

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA**

Case Number:

In the matter between:

**THE ECONOMIC FREEDOM FIGHTERS**

Applicant

and

**THE SPEAKER OF THE NATIONAL ASSEMBLY  
REPUBLIC OF SOUTH AFRICA**

First Respondent

**PRESIDENT JACOB GEDLEYIHLEKISA ZUMA**

Second Respondent

**NOTICE OF MOTION**

**TAKE NOTICE** that in terms of the provisions of sections 167(4)(e), 167(6)(a) of the Constitution and rule 18 of the rules of the Constitutional Court, the applicant makes application to this Court for final relief in the following terms:

1. It is declared that the National Assembly has failed to fulfil its obligations in accordance with the provisions of sections 55(2) and 181 of the Constitution to ensure that all executive organs of state in the national sphere of government are accountable to it and to maintain oversight of the exercise of National Executive authority in that it has failed to ensure that the President of the Republic of South Africa, Mr J G Zuma (President Zuma), has complied with and given effect to the findings and remedial action of the Public Protector in her report dated March 2014, under the heading: "*Secure in Comfort: Report on an investigation into allegations of impropriety and unethical conduct relating*


*to the installation and implementation of security measures by the Department of Public Works at and in respect of the private residence of President Zuma at Nkandla in the Kwa-Zulu Natal province". (This is hereafter referred as the Public Protector Report).*

2. It is declared that President Zuma in his capacity as Head of the National Executive has failed to fulfil his constitutional obligations in that he has failed to implement the findings and remedial action in the Public Protector report.
3. President Zuma is directed to give effect and to comply with the remedial action contained in the Public Protector Report, within 30 days of the order of this Court.
4. Directing that costs be paid by any person opposing the application.
5. Granting further and/or alternative relief.

**TAKE NOTICE THAT** the founding affidavit of Mr Floyd Nyiko Shivambu annexed hereto and its annexures shall be used in support of this application.

**TAKE NOTICE FURTHER** that the Chief Justice is requested to issue directions concerning the manner in which this application shall be dealt with.

DATED AT JOHANNESBURG ON THIS THE 4<sup>th</sup> DAY OF AUGUST 2015.

  
GODLA AND PARTNERS  
APPLICANTS' ATTORNEYS

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TO: THE REGISTRAR OF THE ABOVE  
HONOURABLE COURT  
**BRAAMFONTEIN**

AND TO: STATE ATTORNEY  
ATTORNEYS FOR RESPONDENTS  
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CARE OF: STATE ATTORNEY, JOHANNESBURG  
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2001

|                            |
|----------------------------|
| Parliament of South Africa |
| 05 AUG 2015                |
| Legal Services Office      |

*[Handwritten signature]*  
10/2015

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First Respondent

**PRESIDENT JACOB GEDLEYIHLEKISA ZUMA**

Second Respondent

**FOUNDING AFFIDAVIT**

I, the undersigned,

**FLOYD NYIKO SHIVHAMBU**

Do hereby make oath and state that

1. I am an adult male and am the Deputy President of the Economic Freedom Fighters (the EFF). I serve as the Chief Whip of the EFF in the National Assembly. I am duly authorised to bring these proceedings on behalf of the EFF and to sign this affidavit on its behalf.
  
2. The facts contained herein are, to the best of my knowledge and belief, both true and correct and, unless the contrary appears from the context, are within my personal knowledge.

*Handwritten initials: MF and a checkmark*

3. Any submissions of law are made on the advice of the legal representatives of the EFF which advice is accepted as being correct.

## **PARTIES**

4. The applicant is the Economic Freedom Fighters.

- 1.1. The EFF is a political party registered with the Independent Electoral Commission. It is the third largest political party represented in the National Assembly of the Republic of South Africa. In the last general elections held in April 2014, the EFF secured 6.35% of the national vote and acquired 25 seats in the National Assembly.

- 1.2. The Constitution of the EFF is annexed marked "FS1". The principal aim of the EFF is to advocate the interests of all South Africans in order to achieve economic emancipation in our lifetime.

- 1.3. The EFF is anti-capitalist, anti-racist, anti-sexist and anti-imperialist in its world outlook and is driven by sound democratic socialist values where the leadership is accountable to the membership which elected it. The ultimate goals of the EFF are contained in its seven basic foundational principles. The seventh of these foundational principles reads as follows:

*"Open accountable government and society without fear of intimidation by the State Defence, Police and other agencies".*

5. The address of the EFF is office M, 441, Marks Building, 990 Plein Street, Cape Town, 8000. Service shall be effected at the address of the attorneys of the

record of the EFF at 28 wale Streeet, 2nd Floor, Waalburg Building, Cape Town, 8000.

6. The first respondent is the Speaker of the National Assembly.

1.1. She is cited as nominal respondent on behalf of the National Assembly in terms of section 23 of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 4 of 2004 read with section 2 of the State Liability Act, 20 of 1957.

1.2. The address of the Speaker is 90 Plein Street, Cape Town, Marks Building. The Speaker is cited herein as the leader and chairperson of the National Assembly.

7. A key function of the Speaker is to ensure the dignity of the National Assembly. This requires her to act impartially in respect of all political parties which are represented in Parliament. The experience of the EFF with the current Speaker has been that she is not impartial, is prone to procedural lapses and openly hostile to the EFF.

8. The second respondent is Mr Jacob Gedleyihlekisa Zuma. Mr Zuma is the President of the Republic of South Africa. He is cited herein in both his personal and official capacities as the President of South Africa. Service to Mr Zuma shall be effected at the address of the State Attorney, at Floor 4 Liberty Life Centre, 22 Long St, Central, Cape Town.

## PURPOSE OF THE APPLICATION

9. The purpose of this application is two-fold:

- 1.1. Firstly, the applicant seeks a declaratory order that the National Assembly has failed to fulfil its constitutional obligation under sections 55(2), 181(3), 181(4) and 182(1)(c) of the Constitution to hold the executive accountable and to ensure compliance with remedial action prescribed by the Public Protector. The applicant is cognisant of the Ad Hoc Committee established by the National Assembly to consider the matter of the security upgrades at the private residence of President Zuma. This Committee however has no powers to alter or amend remedial action decided by the Public Protector. At any rate, it is apparent that the purpose of this Ad Hoc Committee is not to give effect to the report of the Public Protector.
- 1.2. Secondly, the application seeks to compel the President to take steps to give effect to the report of the Public Protector. The President has thus far failed to comply with the report. The purpose of this application is therefore to secure a declaratory order against Mr Zuma to the effect that he has failed to comply with a constitutional obligation vesting on him by virtue of his position as head of the National Executive, in terms of section 80(b) of the Constitution and section 181 of the Constitution.

## LEGAL AND FACTUAL BACKGROUND

### *Parliamentary oversight over the President*

10. A basic foundational principle of the EFF is open and accountable government

in which people live without the fear of being victimised by the National Defence Force, the Police or other security agencies.

11. The principle of accountability constituted a cornerstone of the campaign of the EFF in the last national elections held in April 2014. Supporters of the EFF, who number in excess of 1.2 million voters, require us to pursue executive accountability in Parliament. Should we fail in this regard we would be betraying our principal mandate.
12. Accountability is also a central value in the South African Constitution. The South African State is founded upon the foundational values listed in section 1 of the Constitution. These values include human dignity, the achievement of human rights and freedoms, the supremacy of the Constitution and the rule of law, and a multiparty system of government to ensure accountability, responsiveness and openness.
13. The office of the President of the Republic is established in terms of section 83 of the Constitution. The President is the head of the State and the head of the National Executive. He is obliged to uphold, defend and respect the Constitution as the supreme law of the Republic. The President is also required to promote the unity of the Nation and that which will advance the Republic. When elected, the President must assume office by swearing or affirming faithfulness to the Republic and obedience to the Constitution.
14. In terms of section 89 of the Constitution, the President can be removed from office by the National Assembly. Section 89 provides that the National



Assembly may, with a supporting vote of at least two thirds of its members, remove a President from Office on the grounds of a serious violation of the Constitution or the law or serious misconduct or inability to perform the functions of the office of the President.

15. The National Assembly is the key democratic Institution which bears the responsibility to hold the National Executive accountable.

1.1. Section 55 of the Constitution deals with the oversight powers of the National Assembly. In terms of section 55(2), the National Assembly must provide mechanisms: *"to ensure that all executive organs of State in the national sphere of government are accountable to Parliament"*.

1.2. The National Assembly is also required to maintain oversight of the exercise of National Executive authority, including the implementation of legislation and oversight over any organ of State.

#### ***The report of the Public Protector***

16. The main issues in this application have their genesis in the failure of the Parliament to ensure that the President is held accountable in relation to the personal benefit which he derived from the resources of the State, as determined by the Public Protector. It is thus necessary to make some reference to the provisions of the Constitution which deal with the powers of the Public Protector.

17. Section 181 of the Constitution provides for the establishment of state

institutions to support constitutional democracy. One of these is the Public Protector. In terms of section 181(2) institutions set up under chapter 9 of the Constitution are independent and subject only to the Constitution and the law. These institutions are impartial and exercise their powers and perform their functions without fear, favour or prejudice. In terms of section 181(3) other organs of State, through legislative and other measures *“must assist and protect these institutions to ensure the independence, impartiality, dignity and effectiveness of these institutions”*.

18. No organ of State or person may interfere with the functioning of any chapter 9 institution (section 181(4)).
  
19. In pursuit of her mandate under the Constitution, the Public Protector compiled and published her report entitled *“Secure in comfort: report on an investigation into allegations of impropriety and unethical conduct relating to the installation and implementation of security measures by the Department of Public Works at and in respect of the private residence of President Zuma at Nkandla in the Kwa Zulu Natal Province.”* The report is lengthy. I do not attach it in full herein. However relevant pages shall be referred to. These relevant passages are annexed as **“FS2”**.
  
20. At page 427 of the report, the following finding was made against President Zuma:

*“[4] it is my considered view that the President, as the head of South Africa Incorporated was wearing two hats, that of the ultimate guardian of the resources of the people of South Africa and that of being a beneficiary of public privileges of some of the guardians*

*of public power and State resources, but failed to discharge his responsibilities in terms of the latter. I believe the President should have ideally asked questions regarding the scale, cost and affordability of the Nkandla project. He may also have benchmarked with some of his colleagues. He may also have asked what his idea for some of these measures and viewed them with circumspection given Mr Makhanya's security background and the potential of misguided belief that his main role was to please the President as his client and benefactor.*

*[5] It is also not unreasonable that once the news broke in December 2009 of alleged exorbitant amounts, at the time R65 million on requested security installations at his private residence, that dictates of sections 96 and 237 of the Constitution and the Executive Ethics Code required of President Zuma to take reasonable steps to order an immediate enquiry into the situation and immediate correction of any irregularities and excesses.*

*[6] His failure to act in protection of State resources, constitutes a violation of paragraph 2 of the Executive Ethics Code and accordingly amounts to conduct that is inconsistent with his office as a member of Cabinet, as contemplated by section 96 of the Constitution."*

21. The findings made by the Public Protector against the President are gravely serious. Section 96(1) provides that members of Cabinet must comply with an executive ethics code promoted in national legislation. Section 96(2)(b) of the Constitution provides that a member of Cabinet, including the President, may not *"act in a way that is inconsistent with their Office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests."*
22. Section 96 imposes a high standard of conduct on the President. The President must avoid putting himself in a position where a risk of conflict may arise. It is significant that the section does not require the existence of actual conflict of interest. If the President puts himself in a situation of a conflict of interest, he has acted in breach of the Constitution.

23. The Public Protector found in explicit terms that the President violated section 96 of the Constitution.

1.1. The President's conduct is *"inconsistent with his Office as the member of Cabinet, as contemplated by section 96 of the Constitution."*

1.2. The Public Protector made an unequivocal finding that the President breached paragraph 2 of the Executive Ethics Code which is envisaged in section 96(4) of the Constitution. The Executive Ethics Code itself is attached hereto marked **"FS3"**. The standards mentioned in the Code include the obligation to act in good faith and in the best interests of good governance and to act in a manner which is consistent with the integrity of their Office or the Government.

24. Members of the Cabinet are also prohibited by clause 2.3 from engaging in certain conduct.

1.1. They may not act in a manner inconsistent with their office.

1.2. They may not use their positions or information entrusted upon them to enrich themselves or to improperly benefit any other person.

1.3. They may not expose themselves to any situation involving the risk of a conflict between their official responsibilities and their private interest.

25. According to the report of the Public Protector, the President is the guardian of national assets and resources. In that capacity he is required to use the resources for the promotion of the public interest at large and not to gain

personally therefrom.

26. In summary, the following findings of the Public Protector deserve emphasis:

- 1.1. President Zuma *"was wearing two hats"*. He was required to be the guardian of the resources of the people of South Africa. At the same time and in the second hat he was *"a beneficiary of public privileges of some of the guardians of public power and State resources"*. He *"failed to discharge his responsibilities in terms of the latter"*. His failure to protect State resources, which were used to benefit him *"constitutes a violation of paragraph 2 of the Executive Ethics Code"*. Also, the failure by the President to protect the use of State resources which were used for his personal benefit *"amounts to conduct that is inconsistent with his office as a member of Cabinet, as contemplated by Section 96 of the Constitution"*.
- 1.2. President Zuma *"tacitly accepted"* the installation and the construction at his property. He therefore *"unduly benefitted"* from the capital investment consequent upon installations which are not security related at his *"private residence"*. The *"undue benefits"* denied by the President were the visitors' centre, a cattle kraal and chicken run, a swimming pool and amphitheatre.
- 1.3. Because of President Zuma's *"tacit acceptance"* of the *"undue benefits"*, the Public Protector prescribed that he must, with the help of the National Treasury and the South African Police Service, determine the reasonable cost of the measure implemented by the Department of Public Works *"that do not relate to security, and which include the visitor's centre, the*

*amphitheatre, the cattle kraal and the chicken run and the swimming pool*".

Having so determined, he must "pay a reasonable percentage of the cost of the measures". He should thereafter reprimand the Ministers involved and report on his comments and actions within fourteen days thereof to the National Assembly.

27. The findings and the remedial action prescribed are therefore clear. The items which do not relate to security include amphitheatre, cattle kraal and chicken run and the swimming pool. The cost of these items must be determined and once that has been done, the President must pay a reasonable percentage of those costs through the National Treasury.
28. The President has violated the Constitution, which he is duty bound to uphold. In failing to give effect to the findings of the Public Protector, the President has committed a serious constitutional breach. He has failed to protect and promote the independence of the Public Protector, despite being under a constitutional duty to do so. By failing to give effect to the findings of the Public Protector and at the same time not challenging such findings in court, the President has undermined the independence and effectiveness of the Public Protector. As head of the National Executive, the President must be at the forefront of supporting the independence and efficacy of the Public Protector by, among others, implementing the remedial action taken by the Public Protector. If he does not agree with the remedial action taken by the Public Protector, the President must challenge such remedial action in court. It would be intolerable to ignore the remedial action of the Public Protector, without having same reviewed in court.

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29. Similarly, the National Assembly must protect the office of the Public Protector. In accordance with Section 55 of the Constitution, the National Assembly must ensure that the National Executive is accountable in relation to the discharge of its executive obligations.

30. The remedial action decided by the Public Protector was the following:

1.1. With the assistance of National Treasury and the South African Police Service to determine *"the reasonable cost of the measures implemented by the DPW at his private residence that do not relate to security, and which include visitors centre, the amphitheatre, the cattle kraal and the chicken run and the swimming pool."*

1.2. To pay a reasonable percentage of the cost of the measures determined with the assistance of National Treasury taking into consideration a document prepared by the Department of Public Works referred to as *"DPW apportionment document"*.

1.3. To reprimand ministers involved *"for the appalling manner in which the Nkandla project was handled and State funds were abused."*

31. These steps have not been taken.

1.1. The cost of the items which were determined by the Public Protector to be non-security related has not been determined.

1.2. The President has not paid the percentage of these costs.

1.3. The President has not reprimanded the ministers involved in the project

for the appalling manner in which they handled the Nkandla project.

32. The National Assembly is also obliged to protect the Public Protector. Protecting the office of the Public Protector includes giving effect to its determinations, which cannot be altered at the instance of the National Assembly. The National Assembly cannot revisit findings already made by the Public Protector. Those findings are binding. They should be given effect.
33. Unfortunately, neither the President nor the National Assembly has carried out the findings and determinations of the Public Protector. It was with this background that the EFF took the political campaign – through the Parliamentary procedures – to ensure that the President complies with the findings and determinations of the Public Protector. That campaign also included the specific requirement that the National Assembly must give effect to the findings and recommendations of the Public Protector.

***Actions of the President subsequent to the publication of the report***

34. Subsequent to the publication of the Public Protector's report, President Zuma submitted a report to the Speaker of the National Assembly on 14 August 2014. A copy of President Zuma's report is annexed hereto marked "FS4".
35. The report purports to reply to the findings and remedial action of the Public Protector. At pages 13 to 15 of his report, President Zuma purports to summarise the finding of the Public Protector. However, the summary is a distortion of the true findings of the Public Protector on the following grounds.

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- 1.1. The President did not mention the finding that by December 2009 he was aware of the exorbitant cost of the project, at that stage being R65 million, and despite such knowledge failed to take appropriate steps to ensure that State resources were not spent further.
- 1.2. President Zuma did not mention that the Public Protector had found that he violated paragraph 2 of the Executive Ethics Code. In fact, the President's report is cynical in this regard. In paragraph 50.9 it is stated: *"President Zuma did not mislead Parliament or violate the Executive Ethics Code when he addressed Parliament regarding the security upgrades."* While technically this is correct, the President's report completely omits to make mention of the fact that it was found that the President had in fact violated the Executive Ethics Code in putting himself in a situation of a conflict of interests.
- 1.3. President Zuma's report failed to mention that the Public Protector found that he acted in violation of section 96 of the Constitution. This is a serious omission particularly in light of the fact that one of the grounds upon which the President may be discharged from office by the National Assembly is a serious violation of the Constitution.
- 1.4. The President's report did not mention that the remedial action prescribed by the Public Protector included that the President should reimburse the government for some of the costs associated with non-security features, which were specified in the report. The report of the President states that: *"The President should determine the cost of the measures implemented by DPW which do not relate to security and pay a reasonable percentage*

*of such costs.*" However, on a proper reading of the report by the Public Protector, the items which the President is liable to repay have been specifically mentioned. It was not open to the President or his Cabinet to reconsider which items were security and which ones were not.

36. In paragraph 63.2 of his report, the President decided the following:

*"The Minister of Police as the designated Minister under the National Key Points Act, to report to Cabinet on a determination to whether the President is liable for any contribution in respect of the security upgrades having regard to the legislation, past practices, culture and findings contained in the respective reports."*

37. This decision is unconstitutional. The finding by the Public Protector is clear. The items which do not relate to security have been decided. And so is the liability of the President. The report of the Public Protector remains and has not been challenged in a court of law. However, the President elected to side-step the issue by having a member of Cabinet decide whether or not the President is liable.

38. On 25 March 2015, the Minister of Police presented his report to the National Assembly. The report follows the decision of the President designating the Minister to determine the President's liability. The purpose of the report appears at page 7 thereof. It states that it is intended to inform Parliament as to the outcomes and the assessment of *"the security features in Nkandla ... with specific reference to features that the Public Protector's report refers to as non-security."* In addition, the Minister's report says that it intends to determine whether the President is liable for any contribution in respect of security upgrades.

