



PUBLIC PROTECTOR
SOUTH AFRICA

Statement by Public Protector Adv. Thuli Madonsela during a media briefing to release the 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 Jacob Zuma at Nkandla in KwaZulu-Natal

Programme Director and Spokesperson of the Public Protector SA, Ms Kgalalelo Masibi;

Deputy Public Protector, Adv. Kevin Malunga;

Chief Executive Officer of the Public Protector SA, Mr Themba Mthethwa;

Members of the Investigation Team that assisted me on this investigation;

The Public Protector Team at large;

The people of South Africa that are joining us through several TV and radio live broadcasts;

Members of the media;

Ladies and gentlemen

We are humbled by your interest in today's media briefing and wish to convey our gratitude to you for ongoing interest in the work of this constitutional institution, the Public Protector SA.

To the media and the people of South Africa, my team and I are sincerely grateful to you for your on-going facilitation dialogue on ours and other investigations on maladministration, ethical conduct and other forms of improper conduct in state affairs.

I have previously said that the facilitation of public dialogue is the key to my office's ability to support and strengthen constitutional democracy as envisaged in sections 181 and 182 of the Constitution.

It is often said that the judiciary is disadvantaged in comparison to the other branches of government as it controls neither commands neither force nor resources, hence the need for it to be protected and guaranteed independence.

The Public Protector forms part of the Ombudsman family, which is a fairly recent innovation in the area of public accountability. The institution was introduced in Sweden to address a gap in traditional checks and balances a little over two hundred years ago. We have learnt that the King of Sweden got the idea from the middle east. We have also discovered that there are parallels between the Protector as an institution and some of our own non political institutions that served to curb the exercise of public power. One institution is the Makhadzi which we have adopted as one of our symbols. The Makhadzi, an Aunt is a non political figure who serves as a buffer between the ruler and the people.

In South Africa, this is one of the innovations of the Constitutional democracy embraced 20 years ago. The Public Protector is part of innovative constitutional institutions that are meant to help the people exact accountability in the exercise of state power and control over state resources through administrative scrutiny.

Administrative scrutiny is a novelty on its own. Implementation of decisions is not through the hard power exercised by courts and the other branches of government.

Ours is to strengthen constitutional democracy primarily through facilitation of dialogue between the people and those they have entrusted with public power. Our strength we refer to as moral suasion. The media is essential in this regard.

Media involvement is also an essential part of an open and transparent state. We are such as state accountability and openness form part of the founding values entrenched in section 1 of our Constitution.

My office has a further responsibility under section 182(4) to be accountable to all persons and communities. Again without the media, it would be impossible to comply with this injunction.

We use media briefings for the dual purpose of keeping people abreast of rules are made collectively by the governors and the developments in our investigations while promoting the accessibility of our services Not all cases come to media briefings. fMost are resolved through the Makhadzi way of whispering to appropriate authorities about wrong doing. Lat year we received over 33K nad this year ovr 40K.

Its important to know tht like the Makadzi we do not make the rules> they are made by those who are governed and those who govern we are just the keepers of such rules.

I now turn to the focus of our briefing the report on the Public Protector investigation into security and related upgrades at the private residence of the President of South Africa. This investigation has elicited more interest than others. I will deal with some of those in the report and during question time.

“Our government is the potent, the omnipresent teacher. For good or for ill, it teaches people by example... If the government becomes a law breaker, it breeds contempt for law; it invites every man [person] to become a law; unto himself...”

Section 140 of the Constitution which provides for the oath of the President, and states that *“The President should protect and promote the rights of all people within the Republic; and that he will devote himself to the wellbeing of the Republic and all its people”*. Against this background it is difficult to reconcile the unconscionable expenditure attached to the project and the spirit of s140 of the Constitution.

- (i) “Secure in Comfort” is my report as the Public Protector of the Republic of South Africa on an investigation conducted 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, His Excellency J G Zuma, at Nkandla in the KwaZulu-Natal Province.
- (ii) At the time the remark of the Director: Architectural Services of the Department of Public Works (DPW) was made, the cost estimation for the project was R145 million. By the time I concluded this investigation R215 million had been spent while the total cost to conclude the project was conservatively estimated at R246 million.

- (iii) The investigation was conducted in terms of section 182 of the Constitution, 1996, which gives the Public Protector the power to investigate alleged or suspected improper or prejudicial conduct in state affairs, to report on that conduct and to take appropriate remedial action; and in terms of sections 6 and 7 of the Public Protector Act, 23 of 1994, which regulate the manner in which the power conferred by section 182 of the Constitution may be exercised. Part of the investigation was also conducted in terms of the Executive Members' Ethics Act, 82 of 1998 (thereafter EMEA), which confers on the Public Protector the power to investigate alleged violation of the Executive Ethics Code, at the request of Members of National and Provincial Legislatures, the President and Premiers.
- (iv) The investigation was carried out in response to seven complaints lodged between 13 December 2011 and November 2012. The first complaint, from a member of the public was lodged in terms of the Public Protector Act on 13 December 2011. Other complaints followed thereafter, also lodged under the Public Protector Act. Further complaints were received from ordinary members of the public, and a year after the first complaint, a Member of Parliament lodged a complaint under the EMEA.
- (a) The first complainant requested an investigation into the veracity of allegations published by the *Mail and Guardian* newspaper on 11 November 2011, under the heading: "*Bunker, bunker time: Zuma's lavish Nkandla upgrade*". According to this media report the President's private residence was being improved and upgraded at enormous expense to the state, estimated at about R 65 million. The impugned improvements allegedly included a network of air conditioned living quarters, a clinic, gymnasium, numerous houses for security guards, underground parking, a helicopter pad, a playground and a Visitors Centre.
- (b) The earliest concerns regarding opulent or excessive expenditure at the private residence of President Zuma were expressed on 04 December 2009 by the *Mail and Guardian* in an article titled "*Zuma's R 65 million Nkandla Splurge*". Apart from the release of a statement by the Presidency on 03 December 2009, denying that government was footing the bill, nothing seems to have been done by government to verify the 2009 allegations or attempt to arrest the costs which the article predicted would continue to rise. Three years later and a year after a complaint was lodged with my office, the Minister of Public Works appointed a Task Team of officials from the departments involved in the impugned upgrades at the President's private residence, to investigate specified matters in

relation therewith. The Task Team's report was released to the public on 19 December 2013.

(c) More items were added to the project after the concerns were raised in 2009, bringing the cost from the R65 million, which was the subject of complaint in 2009, to R215 million, which has since been spent, while outstanding work is currently estimated at R 36 million bringing the envisaged total cost to R246 million.

(d) Some of the key questions in the written complaints were the following:

(1) *"Where is the money coming from and how has it been approved?"*

(2) *"Whether any undue political influence was placed on the Department of Public Works to allocate these funds.";*

(3) *"Who issued the instruction for the allocation of these funds;"*

(4) *"Whether these funds have been properly budgeted for;"*

(5) *"Whether any funds have been transferred from other much needed projects for this revamp to take place;"*

(6) *"Whether the allocation of funds for what is essentially a private home-which will not remain within the state's ownership-represents irregular expenditure."*

(7) *"How can this amount of money be spent on a private residence of any government employee"*

(8) The additional complaints raised issues regarding the possible abuse of Executive privileges, impropriety, extending benefits to relatives and misleading Parliament.

(9) Included in the complaints were the following significant statements:

"I do not understand how this money can be spent on a private residence of any government employee, especially when that employee has two residences at his disposal in Cape Town and Pretoria."

"Whether this construction is being performed for President Zuma as President of SA or as a favour as ANC President, I would suggest it is misuse of state funds to the benefit of a private individual, possibly

to curry political favour for the Minister of Public Works or a DG. When the President is no longer the incumbent he is not entitled to state housing but he will enjoy the benefits of the modifications to his private estate in perpetuity.”

“While the majority of people in this country still struggle and fight for survival it is deeply disturbing to discover that the President and some of his close senior supporters feel that it is all right to abuse their positions to benefit themselves and each other at the expense of the nation and all her citizens. These individuals, in their capacities as servants of the people, should be held to task if they are in any way guilty of wrongdoing, abuse of power or corruption. If the allegations in the press on what is happening with the President’s private homestead in Nkandla are true then the President and those involved in facilitating these massive renovations are possibly guilty of a number of transgressions and should be held accountable. At the least these allegations should be grounds for you and your team to conduct some sort of investigation.” (emphases added)

- (e) In essence the complainants alleged that:
- (1) There was no legal authority for the expenditure that was allegedly incurred by the state in respect of upgrades made at the President’s private residence in the name of security. Even if there was authority, the upgrades were excessive or “opulent” and transcended such authority.
 - (2) The procurement process was improper, in violation of the prescribed Supply Chain Management policy framework and resulted in unduly excessive amounts of public money being spent unnecessarily.
 - (3) The conduct of the President in relation to the implementation of the impugned upgrades at his private residence may have been unethical and in violation of the Executive Ethics Code.
- (v) Based on an analysis of the complaints, the following issues were identified and investigated:
- (1) Was there any legal authority for the installation and implementation of security measures and the construction of buildings and other items by the state at the President’s private residence and was such authority violated or exceeded?

- (2) Was the conduct of relevant authorities in respect of the procurement of goods and services relating to the upgrades, improper and in violation of relevant Supply Chain Management prescripts?
- (3) Did the measures taken by the Department of Public Works (DPW) at the President's private residence, go beyond what was required for his security?
- (4) Was the expenditure incurred by the state in this regard excessive or amount to opulence at a grand scale, as alleged?
- (5) Did the President's family and/or relatives improperly benefit from the measures taken, buildings and other items constructed and installed at the President's private residence?
- (6) Was there any maladministration by the public office bearers, officials and other parties involved in this project?
- (7) Was there any political interference in the implementation of this project?
- (8) Were funds transferred from other much needed DPW projects to fund this project?
- (9) Is the President liable for some of the cost incurred?
- (10) Were there ethical violations on the part of the President in respect of this project?
- (11) Are there other maladministration issues that arose from the complaints and the investigation process?
- (12) Are there systemic deficiencies regarding the administration of benefits of Presidents, Deputy Presidents, former Presidents and former Deputy Presidents?

(vi) The investigation focused on security installations at the President Zuma's private residence situated at a village known as Nkandla in KwaZulu-Natal where he was born and spent most of his life, save for the years when he was in prison and later exiled. President Zuma is the fourth President in democratic South Africa. The security installations commenced shortly

after he was elected and sworn-in in May 2009, as president of the Republic.

