



Report of the *Ad Hoc* Committee to consider the Report by the President regarding the security upgrades at the Nkandla private residence of the President, dated 11 November 2014

Having considered the report of the President, the reports and correspondence presented before it on the security upgrades at the Nkandla private residence of the President, the Committee wishes to report as follows:

1. INTRODUCTION

The *Ad Hoc* Committee to consider the Report by the President regarding the security upgrades at the Nkandla private residence of the President was established through a Resolution of the National Assembly on 19 August 2014.

The Assembly Resolution of 19 August 2014 read as follows:

“The Chief Whip of the Majority Party moved: That the House -

- (1) notes that a Report by the President of the Republic of South Africa to the Speaker regarding the security upgrades at the Nkandla private residence of the President was tabled on 14 August 2014 (Announcements, Tablings and Committee Reports, p 1026); and
- (2) establishes an ad hoc Committee to -
 - (a) consider the Report by the President;
 - (b) make recommendations where applicable;

- (c) exercise those powers as set out in Rule 138 of the Rules of the National Assembly that are necessary to carry out its task;
- (d) consist of 11 Members as follows: African National Congress 6, Democratic Alliance 2, Economic Freedom Fighters 1 and other parties 2; and
- (e) report to the House by no later than 24 October 2014.”

On 12 September 2014 the following correspondence from the President was also referred to the *Ad Hoc* Committee by the Speaker (see Announcements, Tablings and Committee Reports of Friday, 12 September 2014, p1193):

- (a) A letter, dated 12 August 2014, from the Public Protector to the President of the Republic regarding the report that he submitted to the National Assembly in relation to the security upgrades at his Nkandla residence, and
- (b) A letter, dated 11 September 2014, from the President of the Republic to the Public Protector in response to her letter of 21 August 2014.
- (c) A letter, dated 15 September 2015, from the Public Protector to the President.

Also on 12 September 2014, the Final Report of the Special Investigating Unit (SIU) to the President of the Republic regarding the Prestige Project involving the security upgrading of the private residence of the President situated at Nkandla, KwaZulu-Natal, was referred to the *Ad Hoc* Committee (see Announcements, Tablings and Committee Reports document of Friday, 12 September 2014, p1205).

Following this, at a Multiparty Chief Whips Forum [date to be inserted], the political parties agreed that:

- the Public Protector’s Report [Report number 25 of 2013/2014];
- the Report(s) of the Special Investigating Unit established in terms of Proclamation R 59, 2013 and the submission of the President thereto; and
- all other relevant information and correspondence would be considered.

The following reports and correspondence therefore served as source documents for consideration by the Committee:

- a) The Inter-Ministerial Security Cluster Task Team Report (Also referred to as the Inter-Ministerial Security Cluster Task Team Report);
- b) The Report of the Joint Standing Committee on Intelligence (JSCI) on the Inter-Ministerial Report; and
- c) The Public Protector's Report entitled "Secure in Comfort";
- b) The Special Investigating Unit's Final Report;

The following Members were appointed to the Committee:

AFRICAN NATIONAL CONGRESS (ANC)

Frolick, Mr CT

Diakude, Ms DE

Kubayi, Ms MT

Motshekga, Dr MS

Beukman, Mr F

Ngcobo, Ms BT

Maseko, Ms LM (Alternate)

DEMOCRATIC ALLIANCE (DA)

Maimane, Mr M

Selfe, Mr J

Breytenbach, Adv G (Alternate)

ECONOMIC FREEDOM FIGHTERS (EFF)

Malema, Mr JS

Shivambu, Mr NF (Alternate)

INKATHA FREEDOM PARTY (IFP)

Singh, Mr N

FREEDOM FRONT PLUS (FF +)

Mulder, Dr CP

In line with Assembly Rule 153 the following Members attended some of the Committee's meetings:

AFRICAN CHRISTIAN DEMOCRATIC PARTY (ACDP)

Swart, Mr SN

CONGRESS OF THE PEOPLE (COPE)¹

Lekota, Mr MGP

Madisha, Mr WM

ECONOMIC FREEDOM FIGHTERS (EFF)

Gardee, Mr SM

Ndlozi, Mr MQ

On 23 October 2014 the Assembly, by Resolution, extended the deadline for the *Ad Hoc* Committee to report to 14 November 2014.

2. COMMITTEE DELIBERATIONS

¹ The Congress of the People does not have party representatives on the Committee. COPE and other smaller parties as a collective elected the Honourable Mr N. Singh (IFP) and the Honourable Dr C.P. Mulder (FF+) to represent them in the *Ad Hoc* Committee.

On 29 August 2014 the Committee convened to elect a Chairperson in terms of the Rules of the National Assembly. However, at this meeting, due to differences of opinion on what constituted the Committee's Terms of Reference, a Chairperson was not elected. The opposition parties were of the opinion that the Resolution establishing the *Ad Hoc* Committee should be amended to reflect that the Committee was to consider, and report on, the Report of the Public Protector.

After consultation amongst all political parties at a special meeting of the Multi-Party Chief Whips Forum of the National Assembly, the Committee reconvened, on 9 September 2014, and elected Mr C T Frolick as its Chairperson.

The Committee convened on the following dates to consider the President's Report and the various reports which served before it as source documents:

- 18 September 2014
- 25 September 2014
- 26 September 2014
- 30 September 2014
- 9 October 2014
- 30 October 2014
- 6 November 2014
- 11 November 2014

At the meeting of 25 September 2014, the Members representing the Congress of the People (COPE), although not Members of the Committee, highlighted the party's objections to the constitutionality of the Committee. All other parties disagreed with the interpretation of the COPE MP's and agreed that the Committee was indeed constitutional. The representatives of COPE then left the meeting stating that the party would follow the proceedings of the Committee, but would not participate in its work.

