## 1. REPORT OF THE PORTFOLIO COMMITTEE ON HEALTH ON THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION’S REPORT INVESTIGATION INTO ONCOLOGY SERVICES IN KWA-ZULU NATAL PROVINCE, DATED 01 NOVEMBER 2017

1. **INTRODUCTION**

The South African Human Rights Commission (SAHRC) conducted an investigation into the provision of oncology services in KwaZulu-Natal (KZN) province following a complaint relating to poor provision of health care services for oncology patients in KZN.

In producing its report, the Portfolio Committee on Health considered the report of the South African Human Rights Commission on 23 August 2017 and reports of the Minister of Health and KZN Department of Health on 6 September 2017.

1. **REPORT OF THE SAHRC**
   1. **Background**
      1. The Commission reported that the Commission received a written complaint from Dr Imraan Keeka (Member of the KZN Provincial Legislature) on 19 February 2016. The compliant related to both shortages of staff and a lack of functional health technology machines for screening, diagnosing and treating cancer patients in KZN Province. This, it was alleged, had a negative effect on the provision of oncology services in the KZN Province.
      2. The Commission conducted a preliminary assessment of the compliant and determined that the matter raised issues relating to the right to access to health care services as enshrined in Section 27 of the Constitution.
      3. On this basis, the Commission determined that an investigation into the complaint should be undertaken in order to establish the veracity of the allegations by the complainant.
      4. On 4 May 2016, the Commission wrote a letter to KZNDoH in which it set out the allegations brought to its attention through communication of the complainant and afforded the provincial department an opportunity to respond to the allegations.
      5. On 8 June 2016, KZNDoH provided a response to the Commission as follows:

* There were eighteen (18) CT scanners at various health establishments in the province, of which seventeen (17) were fully functional. One CT scanner at Ngwelezane Hospital was awaiting installation upon the finalisation of the preparation of its infrastructural site.
* Four (4) additional CT scanners were procured, which had been allocated to: Addington, Grey’s, King Edward VII and Empangeni Hospitals. KZNDoH further stated that with the provision of these additional CT scanners, there would be a sufficient number of functional CT scanners to cater for oncology patients in the province.
* Information reflecting the status of the existing CT scanners was provided and advised that Service Maintenance Agreements (SMAs) are in place for 50 percent of the CT scanners and was in the process of finalising SMAs for those that did not have.
* With regard to the status of the Varian Rapid Arc Linear Accelerator Machine (VRALA) machines, KZNDoH advised that there were two VRALA machines at Addington Hospital which are not functional. A service provider had been appointed to undertake repairs of the machines. One of the VRALA machines was working in March 2016 but had broken down in November 2016. KZNDoH was conducting an investigation into certain matters relating to the SMAs applicable to VRALAs.
  + 1. On the 4 August 2016, the Commission wrote to KZNDoH and received response on 12 January 2017 where KZNDoH advised on the following:
* That it had prioritised the expansion of its oncology services at the Ngwelezane, Madadeni and Port Shepstone Hospitals which would be finalised within the next five years.
* That it had attempted to recruit specialist oncologists to mitigate the shortage of oncologists.
* Oncology services at Addington and Inkosi Albert Luthuli Central (IALC) Hospitals had been combined due to a shortage of staff and the loss of oncologists in both hospitals.
* Over the past six months, KZNDoH lost four oncologists at IALC Hospital and two from Addington Hospital. KZNDoH further indicated that the shortage of oncologists had a direct impact on the time patients wait to access treatment.
  + 1. The Commission noted that even though the responses from KZNDoH were comprehensive in nature, they did not fully address the specific issues or concerns initially raised by the Commission which included:
* The current status of two VRALA machines;
* The interim measures by KZNDoH to ensure that the VRALA machines were being adequately maintained and/or repaired without compromising the patients’ rights to access to health care treatment;
* Steps to address the increased backlog of patients awaiting treatment; and
* Information regarding the average waiting period for a patient to be seen by an oncologist or for a patient to receive radiotherapy.
  + 1. On 9 March 2017, KZNDoH advised the Commission that:
* The VRALA machines at the Addington Hospital were not functional, the provincial department was finalizing an addendum to the main SLA contract. It further advised that the issue pertaining to the maintenance contract for the VRALA machines was still under investigation.
* KZNDoH provided a breakdown of the number of patients treated through the use of three (3) VRALA machines in IALC Hospital between September 2016 and January 2017. A total of 1552 patients were treated with 68 patients treated per day.
* KZNDoH advised that the average waiting period for a patient to be seen by an oncologist was five (5) months, and those waiting to receive radiotherapy usually wait eight (8) months. A process was underway to re-instate functionality of the VRALA machines.
* KZNDoH stated that the backlog in the treatment of oncology patients was caused by staffing constraints including the shortage of specialist oncologists, medical officers and radiotherapists.
  + 1. KZNDoH further advised that it had devised an integrated approach to dealing with the backlog, this entailed the following:
* Merging of the oncology centres at Addington and IALC Hospitals;
* Initiation of a process of acquiring the services of the private sector to reduce oncology backlog as an interim measure to take on priority cases in both radiotherapy and chemotherapy;
* Focussing on existing cases with a view to fast-track the current backlog within the provincial department’s resources;
* Prioritizing the recruitment through a headhunting process of staff for the Head of Clinical Unit: Oncology, including specialist oncologists, medical officers and radiotherapists.
  1. **Findings at Addington and Inkosi Albert Luthuli Central Hospitals**
     1. The Commission conducted inspections at both Addington and IALC Hospitals on 15 and 16 February 2017, respectively. During the inspections, the Commission interviewed staff and patients and established that the two VRALA machines were not functional at Addington Hospital and that all oncology patients were referred to IALC Hospital for treatment. The Commission further established that there is a backlog and delay in the provision of treatment to oncology patients.
     2. The Commission noted that the respondents failed to comply with applicable norms and standard as set out in the legislation and policies, by failing to:
* Evaluate and identify the need for functional equipment such as CT scanners and VRALA machines within a reasonable time;
* Failing to procure, maintain and/or put in place adequate functional equipment such as CT scanners within a reasonable time;
* Recruit and retain suitably qualified staff including oncologists, radiotherapist, medical officers and oncology nursing staff in the province; and
* Monitor and evaluate the health needs of oncology patients in the province in time to implement appropriate interim models such as sufficient private-public partnerships to meet the needs.
  1. **Recommendations**

The respondents (Addington Hospital; IALC Hospital; KZNDoH; and MEC for Health, KZN) were required to immediately address the following:

* + 1. Repair and monitor all the health technology machines including CT scanners and VRALA machines regardless of contractual dispute yet to be finalised through the courts;
    2. Adopt a management plan to deal with the backlog through, entering into interim Public-Private Partnership arrangements with private oncologists, medical officers, radiotherapists and oncology nurses; and
    3. Adopt an interim referral management plan to facilitate the referral of patients to private service providers for screening, diagnostic and treatment of cancer.

The respondents were required to report to the Commission, within ten days of the report in relation to:

* + 1. Progress made in recruiting the Head of Clinical Unit: Oncology, specialist oncologists, medical officers and radiotherapists at Addington and IALC Hospitals;
    2. The status of immediate interim measures and action plan to be implemented to reduce the backlog in the provision of oncology services, including steps to be taken to acquire the services of the private sector to support the remedial action;
    3. Detailed plans to be implemented to efficiently manage the current crisis in oncology services at Addington and IALC Hospitals, and throughout KZN, including plans to communicate with known affected patients;
    4. The process initiated by the provincial department to engage the private sector to take on priority cases for both radiotherapy and chemotherapy;
    5. The details relating to the public-private partnership between the KZNDoH and the Impilo Consortium. In particular, the National Department of Health was required to report to the Commission on the success of the public-private partnership and the viability of rolling out to other hospitals in KZN; and
    6. The specific types of health care treatment that is provided to the oncology patients who are currently awaiting radiotherapy and/or chemotherapy in the province, including transfers.