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39. The premise of the Minister's report is flawed, following upon a wrong decision by the President. In its conclusion at pages 46 to 47, the report of the Minister determined that all of the items which were found by the Public Protector to be non-security related were in fact security related. The merits or the demerits of this decision by the Minister are not pertinent. The point in this application relates to the power of the President and the Minister of Police to effectively overrule the Public Protector. It is submitted that the entire report by the Minister of Police is unconstitutional since it is intended at revisiting findings and conclusions made by the Public Protector. Neither the President nor the Minister of Police can review a final report of the Public Protector.
40. At the current conjuncture, the National Assembly has set up a sub-committee to conduct a further investigation into the matter. However, the entire process is deeply flawed and unconstitutional:
- 1.1. The National Assembly cannot alter the reports of the Public Protector. The reports of the Public Protector are binding and can be set aside only by a court of law.
  - 1.2. The Public Protector's findings are unequivocal in respect of which matters the President is obliged to pay back. It is inappropriate to commence the entire exercise from scratch as if there is no determination by the Public Protector. The Minister of Police cannot make his own determinations of what items must be reimbursed. In any event, as mentioned above, the Minister of Police was never required to determine which aspects are security related. Those items were decided by the Public Protector. The role of the South African Police Service was limited to the determination

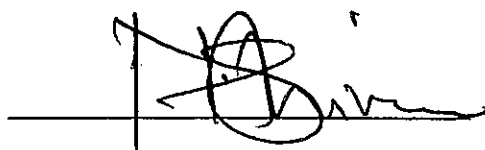
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of the reasonable costs of the items which were already decided by the Public Protector, as being non-security related.

- 1.3. The Public Protector, at any rate has not been allowed to make any presentation before the sub-committee. In this regard, I should mention that although the sub-committee is a multi-party, the EFF is not a party thereto, having elected not to endorse the sub-committee. The decision to refuse the Public Protector a hearing was not unanimous. It was forced through by the ANC using its majority in the sub-committee. Given the public pronouncement made by ANC members on the committee, there is no realistic prospect of the sub-committee compelling President Zuma to comply with the Public Protector's report.

## CONCLUSION

41. It is submitted that the relief sought in the notice of motion must be granted.



FLOYD NYIKO SHIVAMBU

THUS SIGNED AND SWORN TO BEFORE ME at Cape Town on this 4<sup>th</sup> day of AUGUST 2015 the deponent having acknowledged that he/she knows and understands the contents of this affidavit, that the deponent has no objection to taking the prescribed oath, that the oath which the deponent has taken in respect

thereof is binding on the deponent's conscience, and that the contents of this affidavit are both true and correct.



COMMISSIONER OF OATHS

**VUYISEKA DONDOLO**  
COMMISSIONER OF OATHS  
ATTORNEY - CAPE TOWN  
5TH FLOOR, WAALBURG BUILDING  
CNR. WALE & BURG STREETS  
CAPE TOWN, 8001

*M.F.*

# Constitution

## Preamble

ECONOMIC FREEDOM FIGHTERS is a radical and militant Economic Emancipation Movement which brings together revolutionary, fearless, radical, and militant Activists, workers' movements, Non-governmental organisations, community based organisations, lobby-groups under the need to pursue the struggle for economic emancipation.

EFF is a radical, Left, anti-capitalist and anti-imperialist Movement with an internationalist outlook anchored by popular grassroots formations and struggles. EFF will be the vanguard of community and workers' struggles and will always be on the side of the people. EFF will, with determination and consistency, associate with the protest movement in South Africa, and will also join in struggles that defy unjust laws.

The EFF takes lesson from the notation that "political power, without economic emancipation is meaningless". The Movement is inspired by ideals that promote and practice organic forms of political leadership, which appreciate that political leadership at whatever level is service, not an opportunity for self-enrichment and self-gratification.

The EFF draws inspiration from Marxist-Leninist and Fanonian schools of thought on its analysis of the State, imperialism and class contradictions in every society. Through organic engagement and constant relationship with the masses, Economic Freedom Fighters provide clear and cogent alternatives to the post-colonial economic systems, which in many countries kept the oppressed people under colonial domination and suppression

## Logo and Colours

The Logo of the EFF shall be the map of the Continent of Africa representing a commitment to its people, resources and humanity; The Continent will be coloured in green to signify the Land that must be restored to its people; from within the Southern tip of the Continent will be a black clinched fist signifying the unity in strength of the oppressed of the continent; The fist will carry a red spear signifying the defence of the African Revolution mired by the blood of the fallen heroes and heroines of our the liberation struggle; At the bottom of the fist, shall be a shaft, representing the minerals of the earth, which shall be used for the benefit of all; Finally, at the northern tip of the continent shall be a gold star, representing the progressive internationalist character of our African Revolution, international solidarity and the pursuit of total emancipation of the oppressed peoples of the world

## What is EFF?

1. ECONOMIC FREEDOM FIGHTERS (EFF) is a Political organization styled as a Political Party which seeks to act in the interests of all South Africans striving for ECONOMIC EMANCIPATION IN OUR LIFE TIME.
2. The EFF is anti-capitalist, anti-racist, anti-sexist and anti-imperialist in its world outlook and is driven by sound democratic socialist values where the leadership is accountable to the membership which elected it.

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3. The basic programme of the EFF is the complete overthrow of the neo liberal anti-black state as well as the bourgeoisie and all other exploiting classes; the establishment of the dictatorship of the people in place of the dictatorship of the bourgeoisie and the triumph of socialism over capitalism. The ultimate aim of the EFF is the realization of socialism through people's power and the establishment of a state that responds to the needs of its people.

4. The EFF is a vigorous vanguard organization leading the revolutionary masses in the fight against the class enemy.

5. The EFF takes socialism as the theoretical basis guiding its thinking and development of its political line and in this respect identifies itself as a MARXIST, LENINIST, and FANONIAN organisation.

6. Members of EFF, who dedicate their lives to the struggle for socialism must be resolute, fearless and surmount every difficulty to win victory!

#### **Aims and Objectives**

1. To establish and sustain a society that cherishes revolutionary cultural values and to create conditions for total political and economic emancipation, prosperity and equitable distribution of wealth of the nation.

2. To attain and defend the National Integrity and Liberation of the oppressed black majority of South Africa.

3. To participate in the worldwide struggle for the complete eradication of imperialism, colonialism, racism and all other forms of discrimination.

4. To participate in, support and promote all struggles for the attainment of the complete independence and unity of African states and by extension, the African continent.

5. To oppose resolutely, tribalism, regionalism, religious and cultural intolerance.

6. To oppose oppression of women and the oppression of all other gendered persons.

7. To oppose patriarchy, sexism, and homophobia and any cultural or religious practices that promotes the oppression of anyone, women in particular.

#### **Basic Foundational Principles**

1. Expropriation of South Africa's land without compensation for equal redistribution.

2. Nationalisation of Mines, banks, and other strategic sectors of the economy.

3. Building State and government capacity, which will lead to abolishment of Tenders.

4. Free quality education, healthcare, houses, and sanitation.

5. Massive protected industrial development to create millions of sustainable jobs.

6. Massive development of the African economy and advocating for a move from reconciliation to justice.

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7. Open, accountable government and society without fear of victimisation by the State Defence, Police and other Agencies.

### **Membership of EFF**

1. Any South African citizen or resident not limited to any worker, peasant, revolutionary element, unemployed person who has reached the age of eighteen and who accepts the Constitution of the EFF, joins a branch of the organization and works actively in it, carries out the organization's decisions, observes its discipline and pays membership dues may become a member of the EFF.

2. Applicants for EFF membership must go through the procedure for admission individually. An applicant must be recommended by two EFF members, fill out an application form for EFF membership and be examined by an EFF branch, which must seek the opinions of the broad masses inside and outside the organization. Application is subject to acceptance by the general membership meeting of the EFF branch and approval by the next higher level in the organizational structure.

3. All members shall comply with the provisions of this Constitution as well as with the Aims, Objectives, Principles and Policies of the EFF.

4. Any organization, association or society whose aims and objectives are not inconsistent with those of EFF may join the EFF.

5. On acceptance, a member shall pay the joining fee determined by the National Central Command Team.

### **Rights of Members**

Every member of the EFF shall have the right:

1. To vote in any EFF elections in accordance with such rules and regulations.
2. To vote in any elections held by EFF in accordance with its rules and regulations.
3. To be elected to any office in EFF.
4. To participate in meetings and other activities organized by EFF.

### **Duties of the Member**

Every member of the EFF shall have the duty:

1. To be loyal to the EFF.
2. To observe and resort to the Policies, Resolutions, Decisions of the Central Command Team and the Rules and Regulations of the EFF.
3. To constantly and continuously strive to raise the level of her/his own political consciousness and understanding of EFF Policies, Resolutions, Rules and Regulations.

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4. To strengthen, promote and defend the EFF and to popularize its politics, policies and programs.
5. To conduct herself / himself honestly and honourably in dealing with the EFF and the broader public and not to bring the EFF into disrepute or ridicule.

**All Members of the EFF must take instructive note of and internalize the following:**

1. The political line of the EFF is the fundamental and crucial factor in the interaction between EFF and the larger material world. It is the lifeblood of the organization and should be at the heart of every member's activity and duties. The life of EFF and hence that of the revolution compels a very high level of commitment from each member which in turn shall be guided by the struggle to develop, grasp and apply our political line and through that process sharpen it.

2. In refining and carrying out the political line, EFF acts as a collective. Every member's actions in any given situation can make a huge difference—positive or negative. At the same time, the organisation is expected to enable its members to pull together so as to understand why it is necessary to struggle for and achieve our strategic goal of ECONOMIC FREEDOM IN OUR LIFETIME. Members are expected to channel their insights and initiative into a collective process and this in turn enables a more comprehensive analysis of reality, and a much more meaningful mobilization of the people to transform that reality. This is way beyond what any single individual acting alone, or even a loose affiliation of individuals could ever achieve.

3. Inside the EFF, members are expected to thrash out their differences, be faithful to the revolutionary ideas of the organisation through good and bad times and through this whole process look out for each other. In this way we express our revolutionary outlook and collectivity while at the same time boosting the morale of membership.

4. Also inside the EFF there should always be much collective discussion and struggle over ideas of what is to be done, over right and wrong ideas in the development of the revolutionary line and practice to which all members are expected to contribute; this is the life blood of the organisation. But against the ideological enemies of ECONOMIC FREEDOM IN OUR LIFETIME we close our ranks as a collective forming an iron wall of unity and allegiance to the revolution and hence making it impossible for them to break our ranks

5. Learning or education is an active process that requires members to self-develop and seek clarity where they don't understand or feel confused. Finally, the political development of each member is a revolutionary responsibility of all engaged in struggle.

**Members of the EFF are accordingly expected to:**

1. Study and apply the theoretical line of the organisation being Marxist, Leninist and Fanonian philosophical thought and tools of analysis in a living way.

2. Work for the interests of the vast majority of people of South Africa, Africa and the oppressed of the world.

3. Be willing and able to unite with the vast majority, including those who have been wrong in opposing them but are sincerely correcting their mistakes and hence showing remorse for their previous mistakes. However, members must vigilantly guard against elements of unrepentant opportunism, reaction and revisionism so as to prevent such bad elements from infiltrating the leadership of the

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organisation. This is a necessary prerequisite to ensure and guarantee that the leadership of the EFF remains always in the hands of revolutionaries.

4. Consult with the masses and investigate the necessary conditions when matters arise.
5. Be bold in making criticism and self-criticism.

### **EFF Structures**

The EFF shall consist of the following organs:

1. National People's Assembly which elects the Central Command Team (CCT).
2. Provincial Assembly which elects the Provincial Command Team (PCT).
3. A Regional Assembly which elects the Regional Command Team (RCT).
4. Branch General Assembly which elects the Branch Command Team (BCT).
5. Every member of the EFF shall belong to a branch, which is the basic unit of activity for members. A normal meeting of the branch shall be called a Branch Assembly which is to be open to all community members
6. Each branch shall be structured by the respective Branch Command Team into a number of cells dispersed throughout the whole branch. Each cell shall consist of at least 4 members. The cell is the leading unit of the EFF at the level of the village, district and community, workplace and school/collage. It represents the interests and aspirations of the organization and mobilizes membership to work collectively towards achieving the strategic objective of the EFF. Members of a cell will elect / appoint a leader annually who will in turn hold office for a period of one year.
7. Each Branch shall be registered with the CCT and shall consist of no fewer than 100 members, provided that the CCT may under exceptional circumstances allow a branch to be constituted of fewer than 100 members but not less than 40 members.
8. Branches covering a wide area of responsibility or in respect of which some extra-ordinary circumstance exists may be permitted to divide itself into smaller units provided that such units shall only serve as a co-coordinating and administrative mechanism of the branch and shall be devoid of any decision-making powers. Provided also that such units shall operate on the basis of acceptable, democratic principles and practices of the EFF.
9. A BCT is elected every two years by a Branch Command Assembly. The BCT shall comprise of the Chairperson, Deputy Chairperson, Secretary, Deputy Secretary, Treasurer and not more than 10 (ten) members who will hold office for two years.

### **THE HEADQUARTERS**

10. The site of the National Headquarters of the EFF shall be determined by the CCT.

### **The Regional Assembly**

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11. Each Region shall hold a Regional Assembly once every 3 (three) years.

12. The Regional Assembly shall elect the Regional Command Team comprising of a Chairperson, Deputy Chairperson, Secretary who shall deputise the chairperson, Commissar Responsible for Finance and 20 (twenty) additional members who shall hold office for three years. In addition the Chair and Secretary of the EFF Women's Command and the EFF Youth Command in that Region shall be ex-officio members of the Regional Command Team.

## PROVINCES

13. For purposes of EFF structures, the country shall be divided into the following provinces:

Western Cape, Northern Cape, Eastern Cape, KwaZulu Natal, Free State, Gauteng, Limpopo, Mpumalanga, North West

14. The provincial headquarters will be determined by the Provincial Command Team of each respective province.

15. The CCT may from time to time alter the number, the boundaries or the names of the Provinces

16. A province shall consist of as many branches as there are in a Province.

### The Provincial Assembly

17. Members of the PCT are elected at the Provincial Assembly by the delegates representing each branch in the province. The provincial elections are held once every four years by at least one third of all branches in the province.

18. The PCT shall comprise of the Chairperson, Secretary who shall be deputise the chairperson, Commissar responsible for Finance and not more than 20 (twenty) members who will hold office for four years.

### The National People's Assembly

19. The National People's Assembly (NPA) shall be the supreme ruling and controlling body of the EFF. It shall be constituted of:

#### Voting delegates:

20. All of the voting delegates at the National People's Assembly shall be from branches which shall be represented by elected delegates. The number of delegates shall be in proportion to the paid up membership of each branch.

21. Members of the CCT shall attend ex-officio as full participants in the National People's Assembly.

22. All delegates to be appointed to / elected by the CCT shall be appointed / elected directly by the National People's Assembly by the delegates with capacity to appoint / vote.

23. The number of delegates per Province who would qualify for capacity to vote shall be fixed by the CCT in proportion to the paid up membership of each province.

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#### Non-Voting Delegates:

24. The CCT may invite individuals, who have made a special contribution to the struggle or who have special skills or experience, to attend the National People's Assembly. Moreover, the CCT shall allow representation as non-voting delegates with observer status to structures which have not complied with the minimum requirement to form a branch.

#### Duties and Powers of the National People's Assembly

25. The National People's Assembly is the Supreme Organ and accordingly the highest decision making body of the EFF. It sets the organisation's basic orientation and objectives, especially at crucial junctures of the struggle.

26. It is composed of members of the Central Command Team; The Central Command Team of the Women's Command; The Central Command Team of the Youth Command; and delegates from branches of the EFF who shall be determined through a proportionally representative system.

27. The CCT shall appoint an Assembly Organising Team which will circulate the National Assembly's information in advance, determine the precise procedure for selection of delegates and indicate how the membership can then ensure their concerns are on the agenda.

28. The National People's Assembly shall determine its own procedures in accordance with democratic principles.

29. Voting on key questions shall generally be open and may be by secret ballot if at least one third of the delegates at National People's Assembly demand it.

30. The National People's Assembly shall receive and discuss the reports of the CCT

31. It shall have the right and power to review, ratify, amend or over turn any decision taken by any of the constituent bodies of the EFF.

32. The National People's Assembly elects the CCT which develops the political line and policy to meet the challenges of leading the revolutionary struggle.

33. The CCT shall comprise of 14 members who are directly appointed by the National People's Assembly as well as 20 other members which in turn includes the chairperson and secretary of each province, one member from the Women's Command and one member from the Youth Command.

34. As the Supreme Policy making organ of the EFF, it formulates, pronounces and declares all Policies of the EFF and has the power and authority to effect amendment(s) to the Constitution.

35. The National People's Assembly shall convene once every five years, and it is the Supreme Authority for the adoption, implementation and supervision of the Policies, Directives, Rules and Regulation of the EFF.

#### **CENTRAL COMMAND TEAM**

##### Powers

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36. The CCT is the highest organ of the EFF between National Assemblies and shall have the authority to lead the organisation, subject to the provisions of the National Peoples' Assembly resolutions and decisions.

37. In periods between the National Peoples' Assemblies, the CCT shall periodically report to the EFF membership.

38. The CCT shall set up a number of necessary bodies and Standing Sub – teams on different levels in order to guide the overall work of the EFF.

39. The CCT shall implement the policies, resolutions, directives, decisions, and programs enunciated by the National People's Assembly.

40. The CCT shall meet at least once in three months. The CCT is the principal organ of the National Assembly and shall consist of the following:

a. The President and Commander in Chief of the Economic Freedom Fighters, who shall:

i. Be the political head and commander in chief of EFF and the leader of the house at National People's Assembly meetings.

ii. Make pronouncements for and on behalf of the EFF outlining and explaining the policy or attitude of the EFF on any question.

iii. Present to the National People's Assembly a comprehensive statement of the state of the country, continent and the political situation internationally.

iv. Under the overall supervision of the CCT, orient and direct the activities of the EFF

b. The General Secretary who is the deputy President and the chief administrative officer of the EFF shall:

i. Communicate the decisions of all national structures of the EFF on behalf of the EFF.

ii. Keep the minutes of the National People's Assembly, the Special National People's Assembly, the CCT, as well as other records of the EFF.

iii. Administer the correspondence of the CCT and the Provincial Command Teams, and send out notices of all Assemblies and meetings at the national level;

iv. Convey the decisions and instructions of the National People's Assembly as well as that of the Special National People's Assembly and see to it that all units / organs of the EFF carry out their revolutionary duties efficiently.

v. Prepare annual reports on the work of the EFF and the CCT and such other documents which may, from time to time, be required by the CCT and the National People's Assembly.

vi. Present to the National People's Assembly and the Central Command Team a comprehensive statement of the state of the organisation and the administrative situation of the EFF.

