemployed qualified doctors into the public healthcare system.

Keywords. right to access healthcare, unemployed doctors, South Africa, fundamental rights.

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The South African (SA) Constitution, 1996,^[1] has historically been praised for embracing human rights and dealing with modern challenges. In this regard, Harvard law scholar, Cass Sunstein, named it 'the most admirable Constitution in the history of the world.'^[2] The Constitution, which includes the Bill of Rights, was established in 1996, and is considered SA's supreme law, creating a benchmark for all present and future regulatory frameworks. However, the application of fundamental rights as set out in the Bill of Rights, as they appear on paper, lags behind in practical implementation. This is particularly true of the right to access healthcare, an essential service, which is once again in the spotlight as the National Department of Health (NDoH) struggles to find adequate placements for doctors in the public sector. SA's medical internship and community service requirements are governed by the Health Professions Act 56 of 1974, which is the primary legislation overseeing community service for medical practitioners. The main objectives of the Act include establishing the Health Professions Council of SA (HPCSA) and various professional boards. It further regulates the education, training, registration and practice of health professions registered under it. Registration with the HPCSA is a prerequisite for professional practice, and the main registration categories are student registration; intern registration; community service; and independent practice (including registrars who are training in a specific specialty).^[3]

The current challenge in the healthcare sector is the persistently high number of unemployed doctors who have completed their community service and cannot find employment within the public sector. Public hospitals suffer from severe understaffing and an increasing patient load on the one hand, while thousands of newly qualified doctors are unable to find work within the public sector, on the other hand. This paradox is deepened by corruption and inefficiencies in healthcare management, increasing medical malpractice claims and budget cuts – all of which have undermined the right to access healthcare. The direct failure to integrate qualified doctors into the healthcare system not only contributes to the existing crisis but also constitutes a violation of the constitutional obligations of the state to achieve the progressive realisation of the right to access healthcare.

This article highlights the constitutional imperatives by government to the people of SA with regard to the right to access healthcare. It further explores how the right to access healthcare is being impeded, by considering the rights of patients who are being denied access and doctors who are unable to provide access by securing employment within the public healthcare sector. The article considers the reasons why we have reached this point as a nation, and offers some recommendations toward urgent intervention.

Constitutional imperatives

Oaths and solemn affirmations

Schedule 2 of the Constitution sets out the oaths and solemn affirmations that the President, Acting President, Deputy President and ministers and deputy ministers of the country must affirm after assuming office. Section 1 of the schedule indicates that the President and Acting President will obey, observe and maintain the Constitution, including protecting and promoting the rights of all South Africans; upholding justice for all; and devoting themselves to the wellbeing of the republic and its people. In addition, each minister and deputy minister affirms that they will be faithful to the Republic of SA, and obey, respect and uphold the Constitution and all other laws, including performing the functions of their offices conscientiously to the best of their abilities (schedule 2, section 3).^[1] This creates a direct obligation on the government to ensure that the fundamental rights of the people in SA are upheld, including the right to access healthcare.

The public sector provides healthcare access to 84% of patients in SA. However, it is severely understaffed, with only 0.3 doctors per 1 000 people – far below the World Health Organization's recommended ratio of 2.5 per 1 000.^[4] It can therefore be argued that considering the unsatisfactory existing doctor:patient ratios in the country, it is irrational to see newly qualified doctors unable to provide healthcare, perpetuating social gaps in a sector that services >80% of patients. It is submitted that this extends inequality in healthcare access, in contravention of the oaths and solemn affirmations taken by the President and Minister of Health, as set out under schedule 2 of the Constitution.^[1] Furthermore, public health services and public health support services, including (but not limited to) emergency health services and the provision of emergency health facilities to the community or part thereof, nursing, medical and paramedical services, are classified as essential services. An essential service is defined in section 213 of the Labour Relations Act 66 of 1995,^[5] and is deemed essential if it can be shown that the interruption of such a service would 'endanger the life, personal safety or health of the whole or any part of the population'. It would have to be established that a clear and imminent threat to the life, personal safety or health of the whole or part of the population existed.^[6] It is submitted that the failure by government to adequately employ health professionals in the public sector is an imminent threat to the health of the majority of the population who cannot afford to access private healthcare services.