In the subsequent meeting of 26 September 2014, Members of the Committee could not reach agreement on the methodology to follow in performing its mandated task. The key points of deliberation were whether:

- the findings, recommendations and remedial actions in the Report of the Public Protector were binding and enforceable on other organs of State; and

- any person or persons should be invited to present their reports before the Committee or to provide oral evidence.

In its deliberations the issues of contention between Members of the Majority Party and the Opposition Parties were as follows:

The Opposition Parties held the following position:

- a) The Report of the Public Protector was superior to all other reports;
- b) The Public Protector did not make recommendations – her report, “Secure in Comfort”, stated “remedial actions”;
- c) The proposed remedial actions stated in the Public Protector’s Report, “Secure in Comfort”, were binding and enforceable;
- d) The Committee had to invite persons and parties mentioned in the reports of the Public Protector, the Inter-Ministerial Task Team (Security Cluster), and Special Investigating Unit to appear before the Committee as allowed by Rule 138 of the National Assembly Rules; and
- e) The Committee had to seek a legal opinion from senior legal counsel on the status of the Public Protector Report and whether or not its proposed remedial actions were binding and enforceable on the organs of State.

The Majority Party held the following position:

- a) The Committee’s deliberations should remain focused on the Report of the President;
- b) All the reports had to be treated in an equal manner to avoid casting aspersions on any of the government agencies or structures that dealt with the matter at hand;
- c) The Committee had to consider the following source documents to get a proper understanding of the issues raised in it:
 - the Inter-Ministerial Security Cluster Task Team Report;
 - the Joint Standing Committee on Intelligence Report;
 - the Public Protector’s Report; and
 - the Special Investigating Unit Report.
- d) The Public Protector makes recommendations and may state remedial actions;
- e) The proposed remedial actions stated in the Public Protector’s Report were not binding and enforceable on other organs of State;
- f) The Committee to first consider the Report by the President and other reports prior to deciding whether or not to call witnesses;

- g) The Committee was not reviewing any reports and it was not opening any inquiry;
- h) The Majority Party listed the ten steps as contained in the Cabinet Memorandum of 2003 as guiding the methodology it would follow.

The Committee could not reach consensus at this meeting on the issue of the methodology to be followed. Members of the Opposition Parties withdrew their participation from the Committee and walked out of the meeting.

Assembly Rule 133 states that:

- (1) A majority of the Members of a Committee constitutes a quorum, subject to sub rule (2).
- (2) A Committee may proceed with business irrespective of the number of Members present, but may decide a question only if a quorum is present.
- (3) When a Committee has to decide a question and a quorum is not present, the member presiding may either suspend business until a quorum is present, or adjourn the meeting.

When the Committee again met on 30 September 2014, it was confirmed (in terms of the relevant Rules) that the Members present formed a quorum. The Committee therefore proceeded with its mandated oversight responsibilities to consider the President's Report and the source documents. The Committee adopted the methodology as contained in (a) - (g) above.

In this meeting the technical staff supporting the Committee presented the commonalities and differences in the findings and recommendations of the source documents that served before the Committee. In focusing on this issue, the Committee also considered the Constitutional role of the President, the Executive, Accounting Officers and officials of the respective departments.

In concluding the meeting of 30 September 2014, the Committee once more invited the opposition parties to return and participate in the on-going proceedings towards finalising the work of the Committee.

Given the nature of the Committee's oversight function in considering the President's Report, the Committee decided that it was unnecessary to call witnesses.

The Committee noted that when the Public Protector submitted his Report to the National Assembly in 2004 (Public Protector's Special Report to Parliament 28 May 2004), the National Assembly established an *Ad Hoc* Committee to deal with the matters.

The Committee noted that, in processing its work, the Ad Hoc Committee of 2004 did not call witnesses to give evidence, but instead considered the contents of the report before it. The Committee therefore applied the principle of precedence (*stare decisis*) and focused on the content of the investigative reports that served as source documents before it, rather than initiating its own in-depth investigation into the matter.

The Committee concluded this meeting by agreeing that a draft Committee report should be prepared for consideration at its next meeting.

On 9 October 2014, the Committee met to consider its draft report. After deliberations, the Committee noted that additional time was required to properly prepare the final report for the Committee's consideration.

The Committee again expressed disappointment at the withdrawal of the Opposition Parties from the deliberations of the *Ad Hoc* Committee. The Committee repeated its call for Members of the Opposition serving on the Committee to return to the Committee to complete the task in line with the House Resolution.

3. OBSERVATIONS

During its deliberations the *Ad Hoc* Committee made the following observations:

The status of the Public Protector's Report, remedial actions, and the High Court (Western Cape) Judgement regarding the Public Protector as ombudsman:

- 3.1. The Committee noted that the outcome in the High Court of South Africa in the matter between the Democratic Alliance (DA) and the South African Broadcasting Corporation (SABC) (Case No. 12497/2014) was of relevance to the matter that it was mandated to consider.
- 3.2. This judgement stressed the importance of the Office of the Public Protector as one of six institutions established by the Constitution to strengthen democracy through their independence, impartiality and the exercise of their powers without fear, favour or prejudice.
- 3.3. The Committee noted that, in addition, the judgement provided clarity with regards to the findings and remedial actions of the Office of the Public Protector as it stated that the “powers and functions of the Public Protector are not adjudicative” and that “a finding of the Public Protector is not binding on persons and organs of state.” (p. 32 para 51 of the judgement is made in reference to section 182 (1) of the Constitution).
- 3.4. The Committee observed that the above mentioned judgment further stated that the power to take remedial action (as described in section 182 (1) of the Constitution) “means no more than that the Public Protector may take steps to redress improper or prejudicial conduct. But that is not to say that the findings of the Public Protector are binding and enforceable or that the institution is ineffective without such powers.” (ibid).
- 3.5. The Committee further noted that the investigative reports produced by the Inter-Ministerial Task Team, Joint Standing Committee on Intelligence, and Special Investigating Unit all contained findings and recommendations, but that specifically the latter, legislatively, could initiate punitive legal action to ensure redress and remedial action.