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c. Commissar Responsible for Finance who shall:

- i. Be the chief custodian of the funds and property of the EFF.
- ii. Receive and bank all monies on behalf of the EFF and shall, together with the General Secretary and the Commander in Chief, open and operate a banking account.
- iii. Keep such books of account as may be necessary to record accurately the financial position of the EFF.
- iv. Submit to the National People's Assembly a report showing the Income and Expenditure Account and Balance Sheet of the EFF for the period since the previous National People's Assembly, and shall submit periodic reports to the CCT.
- v. Be responsible for working out and executing plans for fund raising.
- vi. Present to the National People's Assembly a comprehensive statement of the state of the finances of the EFF.

d. Commissar Responsible for Political Education, Policy and Research who shall:

- i. Organize and oversee the political university of EFF.
- ii. Develop policy on strategic fields as per the ideology and principles of the EFF.

e. Commissar Responsible for Media and Communications who shall:

- i. Be the national spokesperson of the EFF.
- ii. Oversee and implement the media and communications strategy of the EFF.

f. Commissar Responsible for Campaigns, Mobilisation and Special Projects who shall:

- i. Oversee the mobilisation of EFF and the broader society through campaigns and special projects.

g. Commissar Responsible for Gender and Sexuality who shall:

- i. Oversee the policy and implementation of the gender and sexuality struggle in the EFF and broader society.

h. Commissar Responsible for the International Relations and Solidarity who shall:

- i. Be responsible for the internationalist work of the EFF.
- ii. Ensure the building of international profile and relations with progressive movements on the international front.
- i. Commissar Responsible for Economic Development who shall:

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i. Be responsible for the strategic promotion of EFF's economic policy perspective in all of industry, commerce and the state.

j. Commissar Responsible for Energy and the Environment, who shall:

i. Develop and oversee the EFF perspectives on sustainable and safer sources of energy and broader sustenance of the environment.

k. Commissar Responsible for Heritage, Arts and Culture who shall:

i. Be responsible for the promotion of heritage, arts and culture, within the broader principles of the EFF.

l. Commissar Responsible for Education, Science and Technology who shall:

i. Be responsible for the transformation of education, research and the development and promotion of science and technology of the people.

m. Commissar Responsible for Social Development who shall:

i. Promote community and social developments in matters of social cohesion and anti-criminality, ii. Promote inclusive community life in all aspects relating to the challenges encountered by people with disabilities, immigrants and pensioners so as to facilitate the creation of a caring society.

n. Commissar Responsible for Professionals and Career Development who shall:

i. Promote the transformation of the workplaces in the private and public sector for the emergence of a revolutionary professional culture that is inclusive, caring and productive.

o. Commissar Responsible for Organisational Development who shall:

1. Ensure the development of organisational capacity through the empowerment of members and structures of the EFF.

p. Commissar Responsible for Safety and Security who shall;

1. Promote the development of progressive security and safety

q. Commissar Responsible for Land and Agrarian Reform who shall;

1. Ensure the development of policy for agrarian and land reform, including fishing and food protraction

r. Commissar Responsible for Mineral and Natural Resources who shall;

1. Be responsible for the development of EFF policies on mining, minerals and national resources for the benefit of inclusive economic development

s. Commissar Responsible for Sports and Recreation who shall;

i. ensure the development of policies on promotion of sports and recreation

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t. Commissar Responsible for Justice who shall

i. Develop EFF policy on the transformation of the criminal and justice system

u. The Chairperson and Secretary of each of the Provincial Command Teams as well as one member from the Women's Command and one member from the Youth Command shall be members of the CCT, and the composition of the CCT shall have a gender, demographic and geographic balance.

#### **The Women's Command**

41. Every woman who has attained the age of 14 years and who is a member of the EFF is eligible for membership of the Women's Command through her Branch Command Team.

42. The Women's Command functions as an autonomous structure within the main structure of the EFF.

43. Its main objective is to raise the political consciousness of women into understanding that patriarchy is a societal ill and to this end must organize and mobilize women collectively with men if needs be, into ending patriarchy by putting the patriarchal, white-supremacist, capitalist oppression of women to an end.

44. Moreover the purpose of the Women's Command is to promote the rights of women and in this regard to remove all impediments to their development as full and equal members of society.

#### **The Youth Command**

45. The Youth Command is an integral part of the EFF. Its main objectives are to mobilize and organize the youth into participating fully in the political, social and economic affairs of the country. Membership is open to all South Africans between the ages of 14 and 30 years.

#### **Special National People's Assembly**

46. A Special National People's Assembly (SNPA) may be convened by the CCT to deliberate on serious disciplinary matters and issues relating to the appeal of sentences imposed by the Disciplinary Committee and or for such other purpose as the CCT may deem necessary.

47. A SNPA may be convened by the CCT at any time or at the request of at least one third of membership to address only the matter(s) that triggered it.

48. Not less than one month's notice of such a SNPA shall be given.

49. Participation at the SNPA shall be determined by the CCT, provided that branches are represented in proportion to their membership.

#### **Organizational Principle of the EFF**

1. The organizational principle of the EFF is democratic centralism.

2. The leading bodies of the EFF at all levels are elected through democratic consultation

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3. The whole organization must observe unified discipline: The guiding principle is that at all times the individual is subordinate to the organization, the minority is subordinate to the majority, the lower level is subordinate to the higher level, and the entire EFF is subordinate to the CCT.

4. Leading structures of the EFF at every level shall periodically report on their work to EFF assemblies as well as general assembly meetings and shall constantly listen to the opinions of the people both inside and outside the organization and to this end accept their supervision. EFF members have the right to and must be encouraged where necessary to criticize the EFF, its leadership and or any component part thereof at all levels and make proposals to them. If an EFF member holds different views with regard to the decisions or directives of the any component structure of the EFF s/he is allowed to reserve her/his views and has the right to skip the immediate leadership channels of command and report directly to higher levels, up to and including the CCT and the President of the CCT. It is essential to create political conditions that are conducive to both centralism and democracy; discipline and freedom; unity of will and personal ease of mind.

#### **Central Tasks of EFF Structures, Formations and Other Entities**

1. In general, EFF branches must be formed in factories, mines and other enterprises, people's residential areas including informal settlements, offices, schools, shops, prisons etc.

EFF branches or primary EFF Command Teams may also be set up where there is a relatively large membership or where the revolutionary struggle requires.

2. EFF structures, formations and other entities must give prominence to the revolutionary politics of the organization and develop the style of melding theory with practice, maintaining close links with the people and practicing criticism and self-criticism.

3. The main tasks of the component structures, formations and other entities of the EFF are:

a. To lead EFF members and the broad revolutionary masses in studying, internalizing and applying the political line of EFF;

b. To give constant education to EFF members and the broad revolutionary masses concerning the race/class struggle and the struggle between the two lines and to lead them in fighting resolutely against the class enemy;

c. To propagate and carry out the policies of EFF, implement its decisions and fulfil every task assigned by the CCT;

d. To maintain close ties with the masses by being located on the ground and constantly listening to their opinions and their demands.

e. To conduct robust ideological struggle within the EFF so as to keep the organization's life vigorous.

f. To take in new EFF members, enforce discipline, constantly consolidate the EFF membership strength and to get rid of the rot and take in new energy so as to maintain the purity of the organizations' ranks.

#### **Disciplinary Matters**

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When members violate organizational discipline they must be dealt with in terms the provisions of the CODE OF CONDUCT as stated below under the heading, 'Administration of Revolutionary Justice in the Economic Freedom Fighters'.

Proven reactionaries, enemy agents, absolutely unrepentant persons in leadership taking the racist/capitalist road, must be expelled from the EFF and not be re-admitted.

### **Administration of Revolutionary Justice In The Economic Freedom Fighters**

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Revolutionary Discipline Code (Code)

(Sections 1 to 3)

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(Sections 19 to 24)

#### **CHAPTER 4**

Guidelines On Factors To Be Considered By The Disciplinary Committee (DC) When Imposing An Appropriate Sentence On Any Member Who Has Been Found By The DC To Have Committed An Offence In Terms Section 2 Of The Revolutionary Discipline Code

(Sections 25 to 30)

#### **CHAPTER 1**

Revolutionary Discipline Code (Code)

1. This code in Chapter 1 is applicable to and binding on all members of the Economic Freedom Fighters (EFF)

2. Any member who-

(a) without authority or contrary to the decision of the Central Command Team (CCT) discloses the contents of any document as a result of which an unauthorized person becomes aware of the contents of any document, to the prejudice of the EFF;

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(b) absents her/himself from any meeting, gathering, conference, workshop or any other event, being so required to attend by the CCT or any branch or other component structure of the EFF;

(c) assaults another member;

(d) willfully defies any CCT and or National People's Assembly Decision and or Resolution;

(e) steals any property belonging to EFF;

(f) steals any property belonging to another member;

(g) receives any property referred to in paragraph (e) or (f) knowing it to have been stolen;

(h) being responsible for stocks and or moneys of EFF, negligently performs her/his tasks so as to cause any deficiency in such stocks and or moneys;

(i) makes any false accusation or statement against any other member or against the CCT or EFF;

(j) by word(s), act or omission to act causes actual or potential prejudice to good order and revolutionary discipline in EFF;

shall be guilty of an offence and liable on conviction to any sentence as prescribed in section 3 hereunder

3. Whenever a Disciplinary Committee (DC) convicts any member of any one or more of the offences as listed in section 2 above it shall impose upon the convicted member a sentence consisting of one of the following penalties-

(a) expulsion from EFF;

(b) suspension from EFF for a specified period;

(c) a fine; or

(d) a reprimand

## CHAPTER 2

### Disciplinary Procedure For EFF Members:.

4. All complaints are to be lodged with the CCT within 60 days of the date that the offence was allegedly committed by an EFF member.

5. The complainant must state the concise particulars of the offence allegedly committed by an EFF member, including the date, time and place thereof and must where possible supply the CCT with supporting statements from all witnesses to the offence. The complaint together with the supporting statements must be reduced to writing.

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6. Within 10 days of receipt of the said complaint the CCT, being the Convening Authority (CA), shall set up a Disciplinary Committee (DC). The DC shall comprise of three members i.e. the co-ordinator and 2 assessors who shall in turn be appointed by the CCT;

7. The CCT when appointing the members of the DC should ensure that each appointee:

(a) Is not related to the accused or the complainant by affinity, marriage or blood in the first or second degree;

(b) Has no such knowledge concerning the facts of the matter that her/his decision is likely to be prejudiced thereby;

(c) Does not bear the accused such animosity that her/his decision is likely to be affected thereby;

(d) Has no personal interest in the proceedings.

8. The co-coordinator of the DC shall within a reasonable time of convening the DC transmit to the member who is alleged by the complainant to have committed the offence a copy of the complaint and all supporting statements and call upon the alleged offender to respond to the complaint in writing within 10 days of receipt thereof. The alleged offender may corroborate her/his evidence by attaching written statements from all witnesses.

9. The DC may in its discretion call for the evidence of further witnesses which it feels may assist it in coming to an appropriate finding in the case. This evidence must be reduced to writing by the witnesses and sent to the DC within 10 days of receipt of such request by the relevant witnesses. The DC shall then send the further evidence to both the complainant and the alleged offender and request that they respond thereto in writing within 5 days of receipt thereof.

10. The complainant shall thereafter and within 5 days lodge with the DC her/his reply to the alleged offenders response and the DC shall then serve a copy thereof on the alleged offender.

11. The DC then evaluates the evidence and makes a finding and imposes an appropriate sentence on the offender in the circumstances where s/he was found to have committed the offence(s) as alleged. The decision of the majority of the DC shall be the decision of the DC.

12. Sentences of suspension and expulsion from the EFF shall not be executed until the finding and sentence have been considered and upheld by the CCC as the Appeal Authority. In this case the appeal is automatic.

13. For all other sentences the offender

may within 15 days after the finding furnish the CCT with written representations concerning the finding made and or sentence imposed by the DC and such representations shall together with the record of proceedings of the DC be duly considered by the CCT as the Appeal Authority.

14. The decision of the CCT may on application by the offender be placed before the National People's Assembly as a subject of final appeal.

15. The entire process can be settled either on papers or orally or both on papers and orally as the relevant authority at each stage may require.

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16. The DC may, in circumstances calling for urgent action to be taken and where there are compelling reasons to grant such relief, find against and sentence a member provisionally and call upon her/him to show cause on a return date why the provisional finding and sentence should not be made final. .

17. In the circumstances contemplated in Section 16 herein, the DC shall consist of one member appointed by the CCT

18. The outcome of the disciplinary hearing will be announced to members only.

### CHAPTER 3

#### Evaluation Of Evidence By The DC

19. In assessing the evidence before it the DC shall take instructive note of the following:

(a) The relevant facts that are not disputed by either the complainant or the alleged offender must be identified and accepted by the DC.

(b) All the other relevant evidence before the DC should then be assessed to determine its value to the case. This evidence is not to be evaluated in isolation but in totality, taking into consideration the undisputed facts.

(c) Once the evaluation of evidence has been finalised, the DC will then make its finding based on the evaluated evidence.

20. In determining the value of evidence the DC shall inter alia consider the type of evidence, whether the complainant had any witnesses and the credibility and reliability of the witnesses.

21. A distinction must be made between direct and circumstantial evidence. Direct evidence is where the witness makes direct submissions regarding the facts of the case. This type of evidence is regarded as strong evidence and significant value should therefore be attached to it. When assessing circumstantial evidence the DC is required to draw an inference since the witness has made no direct submission regarding the fact in issue. This type of evidence only provides indirect proof of a fact. Direct evidence will generally therefore carry more weight than circumstantial evidence.

22. Although the DC may convict an offender of any offence on the evidence given by a single witness, it should however apply caution when evaluating this evidence as it is only this witness's version against the version of the alleged offender that is before the DC.

23. The credibility of a witness can be decisive to the outcome of a case. When assessing evidence the DC must ask how credible or truthful each witness appears to be. To this end the DC must establish:

(a) whether the evidence of the witness was supported by the undisputed facts of the case;

(b) whether the witness contradicted her/himself and if so the nature of the contradictions must be established;

(c) whether there were inconsistencies in the evidence;

(d) whether the witness was evasive or candid ;

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(e) whether the evidence appears to be true in the light of all the circumstances.

24. Where an alleged offender fails or refuses to give evidence, the DC must not base its evaluation of such offender's credibility on the fact that s/he did not give evidence but must decide whether the evidence of and in support of the complainant is sufficient to prove the guilt of the alleged offender. If such proof exists then failure or refusal to give evidence in her/his case may lead the DC to draw a negative inference against the alleged offender.

#### CHAPTER 4

#### Guidelines On Factors To Be Considered By The Disciplinary Committee (DC) When Imposing An Appropriate Sentence On Any Member Who Has Been Found By The DC To Have Committed An Offence In Terms Section 2 Of The Revolutionary Discipline Code

25. Before the DC imposes a sentence on an offender, it shall ascertain all the facts that may be relevant in arriving at a just sentence. There should be no standard punishment for a certain offence. Revolutionary conditions prescribe individualised punishments. The DC must evaluate all the facts that are aggravating (more severe) and mitigating (justifying) in respect of the sentence.

26. Before elaborating on the factors the DC must consider before sentencing an offending member, it is important that we understand why that member must be punished. Punishment is a sanction that entails the EFF community's condemnation and disapproval of the offender and her/his conduct.

27. We must apply retribution and not revenge, in other words the offender must experience harm proportionate to that which has been inflicted by that member. There is a sense of proportionality here, the sense that the punishment should fit the offence and not the offender.

28. The sentence imposed must have the effect of deterring other would be offenders from committing similar offences.

29. Where there is material evidence that the offender has rehabilitated her/himself since the date of the commission of the offence that s/he is being sentenced for or if there are reasonable prospects that the offender will through the imposition of a certain sentence rehabilitate her/himself into a disciplined member of the EFF, then in this event the punishment must fit the offender rather than letting the punishment fit the crime.

#### 30. Types of Sentences:

(a) Expulsion: The expulsion of a member from EFF shall only be considered where the offence that the member was found by the DC to have committed is of a disgraceful and or treasonous nature and the reputation and or the image of the EFF is tainted by her/his actions. Also where there is evidence that the offender is likely to continue committing similar and or other offences unless restrained then the preventative measure of expulsion of the member from the EFF shall be considered.

(b) Suspension: The suspension of a member from EFF shall only be considered where the offence that the member was found by the DC to have committed is of a serious nature and there is clear evidence that the member has rehabilitated her/himself into a disciplined member of EFF or where there are reasonable prospects of rehabilitation on the part of the member.

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(c) Fine: when deciding on an amount the DC should decide on enough to punish the offender, but this should not serve to limit the member's prospects of rehabilitation.

(d) Reprimand: this sentence is appropriate when the offence committed is not of a serious nature and there is clear evidence that the member has rehabilitated her/himself into a disciplined member of EFF or where there are reasonable prospects of rehabilitation on the part of the member.

Adopted by the Economic Freedom Fighters Founding National Assembly, 27 JULY 2013

Signed by

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Commander in Chief President

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General Secretary

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- 9.6.1.2 According to the evidence the requisite legal process to regularise building on trust land was not concluded.
- 9.6.1.3 The DPW proceeded with the construction of buildings and other structures on the land immediately adjacent to the land occupied by the President's private residence, despite the fact that no lease agreement had been concluded with the KwaZulu-Natal Ingonyama Trust Board.
- 9.6.1.4 In other words, the DPW does not have legal tenure of the land and the construction of the buildings..
- 9.6.1.5 The implementation of the Nkandla Project leaves one with the impression of excessive and unconscionable "Rolls Royce" security constituting an island in a sea of poverty and paucity of public infrastructure. This cannot be accepted as conscionable in any state and certainly not in a state where section 195 and 237 of the Constitution promise to put people first and where the Batho Pele White Paper undertakes to transform the state from the insular apartheid state to one that is people centred and puts people first
- 9.6.2. **The submission of the final report**
- 9.6.2.1 The issue of the competent authority to receive the report is one of the controversies that bedevilled the report. As indicated, the matter arises on account of the President being the competent authority to act on my findings under the EMEA, while in the current case he is the alleged wrongdoer.
- 9.6.2.2 Dr Lubisi informed me that the relevant amendments to the Executive Members' Ethics Act, as requested in my 2010 report, are still in process and will not be completed by the time that my final report on the investigation is issued.

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## 10. FINDINGS

I make the following findings:

### 10.1. Was there any legal authority for the installation and implementation of security measures and the construction of buildings and other items at the President's private residence and was such authority violated or exceeded?

10.1.1. The authority for implementing security measures at the private residence of the President is primarily conferred by the Cabinet Policy of 2003. In view of the Declaration of the residence as a National Key Point during the implementation of the security measures, the National Key Points Act, constitutes part of the legal framework conferring authority to upgrade security at a private residence. However, the implementation of the security measures failed to comply with the parameters set out in the laws in question for the proper exercise of such authority.

10.1.2. The key violation in this regard is the failure to follow the processes outlined in the Cabinet Policy and the deviation from the 16 security measures that were recommended in the Second Security Evaluation by SAPS. This constitutes improper conduct and maladministration.

10.1.3. With the National Key Points Act having been inexplicably dragged in halfway through the implementation of the Nkandla Project, its provisions had to be complied with. This did not happen. Neither was there compliance with the contents of the declaration of the Nkandla Residence as a National Key Point, as signed by the Minister of Police on 08 April 2010.

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- 10.1.4. In relation to installations at the request of the Surgeon General on behalf of the DOD and SAMHS, there appears to be no instrument specifically authorizing the construction of brick and mortar installations at or for a private household. The installations were justified on generic military doctrines aimed at installations built in pursuit of public services and the general power given to the SAMHS to provide health services to the President Deputy President, Minister and Deputy Minister of Defence and, at the request of the Minister of International relations, foreign dignitaries.
- 10.2. **Was the conduct of relevant authorities in respect of the procurement of goods services relating to the Nkandla Project improper and in violation of relevant prescripts?**
- 10.2.1. The organs of state involved in the Nkandla Project failed dismally to follow Supply Chain Management prescripts, such as section 217 of the Constitution, PFMA, Treasury Regulations the DPW Supply Chain Management policy, key omissions including: the absence of demand management; improper delegations; failure to procure services and goods costing above R500 000 through a competitive tender process; failure to conduct due diligence leading to the engagement of service providers such as the Principal Agent without the necessary qualifications or capacity for security measures; failure to ensure security clearance for service providers, and allowing "scope creep" leading to exponential scope and cost escalations.
- 10.2.2. In addition, the DPW failed to comply with the provisions of GIAMA, which specifically require a proper asset management plan in respect of the immovable assets of the state.