Fundamental rights perspective

Similar to the driving force behind the constitutions of many countries, the SA Constitution aims, in its preamble, to 'improve the quality of life of all citizens and free the potential of each person.'^[1] The fundamental right to healthcare is specifically enshrined under the Bill of Rights in section 27, and requires the state to develop and implement practicable legislative and policy measures in order to gradually realise the right of access to healthcare. This right encompasses more than merely having access to healthcare; it also involves having an obligation to create an environment that makes such services available, adequate and sustainable. In its expansive nature, section 27(2) of the Constitution requires the government to guarantee the equitable and progressive improvement of healthcare services.^[1] As such, the government must ensure that operational policies, funding guidelines and administrative mechanisms favour

access to the healthcare system. In addition to providing access to healthcare for patients, the government has a duty to employ skilled workers to maintain these services. It is evident that the state's actions are insufficient, given the harsh reality of qualified doctors without jobs and public hospitals with inadequate staffing.

Furthermore, judicial precedents have reinforced the enforceability of basic healthcare rights. In the landmark case of the Minister of Health and Others v Treatment Action Campaign and Others,^[8] the Constitutional Court emphasised that the government must take reasonable measures to ensure access to healthcare. The failure to fully integrate unemployed doctors into the public healthcare system reflects a broader systemic failure that undermines the provisions of sections 27(1) and (2) of the Constitution.^[1]

An important phrase under section 27(2) of the Bill of Rights^[7] requires special attention, namely: 'available resources'. This phrase serves as both an enabler and a limitation to the realisation of the right to access healthcare. Accordingly, the government is obligated to provide access to healthcare services within the constraints of the country's available resources. However, in the context of unemployed doctors, this phrase becomes perplexing. This is because qualified doctors undeniably fall within the scope of a nation's available healthcare resources. Despite this, the professional skills of many SA doctors remain underutilised in the public sector. The government, by interpretation along with section 27 as well as section 11 (the right to life) of the Constitution,^[1] are obligated to create an enabling environment where medical professionals can deploy their acquired skills, empowering patients with the right to access healthcare services, including access to lifesaving treatment. SA's public hospitals are already understaffed. However, despite having human capital to assist with the challenge of understaffing in the public sector, the government has evidently failed to deploy available manpower effectively. Therefore, failure on the part of government to engage the services of unemployed doctors is at variance with the state's obligation to progressively realise the right to access healthcare services under section 27 of the Constitution. If the available resource argument is to be consistently applied, then unemployed doctors should be absorbed into the system without further delay in a cost-effective manner, thereby ensuring improved healthcare service delivery for the majority of the country's patients.

In Minister of Health and Others v Treatment Action Campaign and Others, the court declared that 'sections 27(1) and (2) of the Constitution require the government to devise and implement within its available resources a comprehensive and co-ordinated programme to realise progressively the rights of pregnant women and their newborn children to have access to health services' (para 135 (2)(a)).^[8] Also, in Government of the Republic of South Africa v Grootboom (para 46),^[9] the Constitutional Court held, with respect to the qualification of 'within available resources' that:

'the obligation does not require the state to do more than its available resources permit. This means that both the content of the obligation in relation to the rate at which it is achieved as well as the reasonableness of the measures employed to achieve the result are governed by the availability of resources. Section 26 does not expect more of the state than is achievable within its available resources.'

Inferentially and whenever the resources are available, the court rulings on the notion of 'available resources' may be construed

to require the government, through the NDoH in this instance, to demonstrate that it is using its available resources effectively and rationally to enforce socioeconomic rights, including the rights of access to healthcare services. Consequently, by applying this principle, the continued unemployment of doctors, despite healthcare service shortages, suggests that the government is not meeting its constitutional duties.

In addition, according to section 22 of the Constitution (the right to freedom of trade, occupation and profession), every citizen is within the purview of their rights to choose an occupation or profession freely, including medical doctors.^[1] The Constitutional Court, in *Affordable Medicines Trust and Others v Minister of Health and Another*,^[10] affirmed the constitutional significance of the right to practise a trade, occupation, or profession under section 22 of the Constitution. Additionally, it is important to understand the interplay between employment and human dignity, as well as strive toward addressing any possible or potential infringements to the right to dignity, which is almost always implicated when the infringement of another fundamental right is concerned. According to section 10 of the Constitution, 'Everyone has inherent dignity and the right to have their dignity respected and protected.' Since employment in a profession or occupation is a crucial component of social inclusion, self-esteem and personal identity, there is little question that human dignity and the freedom to choose an occupation or profession are intrinsically linked. For example, unemployment damages a person's dignity in a number of ways, especially when it stems from institutional flaws or poor policies. It carries with it the consequences of preventing people from being financially independent, often placing them in difficult and unbearable financial situations and making them reliant on charity or government grants. Feelings of social rejection, embarrassment and low self-esteem can result from the loss of financial freedom caused by unemployment. Additionally, employment provides people with a feeling of direction and a way to give back to their community. Furthermore, when the period of unemployment extends beyond normal, it can result in psychological problems such as anxiety, depression and a low sense of self-worth. Moreover, it worsens social inequality, since people who are unable to find work are frequently excluded and deprived of the chance to fully engage in society. Accordingly, the state's inability to provide or support job possibilities, especially when the means to do so are available, may constitute a breach of the right to dignity of unemployed doctors.