Control and divisions of responsibility – the necessary financial legislative measures are in place:

- 3.6. The Committee observed that the legal framework that was relevant in the matter before it, consisted variously of policy instruments, legislation and regulation; that is the PFMA, the Ministerial Handbook, and the Cabinet Policy of August 2003 dealing with security measures at private residences of the President, Deputy President, Former Presidents and Former Deputy Presidents (referred to as the “Cabinet Memorandum of 2003”).
- 3.7. The Committee observed that the Cabinet Memorandum of 2003 had as its main consideration the safety of the President and that it did not place any limit on the amount to be spent in effecting upgrades for security purposes (p 29, Inter-Ministerial Security Cluster Task Team Report, December 2013).
- 3.8. The regulatory framework guides the actual processes along which officials operationalise the project(s) and consists of both legislation and practice notes from National Treasury on the one hand, as well as Supply Chain Management Policies of the Department of Public Works on the other hand.
- 3.9. The legislation that gives effect to section 216(1) of the Constitution is the Public Finance Management Act (PFMA) which states that national legislation is required to "establish a national treasury and prescribe measures to ensure both transparency and expenditure control in each sphere of government, by introducing-
- a) generally recognised accounting practice;
 - b) uniform expenditure classifications; and
 - c) uniform treasury norms and standards."

Divisions of responsibility:

- 3.10. The Committee noted that Section 96 (1) of the Constitution prescribes that “Members of the Cabinet and Deputy Ministers must act in accordance with the code of ethics prescribed by national legislation”.

- 3.11. Section 96 (2) (c) of the Constitution lays out the conduct that “Members of the Cabinet and Deputy Ministers may not use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person”.
- 3.12. The PFMA, in giving effect to what the Constitution states it should do, ensures that an important division of responsibility between the political head (President, Deputy President, Cabinet Minister or Provincial Member of the Executive Council) on the one hand, and the administrative head of the department, that is, the Director-General or Head of Department of a national or provincial department exists.
- 3.13. The political head - referred to as the Executive Authority - held the responsibility for matters of policy; while the administrative head - referred to as the Accounting Officer - held the responsibility to implement the department’s budget and human resources to translate policy into concrete outcomes.
- 3.14. The Executive Authority remains accountable to Parliament for achieving policy matters and outcomes, while the Accounting Officer is accountable for the manner in which he or she utilised the budget and human resources to reach those outcomes.
- 3.15. The Committee observed that an important aspect of the PFMA was the establishment and maintenance in each department of government, of an effective and transparent financial accountability system.

- 3.16. In the matter before the Committee, the reports before it contained evidence that a Roster System through which service providers were contracted, the Special Bid Adjudicating Committee, the Regional Bid Adjudicating Committee, and the Supply Chain Management (SCM) policies were in fact in place and were supposed to be applied in a uniform and transparent manner. (p16, paragraphs 52 and 54, of Department of Public Works (DPW) SCM policy).

Systems of financial control are constitutionally prescribed:

- 3.17. The Committee observed that the PFMA gives appropriate effect to section 216 of the Constitution as it places on Accounting Officers the responsibilities (sections 38 to 44 of the PFMA) to not only establish, but to maintain systems of financial accountability; Accounting Officers are therefore responsible for:
- a. the operation of basic financial systems, internal controls in both the departments and the entities that fall under their control;
 - b. to ensure that budgets are not overspent;
 - c. to report on a monthly and annual basis;
 - d. to publish annual reports in a prescribed manner which should include
 - e. performance reporting.
- 3.18. The Committee observed that Chapter 10 of the PFMA states clearly that Accounting Officers face strict disciplinary sanctions, including dismissals where they do not adhere to the prescripts of the PFMA.
- 3.19. The Committee observed that in her Report the Public Protector states that there were instances where the Executive Authority strained too close to the areas of responsibility of the Accounting Officers and the administration. (Public Protector's Report, p. 61).

3.20. The Committee observed that the residences of families that had to be resettled for security purposes, were constructed on land that belongs to the Ingonyama Trust. The President occupies the land through a certificate issued by the local *inkosi* termed "Permission to Occupy". (President's Report to Speaker of the National Assembly, 14 August 2014, p 4; Public Protector's Report p 425 and 426)

3.21. The Committee observed with concern that the investigating team of the SIU reported that in spite of the project to secure it, the private residence of the President remained insecure. (SIU Report, p 244).

The rural character of Nkandla affected the provision of security (all information based on the President's Report to the Speaker of the National Assembly, and security assessments as reported on by the JSCI and the Inter- Ministerial Security Cluster Task Team):

3.22. The unique rural conditions of the area and the geography of Nkandla had a marked influence on ensuring the security of the sitting President.

3.23. In providing security, government must make the necessary physical modification to the particular physical and socio-economic circumstances within which the President's private residence is situated.

3.24. The President is the Commander-in-Chief of the Armed Forces and he and his dependents must be provided with:

- a. health care by the South African National Defence Force (SANDF);
- b. protection by the South African Police Services, (SAPS) supported by the SANDF; and
- c. transport by the SAPS and the SANDF.