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Minutes

**SECURITY AND CONSTITUTIONAL AFFAIRS SELECT COMMITTEE**

**9 May 2000**

**CODE OF ETHICS FOR MEMBERS OF THE EXECUTIVE**

Documents handed out:

Draft Code of Ethics for Members of Cabinet and Members of Executive Councils (see Appendix)  
Executive Members' Ethics Act, 1998

Chairperson: Mr J Mahlangu

**SUMMARY**

A draft code of ethics for members of the Cabinet and Executive Councils, mandated by the Constitution and the Executive Members' Ethics Act, provides for general standards to which the executive arm of government has to adhere. It provides for avoidance of conflict of interests in fulfilling official duties. Members of the Executive are not allowed to accept gifts that would compromise their decision-making capacity. They are required to disclose their financial interests which are specified in the code. The Secretary of both Cabinet and an Executive Council has to keep a register of disclosed interests. Members are required to instruct one of their staff members to assist in monitoring the code. The indication from the Committee was that a code of this nature is to be welcomed. It will be debated in the house on 17 May 2000.

**MINUTES**

**Code of Ethics for Members of Cabinet and Members of Executive Councils**

The Chairperson indicated that the code had initially been referred to the Select Committee on Local Government. Due to an international visit, that committee could not deal with it, hence it was included in this Committee's agenda.

Mr Dirk du Toit, Deputy Minister: Department of Agriculture and Land Affairs, gave a briefing to the Committee on the code. He said a Code of Ethics for members of the Executive must first be seen as a constitutional obligation.

Section 96 of the Constitution requires that such code should be prescribed by national legislation. Legislation to this effect came in the form of the Executive Members' Ethics Act. The Constitution outlines those ethical matters that should be provided for in such a Code of Ethics, namely, that members of the Executive may not:

- undertake any other paid work;
- act in any way that is inconsistent with their office, or expose themselves to situations involving the risk of a conflict between their official responsibilities and private interests;
- use their position or information entrusted to them to enrich themselves or improperly benefit any other person.

The Executive Members' Ethics Act prescribes that by proclamation in the Gazette, the President must after consultation with Parliament, publish a Code of Ethics prescribing standards and rules aimed at promoting open, democratic and accountable government and with which members of the Executive must comply in performing their official duties. The Act in Clause 2(2)(b) duplicates the ethical matters provided for in the Constitution.

Mr du Toit said the Code of Ethics for members of the Executive is something different from accountability of members to Parliament. He said the code has been circulated to the provinces and an invitation extended to them for comment. The President wishes that by 1 June 2000 the Code of Ethics be made a proclamation, unless the provinces indicate that they want an extension. He stated that all the provinces are aware that a house debate on the Code of Ethics has been scheduled for 17 May 2000.

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Members indicated that they did not need Mr Du Toit to go through the draft code as they are conversant with the contents thereof.

#### **Committee Program**

A program was agreed upon by all the parties.

#### **Questions and Comments:**

Mr P Mathee (NNP - KZN) expressed his unhappiness with the use of the words "after consultation" instead of "in consultation" with Parliament in section 2 of the Act.

The Chairperson pointed out that the Committee was not dealing with the Act at the moment but rather the Code of Ethics. Mr du Toit offered the following clarification; "in consultation" would mean that the recommendations of Parliament should appear in the President's decision, while "after consultation" means that the President would exercise his discretion after having consulted Parliament and seriously taking their recommendations into account. He added that the "after consultation" procedure was in order.

A member wanted to know if there is any sanction for breach of the code by members of the Executive.

Mr du Toit responded that criminal charges will still be there and unethical behaviour may be evidence in such proceedings.

A member wanted to know why the public is excluded in the provision in the code that says that members of the Executive may not wilfully mislead the legislature to which they are accountable.

Mr du Toit said that such a provision would make free political speech, especially in periods of campaigning for elections, not possible. In addition, such a provision would seem superfluous as it would be taking over the monitoring role of Parliament.

The Chairperson indicated that a meeting would still be held on 15 and 16 May 2000 to consider the code. The meeting was adjourned.

#### Appendix:

#### **DRAFT CODE OF ETHICS FOR MEMBERS OF THE CABINET AND MEMBERS OF EXECUTIVE COUNCILS**

##### **Introduction**

The President is required to promulgate a code of ethics by proclamation in the Gazette after consultation with Parliament. Once a draft code has been prepared it should, after consideration by the President in Council, and after affording Premiers and their Executive Councils an opportunity to comment thereon, be remitted to Parliament for its views. The President is not obliged to give effect to Parliament's views but must consider them before finalising the code of ethics.<sup>1</sup> This code is mandated by both the Constitution and statute. The prescriptions set out meet the minimum prescriptions of both regarding appropriate ethical conduct by the Executive. The code has been drafted after scrutiny of some 18 comparative codes or frameworks as well as those governing MP's and public servants.

[<sup>1</sup> See section 2(1) the Executive Members' Ethics Act, Act 82 of 1998]

#### **DRAFT CODE OF ETHICS FOR MEMBERS OF THE CABINET AND MEMBERS OF EXECUTIVE COUNCILS AS SUBMITTED BY THE COMMITTEE OF MINISTERS CONVENED BY MINISTER AK ASMAL**

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## 1. Definitions

In this Code, any word or expression defined in the Act bears that meaning and, unless the context indicates otherwise

**'company or corporate entity'** includes any public or private company, any close corporation and any trust, other than a charitable trust, but does not include a charitable organisation or an association not for gain (section 21 company);

**'family member'**, in relation to a member, means the member's parent, spouse, companion or dependent child;

**'member of the Executive'** means a Cabinet member, a Deputy Minister or a Member of Provincial Executive Committee, and **'member'** and **'Executive'** have corresponding meanings;

**'permanent companion'**, in relation to a member, means a person who is cohabiting with the member and is publicly acknowledged by the member as the member's permanent companion;

**'Secretary'**, in relation to members of the Cabinet, means the Secretary of the Cabinet and, in respect of members of an Executive Council, the Secretary of the Executive Council;

**'the Act'** means the Executive Members' Ethics Act, 1998 (Act No 82 of 1998).

## 2. General standards

2.1 Members of the Executive must, to the satisfaction of the President or the Premier, as the case may be -

- (a) perform their duties and exercise their powers diligently and honestly;
- (b) fulfill all the obligations imposed upon them by the Constitution and law; and
- (c) act in good faith and in the best interest of good governance, and
- (d) act in all respects in a manner that is consistent with the integrity of their office or the government.

2.2 In deciding whether members of the Executive complied with the Provisions of clause 2.1, the President or Premier, as the case may be, must take into account the promotion of an open, democratic and accountable government.

2.3 Members of the Executive may not-

- (a) wilfully mislead the legislature to which they are accountable;
- (b) wilfully mislead the President or Premier, as the case may be;
- (c) act in a way that is inconsistent with their position;
- (d) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person;
- (e) use information received in confidence in the course of their duties otherwise than in connection with the discharge of their duties;
- (f) expose themselves to any situation involving the risk of a conflict between their official responsibilities and their private interests;
- (g) receive remuneration for any work or service other than for the performance of their functions as members of the Executive; or
- (h) make improper use of any allowance or payment properly made to them, or disregard the administrative rules which apply to such allowances or payments.

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(i) use their position, or any information entrusted to them, to enrich themselves or improperly benefit any other person.

### 3. Conflict of Interest

3.1 A member must declare any personal or private financial or business interest that that member may have in a matter -

- (a) that is before the Cabinet or an Executive Council;
- (b) that is before a Cabinet Committee or Executive Council, on which the member serves; or
- (c) in relation to which the member is required to take a decision as a member of the Executive.

3.2 A member must withdraw from the proceedings of any committee of the Cabinet or an Executive Council considering a matter in which the member has any personal or private financial or business interest, unless the President or the Premier, as the case may be, decides that the member's interest is trivial or not relevant.

3.3 If a member is required to adjudicate upon or decide a matter in which the member has a personal or private financial or business interest the member must declare that interest to the President or the Premier, as the case may be, and seek the permission of the President or Premier to adjudicate upon or decide the matter.

3.4 If a member makes representations to another member of the Executive with regard to a matter in which the member has a personal or private financial or business interest, the member must declare that interest to the other member.

3.5 For the purposes of the paragraphs 3.1, 3.2, 3.3 and 3.4 the personal or private financial or business interest of a member includes any financial or business interest which, to the member's knowledge, the member's spouse, permanent companion or family member has.

3.6 Where a member holds any financial or business interest in a company or corporate entity or profit-making enterprise which may give rise to a conflict of interest in the performance of that member's functions as a member of the Executive, the member must, within two months of the

promulgation of this Code, or within two months of assuming office, or within two months of acquiring such interest, as the case may be, or within such longer period as the President or, if the member is a member on an Executive Council, the Premier determines

- (a) dispose of such interest; or
- (b) place the administration of the interest under the control of an independent and professional person or agency.

3.7 When the administration of a member's interest has been placed under the control of a person as contemplated in paragraph 3.6(b), the member may not, during the course of his or her term as member, have any communication with or give any instructions to that person regarding the interest or the administration or control thereof, save for purposes of complying with any legal requirement in respect of such interest, or to give instructions to sell such interest.

3.8 When a member is required to make arrangements to meet the conditions of paragraph 3.6, the professional costs occasioned thereby are recoverable from the state.

### 4. Gifts

4.1 A member may not solicit or accept a gift or benefit which -

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- (a) is in return for any benefit received from the member in the member's official capacity;
- (b) constitutes improper influence on the member, or
- (c) constitutes an attempt to influence the member in performance of the member's duties.

4.2. When a member, in the course of the member's duties, has received or has been offered a gift with a value of more than R1000, the member may request permission from the President or Premier, as the case may be, to retain or accept the gift. If the permission is granted the member may retain or accept the gift, but must disclose particulars thereof in terms of paragraph 6.5 of this Code. Where such permission has not been requested or granted the member must either -

- (a) return the gift or decline the offer; or
- (b) donate the gift to the state.

4.3 For the purposes of paragraph 4.2 'gift' does not include travel facilities or hospitality arising from attendance at meals, functions, meetings, cocktail parties, conventions, conferences or similar events attended by the member as part of the member's executive duties.

#### 5. Disclosure of financial interests

5.1 Every member must disclose to the Secretary particulars of all the financial interests, as set out in paragraph 6, of -

- (a) the member; and
- (b) the member's spouse, permanent companion or dependent children, to the extent that the member is aware of those interests.

5.2 The first disclosure must be made within 60 days after the promulgation of this Code or of a member's assumption of office, or of a member becoming aware of such interest, as the case may be.

5.3 After the first disclosure, members must annually disclose particulars of their financial interests on or before a date determined by the Secretary.

5.4 Cabinet members and Deputy Ministers who are members of the National Assembly and are required to disclose particulars of their financial interests in terms of the Rules of Parliament, comply with paragraph 5.1 -

- (a) by submitting to the Secretary a copy of those particulars on the same date as they are filed with the relevant parliamentary official; and
- (b) in so far as those particulars do not meet the requirements of paragraph 6, of this Code, by filing with the Secretary a statement containing the necessary additional disclosure.

5.5 Where any doubt exists as to whether particular financial interests must be disclosed, the member must consult the Secretary.

5.6 When a member makes a disclosure in terms of paragraph 5.1, the member must confirm in writing to the Secretary that the member receives no remuneration other than as a member of the Executive.

#### 6. Financial interests to be disclosed;

Members must disclose the following interests and details:

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#### 6.1 Shares and other financial interests in companies and other corporate entities:

- (a) The number, nature and nominal value of shares of any type in any public or private company;
- (b) the name of that company; and
- (c) the nature and value of any other financial interests held in any company or any other corporate entity.

#### 6.2 Sponsorships:

- (a) The source and description of direct financial sponsorship or assistance from any source other than the member's party which benefits the member in his or her personal and private capacity; and
- (b) the amount or value of the sponsorship or assistance.

#### 6.3 Gifts and hospitality other than that received from a spouse or permanent companion or family member:

A description, including the value and source of -

- (a) any gift with a value of more than R350;
- (b) gifts received from a single source which cumulatively exceed the value of R350 in any calendar year;
- (c) hospitality intended as a personal gift and with a value of more than R350; and
- (d) hospitality intended as a gift and received from a single source, and which cumulatively exceeds the value of R350 in any calendar year.

#### 6.4 Benefits:

any gift with a value of more than R350; gifts received from a single source which cumulatively exceed the value of R350 in any calendar year; hospitality intended as a personal gift and with a value of more than R350; and hospitality intended as a gift and received from a single source, and which cumulatively exceeds the value of R350 in any calendar year.

- (a) The nature and source of any other benefit of a material nature; and
- (b) the value of that benefit.

#### 6.5 Foreign travel other than personal visits paid for by the member, or official travel paid for by the state, or travel paid for by the member's party:

- (a) A brief description of the journey abroad; and
- (b) particulars of the sponsor.

#### 6.6 Land and immovable property, including land or property outside South Africa

- (a) A description of and the extent of the land or property;
- (b) area in which it is situated; and
- (c) nature and value of interest in the land or property.

#### 6.7 Pensions:

- (a) The source of any pension; and
- (b) the value of the pension.

### 7. Register of financial interests

7.1 Each Secretary must keep a register of all financial interests disclosed by members. The register must have a confidential part and a public part.

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7.2 The following financial interests must be recorded in the confidential part of a register:

- (a) The value of interests in a corporate entity other than a private or public company;
- (b) the details of foreign travel when the nature of a visit requires those details to be confidential;
- (c) the details, including the address, of any private residence;
- (d) the value of any pension;
- (e) details of the financial interests of a member's spouse, permanent companion or dependent child;
- (f) the member's liabilities.

7.3 Only the President or Premier, as the case may be, the Public Protector, the Secretary concerned and staff designated by the Secretary have access to the confidential part of a register.

7.4 No person who has access to the confidential part of a register may disclose particulars of any entry in that part to anyone other than the member concerned or another person who has such access, except when a court or the Public Protector so orders.

7.5 Any person has access to the public part of a register during office hours of the Secretary concerned.

## 8. General

8.1 A member must instruct a member of the staff of the member's office or ministry to assist and monitor compliance with this Code. The information obtained by that staff member may not be disclosed to anyone, except in executing measures envisaged in this Code.

8.2 A member must assist the Public Protector in the performance of the Public Protector's functions under the Act.

8.3 This Code may be amended or replaced, and the amounts specified in the Code adjusted, from time to time by proclamation in the *Government Gazette*.

8.4 This Code is called the Executive Ethics Code, and comes into effect on the date of its promulgation in the *Government Gazette*.

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**REPORT TO THE SPEAKER OF THE  
NATIONAL ASSEMBLY REGARDING THE  
SECURITY UPGRADES AT THE NKANDLA PRIVATE RESIDENCE OF HIS  
EXCELLENCY PRESIDENT JACOB G ZUMA**

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## INTRODUCTION

1. This report to the Speaker of the National Assembly arises out of concerns expressed by government and certain sectors of society concerning the procurement, management and expenditure of the security upgrades at the private presidential residence at Nkandla.
2. The security which attaches to the President is and remains a matter of primary national importance and cannot be denigrated to narrow party-political interests in a proper appraisal of the security upgrades at the Nkandla residence.
3. The need that was established to provide security enhancements at the Nkandla residence is not in dispute. What is the subject of enquiry is the manner and extent in which these security upgrades were effected.
4. I have the benefit of having received and considered:
  - 4.1.1 the report of the Joint Standing Committee on Intelligence, (JSCI);
  - 4.1.2 the report of the Public Protector titled "Secure in Comfort";
  - 4.1.3 the progress report in terms of Section 4(1)(f) of the Special Investigating Units and Special Tribunals Act submitted by the Head of the Special Investigating Unit (SIU).
5. These reports have their origin either in a constitutional or legislative framework, and I consider each to be appropriate to fall under my consideration.
6. I have carefully studied, evaluated and received advice on the reports with a view to determining what the appropriate response should be, mindful as I am of the prescripts of *inter alia*:

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- 6.1.1 the Constitution of the Republic of South Africa, 1996;
  - 6.1.2 the Public Finance Management Act, 1999 and all applicable regulations, practice notes, instructions and policy;
  - 6.1.3 the Minimum Information Security Standards;
  - 6.1.4 the National Key Points Act, 1980;
  - 6.1.5 the Executive Members Ethics Act, 1998 and the applicable code;
  - 6.1.6 the Cabinet approved Ministerial Handbook of February 2007;
  - 6.1.7 the Cabinet approved policy relating to security measures at the Private Residence of the President, Deputy President and former Presidents and Deputy Presidents of February 2003;
  - 6.1.8 the Public Protector Act , 1994; and
  - 6.1.9 the practices and culture of government and various departments, to the extent that these are consistent with the applicable regulatory framework.
7. This report is not a critique of the reports referred to in 4 above. The fact that I restate or offer no comment on:
- 7.1.1 the methodology adopted;
  - 7.1.2 any interpretation of the law or regulatory framework;
  - 7.1.3 the evaluation of evidence;
  - 7.1.4 the analysis, findings and conclusions reached; and/or

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#### 7.1.5 the recommendations and remedial action proposed

is not reflective of the fact that I am accepting of the same.

### BACKGROUND

8. Nkandla is a rural town located some 55 kilometers south-west of Melmoth and approximately 60 kilometers from Eshowe, which are the nearest towns in the province of KwaZulu-Natal. It is isolated from the major economic development corridors and is accessed by road from the town of Eshowe through to Nkandla Reserve, the main road from Melmoth and via a road from Greytown and Kranskop.
9. The topography of Nkandla is characterized by slopes and hills which pose a challenge in providing accessibility and speedy delivery of basic services. Poverty, unemployment and other socio-economic deficiencies, whilst key challenges in many parts of South Africa, have also taken a firm grip on the community in Nkandla.
10. The Nkandla town lacks basic infrastructure. Hospitals, rescue services, police services, accommodation and links to the national transport grid are only accessed through the neighbouring towns over a considerable distance.
11. My family homestead is located some 24 kilometers south of the Nkandla town centre. The land upon 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 KaBhekuZulu. Together with my family, I occupy the land through a certificate issued by the local *inkosi* termed Permission to Occupy.

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12. I turn now to my particular personal circumstances and role in the security upgrades at my family home in Nkandla.
13. During the early 1990's, I returned to South Africa after having spent some time in exile. I resided in Johannesburg where I was deployed by the African National Congress and visited my home in Nkandla from time to time.
14. Unfortunately, this period was characterized by political violence particularly in KwaZulu-Natal, the likes of which is well documented.
15. My home at Nkandla, which at this stage consisted of a few rondavels, was occupied by my immediate family, children of two of my siblings, children of my late brother, as well as my younger brother and his family.
16. In the ensuing violence my home was razed to the ground twice and my family was repeatedly subjected to acts of violence. These occurrences were regrettably common-place in many communities across the country during this politically turbulent time.
17. As the political environment stabilized in the coming years with the advent of our new democracy, I now felt more confident to effect improvements to the family homestead in order that it could cater for our needs more adequately.
18. I, together with my extended family, proceeded to engage a building contractor to effect the improvements to my homestead. Several new rondavels, each self-contained, were constructed.
19. These improvements were financed by a home loan obtained from one of the four largest commercial banking institutions in the Republic upon satisfaction of their collateral requirements. The property is still subject to a mortgage and I continue to meet my financial commitments in terms thereof.