Addington and IALC Hospitals were required to furnish the Commission with the following:

* + 1. A detailed list of patients awaiting radiotherapy treatment at the two hospitals, including the duration of waiting periods for treatments; and
    2. A list of cancer patients who have passed away whilst waiting for treatment or undergoing treatment at Addington Hospital and IALC Hospitals. This must also include the cause of death in respect of each and every deceased patient.
    3. KZNDoH in collaboration with the National Department of Health is required to develop a strategy and/or programme to meet the current medical staffing challenges in KZN.

KZNDoH had to provide the Commission with the following:

* + 1. Its human resources retention plan and immediate actions to attract and retain the relevant oncologists, radiotherapists and other skills and specialities in the area of oncology; and
    2. Details of service agreements for the maintenance of health technology machines at Addington and IALC Hospitals.

KZNDoH had to ensure the following:

* + 1. Evaluate and prioritise the expansion of oncology services at the Ngwelezana, Madadeni and Port Shepstone Hospitals;
    2. Prioritise capacity building at administrative level and retention of professional health care workers, including specialists, registrars, medical officers and nurses; and
    3. In collaboration with the National Department of Health prioritise the procurement of essential health technology machines for screening, diagnosing and treating cancer.
  1. **KZNDoH’s response to the SAHRC recommendations**

KZDoH furnished the Commission with the following responses:

* + 1. The service provider responsible for the VRALA machines was requested to assess the two VRALA machines at Addington Hospital and to report to the Provincial Department of Health regarding repairs required.
    2. KZNDoH held a meeting with the private sector in order to seek their assistance in the provision of oncology services.
    3. Agreements were made with the Hopelands Oncology Group as well as the Rainbow Oncology Group to assist in consulting with patients.
    4. Vacant posts had been advertised, however no applications were received for the post of the Head of Clinical Unit: Oncology at IALC Hospital.
    5. The backlog of patients from Addington Hospital who were currently awaiting radiotherapy treatment was approximately six to seven months.
    6. The backlog of patients from IALC Hospital who were awaiting radiotherapy treatment was approximately seven to eight months.
    7. The KZN Provincial Treasury will be taking over the Supply Chain Management (SCM) functions of the Provincial Department of Health and all SCM backlogs will be addressed by January 2018.
    8. KZNDoH met with Varian Medical International (Varian) regarding repairs of the VRALA machines and it was agreed that Varian would be responsible for ensuring that the machines are operational.
    9. The SMAs for all health technology equipment would only be finalised once an assessment of machines had been completed.
    10. The vacant posts were re-advertised.
    11. KZNDoH received preliminary feedback from Varian indicating that one of the VRALA machines would be easier and faster to repair than the other machines.
    12. On the 1st of July 2017, Joint Medical Holdings (JMH), a group of private oncologists started consulting with patients at Ngwelezane Hospital and Lower Umfolozi War Memorial Hospital pro bono. KZNDoH accepted a proposal from JMH to extend their assistance to patients in Northern KZN at a cost, in their private rooms. KZNDoH has requested KZN Provincial Treasury to approve a deviation for a period of three months.
    13. KZNDoH was working with the KZN Provincial Treasury to fast-track procurement of medical equipment and the process is ongoing.
  1. **Ongoing Monitoring**

The Commission undertook monitoring at Addington and IALC Hospitals and noted the following:

* + 1. The VRALA machines were still not functional;
    2. There were no oncologists at the IALC Hospital;
    3. The waiting period was approximately nine months for new appointments of oncology patients;
    4. KZNDoH secured the services of consultants from Rainbow Oncology Services to assist, however the consultants only attend to patients twice a week (Tuesdays and Thursdays) for a maximum period of two hours; and
    5. Monitoring has been constrained due to full access being denied at the aforesaid hospitals.