How did we get here?

Over the past decade, the healthcare system has faced a dramatic rise in medicolegal claims for medical negligence and malpractice, which have placed enormous strain on the healthcare budget. According to Prinsen,^[11] there has been a growth rate of 23% for medicolegal claims in the public sector since 2014, translating to ZAR2 billion in the 2018/2019 National Treasury Budget Review reporting period. In 2020/2021, >ZAR6.5 billion was awarded in medicolegal claims.^[11] This situation is likely to worsen, as newly qualified health professionals cannot effectively service the public sector, and those who are currently employed struggle to cope amidst staffing shortages and growing patient numbers.

In addition, the SA healthcare system has experienced severe financial constraints in recent years. For example, the 2021 national

budget called for a ZAR50.3 billion cut in public health spending over the subsequent 3 years. This cut had an impact on several important facets of health programmes.^[12] The National Treasury's health budget has increased nominally by 3.4% over recent years, but falls short of inflation.^[4] Ironically, in February 2025, it was announced that public servants will receive an above-inflation wage increase of 5.5% for the 2025/2026 fiscal year.^[13] These fiscal choices have worsened the situation in the healthcare sector via the reduction of the amount of money available for necessary services, such as employing qualified doctors. 'Obsession with debt stabilisation and providing kickbacks to the rich through tax breaks' are considered major causes of healthcare budget cuts.^[4] Funding for socioeconomic rights is a constitutional imperative, and public budgeting for the protection and promotion of basic human rights should be prioritised.

Corruption is another bane of the SA healthcare system. The promise that corruption will be rooted out is monotonously repeated by politicians; however, lived experiences have exposed the looting and stealing that continues with impunity.^[14] According to Transparency International's 2024 public-sector corruption-perceptions index,^[15] SA is ranked 82nd in the world for corruption, out of 180 countries. The index ranking is calculated on a scale of 0 (very clean) to 100 (highly corrupt), with SA scoring 41/100.^[16] This is a reflection of the depth of concern around the nation's integrity and global acceptability. Whatever form it takes in a system, corruption poses a substantial threat to economic progress and development, while also undermining the effectiveness, accessibility, affordability, efficiency and fairness of healthcare services. Specifically, corruption can influence healthcare policies and funding decisions, sometimes leading to disastrous consequences, such as the employment of quack doctors^[17] and the purchase of ineffective medical equipment and drugs, among others. In April 2025, the National Health Council approved the immediate hiring of 1 200 doctors, alongside 200 nurses and 250 other healthcare professionals, with the aim of addressing long-standing staffing issues in the public healthcare sector.^[18] Although this is a step in the right direction, 450 doctors remain unemployed as at 22 April 2025.^[19] In addition, the issue remains a concern year after year, as no concrete strategies have been implemented to ensure that the unemployment of doctors no longer occurs.

The requirement for urgent action

It is clear that the NDoH has failed to develop a clear strategy to retain newly qualified doctors within the public sector, despite countless engagements with successive ministers of health. What is required is a focused strategic intervention that prioritises the immediate needs of the majority of the population. During the State of the Nation Address, the President announced the development of new healthcare facilities, but buildings alone cannot deliver healthcare – people do. If the NDoH is already struggling to fill posts in the public sector, how can communities trust that adequate human resources have been budgeted for new facilities? Without proper staffing, these new facilities could exacerbate our existing workforce shortages. Retaining and staffing the public health sector adequately will also lay a foundation for the impending National Health Insurance (NHI), which hinges on strengthening human resources in public hospitals. The current situation and skewed doctor:patient ratios do little to instill confidence within communities that the rollout

of NHI will grant them greater access to healthcare. Funding for healthcare professionals to be employed within the public sector, in accordance with the promotion of fundamental human rights, should be prioritised as a matter of urgency. The argument that government does not have the funds to employ doctors is highly questionable considering recent public servant wage increase negotiations that were settled above inflationary rates. Supporting the public healthcare sector with adequate staff and improving doctor:patient ratios will also curb increasing medical malpractice litigation claims against the NDoH in the longer term. Advocacy around the negative effects of the lack of access to healthcare, as well as the gains of proper integration of unemployed doctors into the public healthcare system, needs to gain momentum. Although the issue of unemployed doctors is part of a bigger crisis within the healthcare sector, it is imperative that it is tackled first in order to avoid the further collapse of the SA healthcare system.

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