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20. In the ensuing years, and as I began to play a leading role in government, I had to submit to the security protocols which senior government executives are subjected to. Static security was provided from the South African Police Services (SAPS) in Ulundi, while protection services were provided from SAPS Eshowe.
21. This meant that additional rondavels were constructed on my homestead in order to cater for the accommodation of those police officers assigned for my protection, given the lack of infrastructure in Nkandla. In addition, a car port and storerooms were also constructed.
22. In 1999 I was appointed as Deputy President of the Republic. As a consequence of my increased responsibilities in government I received a higher volume of frequent guests at my home in Nkandla. This, coupled with the fact that my family had grown over the years, necessitated that my family and I embark on fairly extensive and modern improvements to the property.
23. To this end we engaged contractors and commissioned the building of three new houses which would be developed in phases over additional neighbouring land which we acquired with the consent of the local chief.
24. The construction of the houses commenced under the direction of Minenhle Architects.
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.

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26. As President of the Republic I have the benefit of residences at Mahlabandlopfu in Pretoria, Genadendal in Cape Town and John Dube House in Durban, all of which I make extensive use of. Equally, I maintain my private residence at Nkandla.
27. Like most South Africans, I am particularly proud of my community and never miss an opportunity to go home to Nkandla – the demands of my work schedule permitting. I sometimes wish it otherwise, but I do not shed my status as President when I am at home in Nkandla. People continually visit me, seek my advice, support and counsel on a whole range of matters.
28. Similarly, matters of government do not grind to a halt during these all too infrequent visits to my homestead and consequently my role as Head of the Executive is likewise not suspended during these visits.
30. In the course of the engagements with the security cluster, I initially met with 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.
31. I thereafter 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 of the residences and that there would be as little disruption as possible to the work already commissioned.
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.

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33. At these briefings I expressed concern with what appeared to be inordinately lengthy delays which impacted on my family. Equally, I found some of the security features like the bullet-proof windows an excessive encroachment on my use and enjoyment of my property.
34. The security upgrades are to be distinguished from the construction of buildings which provide infrastructural support for security personnel.
35. I take exception to the continued conflation of the security upgrades with the construction of buildings for the benefit of security personnel. Whilst neither were at my behest, the latter is directly attributable to the fact of my residence being located in a rural area with all the attendant challenges.
36. Persons drawn from rural communities can and do play a role in the development of our constitutional democracy.
37. I now turn to a consideration of the reports before me.

#### JSCI REPORT

38. Honourable Minister Thulas Nxesi, Minister of Public Works, ordered an investigation into Prestige Project A, the project to effect security upgrades at my private Nkandla residence.
39. A Task team of senior government officials was established in consultation with Honourable Siyabonga Cwele, then Minister of State Security and Honourable Nathi Mthethwa, then Minister of Police.
40. This decision was taken in response to government's concern regarding reports of allegations of financial mismanagement and excessive expenditure in relation to Project A. Project A had cost the government R206 420 644.28 as at December 2012.

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41. The terms of reference were the following:

- 41.1.1 establish the chronology and process of declaring the Nkandla Residence Complex (NRC) as a National Key Point (NKP);
- 41.1.2 ascertain the legal, procedural and regulations that govern the declaration of premises such as the NRC and the NKP;
- 41.1.3 determine the legal and procedural process of declaring the NRC as a NKP;
- 41.1.4 ascertain in detail the recommendations made by the SSA, SAPS, Public Works and other statutory role-players in respect of the upgrading of security measures at the NRC;
- 41.1.5 determine in detail any other recommendations made by statutory entities on the upgrading of the NRC on non-security aspects (i.e. improvements proposed but that were not related to the securing of the complex);
- 41.1.6 establish details of the initial funds allocation and budget to the project and by whom was it approved;
- 41.1.7 ascertain whether delivery and supply chain prescripts were followed;
- 41.1.8 ascertain whether there were any deviations from the above; and
- 41.1.9 determine whether deviations from the above were in accordance with the legal and procedural prescripts.

42. The mandate of the Task Team derived from Section 92 of the Constitution which reads:

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*"Accountability and Responsibilities:- (1) The Deputy President and Ministers are responsible for the power and functions of the executive assigned to the President. (2) Members of the Cabinet are accountable collectively and individually to Parliament for the exercise of their powers and the performance of their functions. (3) Members of the Cabinet must-*  
*(a) act in accordance with the Constitution; and*  
*(b) provide Parliament with full and regular reports concerning matters under their control".*

43. The Task Team had regard to a whole host of applicable legislation and proceeded to interview officials and other witnesses, reviewed relevant supporting departmental documentation and conducted site inspections.

44. The findings contained in the report may be summarized as follows:

- 44.1.1 the Minister of Police declared the private residence of President Jacob Zuma a National Key Point on 8 April 2010;
- 44.1.2 the Security Cluster Departments conducted security assessments of the residence and accordingly made recommendations to review and address security shortcomings surrounding the President's security in line with government policy, in particular Cabinet Memorandum 09 of 2003;
- 44.1.3 in respect of the declaration of the residence as a National Key Point, a special account should have been registered and opened. This was not done.
- 44.1.4 the budget for this particular project was not included in the Medium Term Expenditure Framework(MTEF) for the financial period 2010-2013;
- 44.1.5 the Department of Public Works did not pay any contractor for the construction of the houses of the President;

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- 44.1.6 the total amount paid by the state as at December 2012 amounted to R206 420 044.28;
- 44.1.7 the Supply Chain Management Policy and prescripts were not fully complied with in the procurement of goods and services related to the project; and
- 44.1.8 there were security breaches in the procurement of services for the project.

45. The Report then proceeded to principally recommend the following:

- 45.1.1 that the report be referred to the SIU, the Auditor-General and SAPS with a view to investigate any possible acts of criminality;
- 45.1.2 that Parliament review the National Key Point Act and align it with the 2004 proclamation;
- 45.1.3 that DPW develop a policy relating to the management and control of prestige projects;
- 45.1.4 that immediate disciplinary measures be instituted against any government officials who might be implicated in wrong-doing, including the flouting of policies and procedures;
- 45.1.5 the role of Minister Doidge and Deputy Minister Bogopane-Zulu be further investigated and clarified;
- 45.1.6 that the Ministerial Handbook be reviewed in order to align it with Cabinet decisions on security measures at private residences of the President and Deputy President and former Presidents and Deputy Presidents; and
- 45.1.7 that any breach of law must be reported to the relevant authorities for investigation and prosecution.

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## PUBLIC PROTECTORS REPORT

46. The Public Protector of the Republic of South Africa launched an investigation into allegations of impropriety and unethical conduct relating to the installation and implementation of security and related measures at the private residence of the President of the Republic of South Africa at Nkandla.

47. The investigation was carried out in response to complaints lodged with the office of the Public Protector.

48. In essence the complaints alleged that:

48.1 there was no authority for the expenditure incurred by the state in respect of the security upgrades and in the event that there was such authority, the upgrades were excessive and transcended such authority;

48.2 the procurement process in respect of the security measures were improper and resulted in unduly excessive amounts of public money being spent unnecessarily; and

48.3 the conduct of the President in relation to implementing the impugned upgrades may have been unethical and in violation of the Ethics Code.

49. The Public Protector derives her mandate from:

49.1 Section 181(2) of the Constitution of the Republic of South Africa;

49.2 the Public Protector Act; and

49.3 Section 3 and 4 of the Executive Members Ethics Act.

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50. The Public Protector principally found that:

- 50.1 the implementation of the security measures failed to comply with the parameters set out in the Cabinet Policy of 2003 and the National Key Points Act for the proper exercise of such authority. This constitutes improper conduct and maladministration;
- 50.2 no instrument specifically authorized the construction at the request of the Surgeon-General carried out on behalf of the Department of Defence and SAMHS;
- 50.3 the organs of state failed to follow Supply Chain Management prescripts;
- 50.4 the Department of Public Works(DPW) failed to comply with the provisions of GIAMA, which requires a proper asset management plan in respect of the immovable assets of the state;
- 50.5 a number of measures constructed and installed by the DPW went beyond what was reasonably required for the President's security;
- 50.6 the expenditure incurred by the state went beyond what was reasonably required for the President's security, was unconscionable, excessive and caused a misappropriation of state funds;
- 50.7 President Zuma's brother did not improperly benefit from the measures implemented;
- 50.8 President Zuma's immediate family did not improperly benefit from the measures implemented;
- 50.9 President Zuma improperly benefitted from some of the measures implemented in the name of security;
- 50.10 the Minister of Police failed to properly apply his mind when declaring President Zuma's residence a National Key Point;

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- 50.11 the Minister of DPW and the Minister of Police could have provided better executive leadership;
- 50.12 the conduct of the DPW, SAPS and DOD officials constitutes improper conduct and maladministration;
- 50.13 the conduct of Minister Doidge and Deputy Minister Bogopane-Zulu insofar as their interventions at problem-solving, does not constitute improper conduct or maladministration;
- 50.14 the reallocation of funds from other DPW projects constitutes improper conduct and maladministration;
- 50.15 President Zuma was never familiarized with the provisions of the National Key Point Act, more particularly the declaration that he should contribute to the cost of the security upgrades;
- 50.16 the DPW mismanaged the process initiated with a view to determining the cost to be paid by President Zuma;
- 50.17 President Zuma tacitly accepted the implementation of all measures at his residence, has unduly benefited and should bear a portion of the costs;
- 50.18 President Zuma and his family benefited from the construction of certain measures;
- 50.19 President Zuma did not mislead Parliament or violate the Executive Ethics Code when he addressed Parliament regarding the security upgrades;
- 50.20 Sections 96 and 237 of the Constitution of the Republic of South Africa required President Zuma to take steps to protect state assets.
51. The Public Protector went on, in the main, to propose the following remedial action:

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- 51.1 the President should determine the cost of the measures implemented by DPW which do not relate to security and pay a reasonable percentage of such costs;
- 51.2 the President should reprimand the Minister involved;
- 51.3 the President must report to the National Assembly within 14 days;
- 51.4 the Secretary of Cabinet must take urgent steps to update the Cabinet Policy of 2003;
- 51.5 the Secretary of Cabinet to assist cabinet to set clear standards on security measures and the reasonable cost that can be incurred;
- 51.6 the Secretary of Cabinet to take periodic measures to familiarize Cabinet with the parameters of executive benefits;
- 51.7 the Department of Defence to create Standard Operating Procedures regulating the implementation of benefits extended to Presidents, Deputy Presidents and former Presidents and Deputy Presidents;
- 51.8 the Minister of Police to urgently review the National Key Points Act;
- 51.9 the Minister of Police to ensure that no further security measures are installed at Nkandla;
- 51.10 the National Commissioner of Police to take steps against errant officials and assist the Minister of Police in his understanding of his responsibilities under the National Key Points Act;
- 51.11 the Director-General of DPW to take steps to recover over expenditure;
- 51.12 the Director-General to urgently enter into a lease agreement with the Ingonyama Trust Board in respect of adjacent property occupied by the state.

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**SIU REPORT**

52. In terms of section 2(1)(a) of the SIU Act, the President may by Proclamation require the SIU to investigate matters where among other things the following is alleged: serious maladministration in connection with the affairs of any state institution; improper or unlawful conduct by employees of any state institution; unlawful appropriation or expenditure of public money or property; unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing upon state property; and/or unlawful or improper conduct by any person which has caused or may cause serious harm to the interests of the public or any category thereof.
53. In December 2013 the President issued Proclamation R59 directing the SIU to investigate certain aspects of the security upgrades at his private residence at Nkandla.
54. In essence it requires the SIU to investigate among other issues the following:
- 54.1 the procurement of goods, works or services in a manner that was not fair, equitable, transparent, competitive or cost-effective;
  - 54.2 the procurement of goods, works or services in a manner that was not consistent with the applicable statutory or other regulatory provisions or prescripts;
  - 54.3 the procurement of goods, works or services from contractors, suppliers or service providers in which Departmental personnel or their close family members or friends held a financial or material interest;
  - 54.4 the manipulation of the Department's procurement processes by any unlawful scheme or practice, such as cover quoting, splitting of orders, etc.;
  - 54.5 the evading of competitive bidding processes by renewing, extending or amending existing contracts;

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- 54.6 [the lawfulness and validity] of payments made to contractors, suppliers or service providers;
- 54.7 undeclared or unauthorised interests held by Departmental personnel in contractors, suppliers or service providers who were appointed to provide goods, works or services;
- 54.8 the losses or prejudice suffered by the state due to maladministration of the affairs of the Department relating to such matters as overpayments, duplicate payments, payments made despite inadequate performance, and the like;
- 54.9 improper or unlawful conduct by contractors, suppliers or service providers of the Department or other third parties in relation to the upgrades and alterations.
55. The evidence gathered is still being carefully analysed to consider its full implications for the purposes of seeking positive outcomes in respect of disciplining Departmental officials who have committed misconduct, prosecuting those who have committed criminal offences and approaching the civil courts for appropriate relief, in particular recoveries of money paid.
56. The view has however been formulated that the evidence appears to point to the following:
- 56.1 there was non-compliance by Departmental officials with supply chain management processes with regard to the appointment of at least some of the contractors, suppliers or service providers who were engaged to effect the upgrades and improvements;
- 56.2 there was overcharging by at least some of the consultants. It would appear that although they were entitled to charge 18,5% of the total value of the contract, they charged 25% of the contract value;
- 56.3 some of the contractors, suppliers or service providers appear to have submitted fraudulent Tax Clearance Certificates ("TCC");

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56.4 some of the contractors, suppliers or service providers who were appointed had not been vetted by the State Security Agency ( SSA);

56.5 some of the contractors who were appointed did not have the required CIDB grading to perform the construction work that they were engaged to perform;

56.6 there may have been undue interference by the former Minister and the former Deputy Minister of the Department in the appointment of certain contractors, suppliers or service providers.

57. We are advised that the following steps are in progress:

57.1 finalizing "disciplinary dockets" to be handed to the Department's Director-General in respect of 19 Departmental employees;

57.2 preparing "criminal dockets" to be handed to the National Director for Public Prosecutions in respect of persons whom we suspect are guilty of criminal offences;

57.3 referring to SARS the TCCs which we suspect are fraudulent;

57.4 briefing counsel to settle papers to bring civil claims against certain contractors, suppliers or service providers.

#### APPRAISAL AND ANALYSIS

58. I have been greatly assisted by the reports referred to above and have had an opportunity to reflect thereon.

59. In terms of Section 83 of the Constitution of the Republic

*The President*

*(a) is the Head of State and head of the national executive;*

*(b) must uphold, defend and respect the Constitution as the supreme law of the Republic; and*

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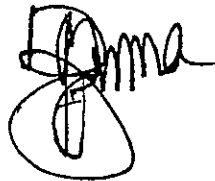
*(c) promotes the unity of the nation and that which will advance the Republic.*

60. Likewise, as head of state, the executive authority of the Republic is vested in the President and the President exercises such executive authority in terms of the Constitution.
61. A proper appraisal of the commissioning of the security upgrades and expenditure at Nkandla must of necessity include an examination of the conduct of the Executive as measured against the Constitution and the prescripts set out in paragraph 6 above.
62. This examination and intervention has not awaited the compilation of this report and as government, measures have already been adopted to ensure compliance with the legislative framework and the review and determination of best practices.
63. What appears apparent is that whilst a legislative framework exists, it was either deficient in certain respects, wholly ignored or miss-applied.
64. I deem the following to be appropriate:
- 63.1 the Minister of Police as the implementing Minister under the National Key Points Act, to expedite the review of this legislation which is currently under way and to report to Cabinet periodically of the progress in this regard;
  - 63.2 the Minister of Police as the designated Minister under the National Key Points Act, to report to Cabinet on a determination to whether the President is liable for any contribution in respect of the security upgrades having regard to the legislation, past practices, culture and findings contained in the respective reports;

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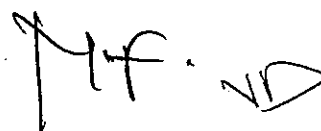
- 63.3 the Minister of DPW to urgently report to Cabinet on the review of protocols and procedures regarding procurement, expenditure and oversight applicable to prestige and related projects;
- 63.4 the Ministers comprising the Security Cluster and the Minister of DPW to report to cabinet on their clearly defined roles and responsibilities when dealing with the security which attaches to the President and Deputy President and former Presidents and Deputy Presidents when implementing Cabinet policy consistent within the applicable legal framework;
- 63.5 Cabinet to conduct a review of the Cabinet Policy of 2003, relating to security of the President, Deputy President and former Presidents and Deputy Presidents with a view to setting parameters for expenditure and implementation.
65. I am satisfied with the progress reported by the SIU and that the interventions both proposed and actualized in terms of our civil and criminal law, as well as departmental procedures, speak to the seriousness of their findings and in accordance with the terms of reference set out in the proclamation.
66. I am equally satisfied that adequate steps have been taken by parliament and the executive in reviewing the ethical codes applicable to members of cabinet and of parliament.

**Mr Jacob G. Zuma**



**President of the Republic of South Africa**

**14 August 2014**



**REPORT BY THE MINISTER OF POLICE TO PARLIAMENT ON  
SECURITY UPGRADES AT THE NKANDLA PRIVATE RESIDENCE OF THE  
PRESIDENT**

**25 March 2015**

**ACKNOWLEDGEMENTS**

I wish to acknowledge and thank:

- The Minister of Public Works for the invaluable contribution that he made by volunteering relevant documents in this regard;
- The Reference Group and its Members, in particular the security experts therein, who provided incisive investigative analysis pertaining to this work;
- We are also appreciative of the contributions of the fire officer of iNkandla Municipality, Mr Ntombela and Chief Fire Officer of uMhlathuze Municipality, Mr. Vumba; cultural expert, Professor Ntshangase; the advising architect, Mr. Mhlaba; the PIDS technician, Mr. Mlawulo; as well as the advising engineer, Mr. Cyril Gamede;
- The President of the Republic of South Africa for his cooperation and for providing access to his homestead; and
- The Acting Secretary of Police for providing technical, administrative and logistical support to this work.

**ABBREVIATIONS**

- DPW - Department of Public Works
- DOD - Department of Defence
- MDB - Motion Detection Beams
- PID - Perimeter Intrusion Detection
- SANDF - South African National Defence Force
- SAPS - South African Police Service
- SCM - Supply Chain Management
- SIU - Special Investigations Unit

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SSA - State Security Agency

## PREFACE

The security upgrades in the Presidential Homestead in Nkandla has dominated public discourse since November 2011 when the matter first appeared in the Mail and Guardian. It gained momentum after formal complaints were lodged with the Public Protector, first in December 2011 and then in late 2012 after a further newspaper article appeared in the City Press.

The origins and positioning of this discourse are important, as they reflect the mind-sets and cultural orientation that inform the interpretation of the nature and the validity of the upgrades that were effected at the Presidential Homestead in Nkandla.

Taking into account, the magnitude and intensity of scrutiny that the security upgrades at the Nkandla Private Residence of the President have been subjected to, the scope of this report is confined to the mandate given to the Minister of Police by Parliament through the 'Ad Hoc Committee to consider the Report by the President regarding the security upgrades at the Nkandla private residence of the President'.

## 1. INTRODUCTION

1.1 The President, His Excellency Mr Jacob Zuma, in his report to the National Assembly regarding the security upgrades on 14 August 2014 stated that, *"I deem the following to be appropriate: The Minister of Police as the implementing Minister under the National Key Point Act, to expedite the review of this legislation which is currently under way and to report to Cabinet periodically of the progress in this regard; and the Minister of Police as the designated Minister under the National Key Points Act, to report to Cabinet on a determination to whether the President is liable for any contribution in respect of the security upgrades having regard to the legislation, past practices, culture and findings contained in the respective reports"*.

1.2 The report also responds to recommendation 5.9 arising from the 'Ad Hoc Committee to consider the Report by the President regarding the security upgrades at the Nkandla private residence of the President' adopted by the National Assembly on 11 November 2014 relating to *"what constitutes security and non-security upgrades"*, as expressed in correspondence from the Speaker of the National Assembly to the Minister of Police, dated 29 December 2014.