Material conditions at Nkandla that influenced security upgrades:

- 3.25. The President's private residence is geographically located in a deep rural area that is characterised by a low level of infrastructural development with statistics showing that Nkandla rates in the top five poorest areas in the province of KwaZulu Natal (KZN).
- 3.26. Roads are of low quality which influences security due to the need for access roads that enable staff who are responsible for the President's health, protection and transport to quickly reach, and in cases of emergency, evacuate the President and his dependents.
- 3.27. The terrain is steep and mountainous which make any form of transport difficult – especially in bad weather; due to the situation of Eskom pylons, even transport by air (helicopter) has proven to be dangerous.
- 3.28. Health care facilities in Nkandla are too far from the President's residence.
- 3.29. There is a general lack of bulk water and electricity supply, and communication infrastructure that negatively influences the socio-economic condition of the area.
- 3.30. The municipality of Nkandla and surrounding areas has, over a number of years, experienced high political tension with sporadic threats and warnings of a resurgence of political violence.
- 3.31. Rural villages are soft targets for criminals and the security assessment by the Departments of Police and Defence and Military Veterans concluded that Nkandla was a high risk area.

A difficult terrain on which to construct and ensure security:

- 3.32. The land on which the President's private residence has been developed lies at a gradient of 40 to 70 degrees which makes it even more susceptible to flooding during storms.
- 3.33. Due to this gradient all construction activities such as earthworks and landscaping had to include fortifications, buttresses, and paving for proper water-flow and storm-water drainage.
- 3.34. To ensure general security, and a swift flow of traffic in case of emergencies, all structures that could have slowed down traffic or that could have been used as hideaways and strategic attack positions by possible assailants, had to be removed and cleared.
- 3.35. Where structures and other residences had to be removed and cleared, they had to be re-erected elsewhere.

The private expansion and improvements to the Zuma homestead:

- 3.36. In 2008, prior to being elected as President, the Zuma family started expanding and improving the homestead.
- 3.37. At the time of the President's inauguration in 2009, the three houses on which work had started were at various stages of construction; the first house was at roof level with work on the roof at the first stages; the second house was also at roof level just ready for the roof to be installed; and the third house was just below roof level (Inter-Ministerial Security Cluster Task Team Report, p 8).
- 3.38. The Zuma family had appointed its own architect, contractors and engineers for the project and no state funds were used to improve the homestead.

3.39. In the Inter-Ministerial Security Cluster Task Team Report, the Department of Public Works made it clear that the Department “did not pay any contractor for the construction of the houses of the President.” (p 31 Inter-Ministerial Security Cluster Task Team Report).

The introduction of Mr Makhanya

3.40. The President introduced Mr Makhanya to the DPW team. This was done because there were already advanced construction taking place at the President's homestead. The President notes that he “...facilitated a meeting between this same grouping of persons and Mr Minenhle Makhanya, the consultant who was already engaged with building work at my home so that they would be appraised of the pre-existing plans for construction at the residences and that there would be as little disruption as possible to the work commissioned.” (President's Report to the Speaker, 14 August 2014, p 7, para 31).

Regarding allegations that the President's brothers may have benefitted from the prestige project:

3.41. The Public Protector (para 10.5.1, p 431) found no evidence that the President's brothers benefitted from the prestige project and contractual arrangements that involved the security upgrades at his private residence at Nkandla.

3.42. We equally observe that despite the above finding, in para 9.3.2 and 9.3.3. on p 408, the Public Protector continues to allege that, “There is no question that his family benefitted from these as they now form part of the President's estate”. The question that arises is whether or not the family has and will continue to unduly benefit from the luxurious items not recommended in the security evaluation”.

The Committee holds a different view.

Steps taken by the President to deal with the allegations of maladministration and wastage related to the project to secure his private residence at Nkandla:

- 3.43. Following sustained media allegations of maladministration and wastage that the President used State funds to build his private residence at Nkandla the President took a number of steps to deal with the matter;
- 3.44. These actions by the President as Head of the national executive (Section 83 of the Constitution), took place in addition to the investigation that the Public Protector undertook and reported on in "Secure in Comfort" dated 19 March 2014;
- 3.45. Each of the investigations resulted in reports that included findings and remedial actions that cannot be ignored;
- 3.46. The investigations and reports can be recorded chronologically, as follows:
- a. On 5 October 2012, the Minister of Public Works announced that an investigation into allegations of maladministration and wastage of public resources would take place by a specially convened Inter-Ministerial Security Cluster Task Team;
 - b. On 20 December 2013, the President signed Proclamation R 59 of 2013 for the Special Investigation Unit (SIU) to investigate the matter and where relevant, institute civil action to recover any state funds that might have been lost due to possible irregular activities;
 - c. The Inter-Ministerial Security Cluster Task Team reported on its investigation on 27 January 2013;
 - d. The President, in his letter dated 2 April 2014 addressed to the Speaker of the National Assembly, noted the Report of the Public Protector its findings and recommendations.
 - e. The President in this letter stated that he had requested the SIU to provide him with a provisional report of its investigation as soon as possible, in order to assist him in providing the National Assembly with a further final report (Ibid).

- f. On 14 August 2014, the President provided a further report to the National Assembly on the efforts he and the government as a collective had made and were busy making to ensure that whatever state funds might have been lost due to the security upgrades, could be identified and recovered, and that persons who were implicated through evidence, were brought to book.

With regards to whether the President and his dependents benefitted unduly as a result of the security upgrades, the committee noted that:

- 3.48 The security list developed by SAPS and relied upon by the Public Protector in her report, was not developed in accordance with Step 2 of the Cabinet Memorandum of 2003. There was no evidence that it was conducted together with SSA or that it was submitted to the Inter-Departmental Security Coordinating Committee (para 9.1.1.5, p 389, Public Protector's Report). The Committee could thus not rely on the authenticity of this list.