- (a) The period covered by the investigation runs from the date of first assessment of the requirements to upgrade the security at the President's private residence on 19 May 2009 to the end of January 2014.
- (b) The substantive scope focused on compliance with applicable laws and policies in relation to security privileges accorded to Presidents, Deputy Presidents, former Presidents and former Deputy Presidents; compliance with Supply Chain Management prescripts; and the propriety of the conduct of the President and others allegedly involved in the implementation of the impugned upgrades.
- (c) The laws and policies that informed the investigations were principally those relating to the authority to implement the upgrades being the Cabinet Policy of 2003 and the National Key Points Act, 102 of 1980 and those relating to procurement being section 217 of the Constitution, the Preferential Procurement Policy Framework Act, 5 of 2000, the Public Finance Management Act, 1 of 1999 and Treasury Regulations. In relation to the role of the Department of Defence (DOD), the provisions of the South African Defence Review of 1998, and the Defence Act, 42 of 2002 were considered together with institutional policies regulating the provision of medical support and securing the President and others while in transit. With regard to procurement, section 217 of the Constitution was applied.
- (d) I was particularly mindful of the fact that the current regulatory framework does not distinguish between permissible measures for securing the private residences of Presidents, Deputy Presidents, former Presidents and Deputy Presidents. In respect of the DOD I was further mindful of the fact that the regime relied on for the provision of health care, being paragraph 22 of Chapter 7 of the Defence Review, covers the President, Deputy President, Minister and Deputy Minister of Defence and foreign dignitaries visiting South Africa. In other words, if I were to reach a conclusion that what was done at Nkandla was permissible for a sitting President, I would be saying that the same measures are permissible for the others. This would inevitably lead to questions of affordability and sustainability, not only in the context of the current fiscal climate, but also in terms of balancing competing needs of South Africa as a developmental state against the backdrop of section 237 of the Constitution, which directs that "*All constitutional obligations must be performed diligently and without delay*" and the *Batho Pele, White Paper on Transforming Public Service Delivery* (1997) which undertakes to

transform an inherited insular state to one that puts people first as the true targeted beneficiaries of public resources and services.

- (e) The conduct of the President was primarily assessed against the pursuit of ethical standards imposed on members of the executive by section 96 of the Constitution and the Executive Ethics Code issued under the Executive Members' Ethics Act. To unpack the provisions of the Constitution and the code, I took into account previous investigations of the Public Protector on executive privileges notably the investigations that had scrutinized the conduct of the Minister of Police in relation to accommodation privileges, the then Minister of Cooperative Governance and Traditional Affairs on accommodation and travelling privileges and the Minister of Agriculture and Fisheries on the same issues. With regard to the Minister of Police, the findings of the Auditor General regarding alleged excesses in relation to the construction of a security wall at his private homestead, were also taken into account in compliance with laws and related standards regulating the provision of medical support and securing Presidents and the others while in transit, were also considered count.
- (f) Consideration was also given to global benchmarks, principally on the role of those entrusted with public power and resources regarding the exercise of such power and balancing people's rights to resources and self-maintenance privileges for 'trustees'.
- (g) My approach to the investigation included the following measures:
 - (1) **Correspondence**, which commenced with alerting the Presidency to the allegations in January 2012 and a letter of acknowledgement on the same day. Further correspondence was entered with the Presidency, the Ministers of Defence and Military Veterans, Police and Public Works; the Deputy Minister of Women, Children and Persons with Disabilities; Departments of Defence, Police and Public Works; Complainants and various parties involved in the project, including contractors; and the Acting State Attorney. The latter wrote to me on 24 April 2013, advising on a suspension of my investigation, responded to by the head of my private office on 10 May 2013 clarifying the legal and constitutional position regarding Public Protector investigations and the status of the current investigation at the time.
 - (2) **Interviews** conducted with Ms G Mahlangu-Nkabinde, the former Minister of Public Works (telephonically) on 23 August 2013; Deputy Minister H Bogopane-Zulu, who was the Deputy Minister of Public

Works at times material to the investigation on 14 May 2013; Officials of the DPW, the South African Police Service (SAPS) and DOD, selected contractors that were involved in the Nkandla Project. Meetings were also held with President Zuma on 11 August 2013; Dr C R Lubisi, the Director-General in the Presidency, in January 2012; The Ministers of Police, Mr N Mthethwa, Public Works, Mr T W Nxesi and State Security, Dr S Cwele on 22 April 2013, 31 May 2013, and 8 August 2013 respectively. The meeting of 31 May 2013 was also attended by the Chief State Law Adviser, Mr E Daniels, and other high ranking officials of the Departments involved; The Minister of Justice and Constitutional Development, Mr J Hadebe, who also attended the meeting of 31 May 2013; The Minister of Public Works on 2 July 2013; The Minister of Defence and Military Veterans, Ms N Mapisa-Nqakula, who also attended the meetings of 31 May and 8 August 2013; The former Surgeon-General, Lt Gen V Ramlakan; and the Acting Chief of Staff of the Ministry of Police, Ms J Irish-Qhobosheane.

- (3) **Analysis of voluminous documents** such as correspondence; applicable laws incorporating legislation and case law; relevant policies regulating security upgrades at private residences; supply chain policies and supplementary prescripts and touch stones or established principles from previous Public Protector Reports;
- (4) **An inspection *in loco*** on 12 August 2013, aimed at verifying and assessing the works implemented by the DPW at the President's private residence, accompanied by the Minister of Defence, a member of the investigation team and officials from the DPW and the security cluster; and
- (5) **Submissions in terms of section 7(9) of the Public Protector Act** by parties that appeared to be implicated during the investigation.

(h) Limitations of the investigation:

- (1) The investigation took approximately two years, which exceeds the one year target the Public Protector South Africa team has set for complex investigations. The delays can be attributed to:
 1. Internal capacity constraints;
 2. Access to classified information;

3. Access to the report of the internal Task Team appointed by the Minister of Public Works;
 4. Objection lodged by the Minister of Police on 22 March 2013, later supported by the Ministers of Public Works and State Security with the assistance of the Acting State Attorney and the Chief State Law Advisor to the investigation;
 5. General delays in access to information held by some departments involved in the Nkandla Project also.
 6. Requests for extensions to submit responses to notices issued in terms of section 7(9) of the Public Protector Act.
- (2) When the Executive Members' Ethics Act dimension was added in December 2012, the 30 day period stipulated in this Act could not be met, primarily because this was an addition to an existing extensive investigation in terms of the Public Protector Act. Furthermore, the abovementioned delays exacerbated the situation;
 - (3) Some of the parties that appeared to have been implicated by the investigation were assisted by attorneys and advocates in their responses and a total of 7 attorneys and 5 advocates were involved, some of whom tried to turn the investigation into adversarial proceedings. Threats of interdicts were frequently made.
- (vii) The following jurisdictional and process issues were raised by respondent organs of state and implicated persons:
- (a) The authority of the Public Protector to conduct the investigation at the same time while the Executive had decided on the agencies it wanted to conduct the investigation;
 - (b) The authority to investigate the conduct of a private consultant contracted by the state;
 - (c) The access to, scrutiny and review of the evidence and information obtained during the investigation; and
 - (d) The process followed during the investigation. In some cases there was a lack of proper understanding of the provisions of the Public Protector Act.
- (viii) Security concerns and litigation by the security cluster.

- (a) The security nature of the project in question required an extensive consideration of the legislation and other prescripts that regulate the security classified information. In terms of the provisions of the Minimum Information Security Standards Policy (MISS), this means that the information is regarded as being of such a nature that its unauthorized disclosure/exposure can be used by malicious/opposing/hostile elements to neutralize the objectives and functions of institutions and/or the state
- (b) In essence I had to strike a balance between security on the one hand and accountability and openness. I took into account the provisions of section 1(d) of the Constitution, entrenching accountability, responsiveness and openness among other founding values of our democracy.
- (c) My office took drastic measures to ensure that information that is sensitive and classified was secured throughout the investigation.
- (d) I was further guided by what government had already made available in the public domain. In June 2013 the Minister of Public Works in response to an application in terms of the Promotion of Access to Information Act, 2000 provided the M & G Centre for Investigative Journalism with 12 000 pages of documents from the DPW records relating to the Nkandla Project. All these documents, including several that are classified, were published on the Internet and are available at www.amabhungane.co.za.
- (e) In relation to the ethical considerations, I was faced with asking the President the same questions that I had to ask of the former Minister of Cooperative Governance and Traditional Affairs, the late Mr S Shiceka, and the Minister of Police, Mr N Mthethwa, when I investigated allegations of unethical conduct against them, i.e. did he raise any concerns about obvious extravagant and expensive measures that were being implemented by the state at his private residence? In Mr Mthethwa's case he questioned obvious excessive expenditure and took steps to remedy the impropriety.
- (ix) My approach to the investigation was to consider and evaluate what happened, what should have happened and whether there was a discrepancy between the two that constituted improper conduct and maladministration, to rectify or remedy the impact.
- (x) I now turn to the general conclusions I have reached on the 12 issues before I proceed to my specific findings on each of them.

(a) Regarding the issue of legal authority to install security features at a private residence at state expense and the allegation that such authority may have been exceeded, the investigation revealed that:

- (1) Security upgrades at private residences are allowed as privileges accorded to members of the executive and other parties whose security is essential to the functioning of the state, at the owner's request. In the case of the President and Deputy President, the Presidency is also authorized to make the request.
- (2) The Ministerial Handbook regulates security installations for members of the executive except for the President, Deputy President, former Presidents and former Deputy Presidents. The Cabinet Policy of 2003 is the key policy instrument that has regulated security installations at the private residences of Presidents, Deputy Presidents, former Presidents and former Deputy Presidents during the period under scrutiny.
- (3) Installations implemented in connection with health care services to the President and transport, are regulated by prescripts guiding the DOD Doctrines relating to transporting and providing medical services to the President, Deputy President, former Presidents and former Deputy Presidents.
- (4) It was these two sets of regulatory frameworks that authorized the installations undertaken in the name of security at the private residence of President Zuma on assumption of office in May 2009.
- (5) According to a Declaration Certificate issued by the Minister of Police, the Nkandla private residence of President Zuma was declared National Key Point on 08 April 2010. Despite the Minister of Police and the Presidency's denial in their submissions during the final phases of the investigation, this added the National Key Points Act, 1980 into the legal framework permitting and regulating security measures at his residences. The specific compliance requirements in regard to the National Key Points Act are stipulated in the Declaration Certificate issued by Minister Mthethwa on 08 April 2010, declaring the Nkandla residence a National Key Point and the receipt of which was confirmed by the Presidency, a year later, on 07 April 2011.
- (6) As indicated earlier, security measures at private residences under any of the regulatory instruments are not automatic. In the case in point, we have established that the measures implemented from May

2009 to April 2010 could have only been authorized by the Cabinet Policy as the DOD prescripts do not cover any permanent security installations. Paragraph 8.1.2(b)(i) of the Cabinet Policy directs that such installations be implemented “*at the request of the President or the Presidency*” (if the residence belongs to the President) following a security evaluation by the SAPS together with the National Intelligence Agency (NIA, now SSA) advising that the security of the President is compromised as a direct result of his or her public position.