1.4 A brief report was submitted to the Speaker of the National Assembly in February 2015 in response to the recommendations as expressed below:

1.4.1 Establishing a technical team of qualified security experts to undertake an evaluation of the existing security features at Nkandla, its effectiveness, and its appropriateness in relation to the Special Investigation Unit (Sill) report; *to which the Minister of Police indicated that, a report will be presented before Parliament by the end of March 2015.*

1.4.2 Assessing the policy and regulatory gaps relating to securing the private residences of political office bearers; *in this regard the Minister of Police stated that the Civilian Secretariat*

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for Police has undertaken a comprehensive review of all policies, legislation (including the National Key Points Act, Act 102 of 1980), regulations, and court judgments pertaining to the national key points. The outcomes of this review highlighted the need for a National Critical Infrastructure Protection Policy. The Policy is currently before Cabinet and will be introduced to Parliament after the Cabinet process has been completed.

1.4.3 A comprehensive review of the National Key Points Act, Act 102 of 1980; in response the Minister of Police stated that the process of reviewing the Act commenced in 2008. Given that conditions had changed significantly since 1980, and a number of policy gaps were detected, it was decided that a National Critical Infrastructure Protection Bill be developed in line with the National Critical Infrastructure Protection Policy, which will seek to repeal the National Key Points Act. The National Critical Infrastructure Protection Bill, which is currently within the Cabinet process, will be published in the Government Gazette, alongside the release of the National Critical Infrastructure Protection Policy, for public comment.

1.5 This report that is tabled before Parliament today is focused on the alleged non security features. The Public Protector had examined all complaints related to the security upgrades of the President's private residence in Nkandla, and has confirmed that no public funds were used to upgrade the private residence of the President, with the exception of specific features which were listed as questionable, namely the swimming pool, new kraal, visitors' centre and the amphitheatre. This report presents a careful analysis of each of the features and its purposes, as well as the context that informed its construction. I believe that my recommendation in respect of a determination, as assigned by Parliament, will assist in amicably concluding this matter.

## 2. PURPOSE

2.1 The purpose of this report is to inform Parliament of the outcomes of the assessment of the security features in Nkandla, the private residence of the President, with specific reference to features that the Public Protector's Report refers to as 'non-security'. (Public Protector's Report 2014, page 431 par I 0.5.1. & page 432; par 10.5.4.).

2.2 This report further determines whether the President is liable for any contribution in respect of the security upgrades.

2.3 In responding to the finding of the Public Protector in relation to non-security features, this report further honours the determination by the 'Ad Hoc Committee to consider the Report by the President regarding the security upgrades at the Nkandla private residence of the President' that, " ...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 practitioners consistently with the Cabinet Memorandum of 2003 ". (Parliament of RSA: Announcements, Tabling's and Committee Reports; 11 November 2014; page 2978, par 4.25. Adhoc Parliamentary Committee: Nkandla security upgrades).

## 3. BACKGROUND

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3.1 The President in his report to Parliament on 14 August 2014 directed the Minister of Police to, among others, make a determination regarding his financial liability in relation to the findings of the Public Protector. The request was followed up by further correspondence from the Speaker of the National Assembly on the 29th December 2014 pertaining to security upgrades at the Nkandla private residence of the President, requesting that the Minister attends to the recommendations of the Parliamentary Ad Hoc Committee.

3.2 There have been various investigative reports undertaken regarding this matter, all of which were considered when developing this report. These include:

- Investigation Report Prestige Project 'A': Security Measures President's Private Residence; Nkandla. The Department of Public Works (Task Team). 28 January 2013
- The Inter-Ministerial Security Cluster Task Team Report. 19 December 2013
- Secure in Comfort. The Public Protector. 19 March 2014
- Report to the Speaker of the National Assembly regarding the Security Upgrade at the Nkandla Private Residence of his Excellency, President Jacob Zuma. The Presidency. 14 August 2014
- The Special Investigation Unit Final Report to the President of the Republic of South Africa, his Excellency, President Jacob Zuma. Special Investigating Unit (SIU). 20 August 2014
- 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. National Parliament. 11 November 2014

3.3 It should be noted that a number of investigations and subsequent reports have been generated around the security upgrades at the Nkandla Private Residence of the President, amongst which are listed above.

It should further be noted that going through these reports by different investigative arms of government there are a number of points of convergence that emerge. Here under is the summation of points of convergence:

**Table 1**

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| Public Protector   | Task Team                                   | SIU                                   |
|--|---|---------------------------------------|
| In 2003 Cabinet Policy is applicable   | Same Findings                               | Same Findings                         |
| The area was declared a National Key Point   | Same Findings                               | National Key Point Act not applicable |
| Violation of the National Key Point  | Same Findings                               | Not dealt with                        |
| Violation of Supply Chain Policy, Treasury Regulations and the Constitution                                | Same Findings                               | Same Findings                         |
| Project improperly managed   | Same Findings                               | Same Findings                         |
| Project not properly budgeted  | Same Findings                               | Same Findings                         |
| Non-compliance with Government Immovable Assets Management Act (GIAMA)                                     | Same Findings                               | Not dealt with                        |
| Excessive amounts spent / costs allowed to escalate  | Same Findings                               | Same Findings                         |
| Public Works' officials found to have violated policy and prescripts                                       | Same Findings                               | Same Findings                         |
| No public funds was used to build the President's house (s)  | Same Findings                               | Not dealt with                        |
| Failure to ensure security clearance for service providers   | Same Findings                               | Not dealt with                        |
| Failure to comply with Treasury Regulations 16A  | Same Findings                               | Same Findings                         |
| Funds transferred from other projects like Inner City Regeneration and Dolomite                            | Same Findings                               | Same Findings                         |
| <b>Recommendations</b>   |   |                                       |
| Recommended that the National Key Point Act be reviewed  | Same Recommendations (Implemented).         | Not dealt with                        |
| Recommended that Department of Public Works take steps against any officials that have violated procedures | Same Recommendations (Already implemented). | Not dealt with                        |
| Review of delegation (SCM) to Regional Office  | Same Recommendations (Already implemented). | Not dealt with                        |
| Department of Public Works to apportion costs to Departments (SAPS and DOD)                                | Same Recommendations (Already implemented). | Not dealt with                        |
| Recommended that the development of policy on Prestige Projects  | Same Recommendations (Already implemented). | Not dealt with                        |
| Lease agreement be entered into between Department of Public Works and Ingonyama Trust                     | Same Recommendations (Already implemented). | Not dealt with                        |

Source: Parliamentary Ad Hoc Committee Report, 2014

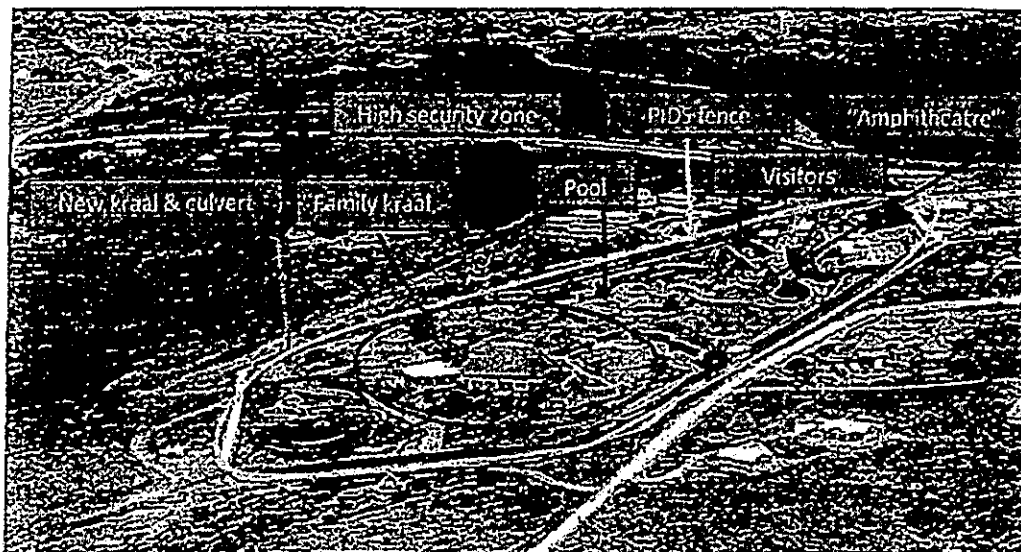
3.4 Clearly the above table indicates that there is no dispute amongst the Public Protector, the DPW Task Team, the SIU, and the Parliamentary Ad hoc Committee Reports that the security upgrades undertaken in the private residence of the State President were necessary. All parties accept that DPW and the security entities were within their mandates, as well as the Constitutional obligation to do so.

3.5 Of specific relevance is the finding by the Public Protector in her report on Nkandla security upgrades that among others, "*President .J.G. Zuma improperly benefited from the measures implemented in the name of security which include non-security comforts such as the Visitors' center, Swimming pool, Amphitheatre, Cattle Kraal with culvert and Chicken run.*" (Public Protector's Report, 2014 page 431; par 10.5.3.)

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3.6 The picture below depicts the layout of the entire private residence of the President in Nkandla from an aerial point of view. This aerial view shows the high security zone in red, the outer perimeter fence in yellow, and the blue points to the actual location of the features in dispute.

Figure 1: The aerial picture of the Nkandla Homestead



*The black steel fence around the homestead is the outer Perimeter PIDS fence. Below the inner lower road are the new kraals with culvert and chicken run. All houses below the swimming pool and lower road are located in the high security zone. The high security zone would be protected by Motion Detection Beams*

3.7 It is apparent from various reports that the Nkandla 'prestige project' cost the state in the region of R2 16 Million according to Special Investigation Unit. (SIU report page I par I dated 24 August 2014).

3.8 The Department of Public Works documents show that the above amount as at December 2012 was confirmed to be at R206 420 644.28 (SIU 2014:31 para 111). According to the Chief Financial Officer (CFO) of Public Works memorandum dated November 2012, this amount was divided into two. The first portion is the cost of the security features which amounted to R71 212 621.77 including consultancy and/or professional fees. The remainder of R 135 208 022.51 was the cost of departmental operational needs, such as the clinic, SAPS and SANDF staff quarters and needs, and consultancy fees amongst others.

3.9 Consultancy and/or professional fees amounted to R20 688 736.89. Therefore the total for security features excluding the consultancy and/or professional fees is RSO 523 884.88 (page 31, par 112 and 114 of the Department of Public Works Investigation Report, 2014). It appears from the Public Works document that an amount of R1 0 million was expected to be paid by the President for what was referred to as private expenses. This amount of R1 0 million was further reduced to an amount of R3 million and no reasonable and clear explanation was given for how this amount was determined and what led to the reduction.

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207 of the same SIU report under the heading 'Civil Claims', under claim B par 6, that "after his appointment, Makhanya proceeded to authorize and oversee the installation of improvements and the installation of security measures at Nkandla in excess of the security assessments and requirements that had been determined by SAPS and at a cost far more than that was approved and budgeted for by DPW". It further mentions that the consultants; who provided civil and structural advice, were paid a total of R6 6. However, this was R255 681.51 more than they should have been paid, according to the report, 2014 page 211, para 30.

The SIU report acknowledges that "On 28 May 2009 the SAPS visited Nkandla to conduct an assessment after Mr. Zuma had become President. The SAPS then prepared a further report. The report does not mention costs. This is unsurprising as the upgrades were implemented by the DPW, which would also bear the costs of the upgrades, save for those for the accommodation requirements of the SAPS personnel .... ". This assessment report was handed over to the DPW's acting DG on 9 June 2009 (SIU report dated 20 August 2014, para 21).

The Project was conducted as a high security project. The SIU report page 28 para 21 states that the minutes of meetings held relevant to this project could not be located and the SIU determined that the meetings were classified as 'Special Meetings' and there were no minutes. These meetings, convened by DPW, were attended by private contractors and/or government officials from the following government departments, namely SAPS, DoD and

adjustments were allegedly presented in subsequent meetings where they would have been discussed by various stakeholders present. The one version is that in those meetings further adjustments to the design were received from Departments or security agencies. The other version is that the SAPS, represented by Brig Adendorff, is that "DPW held weekly site meetings where design changes were discussed and/or made ....by the private professionals" (SIU report para 71 par 79).

The findings as contained in the Department of Public Works Investigation Report, 2014, page 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

Department of (Security),

Consultants (Civil/Structural Engineers),

Consulting (Quantity Surveyor),

Makhanya Architects (Principal Agent/Architectural Design),

and Cachalia CC (Mechanical Engineer),

(Electrical) and

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3.10 Page 207 of the same SIU report under the heading '*Civil Claims*', under claim B par 6, states that *"after his appointment, Makhanya proceeded to authorize and oversee the implementation of improvements and the installation of security measures at Nkandla in excess of and beyond the security assessments and requirements that had been determined by SAPS and SANDF, and at a cost far more than that was approved and budgeted for by DPW"*. It further states that Ibhongo consultants, who provided civil and structural advice, were paid a total of R6 006 497.36. However, this was R255 681.51 more than they should have been paid, according to SIU Report, 2014 page 211, para 30.

3.11 The SIU report acknowledges that *"On 28 May 2009 the SAPS visited Nkandla to conduct their first assessment after Mr. Zuma had become President. The SAPS then prepared a farther assessment report. The report does not mention costs. This is unsurprising as the upgrades were to be implemented by the DPW, which would also bear the costs of the upgrades, save for those specific to the accommodation requirements of the SAPS personnel ...."* This assessment report was handed over to the DPW's acting DG on 9 June 2009 (SIU report dated 20 August 2014, page 70; par21).

3.12 The Prestige Project was conducted as a high security project. The SIU report page 28 par 61 suggests that the minutes of meetings held relevant to this project could not be located and the SIU was informed that the meetings were classified as '*Special Meetings*' and there were no recordings. These meetings, convened by DPW, were attended by private contractors and/or consultants and officials from the following government departments, namely SAPS, DoD and SSA.

3.13 The adjustments were allegedly presented in subsequent meetings where they would have been approved by various stakeholders present. The one version is that in those meetings further requests for adjusting the scope were received from Departments or security agencies. The other version from the SAPS, represented by Brig Adendorff, is that *"DPW held weekly site meetings during which designs changes were discussed and/or made ....by the private professionals"* (SIU report page I 71 par 79).

3.14 The facts as contained in the Department of Public Works Investigation Report, 2014, page 34; par 123 thereof, state that the following contractors did not go through security clearance process as was a prerequisite, namely;

- CA Du Toit (Security),
- Ibhongo Consultants (Civil/Structural Engineers),
- Ilangaletu Consulting (Quantity Surveyor),
- Minenhle Makhanya Architects (Principal Agent/Architectural Design),
- Mustapha and Cachalia CC (Mechanical Engineer),
- IGODA (Electrical) and

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- E Magubane Information Systems (Electronic Detection System).

These contractors were limited in terms of understanding explicitly the end users intention and purpose and were therefore not equipped to make a determination on what constituted private and public costs.

3.15 This argument is supported by Mr. Makhanya, of Minenhle Makhanya Architects, who conceded that he and his team of experts comprised of architects and engineers were not vetted and did not have security clearance, though they were cautioned about the sensitivities of the project. Accordingly, they were not allowed to keep any documents related to the project.

3.16 Mr. Makhanya, who is among the persons who was approached to do cost determination, stated that he as an architect is not trained to determine how the President benefits from the government sponsored security measures and he believes his engineering team is also not competent in that field, however they tried to deliver what the client, the Department of Public Works, wanted from them. There was no measuring instrument and /or legal bases used to make this determination according to Mr. Makhanya.

3.17 Furthermore, the lack of security clearance also meant that the end-user design and use of certain facilities or areas could not be divulged to the Makhanya team, and hence their architectural plans named facilities differently to those of the security objectives. Basically, they had to design and build certain structures and technicians from the South African Police Service (SAPS) or the State Security Agency (SSA) and the South African National Defence Force (SANDF) would thereafter come to install their equipment and reconfigure where necessary. This made project management and project coordination difficult and introduced its own set of complications.

3.18 Cost determination could not have been informed by the National Key Points Act, Act No. 102 of 1980 as it is not applicable in this particular instance. What is applicable is the Cabinet memorandum dated 20 August 2003, which caters for the security interests of the President, Deputy President and Former Presidents & Deputies. It should be further noted that in line with international best practice, the Cabinet Memorandum does not place a cap on the costs to be spent on the protection of the above VIPs.

3.19 Furthermore, the Ministerial hand book is also not applicable in this case as it only provides guidelines for benefits and privileges to which Members of the Executive and their families are entitled to in the execution of their duties. By its very nature and character, the Ministerial Handbook excludes the President, Deputy President and Former Presidents & Deputies.

3.20 The Department of Public Works Investigation Report, 2014, page 29 par 104, states that *"...it is evident from the terms of the Cabinet decision and policy approved that the main consideration was the safety of the President. It is further clear that the decision does not place any limit on the amount to be spent on the security upgrades to the residences of sitting Presidents and Deputy Presidents as well as their predecessors ..."*

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3.21 Chapter Five of the SIU Report makes reference to various features built in Nkandla that are said to have been inflated in cost price and extended in scope, without explicit and necessary approval of the Departments concerned. In particular page 140, SIU report; par 45 states that *"in addition, Makhanya designed and authorised the construction of the 175kl fire pool . ...the total amount paid for the fire pool and VIP parking's was R 3 964 239"* is noted and the fire pool shall be dealt with in context here-under.

3.22 Of relevance to the above point is Page 7 of the Department of Public Works Investigation Report, par. 23 & 24, which states that *"...on 21 May 2009, the professionals of DPW visited the President's residence and prepared a scope or proposal on security upgrades to be effected at the residence. According to the initial scope by Public Works, the estimated cost was approximately R27 million ... it should be noted that the initial scope and proposal has no input from the South African Police, Department of Defense or National Intelligence Agency ... "*

3.23 The Department of Public Works proposals on security upgrades with the heading *"Durban Project A: site visit"* dated 21 May 2009, Annexure B referred to above and observed that the unnumbered 3rd page of this report, under the topic *"Architectural"*, contains a list of proposed upgrades. One of the upgrades that appear under letter 'F' is a *"Proposed swimming pool to be used as a reserve for firefighting"*. The letter 'F' depicts a swimming pool drawing, in an adjacent aerial design of the private residence.

3.24 The intention to build a fire pool for firefighting and the conceptualisation of extending its use by the surrounding communities as a swimming facility is captured in the SIU report based on their interview with the then Deputy Minister of Public Works, who stated that; *"she had been involved in the provision of the firepool, she said the possibility of building a firepool and possible building of swimming pool for use by surrounding communities had been discussed and cost estimates were to be prepared ... she did not discuss the fire pool with the President ... "*.SIU report page] 77 par 98.

3.25 Page 132 par 12 of the SIU report speaks to a table (spreadsheet) to the extent that it *"identifies the security requirements as listed in the security assessments and compares them to what was actually constructed"*. In that particular table, there is a column that deals with the firepool and/or swimming pool. It states that *"...the firepool was not required or requested by the SAPS and SANDF but later the SAPS and the SANDF included a firepool as an alternative for firefighting ... "*. In the original Security Evaluation Report by the SAPS, the issue of firefighting capability was raised on Page 4 thereof. The open water source, in other words, a firepool, has therefore been a requirement at various stages from design, to development and construction, by different role players.

3.26 The overriding intent of the upgrades is the safety and security of the President and Head of State. It is clear that the SAPS had in all its actions, always been focused on safety and security needs.

3.27 This report seeks to unpack the security needs as they appear in various reports and focuses on the questioned features; that is whether the kraal with culvert, chicken run, swimming pool, 'Amphitheatre' and the visitors' center as identified by the Public Protector are security features.

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3.28 That is whether they enhance, complement or form part and parcel of protective security measures. It must be noted that, it does not deal with the project costs, cost inflations, deviations from applicable policies, and non-conformity to regulations or procedures with regard to the Nkandla project. There are other State institutions that are dealing with those matters.

3.29 As a result of this investigation, the positioning and security-related purpose of some of these features have been exposed to the general public as well as to hostile forces that may pose a threat to state security. This is an unprecedented exposure of a President's security detail and it will need security practitioners to analyse the extent to which this report contributes to continued manifest threats around the President and how such threats should be mitigated.

#### 4 METHODOLOGY

4.1 In compiling this report, information, analysis and contextualisation were solicited from protective security practitioners within SAPS and SSA. The methodology applied was based on the framework of qualitative research, which includes a review of literature and interviews. Desktop research was also conducted.

4.2 Various reports and legal instruments that were consulted in compiling this report include;

- The Constitution of the Republic of South Africa, 1996
- The South African Police Service Act, 1995 and Regulations
- National Strategic Intelligence Act, 2002
- Minimum Information Security Standard (MISS), 1996
- Minimum Physical Security Standards (MPSS), 2008
- Public Protector's Report, 2014
- DPW. Prestige project A, 2011
- Security measures, SAPS Security Evaluation Report ref S2/26/2/6(02)(2/99) over 2001
- Ibhongo consulting cc. Civil Engineering Services Report, 2012
- Briefing notes Nkandla P S Masilo special advisor to Min T Nxesi, 2014
- SIU Report, 2014 and
- The 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, 11 November 2014.

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4.3 Furthermore, interviews were conducted with key technical persons with expertise in different fields, including chief fire officers, engineers, architects and a cultural expert. Reports emanating from those interviews are hereto attached.

4.4 This report is clinically limited in that it pronounces itself on the security features in question, which excludes the following:

- whether prices were inflated,
- whether Supply Chain Management (SCM) Policy and National Treasury Regulations were violated,
- who violated the above,
- any person to be criminally prosecuted, and whether
- there was any political interference?

4.5 This report was compiled taking due consideration that the SAPS Security Evaluation Report was informed by the National Intelligence Act, Act 39 of 1994, as it pertains to counter intelligence. Which defines *Counter Intelligence (CI)* as "*Measures and activities conducted, instituted or taken to impede and to neutralise the effectiveness of foreign or hostile intelligence operations to protect classified intelligence and to counter subversion, sabotage and terrorism aimed at or against personnel, strategic installations or resources of the Republic.*"

4.6 The analysis of reports and structures of the interviews were aimed at extracting information pertaining to critical questions, as per focal areas articulated by Parliament's report. Hereunder, are the matters of discussion;

## 5 THE CRITICAL QUESTIONS

5.1 The features that required determination on whether or not these are security features or part thereof were:

- The fire pool and/or swimming pool,
- The kraal or animal enclosure (cattle and goats) with culvert and chicken run,
- The visitors centre, and
- the amphitheatre and/or soil retention wall.

All these features were designed, approved and built at the private residence of the President in Nkandla; even though some of them do not appear clearly on the security evaluation report or reports of one state department or the other.

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5.2 There were various equipment and security complementary features that are not clearly or specifically mentioned in the security appraisal reports like, the nature of fire-fighting equipment that must be on site, details of which, were left entirely to the fire experts.

5.3 Some of the security complementary features are considered and duly authorised by practitioners as they continue to monitor building progress, more specifically technological equipment. This report does not deal with the procurement and authorisation procedures thereof.

5.4 It is noted that there are features or equipment recommended for the private residence of the President by security practitioners, which are not yet installed. Most of the installations have been halted due to on-going investigations. One such example is the motion detection beams constituting the inner perimeter of the high security zone and the control room. The Pan, Tilt and Zoom (PTZ) camera monitors with recording capabilities are also not yet installed, however, such equipment is recommended in the SAPS security appraisal report page 5 of 8.

5.5 This report portrays a picture of how the security systems would work once completed, while acknowledging that many if not all security features and equipment are not complete for reasons stated above. In some instances where security equipment is not yet installed, the SAPS have to compensate by deploying more members.

## 6 THE FEATURES IN QUESTION

6.1 This Report complements the assertion that appears on page 5 par 15 of a DPW (2014) internal briefing that states that, "*...It is only through the Risk Assessment that one can determine whether any security structure was reasonable necessary or not. It is impossible for anyone who is not a security expert to come to the conclusion that a particular security structure was unnecessary ...*". Our first discussion focuses on the construction of the Fire Pool and/or Swimming Pool.

### 6.2 The Fire Pool and /or Swimming Pool

6.2.1 The SAPS Security Evaluation Report (Page 4 of 8: Par 9) deals with firefighting equipment and states that, "*.. firefighting equipment must be made available at the premises to be used when a need arise. All the huts within the homestead consist of thatch roof and they are close to each other, it may be difficult to control fire when it occurs. If there is no relevant equipment the system must be able to detect fire when it starts by sending a sig-aal to the main security control room. The firefighting equipment must be maintained and approved in accordance with National fire Regulations.* "

The above statement makes two critical points clear, firstly is that fire equipment is essential, given the architecture of the homestead and secondly that firefighting capability must be on site.

6.2.2 In developing this report a number of officers with expertise on firefighting capability were engaged, including Mr Vumba, the Manager Fire and Rescue Services of UMhlathuze Local Municipality, who after having tested the water pressure from the water mains supply stated that,

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*"An open water source is the best for firefighting and nothing could be better than the pool or a dam. "*

6.2.3 The SAPS Security Evaluation Report page 7; par 15 deals with water supply and recognises the shortage of such. It states that *"anew borehole must be made available at the premises as sufficient water supply is of utmost important"*.

6.2.4 The pictures below illustrate how the fire pool and/or swimming pool is operated during fire fighting.

Figure 2: Fire pool/ swimming pool use for fire fighting



6.2.5 In terms of the 'Durban Prestige Project A: Motivations and cost allocation summary' dated 25 January 2011, the fire pool *"... is a ground water storage facility intended/or dual purpose first to be used for fire fighting in the case of emergency. The second use is recreational within the homestead, Note: open surface water compared with reservoir storage is easily accessed in case of emergency ... "*

6.2.6 To provide onsite complementary firefighting equipment the suction pump with 1500L a minute capacity and monitors with 16 centimeter diameter hose, 50 meters long is permanently attached to the pool, for any fire emergency. This capacity is useful to extinguish fire while the fire truck is on the way. It can also refill the fire truck during firefighting operation.

6.2.7 The report by the civil engineering consultant Ibhongo Consulting CC. dated 17 April 2012 in the DPW prestige project "A" by H.M. Oberholzer Pr Tech Eng; Pr CPM was considered in this regard and it states that; *"Water supply will be from the existing 40mm connection via a 90mm diameter u PVC pipe class 16 pipe. Storage will be for 48 hours supply in a 250 kl prefabricated steel "Galaxy" reservoir. The swimming pool will provide a farther 138 kl storage for fire protection back up."*

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6.2.8 The SIU Report acknowledges that the 175 kl storage pool was designed for fire fighting back up. The SIU report states that *"In addition, Makhanya designed and authorised the construction of 175kl fire pool"* (SIU report page 140 par 45).

6.2.9 The Ibhongo report further states under the topic 'Fire water' that *"Provision is made for storage capacity of 388kl made up as follows; 250kl "Galaxy" reservoir plus the swimming pool volume of 138kl. Assuming that the supply is sufficient then the 60 mm diameter supply will fill the storage in 4.5 hrs. A booster connection is provided at the pool. "* And further that *"Provision is made for 1 hydrant and 2 hose reels to be used at the same time"*.

6.2.10 A firefighting capability test was undertaken, using open water source, namely the swimming pool, on one hand and also using the fire hydrants that is linked to the water reservoir supplying household, on the other hand. The local Nkandla and UMhlathuze fire and rescue services were requested to deploy their equipments i.e. suction pump with double outlet, monitors with water compression and stand. The suction pump could also be used to refill the fire truck getting water from the swimming pool.

6.2.11 On 05 February 2015 an exercise was undertaken to establish the time it takes for the local Nkandla fire and rescue services team to react to an emergency at the President's private residents. The reaction vehicle arrived at least 1 hour 10 minutes later and they were not well equipped to deal with any fire threat *video shall demonstrate this*.

6.2.12 During the demonstration the Chief fire officer of UMhlathuze established that the suction pump could draw sufficient water from the pool at the required speed whereas the fire hydrant lack of necessary water pressure was evident. The water suction engine cavitated, while drawing water from the hydrant due to insufficient water pressure.

6.2.13 The President's homestead has a number of thatched roof houses and the previous arson incidents warranted the establishment of a comprehensive, as well as reliable firefighting capability.

- The comprehensive fire prevention plan is to be complemented by firefighting plans

- Regular fire drills are also performed due to the size of the homestead and number of family members residing in the homestead. The fire drills include identification of assembly points, use of emergency escape routes, and handling of portable fire extinguishers, fire hose etc.

6.2.14 The fire expert concluded, as per the attached Annexure, that the best water source that is available on site at Nkandla is the pool to replenish the fire engine. The pool is equally to be used when the fire breaks out, by deploying the suction pump, linking it with monitors through fire hoses, in order to extinguish fire while the fire truck is on its way. This process is illustrated in the picture below.

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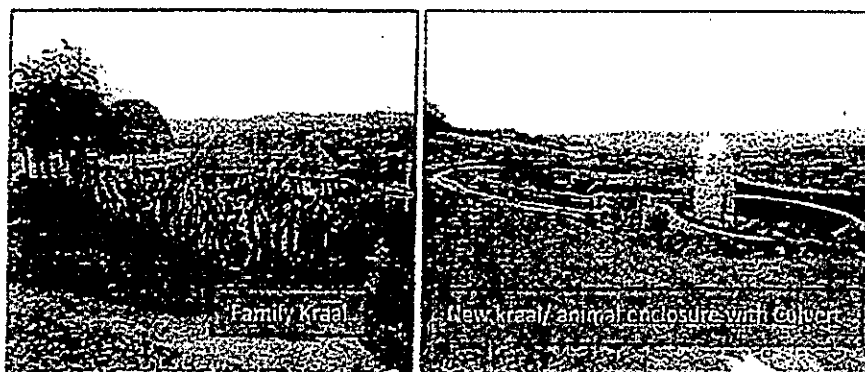
Figure 3: Firefighting demonstration



6.2.15 The two fire hydrants at the private residence of the President in Nkandla and eight reel fire hoses that are installed there have either very low pressure or no water at all. It should be noted that the water supply to Nkandla by uThungulu District Municipality is erratic, has low pressure and at times runs out.(Video firefighting)

6.3 The family kraal and the new kraal and/or animal enclosure with culvert

Figure 4: Family kraal and animal enclosure



6.3.1 The construction of a kraal and/or animal enclosure was regarded as a non-security feature by the Public Protector. The construction of the kraal and/or animal enclosure and the relocation of the animals is amongst others, discussed in the context of access control and Perimeter Intrusion Detection (PID) Fence Technology Management.

The SAPS Security Evaluation Report states that entrances to the homestead should be controlled and that security equipment and infrastructure should be installed in those entrances.

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Operational effectiveness of such security equipment and infrastructure necessitated none interference.

### 6.3.2 Family kraal

According to scholars, Zulu dictionary (Dent-Nyembezi 2009:353) a cattle kraal is defined as iSibaya. The term kraal is defined by the Pocket Oxford English Dictionary (Fowler, 2002:503); as 1. A traditional African village of huts and;

2. An enclosure for sheep and cattle.

There is a problem with Fowler's definition in terms of a kraal being a traditional African village of huts, but he is correct with the second definition, that is an enclosure for sheep and cattle. In line with the Zulu definition, a kraal is used for the following purposes, as:

- A storage space
- A sacred place
- A burial site
- A meat-eating place
- Incisions

Figure 5: Existing family kraal



6.3.2.1 The President's residence has a kraal that the family built, which is at the centre of the homestead. The kraal has significant spiritual and cultural value that extends beyond the storage of animals. Essentially a kraal in its traditional sense is a spiritual and sacred place of a homestead as stated in the paragraph above. (Kraal interview)

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6.3.2.2 The SAPS Security Evaluation Report on page 1 of 11 discusses perimeter protection and entrance gates with regard to perimeter protection. The security appraisal states that amongst others; there should be a brick and mortar wall erected and fitted with a six strand electric fence. The electric fence must be divided into zones and be interfaced with the proposed intruder alarm system as well as the CCTV camera system with analytics. The fence must have passive infra-red motion detectors placed strategically along the fence in sensitive areas (SAPS Evaluation Report, page 4 para 10).

#### **Figure 6: Perimeter Intruder Detecting System**

6.3.2.3 Since the family kraal was/ or is located in the high security zone, the continuous use of the family kraal would interfere with the security motion detectors. It was recommended that the animals be relocated to the periphery of the homestead and outside the inner high security zone and within the outer perimeter security fence.

6.3.2.4 Whilst the President's family conceded to the animals being moved to a new enclosure that was constructed for security reasons, the complete removal of the family kraal was not conceded to, as the family still uses it for cultural and traditional ceremonies and the new construction is not a kraal, rather an animal enclosure, which puts cattle, goats and chicken together. If all of the above is taken into account, it is clear that the President's family, in agreeing to shift the animals to the new enclosure, made a compromise in the interest of security. (Video Z on kraal importance and compromise 1)

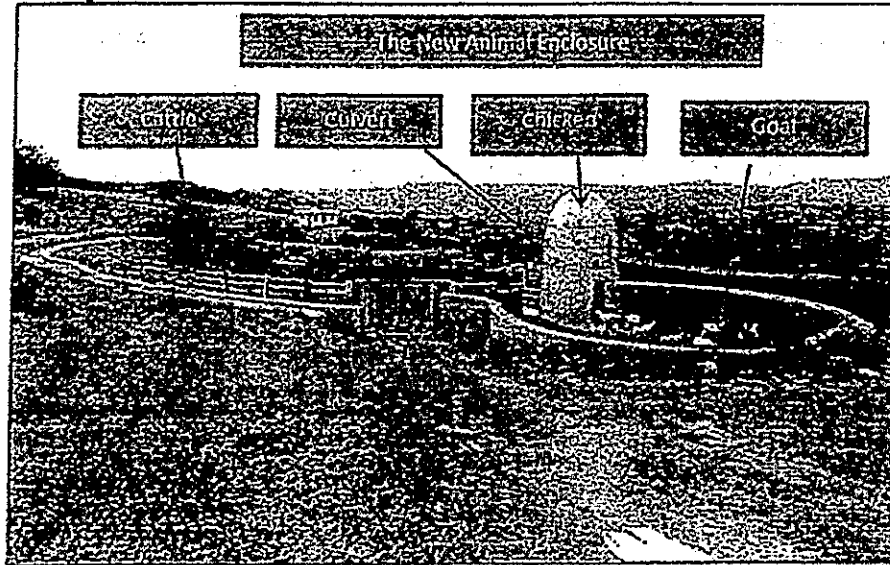
#### 6.3.3 New animal enclosure with culvert

6.3.3.1 The SAPS Security Evaluation report on Page 2 states that, "*The gates to the premises must be divided into three; one main gate with access control, the second entrance for livestock and the third entrance as an emergency gate. The security evaluation report stipulates that the kraals should have a separate entrance to the extent that there is no interface between the livestock and security features hence different gates.*" It is in this context that the animal enclosure with a Culvert for the cattle, the goats and chicken was constructed outside the high security zone in the periphery of the homestead.

6.3.3.2 The new animal enclosure with culvert and chicken run was constructed in a remote location away from the high security zone or inner perimeter infrastructure so as to give effect to the fence technology and use thereof. The R&G Consultancy Report, page 28 par 9.6 states that "*the position of the kraal has been influenced by the new security line, culvert and internal security access road ...*"

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Figure 7: New animal enclosure



6.3.3.3 The new animal enclosure complies with the security requirement that animals should be kept outside the high security zone and have an outlet, or culvert, that allows no interface between the livestock and the security infrastructure. The security infrastructure that should not interface with animals include the outer perimeter automated intrusion detecting fence and inner perimeter motion detecting beams as requested in the SAPS Security Evaluation Report page 5 of 8.

6.3.3.4 This move was necessary because an interface between the inner or outer perimeter fence technology and animals or human beings would have triggered the alarm, which in turn would have registered as a violation of the security zone at the control centre. Therefore allowing animals to roam around would have triggered continuous false alarms and rendered the entire security system ineffective. The picture below shows the culvert underneath the outer PIDS perimeter fence.

6.3.4 The Culvert

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Figure 8: The culvert



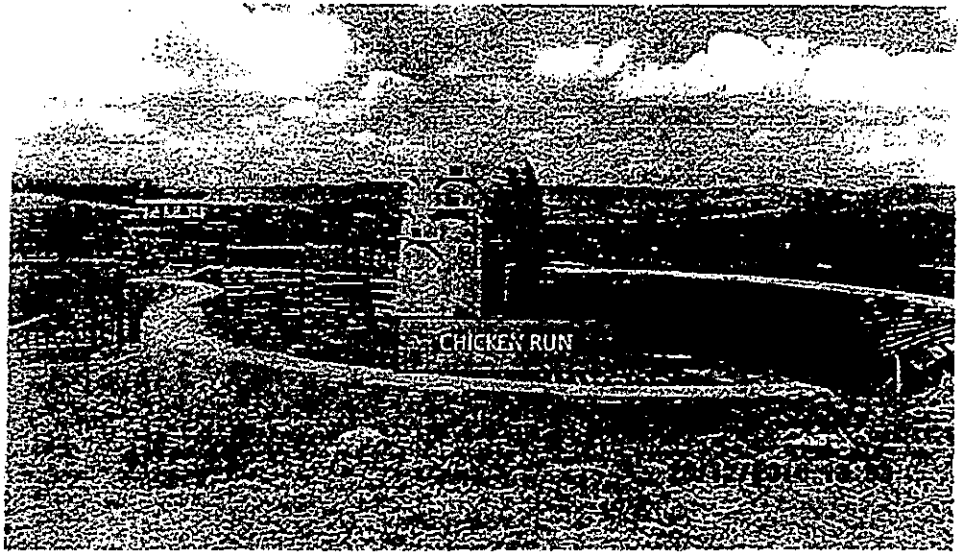
6.3.4.1 The culvert channels the animals in and out of the new kraals and/or enclosure such that the outer perimeter security system (PIDS) as well as the inner perimeter's motion detection beams (MDB) is not interfered with, thereby avoiding interface and triggering false alarms.

6.3.4.2 A DPW Report dated June 2011 and titled "Motivations and cost allocation proposals no.4" provides the following motivation for the livestock culvert "*...Livestock access in and out of the homestead is provided via an under pass punching through the high security fence. A trafficable cattle culvert pass under the fence and there are gates at both ends of the culvert. This was a security design consideration which allow for continuous flow of the high security fence with less false alarm on motion detection ...* "

6.3.5 The Chicken Run

Handwritten signature or initials, possibly 'T. B.' or similar, located in the bottom right corner of the page.

Figure 9: The chicken run



6.3.5.1 The sensors on the PIDS fence and motion detector beams (MDB) are very sensitive to the extent that they could easily be activated by free running chicken.

In this regard, free running chicken needed to be confined to a chicken run outside the high security zone and away from the Perimeter Intrusion Detection System (PIDS) fence technology.

6.3.5.2 Constant false alarms, possibly caused by animals or persons, result in a tendency by the security officers to either ignore any further alarms or simply switch off the system. It is for this reason that security practitioners recommended that the animals should be kept away from the outer and inner perimeter fence technology and be kept in the new enclosure with separate entrance and/or exit (culvert). (Video securi tv appraisal & culvert)

**6.4 Visitors' Center**

It should be noted that, according to the R&G Consultancy Report, the visitors' center and control room were requested by the SAPS. Further that the visitors' center on top of the SAPS control room.

Figure 10: Visitors' Center



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6.4.1 The President of the Republic is also a Head of State in terms of the Constitution Chapter 5, section 83(a) and he continues to discharge his responsibilities even when at his residences. Such engagements include receiving and hosting Presidents from other Countries and high profile local and international guests.

6.4.2 Executive guests have to be received in an area that meets appropriate control, security and protocol norms and standards. Accordingly, similar facilities that are used by the President for official engagements exist at his various residences; that is in Cape Town (Genadendaal), Pretoria (Mahlamandlopfu and Sefako Makgato Guest House), and Durban (JL Dube House) and such a facility also needed to be constructed at Nkandla. Taking into cognisance that Nkandla is a private residence of the President, however such meetings as stated above do take place. These meetings necessitate the creation of conducive and appropriate security environment that is protocol, information and physical security.

6.4.3 When the President is at his private residence, he is regularly visited by locals who have complaints, grievances or problems for the attention of the President. Attending to these complaints is part of the President's statutory and political obligations. On such occasions it is imperative that crowd control and management is effected and any security risk mitigated. In this regard, the visitors' center is key to ensuring security control, which includes people movement and control. The visitors' center at the private residence of the President in Nkandla is strategically positioned such that it allows for the necessary security separation of private activities from family dwellings and the President's official and public engagements at this facility.

6.4.4 There is a need for this facility, so as to control and secure all the President's meetings and other high level official engagements in line with acceptable protocols and/or etiquette, norms and standards.

6.4.5 Former Presidents also play a role within the regional politics in the Southern African Development Community; as well as at African Union level and within the Panel of Elders or Panel of the Wise organs. In this regard the visitors' center will be a fruitful expenditure even beyond his term of office.

## 6.5 "Amphitheatre" and/or Ground Retaining Wall

6.5.1 According to Wikipedia, *"the walls of the amphitheatre are normally constructed in stepping dwarf walls that are suitable for people to sit comfortable and watch some kind of entertainment. The stage where entertainment occurs is always central such that all theatre goers are able to sit facing the stage and enjoy the entertainment."*

*The theatre would normally have electrical points to provide for entertainment or sound system in an appropriate stage." ([www.wikipedia/amphitheatredefinition.com](http://www.wikipedia/amphitheatredefinition.com)). This has been so since the ancient Roman times.*

### Figure 11: Amphitheatre

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Figure 11: Amphitheatre



6.5.2 The Parliamentary Ad hoc Committee observed that *"The land on which the President's private residence has been developed lies at a gradient of 40 to 70 degrees which makes it more susceptible to flooding during storms. Due to the gradient, all construction activities such as earthworks and landscaping had to include fortifications, buttresses and paving for proper water flow and storm water drainage."* (Parliamentary Ad Hoc Committee, 2014:2963, para 3.32 and 3.33).

6.5.3 As a result of the above, a number of soil retaining walls had to be constructed at the private residence of the President in Nkandla to hold the soil and substrate against gravitational pull and storm water. In this context, the soil retention wall also carries an access road on top, which is used by heavy security vehicles for purposes of work within the homestead.

6.5.4 Below are pictures of what is referred to as an amphitheatre. The picture on the left is an amphitheatre designed for entertainment purposes. The picture on the right is what has been referred to as an amphitheatre at the President's residence in Nkandla. The civil engineering reports make reference to both an amphitheatre and a soil retention wall. Clearly the picture on the right does not resemble an entertainment area

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Figure 12: Amphitheatre vs the President's homestead



Social definition: An open air venue used for entertainment, performances, and sports

Architectural definition: Soil retention design with large grass steps so that it looks like an amphitheatre

Social definition: An open air venue used for entertainment, performances, and sports  
Architectural definition: Soil retention design with large grass steps so that it looks like an amphitheatre

6.5.5 The Durban Prestige Project A: Motivations and cost allocations Report states that *"due to house and road levels, contours have been designed to control storm water and help with security/ private lines. Landscaping has been introduced to make good after the construction of the new security access road and tunnels and new houses ..."*. R &G Consultancy Report dated 11 March 2011, page 22 par 5.1.6.

6.5.6 In accordance with the Ibhongo Consulting cc, Provision of Civil Engineering Services report dated 17 April 2012, page 4 under the heading storm water drainage, *"The development is around the hillock ... Storm water management will be on surface by means of kerbs on the road and concrete and grass lined "V" drains flowing into an attenuation pond on site. All batters are to be protected by grassing and the construction of water catch banks..."*

6.5.7 There are further proposed paving and landscaping designs that takes into account the geotechnical requirements. The geotechnical report recommends the construction of various platforms within the homestead (*Ibhongo Consulting cc report, page 6*).

6.5.8 Various types of soil retention walls are constructed at the private residence of the President in Nkandla varying from straight walls of approximately 3 meters high to sloping dwarf wall terraces. However the straight walls are deemed as inappropriate as they provide an intruder hide out. The SAPS Security Evaluation Report, page 3 of 8 under the heading 'Illumination' states, *"...Proposed security illumination must be installed around the resident in such a way as to illuminate on dark areas without illuminating the residence itself..."*

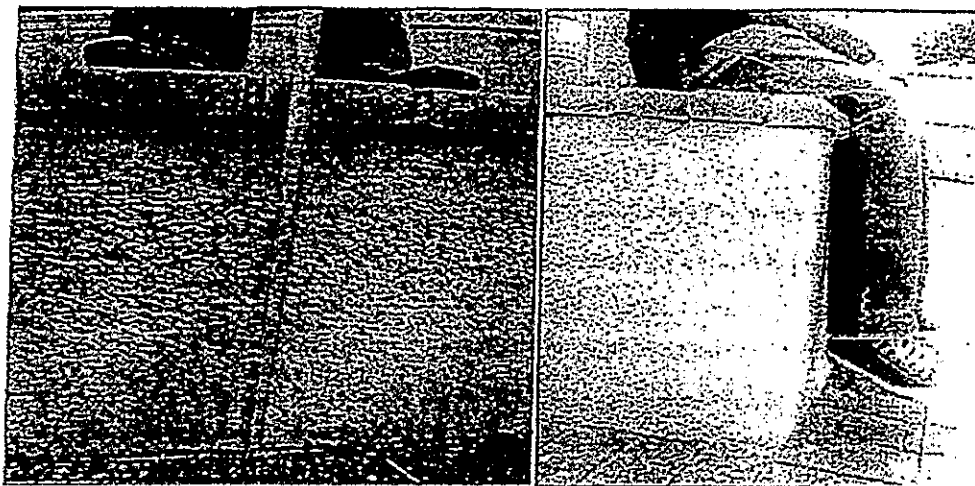
6.5.9 In terms of the document compiled by R&G Consultancy, page 19, under the heading 'Landscape', one of the motivations for the landscape at the President's residence in the area around the Visitors' Centre and the security control room is, *"...retaining wall is required due to the level difference and to allow access to the security control room in the lower level ....lighting to step and ramp is introduced for safety and security ...."*

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6.5.1 O The height of the step is 0.65 meters whereas the horizontal platform or width is between 0.7m to 1.3meters. With illumination on the vertical walls, whereas if it was to be used as amphitheater there would have been people seated and obscuring the illumination. It would be unimaginable that people would be seated in an aloe garden with irrigation system; this could not be regarded as amphitheater under the circumstances.

Figure 13: Walls not built for sitting

Figure 13: Walls not built for sitting

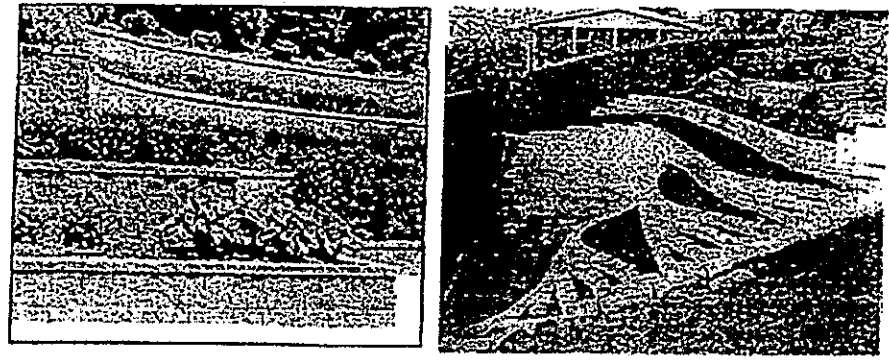


6.5.11 The dwarf stepping soil retention walls are the best in terms of safety and security in that it avoids obscurity of the view of security persons and does not provide hide out for would be intruders. The dwarf stepping walls are preferred in terms of strength and safety as opposed to steep sloping single soil retention walls that pose danger to persons falling and breaking bones or falling to their death.

6.5.12 The pictures below are regarded by landscape experts as the best and sustainable method of soil retention "*Retaining walls prevent soil and substrate from moving because of erosion or gravitational pull*" <http://www.soilretentionmethods.za>. These are also regarded in landscaping terms as Dwarf Wall Sloping Terrace.

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Figure 14: Stepping stone retention walls

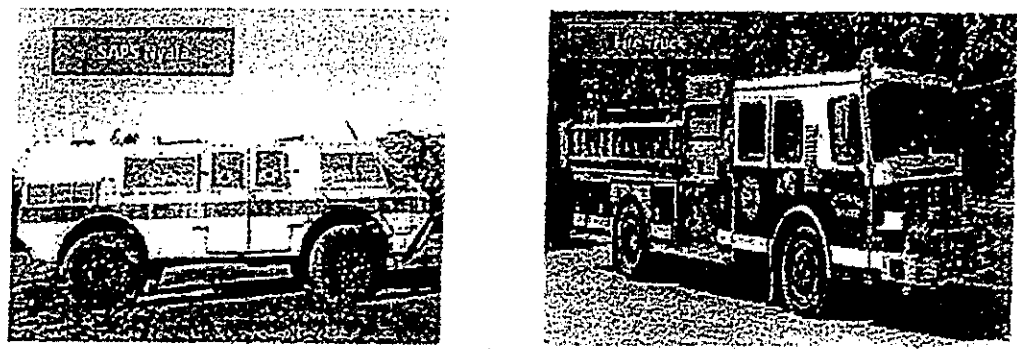


6.5.13 The stepping up ground retention methods shown above are recommended as the best method, also regarded as stronger than single wall retention, single retention walls tend to curve in and crack due to geological and storm water pressure. The R&G Engineers Report stated under the heading 'Landscaping' on page 21 that, "...retaining walls were required due to the new security access road infrastructure .... "

6.5.14 The retention wall at the private residence of the President in Nkandla had to be strong and stepping in order to retain ground that carries the main homestead internal road. The positioning of dwarf walls sloping terrace assist in retaining the soil which carries the upper road surface. The upper road is used by heavy duty vehicles as illustrated below. This includes heavy fire fighting trucks, armored personnel carrier, SAPS Nyala armored personnel carrier and VIP vehicles.

Figure 15: Heavy duty vehicles

Figure 15: Heavy duty vehicles



6.5.15 The other specific purpose for the amphitheatre is that it serves as a primary Emergency Assembly Area.

6.6 Emergency assembly area

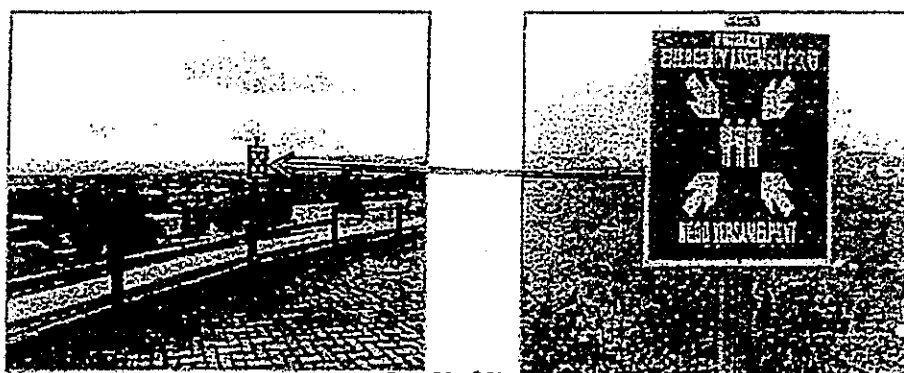
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6.6.1 It is important to note that the homestead dwellers are expected to be able to get to an assembly point as per emergency drills provided for in the SAPS Security Evaluation Report Page 7:Par 17.5 "... Consideration must be given to an awareness programme for the families of the President as well as domestic workers ... "

6.6.2 In case of major security emergencies, security drills and demonstrations by law enforcement officers; as well as emergency services would be able to assemble for briefing and debriefing at this particular zone.

### Figure 16: Emergency assembly point

Figure 16: Emergency assembly point



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6.6.3 The homestead is occupied by a number of people as well as the family members of the President. In case of any fire threats, bomb threat or medical emergencies the occupants of the homestead would assemble at this particular area referred to as "amphitheatre". This area has appropriate signage and thus provides illumination linked to the electrical mains, as well as the backup generators. The linkage of this area to the back-up generator is in line with the SAPS Security Evaluation Report, page 7 of 8 which states that; "...the proposed new generator must be able to supply enough power to cater for both domestic and security needs within the premises ..."

6.6.4 The existence of the assembly area complies with the Occupational Health and Safety Regulation which requires that any dwelling occupied or used for office or accommodation by a number of people should have such an area in order to take stock of the occupants and their conditions during emergency. (*vide am phitheatre*)

## 7 OBSERVATIONS

7.1 Whilst the pursuit of a just and corruption-free society is noble, this pursuit should be conducted in an objective and fair manner so that its very intent is not undermined. The President is as much of a South African as every other citizen and therefore entitled to the rights that every citizen enjoys; the rights that are enshrined in the Constitution of the Republic of South Africa,

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1996 as well as the Bill of Rights. Amongst the fundamental rights are the right to privacy and the right to dignity.

7.2 It is evident from the reports that most of the structures and/or task teams that investigated the security upgrades did not share a common definition of what constitutes security features and its relevance. For example, the SIU dismisses the accommodation for the SAPS and SANDF as non-security features. (SIU report 2014 page 215).

7.3 It is also evident from the available information that the project management process was not properly structured and coordinated. Communication within the project team was poor, including communication between security and non-security personnel. As a result of which monitoring of implementation of the project was not effective.

7.4 The SAPS Security Evaluation Report in which some of these features are requested or implied is proper, well done, and relevant; however, the security advisors could have been explicit and more detail would have assisted non- security persons .

7.5 The manner in which this matter had been handled in former investigations has sought to question the credibility and integrity of professionals and experts in their relevant fields. There is an implied presumption of impropriety in the Public Protector's finding pertaining to an articulation which states that; "*...measures implemented in the name of security which include non-security comforts...*" (Public Protector's Report, 2014, page 431, par 10.5.3). The above articulation amplifies a sense of suggested impropriety on the part of the security experts who conducted the initial and ongoing security evaluation at the private residence of His Excellency, the President.

7.6 The extent of the investigations as well as the intrusion into the private residence of the President has resulted in a violation of his rights. His family has concomitantly suffered the violation and breach of their security and safety. It is an unprecedented phenomenon the world over, that a President's security and privacy is violated to the degree that we have witnessed in South Africa.

## 8 FINDINGS AND RECOMMENDATIONS

8.1. With regards to the firepool and/or swimming pool, the security and fire practitioners found that:

8.1.1 It has been established that the firefighting capacity at the private residence of the President in Nkandla is not up to the required standards, as per the national fire regulations. This is caused by among others, the low water pressure from the main water supply, as well as insufficient and/or inadequate firefighting equipment.

8.1.2 The fire hydrant static pressure yields 2.5 bars, which is very poor and inadequate, thus insufficient for firefighting. The pressure was found not to be enough to supply the inlet of the portable fire pump.

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8.1.3 The inspection of the hose reels showed that only two hoses reels out of 10 are connected to the water reticulation system. All the other hose reels did not have water. Some hose reels are wrongly positioned and exposed to extreme weather conditions. Some hose reel drums were found missing and others appeared to have been damaged by corrosion.

8.1.4 The swimming pool, an open water source, connected to the suction pump and linked to water pressure monitors to be made available on site at the private residence of the President in Nkandla; is known to be the best firefighting water source and as such the most important security feature.

8.1.5 It has been established through scientific and practical demonstrations that the best water source that is available on site at Nkandla is the pool to replenish the fire engine. The pool is equally to be used in an event the fire breaks out, by deploying the suction pump linking it to monitors through fire hoses in order to extinguish fire while the fire truck is on its way.

8.1.6 The portable fire pump capable of discharging 1600L per minute is supplied with sufficient water, from the reliable source such as a Fire Hydrant with at least 500kpa. The pump was able to adequately supply two ground monitors, through separate lines of 64mm diameter fire hoses and could reach a distance of approximately 80 meters without straining the pump, and the quality of throw was extremely good. A suction hose diameter of 100mm was used for this test.

8.1.7 In this regard, a conclusion is arrived at that; eight hose reels need to be connected to the water reticulation system. More hose reels need to be installed in order to improve fire fighting ability. Additional fire hydrants need to be added. A booster pump must be installed in the fire hydrant line in order to increase the pressure to at least 500kpa.

8.2 With regards to the new animal enclosure with culvert and chicken run, the security reports and analysis established that:

8.2.1 The relocation and subsequent confinement of livestock was the necessary security arrangement given the introduction of the MDB and PIDS technology.

8.2.2 The new animal enclosure with culvert and chicken run complements, enhances and ensures the effectiveness of the perimeter security infrastructure.

8.2.3 The effective and efficient use of the fence technology would be enhanced by avoiding foreseeable false alarms, as well as resultant underutilisation of the technology.

8.2.4 The effective and optimal utilisation of the fence technology is in compliance with the Public Finance Management Act No.1 of 1999 as amended by Act 29 of 1999. The particular section of the PFMA refers to the optimal, effective, efficient and economical utilisation of state resources.

8.2.5 The new animal enclosure with culvert and chicken run complements the entire homestead security and as such are a critical security component and feature.

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- the fire-pool and/or swimming pool is a strategic asset useful in fire fighting and therefore, is a security feature.

- the animal enclosure which is made of chicken run, kraal and culvert keeps livestock away from the security infra-structure and therefore these features complements PIDS security fence ,MDB Technology and are security imperatives for fence technology to work. And as such it is a security feature.

- The soil retention wall and/or "amphitheatre" have a clear security purpose as an Emergency Assembly Point for the family and homestead dwellers. Soil retaining wall is critical in holding soil and substrate thereby reinforcing the soil bank carrying the inner road surface. This area is therefore a necessary security feature.

- The visitors' center has to cater for the Presidents distinguished guests' meetings and local constituency meetings. During such meetings privacy and confidentiality is necessary.

There are protocol, physical and information security imperatives that should be observed in hosting such meetings. Therefore the visitors' center is in this regard a security feature.

Accordingly, the State President is therefore not liable to pay for any of these security features.

9.3 The outstanding security related work at Nkandla should be funded and completed expeditiously, including the re-evaluation of the current physical security measures. In this instance the laws and prescripts are to be followed to the letter. Both SIU and Parliamentary Committee report alluded to the urgent need for a new security evaluation to be conducted at the President's residence in Nkandla.

This report is hereby submitted to and tabled for

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