Commonalities across reports on non-compliance with relevant legislation that led to irregular actions and massive cost escalations:

- 3.49 There was agreement across investigative reports on non-compliance with the legislative framework, supply chain management regulations, treasury regulations as well as unnecessary cost escalation.
- 3.50 The reports of the Inter-Ministerial Task Team, the Public Protector and the Special Investigative Unit indicated that costing escalations inflated the project costs in an irregular manner to an amount in excess of R216 million.
- 3.51 Having read and perused the investigative reports, there was agreement in the initial meetings of the Committee between all political parties that the value of the existing structures and work that was performed had been grossly inflated and not worth the amount that was spent in excess of R216 million.
- 3.52 The table that follows shows general agreement across the reports of the Inter-Ministerial Task Team, the Public Protector and the Special Investigating Unit on the issues of non-compliance, unnecessary cost escalations and irregular activities that took place in this project.

Comparative findings across investigative reports		
Public Protector	Security Cluster Task Team	SIU
August 2003 Cab Memo	Same	Same
Area declared National Key Point	Same	National Key Point Act not applicable to this project & investigation
Violation of National Key Point	Same	Not dealt with - found to be irrelevant to the investigation – instead applied the Cabinet Memorandum dated August 2003.
Non Compliance with PFMA, National Treasury Regulations and DPW Supply Chain Management Policy	Same	Same
Project improperly budgeted for	Same	Same
Project improperly managed	Same	Same
Non-compliance with Government Immovable Asset Management Act (GIAMA)	Same	Not applicable
Excessive cost escalations	Same	Same
Department of Public Works officials violated PFMA, NT Regulations and DPW SCM	Same	Same
No public funds were used to build the President's private residence	Same	None
Failure to ensure security clearance for service providers	Same	Not applicable
Failure to comply with National Treasury regulation 16A	Same	Same
Funds transferred from other underspending programmes (Inner City Regeneration and Dolomite) of DPW to fund Project 1	Same	Same
Recommendations		
National Key Point Act should be reviewed	Same	Not applicable
DPW to take steps against officials that violated legislation and policies	ending of Task Team	Not applicable
Review of SCM to Regional Offices	Same	Not applicable
DPW to apportion costs to SAPS and DD	Same	Not applicable
Development of policy on prestige projects is needed	Same	Not applicable
Lease agreement needed between DPW and Ingonyama Trust	Same	Not applicable

Evidence in the investigative reports of control ceded to the private professional team:

- 3.53 The reports document a process amounting to dereliction of duty with control over the design, costing and the procurement of service providers ceded to the private professional team; this was a process in which DPW's professional team systematically and irregularly ceded control of the budget and the procuring of service providers to the private professional team, namely Makhanya Architects and R&G Consultants.
- 3.54 DPW's cost control system that normally takes place through the Special Bid Adjudicating Committee (SBAC), the Regional Bid Adjudicating Committee (RBAC) and the Supply Chain Management (SCM) was corrupted once the acting Director-General, the Deputy Director-General of Key Accounts Management, the regional manager of the Durban Regional Office, and project manager increased the RBAC cost limitations of R 500 000 to an unlimited amount.
- 3.55 This meant that the Makhanya-R&G Consultants combination was able to procure service providers with access to state funds that had no limit set to it through the normal cost control system.
- 3.56 The investigative reports affirm that the Makhanya-R&G Consultants combination continued to do the design and costing on behalf of the DPW's professional team.
- 3.57 The reports provide evidence that Mr Makhanya, the architect of the private renovations at the President's private residence at Nkandla, became the Principal Agent (PA) of the project.
- 3.58 The SIU report further points out that the appointment procedure of the Principal Agent, and the manner of procuring services by ceding control to the Principal Agent, were evidently irregular (para 66 to 70 pp 87 to 89, and para 30, 31, and 32, pp 198 and 199 provide evidence of this).

- 3.59 The SIU report further provided evidence that the ceding of total control into the hands of the Principal Agent, took place in combination with the removal of control of DPW's SCM department. (Ibid).
- 3.60 The reports stated that, in this capacity, Mr Makhanya acted on behalf of the DPW, and that he would, in designing and procuring services on behalf of the DPW, ensure the prudent use of project funds.
- 3.61 The Committee observed that as the Principal Agent, Mr Makhanya had a duty to provide regular reports to the DPW Professional Team on matters of design, the procurement of services, and the costing of all parts of the project. (pp 174 and 175 of Public Protector's Report, the SIU report, para 22, 23 and 24, p194 and 195).
- 3.62 The Committee observed that the reports refer to the DPW Professional Team expressing its concerns that the Principal Agent did not prepare and send monthly reports to the DPW professional team (Public Protector's Report, para 6.43.3, p 175 and SIU report, para 66, p 87 and 88).
- 3.63 The reports unanimously refer to evidence collected from persons involved that the operationalisation of the project by the Department of Public Works constituted non-compliance with the Public Finance Management Act (PFMA), National Treasury regulations and the department's own Supply Chain Management policies. The SIU report goes as far as referring to the DPW Project Managers as flouting the SCM policy and going so far as "making the rules as one went along". (para 28, p 197).

Applicable legislation and policy:

- 3.64 The Committee noted that the Public Protector's report stated that "the authority to implement security measures at the private residence of the President is primarily conferred by the Cabinet Policy of 2003" (p 427).
- 3.65 However, because National Key Points Act (Act 102 of 1980) was "inexplicably dragged in halfway through the implementation of the Nkandla Project," it was her opinion that its provisions "had to be complied with" (Public Protector's Report, p 427, para 10.1.3).
- 3.66 The Committee noted that the Special Investigating Unit (SIU) expressed a view that the upgrades were not installed in terms of the National Key Points Act, but in terms of the Cabinet Memorandum of 2003.
- 3.67 The Committee observed that the Cabinet Memorandum of 2003 was adopted by Cabinet after the promulgation of PFMA, and the steps contained in it are aligned to the provisions of the PMFA.
- 3.68 The Committee observed that the Cabinet Memorandum of 2003 stated the following steps to be followed when security measures had to be installed at the private residence of a President, former President, Deputy President or former Deputy President:
- a. A request from the President followed by an Evaluation by the South African Police Service (SAPS) based on a threat analysis by the State Security Agency (SSA) of structures that the State shall construct to secure the safety of the President and his immediate dependents including their personal property.
 - b. Formulation by SAPS and the SSA of a proposal on appropriate measures (staff and structures) to be put in place by the State. These measures shall be submitted to the Interdepartmental Security Coordinating Committee (ISCC) for technical assessment.