- (7) A Security Evaluation Report duly compiled by the Security Advisory Service of the SAPS in May 2009 did conclude that the security measures at the President’s private residence were inadequate at the time when he assumed office as President. The evidence of officials from the DPW, SAPS and the DOD and our inspection *in loco* in August 2013 confirmed the need. This was despite the fact that Mr Zuma had been the Deputy President between 1999 and 2005. The situation was said to be compounded by the fact that Nkandla is a deep rural area with a rather unfriendly terrain.
- (8) Looking broadly into the issue of compliance with the law and other prescripts, no evidence has been presented or found indicating that the trigger mechanism for the state to get involved financially, in respect of any law, was complied with. We have already established that the process started in 2009 and the President’s private residence was only declared a National Key Point in April 2010. Accordingly, the only basis on which any state funds could have been used for security installations at the President’s private residence is the Cabinet Memorandum of 2003.
- (9) However, no evidence has been submitted or found indicating that the Presidency requested the SAPS and State Security Services to consider securing the private residence of the President, yet this is the trigger mechanism stipulated in paragraph 8.1.2(b)(i) of the Cabinet Policy of 2003.
- (10) However, I was persuaded by the submissions by various representatives of the organs of state involved in the security value chain that the normative process is not to wait for a request from the Presidency. I was advised that that action is taken to provide immediate basic security while commencing a process of conducting a comprehensive security evaluation as soon as a President is elected.

- (11) The documentary evidence, which shows that the measures identified as needing to be taken in response to the security evaluation at that point were consistent with security measures identified in the standard setting documents, among which are the Cabinet Policy of 2003 and the Minimum Physical Security Standards. The procurement of such measures was also costed as required although not by the SAPS but by the DPW and amounted to R27 million at the time.
- (12) The evaluation above, herein after referred to as the first security evaluation, had apparently not taken into account the fact that President Zuma was in the process of constructing three new dwellings, which required the broadening of the scope of the security measures. A second and last security evaluation by the security experts within the SAPS was also conducted and this still did not include the construction, in the name of security, of buildings and other architectural items not listed in the standard setting instruments for the provision of security in identified private residences.
- (13) It would appear that the course of events changed significantly around August 2009, when Mr Makhanya, the President's private architect who had been involved in the President's non-security construction works, was brought in, without going on tender, to act as the DPW's Principal Agent in respect of the entire Nkandla Project, while retaining his position as the President's Principal Agent and architect. This is the period when the scale of work increased exponentially, leading to installations that were not recommended in any of the authorizing instruments or Security Evaluation Reports and the cost of works escalating to over R215 million. It is also the point at which the Director: Architectural Services at the DPW expressed concerns about moving from "humble beginnings to establishing a full township.
- (14) By installing measures that were not based on the outcome of any of the 2 security evaluations carried out using the Minimum Physical Security Standards as required and not quantifying and approving the scope of measures before approaching service providers, the process that ensued from August 2009 did not fully comply with the Cabinet Policy of 2003, from which the authority to install security measures was derived.
- (15) The Cabinet Policy of 2003 requires:

- (a) Request by the President or Presidency for security measures;
- (b) Security evaluation by the SAPS and State Security Agency;
- (c) A proposal to the Inter-Departmental Security Co-ordinating Committee;
- (d) Cost estimate preparations by DPW;
- (e) The SAPS to advise the Minister of Police on the proposed security measures including the cost;
- (f) Communication to the President on the approved security measures for his or consent ;and
- (g) Implementation by the DPW.

(16) If the Cabinet Policy of 2003 was not complied with, how about the National Key Points Act? The Presidency and SAPS have since argued that there was no need to comply with the National Key Points Act. This is despite the fact that in submissions to Parliament and media statements, the National Key Points Act was used, primarily by the current Minister of Public Works, to justify the installations and related expenditure at President Zuma's private residence.

(17) According to the Declaration Certificate issued by the Minister of Police, Mr Nathi Mthethwa, on 08 April 2010, the security installations at the President's residence were supposed to be handled in terms of the National Key Points Act. Since work was already in progress, the directive in the declaration was to presumably apply from that date onwards. Unfortunately the organs of state involved have failed to address me on what was intended arguing, in a very strange way that the act of bringing in the National Key Points Act was to secure what had already been built in the name of security.

(18) Nonetheless, if I am right in arriving at the logical conclusion that the instruction in the declaration was meant to regulate installations and responsibility for payment thereof from April 2010, then everything that was done from that point onwards was in terms of the Declaration signed by the Minister of Police, not meant to be funded by the state but paid for by the owner, President Zuma. This conclusion is arrived at on the basis of the contents of the Declaration Certificate in question, which include the following:

"The total safeguarding of a National Key Point comprises not only the measures which you as owner are obliged to implement in terms of section 3(1) of the National Key Points Act, but also the effective

protection which must be implemented by the protection unit. It is therefore of the utmost importance that either you or a person appointed by you, liaise with the protecting unit of this National Key Point and the Provincial NKP Officer to activate a Joint Planning Committee(JPC) for this National Key Point in order to draw up a joint plan to counter an incident .

In terms of Section 24D of the Income Tax Act, you can submit a claim for tax deduction in respect of expenditure incurred on security measures implemented at your National Key Point...

It is trusted that you will implement your security obligations as defined in section 3(1) of the National Key Point Acts, Act 102 of 1980, at your National Key Point.” (emphases added)

- (19) The Minister of Police’s declaration proceeds to advise the owner, who in this case is President Zuma, that: *“This directive contains all the information you will need in reference to the administration and safeguarding of your NKP. Please study it carefully.”* It concludes with advice that *“If the circumstances of your NKP should change to such a degree that its status as a NKP is affected, you must inform the NKP Section so that a re-evaluation can be carried out.”*
- (20) No evidence documentary or otherwise indicates that the Minister of Police’s decision to have the owner fund the security measures was revoked or the NKP’s situation was reported as significantly changed or re-evaluated.
- (21) The respondent parties’ response to the question regarding how and why the post April 2010 security measures were funded by the state, was simply that, the declaration was never meant to affect the regime that ordinarily applies to the security of Presidents and the other selected dignitaries. I had to consider the possibility that the National Key Points Declaration could have been meant to cover some of the items that were neither mentioned in any of the standard setting instruments nor included in the lists made by the security experts following the two security assessments.
- (22) The possibility that sections 3(2) or 3A of the National Key Points Act, which gives the Minister of Police the power to pay with state funds in the event an owner is unwilling or unable to pay, was eventually used as the basis for tapping into state funds and, was also explored despite protests from all affected organs of state. Despite not denying that he signed the National Key Point Declaration dated 8 April 2010, asking the President to pay for his

own security upgrades, Minister Mthethwa said, in his response to the provisional findings:

“Any contention that the President was required to implement security measures at his private residence at his own expense for his own safety and security is misguided and incorrect”

- (23) Incidentally, the same difficult-to-fathom view was taken in the Presidency’s response to the provisional report. When I asked the President’s legal advisers, what the declaration was asking the President to pay for and if he paid for same, I was advised that he had not paid for anything and should never have been asked to pay for anything. Perhaps that is true but the reality is that he was asked to pay.
- (24) From the investigation’s point of view, the apportionment of costs path was explored primarily because there was evidence of a draft apportionment letter prepared at the request of Ms Hendrietta Bogopane-Zulu, the Deputy Minister of Public Works at the time. Unfortunately although the Deputy Minister confirms requesting the letter, and the evidence show that it was duly prepared she could not confirm that it was sent to the President. Neither could Ms Gwen Mahlangu-Nkabinde who was the DPW Minister at the material time.
- (25) There is clearly no evidence of a decision made by the Minister of Police as required by law to act in terms of the apportionment regime. It must also be indicated, as pointed out by the Presidency that, apportionment is an option. Otherwise, the state may under the National Key Points Act still pay for everything. This takes me back to the view that the owner’s contribution may have to address the matters that were added to the security menu after the security evaluations were done and final list prepared on what was absolutely needed for security purposes and the DOD related needs. The minutes of the meeting held on 11 May 2011 where it was said a decision on the swimming pool is outstanding pending consultation with the owner as it has cost implications for him provide one of the pieces of evidence that gives us a glimpse of the thinking behind apportioning some of the costs to the owner. In the minutes of various progress meetings of the Project Team there is consistent reference to non-security items for the owner’s account, as the elephant in the room.
- (26) Another piece of the puzzle that points us in the direction of the owner footing an undetermined part of the bill are minutes of

meetings held by the Project Team. The minutes of the Project Team meeting dated 1 April 2011, where the question of apportioning of costs was discussed, reveal an agreement reached for a document outlining such apportionment to be prepared for submission to President Zuma. The evidence of the former Deputy Minister of Public Works, Ms Bogopane-Zulu, alluded to earlier, buttresses the existence of such an agreement. In the body of the report I deal extensively with her lamentation that she was unceremoniously removed from the project, an allegation not denied by the Minister at the time, Ms Mahlangu-Nkabinde, whilst still wearing travelling clothes upon landing, from an overseas trip, Ms Bogopane-Zulu indicated that she never saw or heard about the apportionment document she had requested upon departure following her discussion on the same with President Zuma.

- (27) Although the minutes of progress minutes meeting confirm its existence and the investigation did unearth a copy of a document that purports to be the apportionment document and with items for the President's bill allegedly ticked by Mr Makhanya, the fate of the original remains a mystery as Ms Mahlangu-Nkabinde submitted that she had never seen it despite admitting to taking over the prestige portfolio, which included the Nkandla Project, after her abrupt removal of her deputy from same.
- (28) However, I must say that the disappearance of the document amid a situation where virtually all the members of the executive involved appeared conversant with its contents, is a source of grave concern. It is clear that at the level of the Project Team the document was produced and delivered but at a political level, it seems to have been managed in a manner that removed it from the normal administrative decision-making process or track.
- (29) What is clear though is that there is no document through which the Minister of Police revoked his decision. Furthermore his submission and that of the Presidency did not argue that such revocation occurred.
- (30) The procedural question that arose during a consideration of the apportionment of costs issue was whether or not the owner was consulted as required by the law. What we know, according to the Declaration is that President Zuma was informed that he was to pay for everything. Curiously though, the President appears to have been informed of such National Key Point Declaration, a year after it was

made, on 07 April 2011. At what point was he told he would have to pay for some of the items, and for which of those, is not clear.