1. **REPORTS BY THE MINISTER OF HEALTH AND KZNDOH**

Having deliberated on the SAHRC Report, the Minister of Health and KZNDoH were invited to report back and clarify the issues raised by the SAHRC on the status of oncology services in KZN.

* 1. **Report by KZNDoH** 
     1. Dr Sibongiseni Dhlomo, Member of the Executive Council (MEC) for Health, KZN presented a progress report on interventions implemented following the SAHRC recommendations. The three areas to work on had been: (i) the repair of equipment; (ii) the management of patients; and (iii) the recruitment of oncologists.

1. **Repair of Equipment**
   * 1. Two VRALA machines at Addington Hospital had been assessed and a report provided in August 2017. The report was discussed with the National Department of Health (NDoH) and two options had been considered, which were subsequently considered by the Provincial Treasury. The two options were, whether to repair and upgrade the software of both machines or to repair and upgrade the software of one machine. The Provincial Treasury decided on the option to repair and upgrade one of the machines which required less work, and to buy a second one which had better technology compared to the current machine, instead of repairing both.
2. **Management of Patients**

There are three oncology centres and a satellite site (North Coast) in the province that provide both chemotherapy and radiotherapy, these being IALC, Grey’s and Addington Hospitals. A new site has been established in the North Coast where chemotherapy provided by the state is administered by private oncologists from Joint Medical Holdings. This development was not a reactive plan, but part of an ongoing plan.

1. **Grey’s Hospital**
   * 1. There is one VRALA machine which is operational and there are four full-time oncologists (include a Head of Clinical Unit: Oncology and three specialists) and three medical officers.
     2. Grey’s Hospital treats an average of 100 to 120 patients per day. These are patients coming from within the greater Umgungundlovu District as well as the entire Midlands of KZN up to the borders of Free State, Mpumalanga Provinces as well as Lesotho.
2. **Inkosi Albert Luthuli Central**
   * 1. There are three VRALA machines in IALC Hospital. Two are functional and one was decommissioned on 10 August 2017, to be replaced with a new machine. Once the dismantling is completed, a new machine will be installed and it is scheduled to be commissioned by the end of November 2017 in terms of the public-private partnership agreement.
     2. There are currently no full time oncology specialists at IALC Hospital. There are vacancies of Head of Clinical Unit and three oncology specialists posts. The hospital currently functions with five filled medical officer posts, two additional medical officers will start on the 1st of October 2017. The Head of Clinical Unit from Grey’s Hospital supervises and oversees the services at IALC Hospital. He visits IALC Hospital once every Thursday to attend to patients, assist with training of the Registrars and provide general guidance to the junior doctors.
     3. There are six private oncologists from Rainbow (4) and JMH (2) private firms, who do sessional work at the hospital daily and cover the entire week. They assist to deal with the current backlog. On average the institution attends to 120 to 140 patients per day.
     4. Two VRALA machines will be commissioned once the repairs and replacement process is completed.
3. **Addington Hospital**
   * 1. There are currently no oncologists placed at Addington Hospital. There are two specialists and two medical officer posts that will be filled while the machines are being commissioned. The radiotherapy staff from Addington Hospital have been combined with the IALC Hospital staff and are currently based at IALC Hospital. There is only one vacancy for radiotherapy. There are 20 to 30 patients on average seen per day that receive chemotherapy administered by medical officers that rotate. Patients that require radiotherapy are then referred to IALC Hospital for treatment.
4. **New Satellite Site (Ngwelezana/Lower Umfolozi)**
   * 1. The MEC reported that private oncologists from the JMH group consult patients, screen, diagnose and refer to them from Ngwelezana Hospital and Lower Umfolozi Regional Hospital. This services started on the 1st of July 2017.
     2. Once these patients have been assessed, chemotherapy is ordered and supplied by the Department and administered to the patients.
     3. Provincial Treasury has granted the KZNDoH a deviation authority to contract JMH for a fee to offer radiotherapy to patients in the North Coast. The contract will cater for 100 to 150 patients per month which will ease the backlog.
5. **Recruitment of Oncologists**
   * 1. On human resources, posts of IALC Hospital Head of Clinical Unit and three oncology specialists were advertised but were unsuccessful. The hospital had engaged two Registrars currently training to become specialists, who had indicated an interest in taking up the positions should they pass their examinations.
     2. A successful retention strategy of specialists is dependent on strengthening a mutual beneficial relationship between KZNDoH and the University of KwaZulu-Natal Nelson Mandela School of Medicine. This would be premised on a functional Joint Medical Agreement.
     3. The generic Service Level Agreement for maintenance of medical equipment has been finalized. KZNDoH is currently analysing the assessment reports before these agreements are signed. Due to the vast number of involved equipment, the assessment needs to be done carefully and priced correctly. This process was anticipated to be completed in September 2017 after which these SLA’s will be signed with the various service providers. KZNDoH is also working with the Provincial Treasury and NDoH to prioritise the procurement of essential health technology medical equipment.
   1. **Report by the Minister of Health** 
      1. Dr Aaron Motsoaledi, Minister of Health, highlighted that the NDoH became aware of the issue from the South African Medical Association (SAMA) protests in KZN with their memorandum subsequently forwarded to the Director-General for Health. The Director-General along with executive management of the Department visited KZN to investigate the concerns.
      2. The NDoH team visited the following hospitals: Addington; St Aidans; King Edward VIII; Prince Mshiyeni; and Mahatma Ghandi.
      3. The challenges identified were in the areas of human resource planning, development and management; procurement and supply chain management (SCM); and financial management and infrastructure (to a lesser extent).
      4. Human resources challenges were related to:

* That the rate of attrition was higher than the rate at which vacated posts were filled. Some specialists reported that they have lost 50% of their staff over a period of time. The pressure caused by staff shortage resulted in many newly qualified staff to leave the employment of KZNDoH.
* Vacancies in key positions led to long acting periods.
* The reluctance by senior management in the province to delegate recruitment functions.
  + 1. On procurement, in KZN, hospital CEOs have SCM delegations of R200 000 for goods and services. There is an internal instruction to gazette any purchases over R30 000 which makes the delegation of R200 000 ineffective. In addition to this, there is a restrictive delegation of R5000 for equipment. Any equipment purchases have to be referred to the provincial department’s central technology unit to scrutinise specifications and also to assist with purchases in excess of R5000. This unit however, seemed to lack the required capacity leading to long turnaround times for equipment purchases and maintenance.
    2. Following several visits to KZN, human resources delegations were revised and approved by the MEC on 19 June 2017. The Head of Department also approved revised financial delegations on 21 July 2017.
    3. Immediate interventions by NDoH, included the following:
* Immediate filling of critical posts (clinical, administrative and logistical) to ensure the provision of basic standard of services.
* The health technology unit should not be allowed to purchase equipment on behalf of institutions, rather be allowed to assist with specifications and monitoring and evaluation of usage of equipment by institutions.
* NDoH will purchase medical equipment on behalf of the province guided by the National Equipment List.
* Existing transversal contracts will be used where applicable. Where there are no contracts, the provincial and national specification committee will draw up specifications for open tender.
  + 1. To achieve all these, the processes of HR, procurement and supply chain will have to be disrupted in more ways than one and thus required the cooperation of the whole government, specifically the Premier’s Office and Provincial Treasury.
    2. The Minister requested the Premier to convene a meeting with all relevant team players. The meeting was held on 18 August 2017 whereby the proposals on HR and procurement were agreed upon.
    3. From 28 August to 1 September 2017 the NDoH team visited KZNDoH to coordinate all the activities with the Premier’s Office, Provincial Treasury, the University and KZNDoH.
    4. Progress was reported as follows:
* From the 1st of October 2017, the delegations at Central Hospitals will be increased to R500 000 accompanied by appropriate standard operating procedures.
* The gazetting requirement for anything above R30 000 will be abolished from the 1st of October 2017.
* For Addington Hospital, the option to buy one machine and repair the other was agreed upon. NDoH will start the process of procuring one machine.
* Provincial Treasury has developed a transversal SLA for the maintenance of medical equipment for a stipulated period of five years, targeted to commence on the 1st of October 2017.
* A list of critical posts was being compiled and costed and expected to be ready on 6 September 2017, which will then be submitted to the Premier and MEC for Treasury for consideration.
* The MEC for Treasury has made progress in dealing with some of the procurement issues, particularly at Addington Hospital, by instituting a forensic investigation into the maintenance contract for the oncology machines.
  + 1. The findings of the forensic audit carried out by Provincial Treasury would be released on 8 September 2017.
    2. The Minister reported that the Premier has appointed Professor Ronald Green-Thomson, former Head of KZNDoH, to manage all the activities of the intervention.

1. **COMMITTEE OBSERVATIONS AND FINDINGS**

Having considered the report of the SAHRC, the reports of the MEC for Health in KwaZulu-Natal Province and the Minister of Health, the Committee noted the following:

* 1. That KZNDoH had instituted cost-curtailment measures due to financial pressures and the extent at which this decision has contributed to the crisis that the provincial department is facing.
  2. There is a shortage of health professionals, particularly specialists leaving the employment of KZNDoH due to unconducive working conditions.
  3. The staff requirements in relation to Addington and Inkosi Albert Luthuli Central Hospitals was unclear.
  4. Access to treatment for cancer patients in rural areas is a concern and the need for plans to ensure that patients in rural areas receive oncology treatment.
  5. That there seem to be senior management instability in the provincial department as key senior management positions remained vacant.
  6. There seem to be a weaknesses in the national department’s early warning system in monitoring and intervening in some of the challenges faced by provincial departments.
  7. That there is a potential gap in communication between national and provincial departments and cited the mental health crisis in Gauteng as an example.
  8. The backlog of patients awaiting treatment is concerning.
  9. That certain hospitals newly installed radiotherapy machines remained unutilized due to lack of staff trained to operate these machines.
  10. That the SAHRC’s monitoring had been constrained because full access was denied in some of the hospitals.
  11. The lack of SMAs for the maintenance of the oncology equipment had contributed to the collapse of oncology services in KZN.

1. **COMMITTEE RECOMMENDATIONS**

Having made the above-mentioned observations, the Committee recommends that the Minister of Health should ensure that:

* 1. KZNDoH reviews and assess the decision on cost-curtailment in ensuring that the health care service delivery is not compromised.
  2. KZNDoH determines and document the reasons behind the departure of health professionals to enable the province to address its challenges.
  3. KZNDoH ensures that exit interviews are conducted when health professionals resign from the department to assist in the recruitment of new health professionals.
  4. KZNDoH develops and implement a plan to ensure that cancer patients in rural areas have access to cancer treatment.
  5. KZNDoH capacitates and upskill staff in operating some of the oncology equipment.
  6. National and KZNDoH ensure that all critical posts are filled to ensure that existing backlogs and waiting period for care are shortened.
  7. KZNDoH ensures that all key senior management positions are filled and staff is retained to bring stability and to speedily address some of the challenges faced by the provincial department.
  8. KZNDoH develops and implement a comprehensive staff retention strategy.
  9. National and Provincial Departments strengthen and improve communication and early warning systems to detect and avert similar crises to that of KZN.
  10. Progress in the implementation of interventions in KZN is continuously monitored.
  11. The South African Human Rights Commission is allowed access in public health facilities to carry out its mandate.
  12. KZDoH ensure that SMAs are in place for all oncology machines.

The National Department and KwaZulu-Natal Departments of Health should respond to the Committee’s recommendations by 31st March 2018.

Report to be considered.