- c. The DPW prepares a cost estimate based on the proposed structural security measures and submit this to the SAPS.
- d. The SAPS then advises the Minister of Safety and Security on the proposed security measures and the related costs.
- e. The Minister of Safety and Security approves and communicates such measures to the President for consent.
- f. SAPS submits measures as approved by the President to the DPW which approaches the Minister of Public Works for approval of costs of the structural security measures;
- g. Structural security measures that were approved are then implemented as follows:
 - (i) SAPS personnel and related costs provided and funded by SAPS;
 - (ii) Structural additions and amendments to the property is made, and thereafter maintained, from the DPW budget;
- h. The security situation at the President's private property should from time to time be revisited by SAPS to ensure continued security assessments and threat analyses.
- i. These assessment reports may from time to time necessitate up or down grades or termination depending on the dynamic security requirements of the political principal.
- j. Where downgrades or termination takes place, any permanent structures become the property of the owner on which said structures were erected who shall then maintain them. (Inter-Ministerial Security Cluster Task Team Report pp. 28 and 29).

3.69 The Committee observed that only two of the above steps as set out in the Cabinet Memorandum of 2003 were implemented:

- The two security assessments were done by SAPS (Public Protector's Report p 389), and
- The DPW cost estimates was done (SIU Report, p 240, para 34).

4. FINDINGS

With regards to the legislation and regulation that guided the security upgrade project, the committee finds that:

- 4.1. The Cabinet Memorandum of 2003 is the appropriate policy document that should have guided the process of securing the private residence of the President;
- 4.2. The National Key Points Act of 1980 was not the applicable piece of legislation that guided the security upgrades of the President's residence at Nkandla.
- 4.3. Neither the National Key Point Act nor the Cabinet Memorandum of 2003 requires the residence to be declared a National Key Point before security upgrades can be effected. The residence was declared a National Key Point after the project started.
- 4.4. It seems as if there was a lack of oversight by the relevant Executive Authority (relevant Ministers) to ensure the proper departmental co-ordination and implementation in compliance with the Cabinet Memorandum of 2003.
- 4.5. From the source documents, it appears as if regular security assessments, as stated in the Cabinet Memorandum of 2003, were not performed by the South African Police Services (SAPS).
- 4.6. The SIU, using the security requirements as set out in the security assessment reports of the SAPS and SANDF, issued a considered view of concern that requires urgent attention; in the final two points of its report (para 46 and 47 on pp 247 and 248), it places urgency on the need for further security assessments by security experts from the State Security Agency (SSA), SAPS and the SANDF; cited here in part, it reads as follows:
"during the inspection in loco, the investigating team noted a number of matters of concern relating to the upgrades that have been effected. ... having regard for what was produced under Makhanya's stewardship of the project and measuring it against what the security assessment reports set out as requirements, in our respectful view, a further review by SAPS should be undertaken as soon as possible."

With regards to initiation of security upgrades at the private residences of the President, Deputy President, former Presidents and former Deputy Presidents, the committee finds that:

4.7 It is common cause that security upgrades had to be effected at the President's private residence at Nkandla.

4.8 The Public Protector (p 427, para 10.1.1.) and the Special Investigating Unit (pp 68, 69, and 189) both reported that the Cabinet Memorandum of 2003 is the authority for implementing security measures at the President's private residence.

The Public Protector states as follows:

"However, no evidence has been submitted or found indicating that the Presidency requested the SAPS and State Security services to consider securing the private residence of the President, yet this is the trigger mechanism stipulated in paragraph 8.1.2 (b) (i) of the Cabinet Policy of 2003."
(p 20, para 9, Public Protector's Report)

In the light of the aforementioned comments by the Public Protector, it is clear that the President did not request the upgrades.

4.9 The Public Protector further states that *"However, I was persuaded by the submissions by various representatives of the State that the normative process is not to wait for a request from the Presidency. I was advised that the action is taken to provide immediate basic security while commencing a process of conducting a comprehensive security evaluation as soon as a President is elected."* (p 20, para 10, Public Protector's Report).

The President in his report to the Speaker states that:

"25. In 2009 I was appointed as President of the Republic. Immediately upon my inauguration, members of the security cluster engaged with me regarding security requirements at my homestead which are commensurate with a Head of State of the Republic."

In view of the above, the Committee finds that the project to secure the President's private residence was correctly initiated.

4.10 The President in his Report to the Speaker of the National Assembly indicates as follows:

“30. In the course of the engagements with the security cluster, I initially met with the then Minister of Public Works, Mr. Geoff Doidge, senior SAPS officials and other government officials at my homestead in a consultative process regarding improved security due to my occupying the office of President of the Republic”.

The President further states that:

“32. From time to time I received briefings both formally and informally from the various Ministers engaged with the security enhancements. I was advised at some stage of the need to declare the homestead as a National Security Key Point. Whilst I took no exception to such declaration, I was not intimately involved with the finer details”.

Whilst the President may not have requested the security upgrades, it is certain that he became aware of them.