- (31) The only evidence uncovered that suggests the owner was informed or attempts were made to inform him of his partial payment obligations is the document purporting to be an apportionment of costs document and the testimonies of Deputy Minister Bogopane-Zulu and the former Regional Manager of the Durban DPW Regional Office, Mr Khanyile. However, that document was only prepared around the beginning of 2011 and there is inconclusive evidence regarding its delivery to President Zuma.
- (32) The body of the report also deals with purported security installations on state land near the President's homestead, implemented by the DOD at the expense of the DPW. I must indicate upfront that these have emerged as extraneous to the regime for providing security to the President and selected dignitaries. They belong to a DOD-regime regulating medical services and transport services to the President and specified dignitaries.
- (33) This is the murkiest of all areas. The first thing to note is that no policy instrument that clearly stipulates in exact items which can be funded at state expense in the name of providing mobile security to the President was provided by government during the investigation. Precedent also does not help as all predecessors mainly got security assistance at private residences that is mostly limited to the items listed in the security guides. The only difference is former President Mandela whom around 2010, long after retirement and about 3 years before his passing on, got a mobile ICU unit, which will now revert to the state.
- (34) At the Nkandla residence, the items attributable to the SAPS include the relocation of households of neighbours at state expense, apparently because Mr Makhanya's advice was that a straight fence would provide better security than one that goes around these homes. Here it must be borne in mind that the security evaluations did not recommend this. Furthermore Mr Makhanya is an ordinary architect and not a security expert or advisor. His ticket to the project was on account of non-security related architectural work he was performing for his client, the President, shortly before the Nkandla Project commenced. It must also be noted that the meandering fence and proximity of these households was never identified as a security threat in the two security evaluations conducted by security

experts in accordance with the rules and which are the only security assessments ever conducted in respect of the Nkandla Project.

- (35) It is particularly worth noting that if the National Key Points Act were to be viewed as the key authority instrument authorizing the impugned security measures, these households could have simply been included inside the secured area as part of a National Key Point Precinct, as envisaged in section 2A of the Act. This would have meant a straight fence with these homesteads inside the enclosure. There is no evidence that this option was ever considered.
- (36) It is further worth noting that the organs of state involved did not invoke any law, including the Expropriation Act, 1975, as the basis for moving the households at state expense. The argument that this was a security requirement is not borne by the documents prepared by security experts following the two security evaluations. The fact that the families did not want to move on account of, among others, their family gravesite, does not negate the fact that they benefited from better buildings at state expense.
- (37) I have noted with concern the submission by Deputy Minister Bogopane-Zulu during her interview that she had advised that the Minister of Human Settlements be approached with a request to build RDP houses for the affected households. This would have cost between R100 000 and R120 000 per house, which would have been less than R2 million for the four households instead of the R8 million that has since been paid for the 15 rondavels that have been built for them. This cheaper option was not explored by the DPW. Regarding maintaining the rondavel style of the original homes, RDP houses can be adapted to any low cost architectural design.

(b) Regarding the alleged flaunting of Supply Chain Management procedures stipulated in the relevant regulatory framework, the investigation revealed that:

- (1) It is common cause the expenditure of an amount in excess of R215 million that was spent by the DPW on the Nkandla Project, the prescribed open tender process was not utilized for the procurement of the goods and services required at any stage of the project. Treasury requirements require that all goods and services between R10 000 and R500 000 be subjected to three quotations and above R500 000, to an open tender process. Most of the deviations from

the prescribed open tender process were justified in internal memoranda and minutes of meetings citing:

1. The fact that a particular service provider was appointed by the President and that there was a need to integrate the project with the President's private works;
 2. Security;
 3. Instructions from the Minister of Public Works;
 4. Urgency; and
 5. Indications that the service/product required was only available from one supplier.
- (2) Only nominated and negotiated procurement strategies were utilized, and in some cases there were direct contractual appointments of service providers.
 - (3) According to the DPW records, the procurement without tender processes also covered works referred to as "general site works", amounting to more than R67 million and which included the installation of lighting, data and CCTV networks, access control facilities, bulk earth works and landscaping. Mobile accommodation for the SAPS staff and mobile generators were also procured without a tender process.
 - (4) I have had great difficulty understanding why Mr Makhanya and the other consultants and contractors brought in on account of prior involvement in President Zuma's private renovations, were considered key to the work relating to the helipads, the clinic, homes for SAPS members, the relocation of households and most of the general site works. Most of these measures were unrelated to the private renovations by the President and were executed outside his private property.
 - (5) According to his written statement presented to me dated 30 September 2013, the President was present when Mr Makhanya, was introduced to the DPW team at his house in Nkandla in August 2009. The President has since submitted that he never insisted that Makhanya and others he had already engaged privately had to be engaged for the Nkandla Project. He explained that he simply participated in a meeting the purpose of which was:

“Only to introduce my architect to senior government officials and to appraise each other of their respective plans”

- (6) It is common cause that Mr Makhanya not only served as principal agent for both the President’s private work and the state funded the Nkandla Project. It is also common cause that he served as overall architect, providing subcontractors to the Nkandla Project while serving the President as his private architect. Also not denied is the fact that Mr Makhanya throughout the Nkandla Project served as the go-between between the government officials and the President, leaving it to him to discuss designs with and explain the President’s preferences. What is particularly disturbing in this regard, is that the minutes show that Mr Makhanya was often asked to design something more economic and he would come back with something more expensive or even luxurious and then make a submission regarding why ‘security’ the need had to be met through the more costly design. An example in this regard is his decision to change the design and move the location of the safe haven at a significant increase to the cost .No explanation was given regarding why the government had to consult the President through Mr Makhanya, a consultant.
- (7) Despite denials by the Presidency, the appointment to design and implement security features at the President’s residence placed the service providers who were also appointed by the President in a position of dual responsibility to the President and to the DPW. Although denied by the Presidency, I am unable not to conclude that this presented a risk of conflict of interest. This was particularly the case with regard to Mr Makhanya, whose new role as Principal Agent for the entire Nkandla Project meant that he became the state’s main advisor on what it would take to cost effectively meet identified security requirements while maintaining his status as the President’s architect and advisor. In fact the DPW never explained why Mr Makhanya had to be the Principal Agent for the entire project other than to indicate that he was already involved in the President’s private works.
- (8) Mr Makhanya’s third role as the main go-between between the President as owner and the Project Team, also placed him in a position of serving the interests of two masters. The Presidency has argued that there is no evidence that the interests of the two masters were conflicting. That may be so. What we do know though is that many of the modest measures originally recommended by the

security evaluation or agreed to at project meetings, ended up being replaced through the designs of Mr Makhanya and team under him, by more expensive measures.

- (9) The placing of Mr Makhanya between the Project Team and President Zuma evidently shifted power from state officials to Mr Makhanya . In his written submission, one of the “*official*” project managers stated that Mr Makhanya became the *de facto* project manager and that it was difficult to exercise control over him leading to a case of “*the tail wagging the dog*”. It is not difficult to comprehend why government officials, particularly at a fairly low level of the food chain, would have difficulty controlling a consultant who was presented by and claims to speak with the President’s concurrence or authority. My opinion is that even a Minister could have had difficulty countermanding Mr Makhanya.
- (10) Both minutes of the project and interviews reveal a picture of knee jerk reactions during which team members would come up with an idea at any time, thereafter Mr Makhanya was asked to design a feature that could capture that idea and between him and his quantity surveyor have it costed, the subsequent meeting would then simply adopt it. During the inspection *in loco*, the team deferred to Mr Makhanya, who battled to explain items such as the amphitheater, the kraal, which includes a chicken run and cattle culvert, the Visitors’ Centre, the swimming pool, extensive paving and the relocation, at state expense the President’s neighbours.
- (11) Having a contract that paid him on the percentage of the cost of the measures installed also presented a risk of conflict of interest for Mr Makhanya as choosing the most expensive option meant more money as did expanding the scope of the work involved. Mr Makhanya had made R16,5 million from the Nkandla Project by the time of conclusion of the investigation.
- (12) Coming back to the issue of procurement, I have indicated that the minutes of meetings and interviews with the parties, clearly show that many of the procurement procedures were skipped, ostensibly on account of urgency. I am not convinced that urgency prevented the procurement of services on the basis of shortened tender turnaround times as provided for in Treasury Regulation 16A6.4.
- (13) Mr Khanyile, the former Regional Manager of the Durban Office of the DPW, conceded in his evidence, that from the time the project commenced, the procurement procedures followed were different

from the norm usually applied by the SAPS, the DOD and the DPW. He conceded that these organs of state failed to comply with the prescribed standards of proper demand management and budgeting. The Minister of Public Works has, in his official statements, also conceded this point. The Task Team of officials from DPW, SAPS and the Security Ministry also confirmed the same, in its findings.

- (14) The evidence of the officials involved in the Nkandla Project indicated that they erroneously accepted that due to the fact that the project related to the security of the President, which was urgently needed, and because it was driven from the DPW Head Office and the Ministry of Public Works, the deviation from the norms was justified and not to be questioned.
- (15) The evidence of the officials was corroborated by the Acting Director-General of the DPW, Mr Malebye, who took responsibility for the short cuts. Furthermore, his involvement at trench level, when the project commenced, and later that of a Deputy Director-General, the Deputy Minister and the Minister, the officials at the Durban Regional Office that were mainly responsible for the implementation of the project, did create confusion regarding roles and accountabilities for procurement decisions.
- (16) In approving a request from Mr Khanyile submitted in an internal memorandum dated 9 October 2009, Mr Malebye even went so far as to allow a deviation from the internal DPW directive that all procurements above R20 million had to be approved by the DPW Special National Bid Adjudication Committee (SNBAC), and delegated unlimited and unconditional authority in respect of the Nkandla Project to the Regional Bid Adjudication Committee (RBAC) based at the Durban Regional Office.
- (17) In his capacity as the accounting officer, he also approved the appointment of consultants and contractors for millions of Rand by means of nominated and negotiated procurement strategies. This does not cater for proper competition and selection, on the basis that the Nkandla Project had to be fast tracked.
- (18) Despite all the deviations justified on urgency, the project started off quite slowly and, according to the evidence of the Project Manager, by January 2010, not much had been done.
- (19) According to the SAPS, the President started complaining by March 2010, about the slow progress. The President did the same from

May 2010. By then, little had been achieved despite the fact that the project was already a year old and procurement requirements had been flaunted ostensibly on the basis of urgency.

- (20) The evidence further shows that financial planning for the Nkandla Project was also not attended to by the SAPS, DOD and DPW. Furthermore, by June 2010, no funding had been allocated to the Nkandla Project for the applicable financial year, resulting in the reallocation of the DPW Capital Works budget.
- (21) The scale of the project increased exponentially in terms of number of items, size of measures and the size of President Zuma's homestead. In the construction industry a runaway project scale is referred to as "scope creep". Scope creep is primarily attributed to lack of or poor demand management and failure to manage service providers, who are known to find ways to expand their brief leading to greater cost and extended periods of engagement. Some of the dimensions of the scope creep were consequential to the constant add-ons to the original list of security measures. For example, one of the consequences of the measures constructed beyond the list compiled on the basis of the two security evaluations was that the soil was disturbed significantly leading to a decision by the Project Team in August to employ the services of a Landscape Architect to advise on the rehabilitation of the land. This was not part of the original idea. No wonder the Director: Architectural Services at DPW advised the Acting Director General, at that point, that:

"Given the very humble beginnings of this project, nothing short of a full township establishment is now required..."
(emphasis added)

- (22) Failure to ensure demand management as an essential part of Supply Chain Management is one of the factors behind the runaway costs of the Nkandla Project. Due to the fact that no proper initial planning of and budgeting for the project were done by the departments involved, the scale and cost of the project were clearly without boundaries. As more requirements were raised by the departments and other role players involved, more designs by the professional consultants were added, cost estimates prepared accordingly and funds within the DPW budget reallocated without independent evaluation from persons outside the project. The minutes show that Deputy Minister Bogopane-Zulu, tried to contain both scope creep and price escalation, during her short stint

although she too was, by her own admission responsible for small dimensions of the scope creep and cost escalation. She admitted to having supported the idea of turning the fire pool into a swimming pool on being assured the cost difference would be nominal and to ordering permanent brick and mortar quarters for SAPS personnel near the premises instead of the accommodation they then occupied.

- (23) The Ms G Pasley, Chief Quantity Surveyor of the DPW raised her concerns about the escalation of the costs of the Nkandla Project in an email message sent to Mr Rindel, on 3 December 2010. She stated, *inter alia*, that:

“The scope of work and estimated costs have increased considerably over the past four months and continue to change which has given rise to further cost increases as can be seen from the budget reports already submitted by the consultant team and which are currently in the process of being revised again. The estimated costs have almost doubled over this period and it is essential that the parameters in respect of the scope of work and the budget are established and confirmed. Information pertaining to the exact apportionment of work and costs is critical in order that a detailed cost analysis can be done by the consultant Quantity Surveyors within the confines of the budget.” (emphasis added)

- (24) The records of the DPW and the evidence of the officials that were involved in the implementation of the Nkandla Project show that the SAPS Security Advisory Service did not play a significant role in the design of the project. It submitted certain proposals, but the ultimate design details were left in the hands of especially Mr M Makhanya, the architect and Principal Agent, irrespective of the costs involved.
- (25) The evidence suggests that the focus of the Project Team from the start of the project was on creating an ideal situation, rather than a reasonably safe and affordable one. An example of no attention to cost effectiveness is the cattle kraal with a culvert and chicken run. When asked, during the inspection *in loco*, why a cattle culvert and chicken run, Mr Makhanya said “*this is how they do it in England*”. Moving the kraal, if it had to be moved, to the outer perimeter as is the case in the owner built kraal at the late President Mandela’s homestead in rural Qunu, appears not to have been considered. Similar questions arise with the safe haven, which based on initial cost estimates, was originally conceived as a simple safety measure that would have cost under R1 million.

- (26) Brigadier Adendorff, the Head of the Security Advisory Service of the SAPS and SAPS' principal representative in the Nkandla Project, confirmed during her evidence that in her view, the SAPS did not pay attention to cost, understanding itself as having no role in such costing. She submitted that she understood this to be the responsibility of the DPW. She also confirmed that she had not operated according to the Cabinet Memorandum or the National Key Points Act. Had she been aware of the law, she would have known that both the costing and financing are the responsibility of the SAPS, except for the DOD related measures.
- (27) Lt General Ramlakan, who was the head of the South African Medical Services in the Department of Defence, also made a similar submission. With the support of two counsels, he contended strongly that he understood his role as having been confined to making a wish list and for DPW to adjudicate on that list, procure and provide what it chooses to provide and pay for such from its own budget. Despite presenting himself as the expert even questioning my own competency to question what he requested, he maintained that it was not his place to ensure that the needs identified in relation to military health services in support of the President, his family and military staff deployed in Nkandla, were addressed through the most cost effective measures.
- (28) It is difficult not to reach the conclusion that a license to loot situation was created by government due to lack of demand management by the organs of state involved as provided for in the Cabinet Memorandum, the National Key Points Act, relevant health care and transport regulations as well as National Treasury Guides and directives on procurement. Treasury prescripts clearly require government not to go to the market with a blank cheque licensing service providers to simply fill the blanks relating to scope of work and amount to be paid. In the words of the Project Manager, Mr Rindel: *"It was like building a puzzle without a picture"* and the Project Team *"wrote the rules as they went along"*.

(c) Regarding the allegation that the measures taken at state expense at the President's residence transcended what was required for his security:

- (1) The evidence gathered focused on the standard setting instruments and their provisions regarding the minimum security requirements. The lists of security measures compiled at the conclusion of security evaluations were also taken as standard setting. The President's lawyers conceded during the meeting on 21 February 2014 that the deciding factor or what had to be implemented in the name of security were the lists prepared by security experts following the security evaluations.
- (2) However, even where measures were neither mentioned in the standard setting instruments nor in the lists compiled by the security experts, I still gave consideration to the judicious exercise of discretion by relevant state actors to address incidental needs.
- (3) With regard to security measures inside the residence and relating to fencing, the security verification was made easier by the existence of the Cabinet Policy of 2003, the Minimum Physical Security Standards and the SAPS Security Evaluation Reports compiled in conformity with the Minimum Physical Security Standards.
- (4) Based on the items listed in the Minimum Physical Security Standards and the lists compiled in pursuit of the security evaluations left with no basis for accepting as security measures items such as the kraal, chicken run, Visitors' Centre, amphitheater, swimming pool and extensive paving as these were not among the listed items.
- (5) While conceding the point made by the President in his written submission of 14 February 2014, his lawyers during our meeting, DPW and the security cluster, that I am not a security expert and accordingly cannot second guess security experts, the evidence shows that these items did not come from security experts. As indicated, they were neither on the list in the Minimum Physical Security Standards Instrument nor the list developed by the security experts in pursuit of the security evaluations. Furthermore, the minutes of the Project Team show that their inclusion was principally in the advice of civilians in the Project Team.
- (6) My understanding is that my role is not that of a security expert but that of public scrutiny to ensure that those entrusted with public power do not exceed the bounds of their authority. In other words I'm exercising administrative scrutiny in the exercise of state power much the same way as judicial scrutiny. Do I need an expert to help me understand the decisions made and justifications given by actors

such as Mr Makhanya and General Ramlakan (who presented themselves as experts in their respective fields) for recommending measures beyond what was in the Minimum Physical Security Standards Instrument and the lists from the security evaluations? Not in the case of the items in question, as there are precedents from previous Presidents.

- (7) Having accepted that for incidental measures, discretion, although not expressly authorized, had to be exercised, I had to determine how I was to adjudicate the judiciousness of the exercise of such discretion. In this regard, I found myself relying on the quality measures at residences of President Zuma's predecessors and the submissions made by the Project Team, which for whatever reasons, primarily deferred to Mr Makhanya for internal perimeter installations and Lt Gen Ramlakan for the works outside the land leased by the Zuma family.
- (8) Let us take the cattle kraal. President Mandela's is an ordinary kraal built by himself far from the main yard thus not interfering with motion detectors in the inner perimeter. No swimming pool was built for him. I am also not aware of any Visitor's Centre. In any event, the minutes of the Project Team meeting 11 May 2011 show that the thinking at the time was that the swimming pool would have cost implications for the owner hence Mr Makhanya was assigned the task of consulting President Zuma in this regard.
- (9) Having listened to the submissions and measured these against measures in the private homes of previous Presidents and in the absence of any security evaluation report listing such measures, I had serious difficulty understanding the basis for classifying the following items as security measures:
 1. ***Inside the private residence:*** The Visitors Centre, Cattle Kraal, Chicken Run, Amphitheatre, Marquee Area and the Swimming Pool. All I did here was to ascertain from the relevant state actors what the proximity of such non listed measures to the list in the Minimum Security Measures Instrument and the lists prepared in pursuit of the security evaluations were. I also engaged them on whether or not cheaper but equally effective measures had been considered. The arguments made were simply not convincing as the discretionary security concerns sought to be addressed could have been addressed through much cheaper options. Furthermore, the minutes of progress meetings show that there was some debate on the inclusion of these. Some minutes specifically state that some of

these fall outside the mandate of the DPW. The report captures an example of discussions at project progress meetings indicating that these items were not regarded as security items, stating that: “Mr Makhanya was also requested to discuss the issue of the fire-pool with the President” (emphasis added). It was recorded in the minutes of the meeting that: “Mr Makhanya said that the pool has been placed on hold because of the pool bearing a private costing which the principal (the President) did not accommodate for.” (emphasis added)

2. **Regarding the Visitors Centre:** There is currently an empty building belonging to the Zuma family that was used by SAPS at the beginning, which could have been used for the purpose. The media made an issue of a tuck shop, but as the original tuck shop building exists, and the new one is part of a building housing a legitimate and listed security measure, I found no basis for rejecting the arguments for the tuck shop as a discretionary security measure.
3. **On the state leased land outside the private residence:** The private health clinic, helipads and staff homes address a real need. However I found no reason why these were located near the private residence rather than at a central place that could benefit the entire impoverished Nkandla community. The government submission makes a point of highlighting the inhospitable terrain of Nkandla coupled with, at the time, lack of infrastructure such as roads, and properly resourced health facilities and police stations. General Ramlakan’s submission that there were no such central places is contradicted by evidence. For example, a helipad near a rural hospital or police station could offer enormous relief to this remote community. The building of the police staff quarters at a local police station would have left a legacy for the community. General Ramlakan alluded to the George airport as having been built within a stone’s throw of the then President Botha’s private residence in Wilderness. Firstly that airport is 23km from the said private residence, and secondly, it supports the point about catering for the needs of the caretakers in a manner that takes into account that public resources should be primarily deployed to meet public needs. Also of concern is the fact that the amounts involved in implementing these measures, particularly the SAPS ones, is obscenely excessive. I could not find any authority or legitimate reason for classifying the relocation of the households at state expense, as a security measure as envisaged in any of the authorizing security instruments. Apart from this not appearing in the Minimum Physical Security Standards, such relocation was not recommended in the

Security Evaluation Reports Furthermore, no evidence was provided indicating that such relocation at state expense was the only option for addressing the meandering fence.

- (10) The Ministers of Public Work's communication with Parliament, the nation and, possibly, the President was riddled with inaccuracies and inconsistencies, particularly regarding the regulatory framework employed to justify state expenditure on the upgrades at the President's private residence, the nature of the upgrades and the extent to which the President and his family benefited from relevant installations. This has grossly undermined trust in government.

(d) Regarding the allegation that the expenditure incurred by the state was excessive or amounted to opulence at a grand scale:

- (1) The cost analysis shows that the Nkandla Project started from humble beginnings, but soon escalated by more than two hundred per cent (200%) within a year. It is also clear that the uncontrollable escalation took place once the decision-making powers shifted towards Mr Makhanya as the Principal Agent.
- (2) Minutes of project progress meetings ascribe the uncontrolled escalation that occurred principally to the fact that there never was demand management or a point at which the process owners determined and capped the project scope and price.
- (3) Mr Rindel's evidence indicates that a decision was made by the Nkandla Project Team and the DPW to divide the project into three phases and the documents show that the entire project was not costed up front as required under both the Cabinet Policy and the National Key Points Act. The evidence also shows that the cost ballooned exponentially over time and so did the scale of the Nkandla Project.
- (4) I could find no indication from the evidence that the ever escalating cost and lack of planning of the project were ever attended to as serious issues during the implementation of thereof. Ms Parsely's evidence confirms this.
- (5) As the designs of Phases 1 and 2 continued, based on the requirements of the SAPS and the DOD and the inputs of the Project Team and professional consultants, the estimated cost of the project increased, exponentially.

- (6) From the moment the professional quantity surveyors appointed for the Nkandla Project by the DPW, (the same consultants as appointed by the President) concluded from their initial assessment that the full scope of the security requirements of the SAPS and the DOD was not properly considered by the DPW and that the cost estimate of R27 million, as determined by the Department, was very conservative, there were new items and instant price escalation at virtually every project progress meeting. The industry term for this phenomenon is “scope creep”.
- (7) As shown earlier, there was massive scope creep. An example in this regard is the Safe Haven which was initially conceived with a specific location at the estimated cost of about half a million (R0.5 million). As soon as Mr Makhanya got involved and convinced Brigadier Adendorff the location was changed resulting in an initial estimate of R8 million and the subsequent guzzling of about R19 million at the time of concluding the investigation.
- (8) By the time of finalizing the investigation, the total actual expenditure had increased from the initially estimated R27 million to R215 million despite the fact that the project remains incomplete, with the current conservative estimation of the final cost being R246 million, excluding lifetime maintenance costs.
- (9) Worth noting is the fact that the money guzzlers are not items listed in the standard setting instruments for security. The measures inside the patch of land belonging to the Zuma family that seem to have escalated the costs include the relocated safe haven, security fencing covering a broader perimeter than President Zuma’s original patch of land, the swimming pool, amphitheater, sophisticated cattle kraal boasting a culvert and chicken run, and the Visitors’ Centre. Measures located outside the Zuma patch of land and within land leased by the state for additional infrastructures and support staff as part of the President’s security, health services inclusive of a clinic, helipads, paved streets, bachelor rondavels for staff and rondavels for the relocated neighbours.
- (10) All measures, whether in the inner perimeter fence (land leased by the Zuma family from the Ingonyama Trust) or in the outer perimeter (state occupied land) have been implemented principally for the purpose of providing security for the President. I was not convinced by General Ramlakan’s argument that this is not the case. If it wasn’t for the decision to extend privileges to cover the President when at his private residence, none of the costs incurred in respect of the

infrastructure at his door step, would have been incurred by the state. The only difference between the inner and outer perimeter is the fact that measures in the inner perimeter become the President's property whereas those on state land remain public property when no longer needed for the President's security.

- (11) The contention by the representatives of organs of state involved that the bulk of the money went towards measures in the outer perimeter, accordingly, does not mitigate or change the fact that all expenditure was incurred in the name of security, providing health services and related privileges to the President in relation to his private residence. It must be borne in mind that no clinic would have been built at a private homestead if it was not passed as a security feature for the President. The same applies to the helipads, massive paving, houses for members of SAPS and others as well as the payment of relocation costs for the moved households.
- (12) With all the above in mind, coupled with the fact that no evidence was provided or found indicating that any effort was made to find more economic alternatives, how do we answer the questions raised by the first complainant regarding extreme opulence in the face of a state that is struggling to meet the basic needs of people, including those in the backyard of the homestead in question?
- (13) The investigation revealed that 7 teams of professional consultants were involved in the Nkandla Project and were paid a total of R50 352 842 for Phases 1 and 2 alone. It is worth noting that the relocation of 2 households cost R4.2 million whilst the relocation of 1.5 households cost R3.7 million.
- (14) The records of the DPW indicate that by the time that the investigation was concluded the total expenditure of the project for the DPW amounted to R 215 444 415. The estimated cost of Phase 3 of the project that has not been implemented is R 31 186 887, which would bring the total estimated cost of the project to R 246 631 303.
- (15) Some of the actual expenditure at the conclusion of the investigation on the Nkandla Project can be broken down as follows:

#	DESCRIPTION	AMOUNT (R)
1	Safe Haven, Corridor Link, Walkway Above & Exit Portion	R 19,598,804.10
2	20 Residential Staff Houses (40 units) and Laundry Facility	R 17,466,309.67
3	Relocation of 1,5 Households - Moneymine 310 CC*	R 4,223,506.68

4	Relocation of 2 Households - Bonelena Construction	R 3,698,010.76
5	Clinic and SAPS Garage	R 11,900,233.76
6	Visitors Centre & Control Room #	R 6,720,852.95
7	Tuck-shop, Transformer & LV Room, Genset Room & Refuse Area	R 956,381.16
8	Guard House 1	R 1,205,827.49
9	Guard House 2 & 3	R 1,367,770.87
10	Crew Pavilion	R 997,831.00
11	Sewer Pump Station	R 807,782.16
12	Fire Pool and Parking	R 2,819,051.66
13	Sewer Treatment Plant	R 1,030,673.68
14	Booster Pump Station and Steel Reservoir Tank	R 571,278.25
15	New Residences: Security Measures & Air-conditioning	R 5,038,036.33
16	General Siteworks(<i>Note 1</i>)	R 67,964,858.55
	SUB-TOTAL CONSTRUCTION COST	R 146,367,209.07
	ADD: CONTRACT PRICE ADJUSTMENT PROVISION	R 1,231,109.08
	LESS: PENALTIES IMPOSED FOR LATE COMPLETION OF THE CONTRACT	-R 2,781,149.08
	SUB-TOTAL NET ESCALATED CONSTRUCTION COST	R 144,817,169.07
	VAT (14%)	R 20,274,403.67
	TOTAL NET ESCALATED CONSTRUCTION COST INCLUDING VAT	R 165,091,572.74

Figure A: Summary of the works implemented by the DPW

* The reference to 1.5 households here relates to the fact that not all of the buildings of the one household were replaced as it already had an existing building at the place of relocation.

The control room referred to here is the lower part of the building. The lounge is on the first floor of the Visitors' Centre.

#	CONSULTANT NAME	FIELD / EXPERTISE	TOTAL PAYMENTS
1	CA du Toit	Security Consultants	R 2,691,231.49
2	Ibhongo Consulting CC	Civil & Structural Engineers	R 6,006,457.36
3	Igoda Projects (Pty) Ltd	Electrical Engineers	R 2,503,732.89
4	R&G Consultants	Quantity Surveyors	R 13,794,957.70
5	Minenhle Makhanya Architects	Architects, Principal Agent	R 16,587,537.71
6	Mustapha & Cachalia CC	Mechanical Engineers	R 3,676,448.05
7	Ramcon	Project Management Project Managers	R 5,092,477.73
	TOTAL		R 50,352,842.93

Figure B: List of Consultants and total payments made to each

- (16) The security installations and amounts involved in security measures previously implemented at private residences of Presidents, Deputy Presidents, former Presidents and former Deputy Presidents appear to back the conclusion that the intention of the crafters of the authorizing instruments for security measures envisaged items that fall in the ordinary definition of security installations and did not anticipate grand scale constructions.
- (17) In this regard, it is worth noting that at R215 million and still rising, the cost of security installations at President Zuma's private residence far exceeds similar expenditure in respect of all his recent predecessors. The difference is acute, even if an allowance is made for the rural nature of the Nkandla area and the size of President Zuma's household made detached dwellings.
- (18) According to information submitted by the DPW and DOD:
1. R20 101 (equating to an estimated R173 338 in 2013 financial terms) was spent on former President Botha's private residence;
 2. R42 196 (R236 484) was spent on former President De Klerk's private residence;
 3. Less than R32 million was spent at former President Mandela's two private residences, one of which is located in a rural area in the Eastern Cape. I was referred to the fact that the DOD had placed a field hospital at his rural home, at the cost of about R17 million. However, this is a mobile structure that will revert back to the state and not a permanent fixture, as is the case of the Military Clinic constructed at President Zuma's private residence; and
 4. R8 113 703 (R12 483 938) in the case of former President Mbeki's private residence.
- (19) Judging by these amounts, it is clear that the installations envisaged in the name of security are items you are likely to find at a security shop or company regulated by the security industry regulator, PRISA and not the kind of constructions done work done under the rubric of human settlements or the built industry.

(e) Regarding conduct allegedly amounting to maladministration by public office bearers, public officials and other actors:

- (1) This part is specifically dealt with under findings of maladministration. What needs to be said here is that various state actors had different roles they were required to play, as stipulated by law.
- (2) Most of the roles are prescribed under the Cabinet Policy of 2003, the National Key Points Act 102 of 1980 and procurement prescripts, which primarily comprise the Public Finance Management Act 1 of 1999, Preferential Procurement Policy Framework Act 5 of 2000, Treasury Regulations, Treasury Directives and Practice Notes and related prescripts and departmental policies and guidelines.
- (3) The actors in question were also required to refrain from prohibited practices, such as acts prohibited under the Executive Ethics Code, the Public Service Code and sections 96 and 195 of the Constitution.
- (4) The documents elicited, particularly in the form of memoranda, letters and minutes show that virtually all the parties involved either failed to do what they were required to do or did what they were not supposed to do. I deal with the accountability of relevant state actors in the findings.
- (5) Worth noting is the fact that no evidence indicates that any of the state actors took prudent action when the *Mail and Guardian* Newspaper blew the whistle on the runaway cost of the Nkandla Project in 2009, alleging then that an exorbitant amount of R65 million had been spent. It is my considered view that the President, Minister and Deputy Minister of Public Works and senior officials in the SAPS, DPW and DOD involved should have immediately assessed the project with a view to verifying the veracity of the allegations and if confirmed, arrest the escalating costs. I am also quite certain that had such prudent action been taken, we would not be speaking of R215 million while still counting today.
- (6) Considering that the Principal Agent, Mr Makhanya and one of the contractors, Moneymine, billed the President or his private works and the state for the Nkandla Project, it is difficult to understand how they could have charged the amounts in respect if the latter when some of the works are fairly similar or substantially less involved than the President's dwellings. More perplexing is the fact that many of the measures funded by the state were less extensive than the President's private works. An example in this regard is the relocation of 2 families at R2.1 million each.

(xi) I make the following findings:

(a) 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?

- (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.
- (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.
- (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.
- (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.

(b) 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?

- (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.
- (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.
- (3) The conduct of all organs of state involved in managing the Nkandla Project, particularly officials from the DPW, who unduly failed to comply with Supply Chain Management prescripts was unlawful and constitutes improper conduct and maladministration. The DOD and SAPS officials failed to comply with Treasury Regulation 16A.3.2 imposing the responsibility for demand management on client departments, which include ensuring cost effective measures and budgeting, appropriately for such.

(c) Did the measures taken by the DPW at the President’s private residence, go beyond what was required for his security?

- (1) A number of the measures, including buildings and other items constructed and installed by the DPW at the President’s private residence went beyond what was reasonably required for his security. Some of these measures can be legitimately classified as unlawful and the acts involved constitute improper conduct and maladministration.
- (2) Measures that should never have been implemented as they are neither provided for in the regulatory instruments, particularly the Cabinet Policy of 2003, the Minimum Physical Security Standards and the SAPS Security Evaluation Reports, nor reasonable, as the most cost effective to meet incidental security needs, include the

construction inside the President's residence of Visitors' Centre, an expensive cattle kraal with a culvert and chicken run, a swimming pool, an amphitheater, marquee area, some of the extensive paving and the relocation of neighbours who used to form part of the original homestead, at an enormous cost to the state. The relocation was unlawful as it did not comply with section 237 of the Constitution. The implementation of these installations involved unlawful action and constitutes improper conduct and maladministration.

- (3) Measures that are not expressly provided for, but could have been discretionally implemented in a manner that benefits the broader community, include helipads and a private clinic, whose role could have been fulfilled by a mobile clinic and/or beefed up capacity at the local medical facilities. The measures also include the construction, within the state occupied land, of permanent, expensive but one roomed SAPS staff quarters, which could have been located at a centralized police station. The failure to explore more economic and community inclusive options to accommodate the discretionary security related needs, constitutes improper conduct and maladministration.

(d) Was the expenditure incurred by the state in this regard excessive or amount to opulence at a grand scale, as alleged?

- (1) The expenditure incurred by the state in respect of the measures taken, including buildings and other items constructed or installed by the DPW at the request of the SAPS and DOD, many of which went beyond what was reasonably required for the President's security, was unconscionable, excessive, and caused a misappropriation of public funds. The failure to spend state funds prudently is a contravention of section 195 (1)(b) of the Constitution and section of the Public Finance Management Act. The acts and omissions involved are, accordingly, unlawful and constitute improper conduct and maladministration.
- (2) The first Complainant's allegation that the expenditure constitutes opulence at a grand scale is substantiated. The acts and omissions that allowed the excessive expenditure due to non-security items and failure to arrest the wild cost escalation, especially after the story broke in the media in December 2009, constitute improper conduct and maladministration.

(e) Did the President's family and/or relatives improperly benefit from installations implemented by the state at his private residence?

- (1) The allegation that President Zuma's brother improperly benefitted from the measures implemented is not substantiated. I could find no evidence supporting the allegations that the President's brothers benefitted from the procurement of electrical items for the implementation of the Nkandla Project.
- (2) The allegation that the excessive expenditure added substantial value to the President's private property at the expense of the state is substantiated. The excessive and improper manner in which the Nkandla Project was implemented resulted in substantial value being unduly added to the President's private property. The acts and omissions that allowed this to happen constitute unlawful and conduct improper conduct and maladministration.
- (3) The original allegation that President Zuma's immediate family members also improperly benefitted from the measures implemented is substantiated. President Zuma improperly benefited from the measures implemented in the name of security which include none security comforts such as the Visitors' Centre, such as the swimming pool, amphitheater, cattle kraal with culvert and chicken run. The private medical clinic at the family's doorstep will also benefit the family forever. The acts and omissions that allowed this to happen constitute unlawful and improper conduct and maladministration.
- (4) I do not find the relocation of the tuck shop as a benefit as the business was moved at the instance of the state to a building that might even be inconvenient to the owner.
- (5) The conduct of the DPW leading to the failure to resolve the issue of items earmarked for the owner's cost transparently, including the failure to report back on the swimming pool question after the 11 May 2011 meeting and the disappearance of the letter proposing an apportionment of costs, constitutes improper conduct and maladministration

(f) Was there any maladministration by public office bearers, officials and other actors involved in the project?

(1) Public Office Bearers:

1. All the Ministers of Public Works provided incorrect information on the legal authority for and the extent of the works at the President's private residence.

2. The Minister of Police failed to properly apply his mind when signing the Declaration of President Zuma's private residence as a National Key Point directing the President to implement security measures at own cost or to properly modify the Declaration. This failure constitutes improper conduct and maladministration.
3. The former Minister of Public Works, Mr G Doidge and the Minister of Police could have provided better executive leadership, especially with regard to speedily assessing the extent and cost of the Nkandla Project, particularly when the media broke the story in 2009 and taking decisive measures to curb excessive expenditure. Their failure in this regard constitutes improper conduct and maladministration

(2) Officials of the DPW:

1. The DPW officials failed to acquaint themselves with the authorizing instruments relating to the implementation of the Nkandla Project. They failed to apply their minds and adhere to the supply chain management policy framework in respect of the procurement of goods and services for the Nkandla Project. These failures constitute improper conduct and maladministration.
2. Messrs Malebye and Vukela, the Acting Directors-General of the DPW failed as the accounting officers of the Department at the material times to comply with and/or ensure compliance with the provisions of sections 195(1)(b) and 217 of the Constitution, the PFMA, Treasury Regulations and prescripts and the DPW Supply Chain Management Policy in respect of the Nkandla Project was improper and constitutes maladministration.
3. Ms G Pasely, the Chief Quantity Surveyor showed exemplary conduct by raising her concerns about the excessive escalation in the cost of the Project. It is unfortunate that her concerns in this regard were not taken seriously.

(3) Officials of the SAPS:

1. The SAPS officials failed to acquaint themselves with the authorizing instruments relating to the implementation of the Nkandla Project. They failed to apply their minds and adhere to the supply chain management policy framework in respect of the procurement of

goods and services for the Nkandla Project. These failures constitute improper conduct and maladministration.

2. Brigadier Adendorff, the Head of Security Advisory Service failed to comply with and or ensure compliance with the provisions of sections 195(1)(b) and 217 of the Constitution, the PFMA, Treasury Regulations and prescripts in respect of the area of her responsibility relating to the Nkandla Project was improper and constitutes maladministration

(4) Officials of the DOD

1. The DOD officials failed to acquaint themselves with the authorizing instruments relating to the implementation of the Nkandla Project. They failed to apply their minds and adhere to the supply chain management policy framework in respect of the procurement of goods and services for the Nkandla Project. These failures constitute improper conduct and maladministration.
2. Lt Gen Ramlakan, the former Surgeon-General, failed to comply with and or ensure compliance with the provisions of sections 195(1)(b) and 217 of the Constitution, the PFMA, Treasury Regulations and prescripts in respect of his area of responsibility relating to the Nkandla Project was improper and constitutes maladministration.

(5) The Contractors

1. Mr Makhanya's assumption of multiple and conflicting roles as Principal Agent, the President's architect and procurer of some of the subcontractors which placed him in a position where the advice he gave was tainted by conflict of interest and not in the public interest, which led to uncontrolled scope creep, cost escalation and poor performance by some of the contractors.

(g) Was there any political interference in the implementation of this project?

- (1) The former Minister of Public Works, Mr G Doidge, and Deputy Minister Bogopane-Zulu were at some stage involved in the implementation of the Nkandla Project. Their involvement, albeit for a short period of time, appears to have created an atmosphere that was perceived as political interference or pressure, although the evidence does not show any such intent on their part.

- (2) The Task Team Report also indicated that officials were uneasy with the operational involvement of politicians in the Nkandla Project.
- (3) Their involvement at trench level, including the Deputy Minister making suggestions on how to meet perceived security need, was ill advised although well intended in the light of failures in meeting the project timelines. While I would discourage such acts in similar future circumstances, I am unable to find their attempts at problem solving as constituting improper conduct or maladministration.

(h) Were funds transferred from other much needed DPW projects to fund this project?

- (1) Funds were reallocated from the Inner City Regeneration and the Dolomite Risk Management Programmes of the DPW. Due to a lack of proper demand management and planning service delivery programmes of the DPW were negatively affected. This was in violation of section 237 of the Constitution and the Batho Pele White Paper and accordingly constitutes improper conduct and maladministration.

(i) Is the President liable for some of the cost incurred?

- (1) If a strict legal approach were to be adopted and the National Key Points Act was complied with, President Zuma would be held to the provisions of the Declaration of the Minister of Police issued on 08 April 2010, which informs him of the decision to declare his private Nkandla residence a National Key Point and directs him to secure the National Key Point at his own cost.
- (2) However, that approach would not meet the dictates of fairness as the Presidents, Deputy Presidents, former Presidents and former Deputy Presidents are entitled, under the Cabinet Policy of 2003, to reasonable security upgrades, at their request or that of their office at state expense. Even on the understanding that some of the measures were unauthorized and transcended security measures as envisaged in the regulatory instruments and security evaluation findings, the questionable measures implemented exceed the financial means of an ordinary person. It is further clear from all communication by President Zuma that he was never familiarized with the provisions of the National Key Points Act and, specifically, the import of the declaration. The declaration itself was apparently

delivered to his office in April 2011, a year after it was made and more than two years after the security installations had commenced.

- (3) The DPW mismanaged the process initiated with a view to determining the cost to be paid by President Zuma in respect of security measures installed at and in support of his private residence at Nkandla and which was initially estimated at more than R10 million, leading to a situation where to date, there is no clarity on that matter. This constitutes improper conduct and maladministration.
- (4) It is my considered view that as the President tacitly accepted the implementation of all measures at his residence and has unduly benefited from the enormous capital investment from the non-security installations at his private residence, a reasonable part of the expenditure towards the installations that were not identified as security measures in the list compiled by security experts in pursuit of the security evaluation, should be borne by him and his family.
- (5) It is also my considered view that the amount in question should be based on the cost of the installation of some or all the items that can't be conscientiously accepted as security measures. These include the Visitors' Centre, cattle kraal and chicken run, swimming pool and amphitheatre. The President and his legal advisers, did not dispute this in their response to the Provisional Report. The President did not dispute during the investigation that he told me on 11 August 2013 that he requested the building of a larger kraal, and that he was willing to reimburse the state for the cost thereof.

(j) Were there ethical violations on the part of the President in respect of the project?

- (1) President Zuma told Parliament that his family had built its own houses and the state had not built any for it or benefited them. This was not true. It is common cause that in the name of security, government built for the President and his family in his private a Visitors' Centre, cattle kraal and chicken run, swimming pool and amphitheatre among others. The President and his family clearly benefitted from this.
- (2) I have accepted the evidence that he addressed Parliament in good faith and was not thinking about the Visitors' Centre, but his family dwellings when he made the statement. While his conduct could accordingly be legitimately construed as misleading Parliament, it appears to have been a *bona fide* mistake and I am accordingly

unable to find that his conduct was in violation of paragraph 2 of the Executive Ethics Code. His statement is also consistent with those made by the Ministers of Public Works throughout the public outcry over the Nkandla expenditure. I am accordingly unable to find that his conduct was in violation of paragraph 2 of the Executive Ethics Code.

- (3) Regarding President Zuma's conduct in respect of the use of state funds in the Nkandla Project, on the only evidence currently available, the President failed to apply his mind to the contents of the Declaration of his private residence as a National Key Points and specifically failed to implement security measures at own cost as directed by it or to approach the Minister of Police for a variation of the Declaration.
- (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 have also benchmarked with some of his colleagues. He also may have asked whose idea were some of these measures and viewed them with circumspection, given Mr Makhanya's non-security background and the potential of misguided belief that his main role was to please the President as his his client and benefactor.
- (5) It is also not unreasonable to expect that when news broke in December 2009 of alleged exorbitant amounts, at the time R65 million on questioned security installations at his private residence, the 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 inquiry 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.

- (7) Regarding the allegation that the President may have misled Parliament and accordingly violated the Executive Ethics Code when he announced that the renovations at his private residence were financed through a bank mortgage bond, I am unable to make a finding. Although having established through the Register of Financial Interests that the President has declared a mortgage bond in respect of his private residence at Nkandla since 2009, I am not able to establish if costs relating to his private renovations were separated from those of the state in the light of using the same contractors around the same time and the evidence of one invoice that had conflated the costs although with no proof of payment.

(k) Other Findings of Maladministration

- (1) The occupation by the state of the land adjacent to that occupied by the President, and where security and other measures were constructed and installed by the DPW is unlawful and improper as it violates the provisions and requirements of the KwaZulu-Natal Ingonyama Trust Act, 1994 that requires a proper lease agreement. It also constitutes maladministration.
- (2) The conduct of some of the role players unduly delayed the investigation.

(l) Systemic Deficiencies Observed During the Investigation

- (1) The anomalies in the Nkandla Project point to the existence of systemic policy gaps and administrative deficiencies in the regulatory framework used as authority for implementing security measures at the private residences of ones of Presidents, Deputy Presidents, former Presidents and former Deputy Presidents, key among these being the absence of a cap and an integrated instrument such as the Ministerial Handbook, where all permissible measures can be found.
- (2) In view of the fact that the Cabinet Policy of 2003 applies equally to all Presidents, Deputy Presidents, former Presidents and former Deputy Presidents, there is real risk of a repeat of the Nkandla excesses in respect of any of the four covered categories of public office bearers in the future. As the policy applies to all residences of incumbents in any of the four categories, the risk of unbridled expenditure in the future is very real and needs immediate curbing.
- (3) DOD deficiencies, including no instruments for according and regulating the exercise of discretion and concentration of power on a

single individual with no accountability arrangements, emphasized the need for a proper policy regime regulating security measures at the private residences of the President, Deputy President, Minister and Deputy Minister of Defence.

- (4) Need for a clear demarcation of the roles of the SAPS, DPW and DOD in respect of such projects.

(m) The Impact of the Nkandla Project

- (1) A number of the items installed by the DPW, such as the safe haven, swimming pool, paved roads and walkways as well as water and electricity supply, will require lifetime maintenance at cost to the state. Some maintenance costs may transcend the President's lifetime.
- (2) The military clinic also requires maintenance, supplies and permanent human resources as long as it exists, which may be beyond the President's lifetime.
- (3) The future of the buildings constructed at the request of the SAPS also need to be determined.

(xii) Appropriate remedial action to be taken on my findings of maladministration and as envisaged by section 182(1) of the Constitution is the following:

(a) The President is to:

- (1) Take steps, with the assistance of the National Treasury and the SAPS, 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 amphitheater, the cattle kraal and chicken run, the swimming pool.
- (2) Pay a reasonable percentage of the cost of the measures as determined with the assistance of National Treasury, also considering the DPW apportionment document.
- (3) Reprimand the Ministers involved for the appalling manner in which the Nkandla Project was handled and state funds were abused.

- (4) Report to the National Assembly on his comments and actions on this report within 14 days.

(b) The Secretary to the Cabinet to take urgent steps to:

- (1) Update the Cabinet Policy of 2003 to provide for a more detailed regime;
- (2) Assist Cabinet to set clear standards on the security measures that can be taken, the reasonable cost that can be incurred by the state and the conditions subject to which current and former Presidents and Deputy Presidents would qualify for such measures;
- (3) Take periodic measures to familiarize all members of the Cabinet with the parameters for enjoying executive benefits and the responsibilities they have to ensure that officials do not give them benefits transcending what they are entitled to under the law or policies; and
- (4) The Department of Defence creates Standard Operating Procedures regulating the implementation of the benefits extended to Presidents, Deputy Presidents, the Minister and Deputy Minister of Defence and foreign dignitaries (at the request of the Minister of International Relations), which is aligned with the principles of equality, proportionality, reasonableness and justifiability, within 6 months from the issuing of this report.

(c) The Minister of Police to:

- (1) Take urgent steps to expedite the review of the National Key Points Act to clarify its applicability to presidential security privileges and align it with the Constitution and post-apartheid developments; and
- (2) Ensure that no further security measures are installed at the President's private residence at Nkandla, except those determined to be absolutely necessary for the functionality of already installed measures.
- (3) The Nkandla Project does not set a precedent for measures implemented in respect of any future President, Former President, Deputy President and Former Deputy President

(d) The National Commissioner of the SAPS to:

- (1) Identify officials that were and may still be involved in the Nkandla Project and implement measures to identify why prescripts were not complied with and on the basis thereof decide if disciplinary action should be taken; and
- (2) Assist the Minister of Police in familiarizing himself with the contents of and his responsibilities under the National Key Points Act and the Cabinet Policy of 2003 and ensure that in future officials assisting Ministers to take action under any law include, in each relevant submission, a copy of the legal instrument in question and an outline of all steps required of the Minister.

(e) The Director-General of the DPW to take urgent steps to:

- (1) Identify officials that were and may still be involved in the Nkandla Project and implement measures to identify why prescripts were not complied with and on the basis thereof decide if disciplinary action should be taken;
- (2) With the assistance of the National Treasury, obtain advice from an independent and reputable security consultant on the security measures that were necessary for the protection of the President and estimated legitimate costs thereof. On the basis of this information, the DPW to determine the extent of the over expenditure on the Nkandla project and to obtain legal advice on the recovery thereof;
- (3) With the assistance of the National Treasury, determine the extent to which the SAPS and the DOD should be held liable for the expenditure incurred in the implementation of the Nkandla Project and to recover the amounts accordingly;
- (4) Take urgent steps to enter into a lease agreement with the KwaZulu-Natal Ingonyama Trust Board in respect of the property occupied by the state adjacent to the President's private residence;
- (5) Take urgent steps to relocate the park homes to another organ of state that requires temporary accommodation;
- (6) Review the delegation of authority to Regional Offices of the Department;

- (7) Ensure that all DPW staff involved in supply chain management is properly trained on deviations from the normal prescribed procurement processes;
- (8) Ensure that all DPW staff involved in the implementation and execution of projects are properly trained and capacitated to manage projects assigned to them;
- (9) Comply with the provisions of GIAMA in respect of the assets acquired as a result of the Nkandla Project; and
- (10) Develop a policy for the implementation of security measures at the private residences of the President, Deputy President and former Presidents and Deputy Presidents.

(f) The Secretary for Defence, to take urgent steps to:

- (1) Consolidate prescripts relating to the medical, transport and evacuation of Presidents, Deputy Presidents, former Presidents and former Deputy Presidents;
- (2) Determine the role played by DOD Officials, and in particular the SAMHS, in the Nkandla Project to ascertain if it was in line with their remit and if legal authority boundaries and procedures were complied with; and
- (3) Ensure certainty and accountability in respect of the future implementation of measures relating to 11.7.1 above.

(xiii) In order to monitor and ensure the implementation of the remedial action indicated above, the following steps must be taken:

- (a) When the President submits this report and his intentions regarding the findings and remedial action, within 14 days of its receipt, the Director General in the Presidency should notify my office and Cabinet.
- (b) Accounting Officers of all organs of state required to take remedial action, are to provide implementation plans to the Public Protector's office not later than 01 May 2014.
- (c) Status reports on implementation are to be submitted by the affected accounting officers within three months and final reports on action taken to be submitted within 6 months of the issuing of this report.

- (d) Public Office bearers in affected organs of state are to ensure compliance.

The question that arises is what is next? The answer was actually provided in December 2013 by the Constitutional Court in the matter of Khumalo and Another versus the MEC of Education in KwaZulu-Natal here the court highlighted that:

1. *“Section 195 provides for a number of important values to guide decision-makers in the context of public-sector employment. When, as in this case, a responsible functionary is enlightened of a potential irregularity, section 195 lays a compelling basis for the founding of a duty on the functionary to investigate and, if need be, to correct any unlawfulness through the appropriate avenues. This duty is founded, inter alia, in the emphasis on accountability and transparency in section 195(1)(f) and (g) and the requirement of a high standard of professional ethics in section 195(1)(a).”*
2. *“These provisions found not only standing in a public functionary who seeks to review through a court process a decision of its own department, but indeed they found an obligation to act to correct the unlawfulness, within the boundaries of the law and the interests of justice.”*
3. *“Public functionaries, as the arms of the state, are further vested with the responsibility, in terms of section 7(2) of the Constitution, to “respect, protect, promote and fulfill the rights in the Bill of Rights.” As bearers of this duty, and in performing their functions in the public interest, public functionaries must, where faced with an irregularity in the public administration, in the context of employment or otherwise, seek to redress it.”*

Incidentally, if the state had heeded its duty from 2009 when the media broke the story on the Nkandla Project, it would have saved the citizens who invested trust and taxes in the public administration millions of rand.

As a Public Protector or Ombudsman, I do not make the rules, I simply enforce collectively agreed controls and values that are meant to regulate the exercise of entrusted power and resources in the state. The Constitution says I have the power to determine right and wrong and to take appropriate remedial action. I have done so. Only if I was irrational can my findings be ignored.

Thank you.

ADV. THULI MADONSELA
PUBLIC PROTECTOR OF SOUTH AFRICA