- 4.11 It is, however, important to note that the reports contain no evidence that the President in any manner influenced the Executive Authorities or officials to act in ways that may suggest that they should have acted irregularly while securing his private residence at Nkandla.

With regards to the appointment of Mr Makhanya and the Private Professional Team, the committee finds that:

- 4.12 Those officials who were responsible for Mr Makhanya's later appointment as Principal Agent knew the requirements of the legal, regulatory, and supply chain management framework, but did not follow these important prescripts to the letter and therefore it can be alleged that they acted irregularly.
- 4.13 The Private Professional Team was appointed in an irregular manner and the ceding by the DPW officials of their responsibilities to Makhanya and R&G Consultants allowed for "scope creep" and massive irregularities that saw costs soar to in excess of R 216 million as highlighted by both the Public Protector's and the SIU reports.

- 4.14 There was gross negligence on the part of the senior officials of the Department of Public Works. The officials who have acted outside of the legal and regulatory financial framework exposed themselves to the consequences as prescribed in the relevant legislation that gives effect to section 216 of the Constitution, which is the Public Finance Management Act (PFMA), National Treasury's Practice Notes, and the DPW's Supply Chain Management Policies.
- 4.15 It appears from the Public Protector's Report that the former Minister and Deputy Minister of Public Works "were at some stages involved in the implementation of the Nkandla project. The involvement albeit for a short period of time appears to have created an atmosphere that was perceived as political interference or pressure, although the evidence does not show any such intent on their part" (Public Protector's Report p 435 para 10.7.1.1.).
- 4.16 The National Key Points Act of 1980 was erroneously applied to deal with the security requirements of the President.
- 4.17 The oversight over the implementation of the 2003 Cabinet Memorandum is the responsibility of the relevant Members of the Executive Authority.

Systems of financial control are constitutionally prescribed

- 4.18 The measures of financial control were flouted that transparency and control was not evident in the manner in which the project was implemented.

With regard to efforts of the President to investigate allegations of maladministration and wastage in the prestige project involving security upgrades at his private residence at Nkandla, the Committee finds that:

- 4.19 The Public Protector alleges that the President failed to act to protect state resources and that this failure constituted a violation of paragraph 2 of the Executive Ethics Code. (Public Protector's Report, p 439 para 10.10.1.6)
- 4.20 The information before the committee shows that the President as Head of the Executive instituted the following actions:
- On 5 October 2012, the Minister of Public Works announced that an investigation into the allegations would take place by a specially convened Inter-Ministerial Security

Cluster Task Team. This Task Team would, in all likelihood, have been appointed after consultation with the President. It is inconceivable that a Task Team would have been appointed without the President being aware of its appointment:

- On 20 December 2013, the President signed Proclamation R, 59 of 2013 for the Special Investigating Unit (SIU) to investigate the matter and where relevant, institute civil action to recover any state funds that might have been lost due to possible irregular activities;
- The Inter-Ministerial Security Cluster Task Team reported on its investigation on 27 January 2013;
- Once the Public Protector's Report, "Secure in Comfort" was made public on 19 March 2014 and was submitted to the National Assembly by the President. The President, adhering to Chapter 9 of the Constitution, noted her report, its findings and recommendations and responded to it through a letter to the Speaker of the National Assembly, on 2 April 2014 (Announcements Tablings and Committee Reports document, p 2418);
- The President in this letter stated the he requested the SIU to make a provisional report of its investigation available so that he could respond more fully to the report of the Public Protector (Announcements Tablings and Committee Reports document, p 2419);
- On 14 August, 2014, the President reported to the National Assembly on the efforts he and government as a collective is making to ensure that whatever state funds might have been lost due to the security upgrades, could be identified and recovered, and that persons who were implicated through evidence, were brought to book.

4.21 In light of the above points, the suggestion that the President did not act, is not correct.

With regards to whether the President and his dependents benefitted unduly as a result of the security upgrades, the Committee finds that:

4.22 The Committee finds that the security list developed by SAPS and relied upon by the Public Protector in her report, was not developed in accordance with Step 2 of the Cabinet Memorandum of 2003. Step 2 of the Cabinet Memorandum of 2003 requires a formulation by the SAPS and the SSA of a proposal on appropriate security measures to be put in place by the State at the President's private residence. These measures must thereafter be communicated to the Interdepartmental Security Coordinating Committee (ISCC) for technical assessment.

- 4.23 In view of the fact that the list compiled by the SAPS was not developed in accordance with the Cabinet Memorandum of 2003, the Committee could not rely on the list.
- 4.24 It is common cause that the Public Protector is not a security expert. The Cabinet Memorandum of 2003 outlines ten steps to be followed when security measures are to be installed at the private residences of a sitting President, Deputy President, former Presidents and Deputy Presidents. All the Reports prepared on the security upgrades at the President's private residence are unanimous that most of the aforementioned steps were not complied with.
- 4.25 A Senior Parliamentary Legal Adviser provided a legal opinion to the Committee on undue enrichment and arrived at the following conclusion:
- "Therefore, in my view it would be premature for the Committee to make a finding of undue enrichment prior to the matter having been attended to by the relevant security experts consistently with the Cabinet Memorandum of 2003".*

The Committee concurs with this legal advice.

With regards to the ownership of the land, including the structures and amenities that were constructed on it, the committee finds that:

- 4.26 The President's report to the Speaker of the National Assembly provides clarity on the issue of ownership and occupation of land in question. Paragraph 11 of the President's Report reads as follows:
- "My family homestead is located some 24 kilometers south of Nkandla town centre. The land on which it is situated is owned by the Ingonyama Trust, the legal entity that owns traditional land and is administered by His Majesty King Goodwill Zwelithini Ka BhekuZulu. Together with my family, I occupy the land through a certificate issued by the local inkosi termed Permission to Occupy".*
- 4.27 It is evident from the source documents before the committee that both pieces of land where the security upgrades took place belong to the Ingonyama Trust and that the Zuma family occupies one of the pieces of land.

With regards to the question of whether the President was in violation of the Executive Members Code, the Committee finds that:

- 4.28 There were several allegations about the President, amongst others that:
- He lied to Parliament when he said Government did not build his house;
 - Government build a spaza shop for Mrs Zuma;
 - Family benefited from the project (President's brother)

The Public Protector in her Report has noted that:

“President Zuma improperly benefited from the measures implemented in the name of security which include non-security comforts such as the Visitors’ Centre, such as swimming pool, amphitheater, cattle kraal with culvert and chicken run”. (para 10.5.3, p 431)

The Public Protector cleared the President in all these serious allegations (para 10.5.1, p 431) except that she found that there were according to her, *“non- security related items that were erected or built which the President and his family materially benefited”*. (Public Protector's Report, p 431, para 10.5.1. and p 432, para 10.5.4.).

- 4.29 In the judgment of the Democratic Alliance v The South African Broadcasting Corporation Limited and Others (Case No: 12497/2014) WC, High Court Judge Schippers referred to the nature and extent of the powers of the Public Protector and stated as follows:

“(51) Further, unlike an order or decision of a court, a finding by the Public Protector is not binding on persons and organs of state. If it was intended that the findings of the Public Protector should be binding and enforceable, the Constitution would have said so”.

- 4.30 Regarding the above, the Committee thus finds that the Constitution, section 167, (4)(e) specifies that “only the Constitutional Court may decide that Parliament or the President has failed to fulfil a constitutional obligation.”

5. RECOMMENDATIONS:

With regards to non-compliance with relevant legislation, policy instruments and regulations that led to irregular actions and massive cost escalations, the committee recommends that:

5.1 The President must ensure the implementation of all measures, as outlined in his final Report on the upgrades at his Nkandla private residence to the Speaker of the National Assembly (Announcements, Tablings and Committee Reports, 1026, 14 August 2014).

However, the Committee is of the considered view that the Cabinet Memorandum of 2003 is applicable and not the National Key Points Act (102 of 1980). A report must be made available to Parliament within three months.

5.2 The President should consider whether any Member(s) of the Executive Authority i.e former Minister and Deputy Minister of Public Works failed to implement the provisions of the Cabinet Memorandum of 2003, either through complacency or negligence in the execution of their duties, and, if necessary, appropriate action.

5.3 The President should note the instances where the Executive Authorities did not act according to the prescripts of the PFMA that sets out precise divisions of responsibility between the Executive Authority and the administration, and, if necessary, appropriate action.

5.4 The Cabinet must strengthen efforts to ensure greater co-ordination of strategic projects pertaining to the security of the President, Deputy President, former Presidents and former Deputy Presidents.

5.5 All persons responsible for the loss of state funds should be held accountable and the law should take its course. The committee fully supports the measures that are being implemented by the Special Investigating Unit (SIU) and the relevant authorities.

5.6 The Department of Public Works should strengthen its supply chain management processes and key accounts management branches, and include as part of this process, precisely set time frames and cost limits for prestige projects and report to the Portfolio Committee on Public Works within three months.

With regards to the structures and amenities that were constructed on the land adjacent to the Zuma homestead that belongs to the Ingonyama Trust, the committee recommends that:

5.7 The relevant Executive Authority should discuss, at the appropriate time, the post-tenure arrangements with the relevant local, provincial and national authorities to facilitate the future use of such structures and amenities by the local communities.

5.8 The Department of Public Works, should ensure that the necessary consultations take place with the state security departments so that proper security assessments regularly take place to ensure the on-going security of the President, Deputy President, former Presidents and former Deputy Presidents and their dependents after they leave office.

With regards to whether the President and his dependents benefitted unduly as a result of the security upgrades, the committee recommends that:

5.9 The Committee recommends that the matter of what constitutes security and non-security upgrades at the President's private residence be referred back to Cabinet for determination by the relevant security experts in line with the Cabinet Memorandum of 2003. Cabinet must report back to Parliament on the steps taken to give effect to this recommendation within three months.

With regards to the legislation and regulation that guided the security upgrade project, the committee recommends that:

5.10 Policy and regulatory gaps in the current legislative and regulatory framework relating to securing the private residences of political office bearers requires urgent attention to avoid further possible waste of state resources.

5.11 A comprehensive review of the National Key Points Act (102 of 1980) should be undertaken to ensure that a new piece of legislation that is relevant to the current Constitutional and Legislative dispensation is promulgated.

5.12 The Cabinet Memorandum of 2003, and related regulations such as the Ministerial Handbook must be reviewed by Cabinet;

- 5.13 A technical team of qualified security experts from the State Security Agency (SSA), the South African Police Services (SAPS) should undertake an evaluation of the existing security features at the private residence of the President at Nkandla to assess whether the implemented security features are secure, and to evaluate the concerns raised by the SIU report. The outcome of this evaluation must be reported to Cabinet and Parliament within three months.
- 5.14 All contractors involved in projects that are focused on security upgrades of senior public office bearers, should in future be properly vetted by the relevant security agencies and should comply with the construction industry building standards as set out in the policies and regulation of the Department of Public Works.
- 5.15 The relevant Executive Authorities, after doing the necessary assessment with security experts should, in future report to Cabinet and the Parliament on the implementation of security upgrades of Prestige Projects. Regular reports as per the relevant legislation should be made to the Joint Standing Committee on Intelligence of Parliament.
- 5.16 A private home of the President and the Deputy President that is used for official government accommodation should qualify for the necessary security installations and security improvements.

Report to be considered.



Mr. C T Frolick, MP
Chairperson

11 / 11 / 2014

Date:

