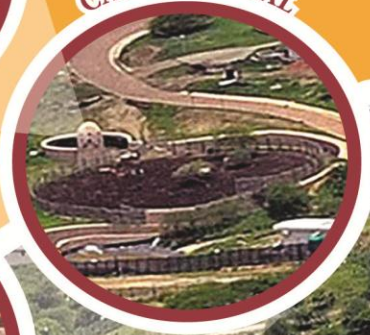


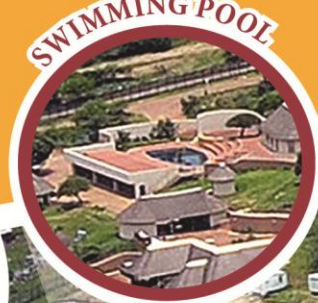
CHICKEN RUN



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# SECURE IN COMFORT

Report on an investigation into allegations of impropriety and unethical conduct relating to the installation and implementation of security measures by the Department of Public Works at and in respect of the private residence of President Jacob Zuma at Nkandla in the KwaZulu-Natal province

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<b>Executive Summary</b>	<b>4</b>
<b>1. INTRODUCTION</b>	<b>78</b>
<b>2. THE COMPLAINTS</b>	<b>80</b>
<b>3. THE POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR</b>	<b>86</b>
3.1. Mandate of the Public Protector	86
3.2. The legal framework of the investigation	88
3.3. Balancing State Security Considerations with Open Democracy Requirements	92
3.4. Security Cluster objections to the investigation and preference for investigations by the SIU and Auditor General	96
3.5. The Alleged Leaking of Information from the Provisional Report:	103
<b>4. THE ISSUES CONSIDERED AND INVESTIGATED</b>	<b>106</b>
<b>5. THE INVESTIGATION</b>	<b>108</b>
<b>6. THE EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION</b>	<b>127</b>
<b>PART A: EVIDENCE ON THE SEQUENCE OF EVENTS</b>	<b>127</b>
<b>PART B: THE EVIDENCE ON THE GOODS AND SERVICES PROCURED BY THE DPW</b>	<b>183</b>
<b>PART C: THE SUPPLY CHAIN MANAGEMENT PROCESS</b>	<b>192</b>
<b>PART D: EVIDENCE ON SPECIFIC ISSUES CONSIDERED DURING THE INVESTIGATION</b>	<b>200</b>
<b>PART E: EVIDENCE ON THE INVOLVEMENT OF THE INDUSTRIAL DEVELOPMENT CORPORATION AND ALLEGATIONS OF IMPROPER BENEFITS AFFORDED TO THE PRESIDENT’S BROTHERS</b>	<b>253</b>
<b>PART F: THE INTERNAL TASK TEAM REPORT</b>	<b>263</b>

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	<b>PART G: THE RESPONSES SUBMITTED BY THE PRESIDENT IN REPLY TO QUESTIONS PUT TO HIM DURING THE INVESTIGATION</b>	<b>269</b>
<b>7.</b>	<b>EVALUATION OF THE EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION</b>	<b>284</b>
	<b>PART A: SEQUENCE OF EVENTS</b>	<b>284</b>
	<b>PART B: THE GOODS AND SERVICES PROCURED BY THE DPW</b>	<b>292</b>
	<b>PART C: THE SUPPLY CHAIN MANAGEMENT PROCESS</b>	<b>293</b>
	<b>PART D: SPECIFIC ISSUES CONSIDERED DURING THE INVESTIGATION</b>	<b>301</b>
	<b>PART E: THE INVOLVEMENT OF THE IDC AND ALLEGATIONS OF IMPROPER BENEFITS AFFORDED TO THE PRESIDENT’S BROTHERS</b>	<b>336</b>
<b>8.</b>	<b>THE LEGAL AND REGULATORY FRAMEWORK</b>	<b>350</b>
<b>9.</b>	<b>ANALYSIS AND CONCLUSION</b>	<b>387</b>
<b>10.</b>	<b>FINDINGS</b>	<b>427</b>
<b>11.</b>	<b>REMEDIAL ACTION</b>	<b>442</b>
<b>12.</b>	<b>MONITORING</b>	<b>446</b>

## Executive Summary

*“Given the very humble beginnings of this project, nothing short of a full township establishment is now required...”*

(Comment of the Director: Architectural Service of the Department of Public Works addressed to the Acting Director-General of the Department on the Nkandla Project at the end of August 2010)

*“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...”*

Justice Louis D Brandeis, US Supreme Court Justice.

- (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) is 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 section 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, which confers on the Public Protector the power to investigate alleged violations 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 Executive Members' Ethics Act.
- (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 R65 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 initial 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 R36 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 Kwa-Zulu 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 of democratic South Africa. The security installations commenced shortly after he was elected and sworn in during May 2009.
- (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, Forestry 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 Radebe, 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; and
  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 seven attorneys and five 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 on the other. 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](http://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 Sicheka, 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 a 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 with 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 were 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 two security evaluations carried out using the Minimum Physical Security Standards as requires 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 for technical evaluation;
  - (d) A cost estimate prepares 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 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 includes 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 shows 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 a 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 is 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 a progress 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 that despite 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 the 'security' 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 amphitheatre, the kraal, which includes a chicken run and cattle culvert, the Visitors' Centre, the swimming pool,

extensive paving and the relocation, at state expense, of 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 Regional Office of the DPW, conceded during 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) 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 a 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, amphitheatre, 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 meetings 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 were 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 Visitors' Centre. In any event, the minutes of the Project Team meeting dated 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 the 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, a 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 Works' 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 thereof. Ms Pasely'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, amphitheatre, 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.

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- (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 seven 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 two 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
	<b>SUB-TOTAL CONSTRUCTION COST</b>	<b>R 146,367,209.07</b>
	ADD: CONTRACT PRICE ADJUSTMENT PROVISION	R 1,231,109.08
	LESS: PENALTIES IMPOSED FOR LATE COMPLETION OF THE CONTRACT	-R 2,781,149.08
	<b>SUB-TOTAL NET ESCALATED CONSTRUCTION COST</b>	<b>R 144,817,169.07</b>
	VAT (14%)	R 20,274,403.67
	<b>TOTAL NET ESCALATED CONSTRUCTION COST INCLUDING VAT</b>	<b>R 165,091,572.74</b>

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
<b>TOTAL</b>			<b>R 50,352,842.93</b>

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.
- (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 & 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 of 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 two 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 and Cooperation, to 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 a Visitors' Centre, an expensive cattle kraal with a culvert and chicken run, a swimming pool, an amphitheatre, 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 brothers 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 benefitted from the measures implemented in the name of security which include none security comforts the Visitors' Centre, such as the swimming pool, amphitheatre, and the 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 accessing 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 assumed 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 needs, 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 Points 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 conscionably 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 them 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 Point 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 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 amphitheatre, the cattle kraal and chicken run and 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) Ensure that 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 and Cooperation), 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;
- (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; and
- (3) Ensure that 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 (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 of affected organs of state are to ensure compliance.



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*"Let it never be said by future generations that indifference, cynicism or selfishness made us fail to live up to the ideals of humanism which the Nobel Peace Prize encapsulates."*

President of South Africa, Nelson Rholihlahla Mandela

## LIST OF ACRONYMS

AGSA	Auditor-General South Africa
ANC	African National Congress
BAC	Bid Adjudication Committee
Bonelena	Bonelena Construction Enterprise and Projects CC
CIDB	Construction Industry Development Board
DG	Director-General
Directive	Directive: Acquisition and Disposal Management
DOD	Department of Defence
DPW	Department of Public Works
GIAMA	Government Immovable Asset Management Act, 2007
HO	Head Office
IDC	Industrial Development Corporation
JCPS	Justice, Crime Prevention and Security
KAM	Key Account Management
MISS	Minimum Information Security Standards
Moneymine	Moneymine 310 CC
MTEF	Medium Term Expenditure Framework
MP	Member of Parliament
NIA	National Intelligence Agency
NKP	National Key Point
PFMA	Public Finance Management Act, 1999
PI	Procurement Instruction
PM	Project Manager
PMBC	Planned Maintenance Budget Committee
PMTE	Property Management Trading Entity
PPM	Portfolio Performance and Monitoring

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QS	Quantity Surveyor
RBAC	Regional Bid Adjudication Committee
RDP	Reconstruction and Development Programme
SANDF	South African National Defence Force
SAPS	South African Police Service
SCM	Supply Chain Management
SAMHS	South African Medical Health Services
SNBAC	Special National Bid Adjudication Committee
SIU	Special Investigating Unit
SSA	State Security Agency
Voltex	Voltex (Pty) Ltd
WCS	Work Control System

### LIST OF KEY ROLE PLAYERS

NAME	POSITION
His Excellency, J Zuma	The President of the Republic of South Africa
Mr J Radebe MP	The Minister of Justice and Constitutional Development
Ms N Mapisa-Nqakula MP	The Minister of Defence and Military Veterans
Mr N Mthethwa MP	The Minister of Police
Mr T W Nxesi MP	The Minister of Public Works
Dr S Cwele MP	The Minister of State Security
Amb. G Doidge	A former Minister of Public Works
Ms G Mahlangu-Nkabinde	The former Minister of Public Works
Ms H Bogopane-Zulu MP	The former Deputy Minister of Public Works
Lt Gen V Ramlakan	The former Surgeon-General of the SANDF
Dr C R Lubisi	The Director-General in the Presidency
Mr S Malebye	A former Acting Director-General of the DPW
Mr S Vukela	A former Acting Director-General of the DPW
Ms G Pasley	Chief Quantity Surveyor of the DPW
Mr K Khanyile	Former Regional Manager of the Durban office of the DPW
Mr J Rindel	Project Manager of the Nkandla Project
Mr J P Crafford	Director: Architectural Services of the DPW
Brigadier S J Adendorff	Head of Security Advisory Services of the SAPS



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Mr M Makhanya	Architect and Principal Agent appointed by the DPW. He was also appointed by the President to design his private works
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## 1. INTRODUCTION

- 1.1. “*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 measures at and in respect of the private residence of President J Zuma, at Nkandla in the KwaZulu-Natal Province.
- 1.2. The investigation was conducted in terms of the provisions of section 182 of the Constitution of the Republic of South Africa, 1996 (the Constitution) and sections 6 and 7 of the Public Protector Act, 1994 (the Public Protector Act). Part of the investigation was also conducted in terms of sections 3 and 4 of the Executive Members’ Ethics Act, 1998 (the Executive Members’ Ethics Act).
- 1.3. The report is submitted to:
  - 1.3.1. The President of the Republic of South Africa, His Excellency, Mr J G Zuma; and
  - 1.3.2. The Joint Chairpersons of the Parliamentary Joint Committee on Ethics and Members Interests, the Honourable Prof B Turok, MP and Mr B Mashile, MP.
- 1.4. The report will also be presented to:
  - 1.4.1. The Minister of Police, the Honourable Mr N Mthethwa, MP;

- 1.4.2. The Minister of Defence and Military Veterans, the Honourable Ms N Mapisa-Nqakula, MP;
- 1.4.3. The Deputy Minister of Women, Children and Persons with Disabilities, the Honourable Ms H Bogopane-Zulu, MP, who was the Deputy Minister of Public Works during certain times material to the investigation referred to in this report;
- 1.4.4. The South African High Commissioner to the Democratic Socialist Republic of Sri Lanka, Mr G Doidge, who was the Minister of Public Works when the project referred to in this report commenced;
- 1.4.5. The Director-General in the Presidency and Secretary to the Cabinet, Dr R C Lubisi;
- 1.4.6. The Director-General of the Department of Public Works (DPW), Mr M Dlabantu;
- 1.4.7. The National Commissioner of the South African Police Service (SAPS), General M V Phiyega;
- 1.4.8. The former Acting Directors General of the DPW, Messrs. S Malebye and S Vukela;
- 1.4.9. The Section Head: Security Advisory Service of the SAPS, Brigadier S J Adendorff;
- 1.4.10. The former Regional Manager of the DPW Durban Regional Office, Mr K Khanyile; and

1.4.11. The DPW Project Manager, Mr J Rindel.

1.5. Copies of the report will also be provided for noting to:

1.5.1. The Minister of Justice and Constitutional Development, the Honourable Mr J Radebe, MP;

1.5.2. The Minister of Public Service and Administration, the Honourable Ms L Sisulu, MP who was the Minister of Defence at certain times material to the investigation referred to in this report;

1.5.3. The Minister of Public Works, the Honourable Mr T Nxesi, MP;

1.5.4. The Minister of State Security, the Honourable Dr S Cwele, MP;

1.5.5. The South African Ambassador to the Republic of Angola, His Excellency, Mr G Ngwenya, who was the Chief of the South African National Defence Force (SANDF) at certain times material to the investigation referred to in this report;

1.5.6. The former National Commissioner of the SAPS, General B Cele; and

1.5.7. The complainants.

## **2. THE COMPLAINTS**

2.1. The complaints were lodged between 13 December 2011 and 12 December 2012 the first complaint was lodged by a member of the public on 13



December 2011 who expressed concern over and requested an investigation to verify allegations of impropriety relating to state funded upgrades at President Zuma's private residence, published by the Mail and Guardian 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 state expense. The improvements allegedly included a network of air conditioned living quarters, a clinic, gymnasium, 20 houses for security guards, underground parking, a helicopter pad, playground and a Visitors Centre.

- 2.2. I immediately informed the Presidency of the request for an investigation into the matter and subsequently met with the Director-General of the Presidency, Dr R C Lubisi, in January 2012. He advised on appropriate departments to assist.
- 2.3. I also informed the President and Dr Lubisi in writing of the compliant in letters addressed to them respectively, on 15 February 2012.
- 2.4. Allegations of impropriety and excessive public expenditure relating to installation and implementation by the state of security measures at President Zuma's private residence (hereafter referred to as *the Nkandla Project*) subsequently appeared in the media on a regular basis.
- 2.5. On 30 September 2012, for example, the *City Press* published an extensive article on the matter, alleging, *inter alia*, that the DPW had allocated funding of more than R203 million to the project and that the development included the construction of three sets of underground living quarters with 10 air conditioned rooms, a clinic for the President and his family, 10 houses for security personnel, a helipad and houses for members of the South African Air Force and the SAPS.

2.6. The Honourable Ms L Mazibuko, MP of the Democratic Alliance lodged a complaint based on this media article with my office on 30 September 2012, as did three members of the public in October 2012 and one in November 2012.

2.7. In their letters of complaint, the complainants raised, *inter alia*, the following concerns:

2.7.1. *“Like all South Africans I have recently read in the media the appalling story of the sums of taxpayers’ money being spent on the private residence of President Jacob Zuma. This is opulence on a grand scale and as an honest, loyal, taxpaying South African I need to understand how this is allowed to happen. Strangely civil society is quiet. This is wrong and highlights the complete disregard which this Government has for the citizens of this country. Where is this money coming from and how has it been approved?”*

2.7.2. *“Whether any undue political influence was placed on the Department of Public Works to allocate these funds;*

*Who issued the instruction for the allocation of these funds?*

*Whether these funds have been properly budgeted for;*

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

*Whether the allocation of funds for what is essentially a private home - which will not remain within the state’s ownership - represents irregular expenditure.”*

- 2.7.3. *“The Minister of Public Works has approved that highly debated, refurbishment of the current president’s private residence in Nkandla, and she (sic) has indicated that this is in line with the Ministerial Handbook. This, I will show, is in fact not true.*

*According to the handbook, ‘Members are responsible for all costs related to the procurement, upkeep and maintenance of private residences used for official purposes’ and furthermore The Minister of Public Works may approve a State contribution of a non-recoverable maximum amount of R100 000, or the total cost of security measures not exceeding R100 000’.*

*As the house in Nkandla is privately owned, the President should only be granted R100 000 for security measures, and not the allotted R203 million. This contradicts the handbook, and so the upgrade should be deemed unlawful, and I wish the Public Protector could investigate this, as the money is well spent on other things in South Africa.”*

- 2.7.4. *“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.”*

- 2.7.5. *“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.”*

- 2.7.6. *“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)
- 2.8. A complainant submitted that the allegations made by the media in connection with the developments at the President’s private residence at Nkandla show that the President acted in violation of the Ministerial Handbook and that it was disingenuous for him to deny that he was unaware of the costs involved.
- 2.9. Ms L Mazibuko, Member of Parliament and Parliamentary Leader of the Democratic Alliance (DA), lodged a further complaint with me in terms of the Executive Members’ Ethics Act, on 12 December 2012. She requested that I investigate allegations that members of the President’s family improperly benefitted from the Nkandla Project and that this constituted a violation of the Executive Ethics Code.
- 2.10. Prof P De Vos of the University of Cape Town lodged a complaint on 21 November 2012 in connection with a statement allegedly made by the President to the National Assembly on 15 November 2012, where he denied that the state had paid for the construction of any house for him and advised

that the development of the first phase of his private residence was financed by a loan secured from a bank through a mortgage bond in respect of the property. A subsequent media article alleged that it was not true and Prof De Vos suggested that the President may have misled the National Assembly, which would constitute a violation of the Executive Ethics Code. Though making reference to the Executive Members' Ethics Act, Prof de Vos' complaint was investigated under the Public Protector Act as members of the public have no *locus standi* under this Act, as section 4 restricts the power to lodge complaints to members of national and provincial legislatures, the President and Premiers in the provinces.

- 2.11. I informed the President in detail of the complaints received from Ms L Mazibuko and Prof De Vos in a letter addressed to him on 29 January 2013.
- 2.12. I should mention that the article referred to in paragraph 2.1 above was not the first published by the media on allegations of opulent public spending at the Nkandla private residence of the President. The first article containing allegations of unwarranted excessive expenditure at President Zuma's private residence was published by the *Mail and Guardian* newspaper on 04 December 2009, under the heading "*Zuma's R65m Nkandla Splurge*".
- 2.13. Except for the release of a statement by the Presidency on 03 December 2009, denying that government was footing the bill, nothing appears 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 me, 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 specific matters in relation thereto. The Task Team's report was only released to the public on 19 December 2013.

- 2.14. The essence of the complaints had three key dimensions. The complainants were essentially alleging that:
- 2.14.1. There was no authority for the expenditure that was allegedly incurred by the state in respect of upgrades made at the President's private residence under the auspices of improving security. Even if there was authority, the upgrades were excessive or "*opulent*" and transcended such authority;
- 2.14.2. The procurement process in respect of the security measures installed and implemented was improper and resulted in unduly excessive amounts of public money being spent unnecessarily; and
- 2.14.3. The conduct of the President in relation to implementing the impugned upgrades at his private residence may have been unethical and in violation of the Executive Ethics Code.

### **3. THE POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR**

#### **3.1. Mandate of the Public Protector**

- 3.1.1. The Public Protector is an independent institution, established under section 181(2) of the Constitution to support and strengthen constitutional democracy by investigating any conduct in state affairs or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice; reporting on that conduct; and taking appropriate remedial action as mandated by section 182 of the Constitution and relevant legislation.

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- 3.1.2. Section 182(2) of the Constitution states that the Public Protector has additional powers and functions prescribed by national legislation.
- 3.1.3. The Public Protector Act elaborates on the investigation powers of the Public Protector and section 6(4) thereof specifically provides that the Public Protector shall be competent to investigate, on his or her own initiative or on receipt of a complaint, *inter alia*, any alleged:
- 3.1.3.1 Maladministration in connection with the affairs of government at any level;
  - 3.1.3.2 Abuse or unjustifiable exercise of power or other improper conduct by a person performing a public function; and
  - 3.1.3.3 Improper or unlawful enrichment or receipt of any improper advantage by a person as a result of an act or omission in the public administration or in connection with the affairs of government at any level or of a person performing a public function.
- 3.1.4. Section 8(1) of the Public Protector Act states that the Public Protector may make known to any person any finding, point of view or recommendation in respect of a matter investigated by him or her.
- 3.1.5. Sections 3(1) and 4(1)(a) of the Executive Members' Ethics Act provide that the Public Protector must investigate any alleged breach of the Executive Ethics Code on receipt of a complaint by a Member of Parliament against a Cabinet member. According to section 1 of the Act, "Cabinet member" includes the President.
- 3.1.6. When investigating an alleged breach of the Executive Ethics Code, the Public Protector, by virtue of section 3(4) of this Act, has all the powers

vested in her/him in terms of the Public Protector Act. Section 4 further states that nothing in this Act may prevent the Public Protector from investigating any complaint by a member of the public in accordance with the Public Protector Act.

3.1.7. The complaints lodged and the insinuations made against President Zuma relate to allegations of maladministration and improper conduct in state affairs and unethical conduct by the President, and accordingly fall within the jurisdiction and powers of the Public Protector.

### 3.2. **The legal framework of the investigation**

3.2.1. The investigation was conducted in terms of the provisions of section 182 of the Constitution, sections 6 and 7 of the Public Protector Act. The complaint lodged by Ms Mazibuko of a possible violation by the President of the Executive Ethics Code was received when an investigation was already under way, albeit at a slow pace due to capacity constraints, among others. The complaint was addressed by ensuring that part of the investigation that had been on-going for a year, was conducted in terms of sections 3 and 4 of the Executive Members' Ethics Act.

3.2.2. Section 3(2) of this Act provides that the Public Protector must submit a report on an alleged breach of the Executive Ethics Code to the President, if the complaint is about a cabinet member, within 30 days of the receipt of thereof.

3.2.3. However, section 3(3) states that if the Public Protector reports at the end of the 30 day period that the investigation has not been completed, the Public Protector must submit a report when the investigation has been completed.



- 3.2.4. The President suggested, in submissions to me during the investigation, that I failed to comply with the 30 day period and also to report that my investigation had not been completed. He requested that I should indicate in my report whether I had complied with the said provisions, and if not, whether the delay in doing so is justifiable. The President further required of me to indicate whether he has the power to condone any non-compliance.
- 3.2.5. The President's legal team further contended that the provisions of sections 3(2) and 3(3) are prescriptive and that non-compliance would negate the validity of the investigation.
- 3.2.6. As I have indicated above, I received only one compliant in terms of the Executive Members' Ethics Act, i.e. from Ms L Mazibuko, MP of the Democratic Alliance, in connection with allegations that the President's family improperly benefitted from the Nkandla Project. Her complaint was lodged on 12 December 2012, a year after the investigation commenced.
- 3.2.7. On 29 January 2013, I informed the President in writing of the complaint and my investigation thereof and that he would be afforded an opportunity to respond thereto, once I had obtained more detailed information pertaining thereto.
- 3.2.8. The President was therefore not only informed of the investigation. He was also advised that it was not completed 48 days after receipt of the complaint. This period included the end of the year festive season and therefore several public holidays.
- 3.2.9. It was simply not possible to have concluded the investigation earlier, because it was an integral part of the on-going investigation in terms of the Public Protector Act. The President never raised this issue with me in

subsequent correspondence and when I met with him on 11 August 2011 or at any other stage objected to my investigation.

- 3.2.10. More importantly though, I respectfully do not accept the contention by the President and his lawyers' that if the Public Protector fails to comply with the 30 day period, it could impact on the validity of the investigation. This period, in my respectful view, was determined by the Legislature to ensure that an investigation against a member of the executive regarding a violation of the Executive Ethics Code should be expeditious, if possible. An executive members' public accountability, in my view, cannot lapse if the 30 days period is not met. I am particularly saddened by the fact that such a submission was made by the ultimate custodian of executive accountability.
- 3.2.11. If the investigation takes longer than 30 days, then the Public Protector can issue the report when he/she is ready to do so. The only requirement is that the President should be informed. Regarding the President's complaint in his submission that inadequate regard had been given for the delay in finalizing the investigation, I advised him and his lawyers that there is also no provision in this Act or any other law that requires of the Public Protector to explain to the President why the investigation took longer than 30 days to complete. The explanation in the Provisional Report was accordingly not exhaustive as it simply meant to highlight some of the hurdles faced in undertaking the investigation leading to the delay in its finalisation.
- 3.2.12. Section 3(4) provides that when the Public Protector conducts an investigation in terms of the Act, he/she has all the powers vested in the Public Protector, in terms of the Public Protector Act. Consequently, even if the submissions made by the President and his legal team carried any merit, it would not have any impact on the validity of my investigation in terms of

section 182 of the Constitution and sections 6 and 7 of the Public Protector Act, that covered the very same issues.

- 3.2.13. There is no provision in the Constitution, the Public Protector Act or the Executive Members' Ethics Act, that authorizes the President to condone any action or omission of the Public Protector. In this case, as I have stated above, I respectfully hold the firm view that there was no conduct failure on my part in the investigation of the matters concerned.
- 3.2.14. The suggestion that the duty to account for one's alleged ethical violations lapses in the event of non-compliance with the reporting requirements appear at odds with the spirit of the Act and public accountability in general. It seems odd that the right of members of the public to exact accountability with regard to ethical conduct by members of the Cabinet, through their legislative representatives, would be extinguished simply because investigative timelines have been missed. Clearly the timelines are meant to ensure efficient handling of such matters but certainly not for members of the Executive to evade accountability.
- 3.2.15. It must be noted that this is the first time such an objection is raised. When I came in as Public Protector there were matters that had been going on for longer than 30 days from my predecessor which I completed as soon as possible and presented the reports to the President without hurdles.
- 3.2.16. I have also considered that if time lines have an impact of the validity of an on-going investigation, it could be equally true that failure by the President to meet his 14 day timeline would absolve Parliament of its duty to entertain the President's report regarding how he has dealt with the Public Protector's report. This certainly could not have been the intention of the architects of the legislation.

3.2.17. The need for a speedy resolution of these matters cannot be contested. However, an approach that supports public accountability and, accordingly, the rule of law, would not seek to aid members of the executive to evade accountability. The approach would help review the resource requirements and assist to address capacity gaps. It is a well-known fact that I have appealed to Parliament for more resources for my office, particularly resources dedicated to the additional statutory mandates that were given to the office in the past few years, without additional resources specifically dedicated to those new mandates. This applies particularly to the Executive Members' Ethics Act, Protected Disclosures Act, 26 of 2000 and Housing Measures Protection Act, 95 of 1998. While Parliament initially accepted the request without reservation, in the last two years, questions have been raised regarding the deservability of the additional resources. The reality though is that no resources were ever assigned for the implementation of these additional mandates and while the office has always struggled to meet the 30 day requirement, the increase in work load and delays in securing answers have compounded the situation.

### 3.3. **Balancing State Security Considerations with Open Democracy Requirements**

3.3.1. As the investigation progressed towards reporting, questions arose regarding whether the report should be kept as a confidential report in view of the subject matter being security installations and many of the regulatory instruments and sources of evidence being classified documents. These questions had to be dealt with against the backdrop of the matter already being in the public domain since 2009 and the narrative being riddled with suspicions of impropriety and a cover up. The context of open democracy

being one of the foundational values of South Africa's democracy, as entrenched in section 1 of the Constitution, also had to be taken into account.

3.3.2. Organs of state affected by the investigation, mainly the security cluster, sharply raised the security question towards the conclusion of the investigation. By February 2013, the concerns culminated in outstanding documents being withheld on account of security and delays in conducting an inspection *in loco* at the Nkandla residence. Threats of litigation were made and eventually on 8 November 2013, government departments took me to court ostensibly for not giving them enough time to assess the Provisional Report for possible security breaches. In reality the cluster advanced arguments that questioned my power to scrutinize the exercise of power by security Ministers and that also challenged security implications of the provisions of the Provisional Report that had no relevance to security. Incidentally, the bulk of the objections were withdrawn when the investigation team eventually met with a Task Team of security cluster officials I had requested be constituted to depoliticize the security assessment of the Provisional Report. By then it had dawned on the security cluster that government had made public most of the contested information in a 12 000+ page batch of documents given to the *M&G Centre for Investigative Journalism (amaBhungane)*. This had been done in June 2013 in response to a court application brought in terms of the Promotion of Access to Information Act 3 of 2000.

3.3.3. My approach regarding balancing the dictates of open democracy as a pillar of public accountability with legitimate state security concerns, was informed by section 32 of the Constitution read with Section 8(2A)(a) of the Public Protector Act provides that any report issued by the Public Protector shall be open to the public, unless the Public Protector is of the opinion that exceptional circumstances require that the report be kept confidential.

- 3.3.4. In the event that the Public Protector is of the opinion that exceptional circumstances require that a report be kept confidential, the Parliamentary Committee on Justice and Constitutional Development must be furnished with the reasons therefor and, if the Committee concurs, such report shall be dealt with as a confidential document in terms of the rules of Parliament.
- 3.3.5. Exceptional circumstances shall, in terms of section 8(2A)(c) of the Public Protector Act, exist if the publication of the report is likely to, *inter alia*:
- Endanger the security of the citizens of the Republic;
  - Disturb the public order or undermine the public peace or security of the Republic;
  - Be prejudicial to the interests of the Republic.
- 3.3.6. In considering this issue, I took cognizance of the fact that some of the information that was provided to me during the investigation related to the security measures that were taken at the President's private residence in its capacity as a National Key Point. The witnesses and officials that provided such information during the investigation did so in terms of their obligation to cooperate with my investigation in terms of the Public Protector Act.
- 3.3.7. Some of the information obtained during the investigation was classified as "*Top Secret*" by the owners thereof. In terms of the provisions of the Minimum Information Security Standards policy, 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.

- 3.3.8. The security of the President is of utmost importance to the safety of the state and the information in respect of the Nkandla Project was throughout the investigation handled with sensitivity and the necessary precautions.
- 3.3.9. I took the additional precaution in this regard to provide the Ministers of the Security Cluster with an opportunity to comment on security issues, referred to in my draft provisional report, which concerned them to enable me to consider whether it should be masked in or removed from my final report. The court application (referred to below) brought by the Ministers of Public Works, Police, State Security and Defence was later withdrawn.
- 3.3.10. Having considered all the inputs provided to me in this regard, I had to strike a balance between the obligation in terms of the Public Protector Act to issue a report that is open to the public, and not compromising the security of the President and the state. I concluded that:
- (a) Since Public Protector proceedings are inquisitorial, based on the relevant provisions of the Constitution, the Public Protector Act and the Executive Members' Ethics Act and as the matter involved the President of our country and the appropriation of public funds, the reporting has to be open and transparent;
  - (b) The information referred to in this report relates to matters of procurement and ethical conduct. The focus is not on the nature and extent of the security measures installed and implemented at the President's private residence;
  - (c) Most of the information concerned has been in the public domain for approximately two years. It reached the public domain by means of media reports based on information obtained by investigative journalists

and voluminous documents provided by the Minister of Public Works;  
and

- (d) The impact of the failure to disclose the relevant information contained in this Report would be that the public would not be informed of the extent of my investigation, the basis for my findings and the reasoning for the remedial action taken. This would not be in the public interest or in the interest of the affected parties and institutions.
- (e) Due to the fact that the report of the DPW Task Team was declassified, and the bulk of the information and documentation relating to matters of security were already in the public domain by the time my investigation was concluded, the issue of whether or not my report should be made public became moot.

#### 3.4. **Security Cluster objections to the investigation and preference for investigations by the SIU and Auditor General**

- 3.4.1. After a smooth flow of information from affected organs of state, including extensive documents received from the DPW, the Minister of Police suddenly raised an objection to the investigation. He questioned the need in the light of government having established an internal task team that had made findings on the matter and that the internal process had not yet been concluded as investigations by the Auditor General and the Special Investigation Unit (SIU), which had been recommended by the Task Team had not yet been undertaken. There was also a veiled questioning of the authority of my office to investigate a security matter and to access related security documents.
- 3.4.2. The objection was first expressed in Minister Nathi Mthethwa's letter of 22 March 2013, which should have been a response to a request for information



in the possession of the SAPS. He indicated that he had difficulty providing the information in the light of the concerns I have alluded to, and requested a joint meeting with his security cluster colleagues to iron out issues.

- 3.4.3. This followed my approach to Minister Mthethwa in writing on 11 February 2013, informing him of my investigation and requesting copies of the relevant documents relating to the declaration of the President's private residence as a National Key Point and the procedure followed in terms of the relevant Act and the *Cabinet Policy on Security Measures at the Private Residences of the President, Deputy President and former Presidents and Deputy Presidents of 2003*.
- 3.4.4. In his letter to me dated 22 March 2013,, Minister Mthethwa alluded to a statement issued by the Minister of Public Works on the report of the internal Task Team that was appointed by the latter and specifically to the recommendations made in the report that the matters concerned should be referred to a (at the time) to-be-established Special Investigating Unit and the Auditor-General for further investigation and stated that:

*"I am concerned that you have now decided to investigate the matter even though a number of processes are underway to deal with the maladministration identified by the Task Team. In effect, an allegation or suspicion of maladministration no longer exists. The Task Team has identified maladministration and, therefore, the Ministers in the JCPS Cluster have decided that a Special Investigating Unit and the Auditor-General must conduct a full investigation and audit. Any other appropriate steps will also be taken.*

*I have considerable difficulty in complying with your request to provide you with all the documents relating to the declaration. Not only will this*

*compromise the security arrangements in place at the President's private residence, it will subject to scrutiny the methodology used and the factors taken into account when considering the declaration of a national key point. This could compromise national security.*

*I have discussed your request with the other Ministers of the JCPS Cluster involved in the matter and with the Minister of Justice and Constitutional Development. Whilst every effort has been made to cooperate with you and while every effort will continue to be made to continue to cooperate with you, the Ministers do share some of my concerns and have raised others. They have, therefore, directed me to request you to meet with all of us to discuss your investigation and the documents which you have requested.” (emphasis added)*

- 3.4.5. The meeting as requested by the Minister of Police took place on 22 April 2013 and was also attended by the Ministers of Public Works and State Security. At the meeting, I explained in detail the constitutional and statutory mandate of the Public Protector to investigate the matters concerned. I also emphasized the fact that my investigation was already at an advanced stage and that the Minister of Public Works and the President had been informed of the investigation when it commenced and complied with consequent document and information requests. A letter from me addressed to the Minister of Police, dated the same day, was also presented to the Ministers. In this letter I stated, *inter alia*, that:

*“It was noted during my investigation to date that reference is often made to the fact that the information that I requested is classified or ‘Top Secret’ and could therefore not be provided to me. However, I could find no indication in the National Key Points Act, 1980, the said Cabinet Policy, the Protection of Information Act, 1982 or the Minimum Information Security Standards that*

*could be interpreted as prohibiting the Public Protector from having access to any information that relates to state affairs, which, I must point out, would be a contradiction of section 7(4) of the Public Protector Act.*

*Section 7(4) gives the Public Protector full and free access to any information or document that has a bearing on any matter that is being investigated by him or her, whether it was classified as top secret or not.*

*You will note that section 7(4) (a) of the Public Protector Act authorizes me to request and subpoena any such information from any person in the Republic with no exceptions. The Public Protector also has powers of search and seizure to obtain documentation and information relevant to any investigation. The provisions are consistent with the Public Protector being one of the only 2 specified safe harbours under the Protected Disclosures Act and one of the enforcers of the Promotion of Access to Information Act No 2 of 2000.*

*Information in the possession of the Public Protector is furthermore protected by the provisions of section 7(2) of the Public Protector Act, in terms of which it may not be disclosed without his or her consent. In terms of section 6(8), not even a court of law can force the Public Protector to disclose such information.*

*Under the circumstances, you will appreciate that I find it difficult to understand why classified and top secret information can be shared with the internal Task Team, the Special Investigation Unit and the Auditor-General, which according to your letter under reply will be mandated to investigate this matter, but not with the Public Protector. I am further perplexed and perturbed by the statement in your letter under reply that to disclose the*

*information that I am by law entitled to have access to ‘could compromise national security.’*

*I must further express my concern about the intention expressed in your letter to establish a Special Investigating Unit (appointed by and reporting to the President) to investigate the matters that I am currently investigating. As indicated earlier, my investigation is already at an advanced stage, about 90% complete. The investigation team has already interviewed a number of witnesses, studied a wide range of voluminous documents and the relevant legislation and other prescripts applicable. Obviously, my office has incurred substantial expenditure in conducting the investigation so far. To appoint another body to investigate the same matters would, in my respectful view, constitute a duplication of efforts and associated costs and other resources.*

*From what is stated above, you will note that my investigation into the matters referred to had already commenced in 2011, before the internal Task Team was appointed by the Minister of Public Works. As indicated, my investigation is already at an advanced stage and will be concluded soon, provided that I receive the outstanding information that is required from your office and the Minister of Public Works timeously.”*

- 3.4.6. It should be noted that when approached by my office on 25 March 2013, the Auditor General South Africa, indicated that the request by the DPW to investigate the matter concerned had been declined. During the meeting with the said Ministers on 22 April 2013, I informed them accordingly.
- 3.4.7. It was agreed at the meeting of 22 April 2013 that I would continue with my investigation. The Ministers attending indicated that they would cooperate with me by providing me access to the requested classified documents during a briefing of the processes followed. It was also agreed that I would be

briefed on the report of the Internal Task Team that investigated certain aspects of the Nkandla Project.

- 3.4.8. I was therefore surprised to receive a letter from the Acting State Attorney on 24 April 2013, acting on behalf of the Ministers of Public Works, State Security and Police. Referring to the meeting of 22 April 2013, he stated, *inter alia*, that:

*“Monday’s meeting with you suggests to our clients that you have embarked on a parallel process to investigate the matters currently under investigation by them. The additional steps being taken by them will also impact on the final determination of the matter by our clients who will decide in consultation with the JCPS Cluster Ministers and with the Cabinet what further measures should be taken. Any transgressions will be dealt with firmly by our clients. **Our clients believe that the SIU has the competency and powers to conduct this investigation** and also point out that you yourself have previously collaborated with the SIU during the handling of sensitive complaints. In any situation where you seek to hold people accountable, the existence of parallel investigations can compromise the outcome.*

*Our clients, therefore propose that they continue to brief you on the matter and that they continue to update you on the investigations, but that you **hold your investigation in abeyance** until the processes embarked upon have been completed.”* (emphases added)

- 3.4.9. The Head of my Private Office responded to the Acting State Attorney on 10 May 2013, informing him in detail of the steps that had been taken by me in the investigation and that to suspend it would have been tantamount to a breach of my constitutional and legislative responsibilities.

- 3.4.10. The proposed briefing meeting was held on 31 May 2013. It was attended by the Ministers of Public Works, Police, Justice and Constitutional Development and Defence and Military Veterans. Also present was Mr E Daniels, the Chief State Law Advisor, Lt Gen Ramlakan, the former Surgeon-General, and other high ranking officials.
- 3.4.11. The Chief State Law Advisor suggested that I should stop my investigation until the recommendations of the internal Task Team had been implemented and the investigations of the Auditor-General and the Special Investigating Unit had been concluded.
- 3.4.12. At the time of the conclusion of my investigation, no investigation had been conducted by the Auditor-General and the Special Investigating Unit had not yet been authorized to investigate the matter. In the first week of January 2014, I was advised by the Head of the SIU, Advocate Vas Soni, SC that a proclamation was finally received shortly before the SIU offices closed for the Christmas holiday. He further advised that the terms of reference are limited to the conduct of officials and service providers in relation to the procurement of goods and services in the Nkandla Project.
- 3.4.13. At a further meeting that took place on 31 May 2013 arguments were again advanced that it was improper of me to continue to investigate against the wishes of the Ministers, who were satisfied with the findings of the Task Team and had decided, at the recommendation of the Task Team, that the next phase should be investigations by the Auditor General and the SIU. The Chief State Law Advisor, Mr Enver Daniels supported the Ministers at the meeting in question, arguing at some point that “*constitutionally speaking*” it was improper for me to investigate when the Ministers had clearly decided as members of the Executive how they wanted the matter investigated.

3.4.13.1 With the support of the Chief State Law Advisor and the State Attorney, the Minister insisted that my investigation should be suspended, (despite the fact that it was already well advanced at the time and my persistently making this point to them) pending the outcome of investigations to be initiated by the Auditor-General South Africa and a to-be-established Special Investigating Unit, which was requested by the Minister of Public Works.

3.4.14. The impasse was eventually overcome when an agreement was reached with the Ministers involved at the meeting of 31 May 2013, that I would continue with the investigation and that they would assist with providing the outstanding information. The contributions of the Minister of Justice and Constitutional Development and the Minister of Defence and Military Veterans regarding my office's powers were instrumental in the breakthrough.

### 3.5. **The Alleged Leaking of Information from the Provisional Report:**

3.5.1. On 5 November 2013, an article appeared in *The Star* newspaper claiming that information was leaked from my draft Provisional Report, which indicated that I had exonerated the President from all wrongdoing. The journalist responsible for the article later told me at a media briefing that his information came from two senior government officials of the security cluster.

3.5.2. The *Mail and Guardian* newspaper published an extensive article on 29 November 2013, on what purported to be "key features" of my draft Provisional Report learnt from undisclosed sources. This article was also based on 12 000 pages of documents obtained from the Minister of Public Works by the *M&G Centre for Investigative Journalism* in June 2013 by means of an application in terms of the Promotion of Access to Information

Act, 2000. All these documents, including several that are classified, were published on the Internet and are available at [www.amabhungane.co.za](http://www.amabhungane.co.za).

- 3.5.3. The President and Gen Cele raised concerns during the investigation regarding the impact of the alleged leaks of parts of my Provisional Report to the media.
- 3.5.4. The leaking of information to the media on my investigation occurred despite extreme measures implemented by my office to secure the information and evidence obtained during the investigation.
- 3.5.5. Although the alleged leaking of information from my draft Provisional Report may have constituted a violation of the provisions of section 7(2) of the Public Protector Act that provides only for disclosure if the Public Protector so determines, I decided not to lodge any criminal charges, as there had been a number of leaks involving a large part of the print media. An investigation would have been counter-productive and, in my view, not in the public interest. I stated my view in this regard publicly and indicated that forthwith no provisional reports will be given to parties.
- 3.5.6. I was therefore surprised to receive a letter from the Minister of State Security on 3 December 2013 informing me of his intention to investigate the so called “leaks” from my draft provisional report, in terms of section 2(1)(b) of the National Strategic Intelligence Act, 1994.
- 3.5.7. I informed the Minister on 3 December 2013 and 12 December 2013 that he, in my respectful view, does not have powers in terms of the said Act, to initiate any investigation and that I was very uncomfortable with the fact one of the parties to whom my draft provisional report was presented on 1 November 2013, was now investigating the alleged leaking thereof to the



media. In addition, I expressed my concern that any such action by the Minister would have an impact on my staff assisting me in this investigation, who are to act without the fear of being intimidated or victimized. The Minister was further advised that it would be improper for me and my staff to be subjected to the process that he initiated as it would infringe on the constitutional independence of my office.

3.5.8. The National Commissioner of the SAPS subsequently informed me in writing on 18 December 2013 that she had given instructions for a criminal investigation in terms of section 7(2) of the Public Protector Act. In my response dated 19 December 2013, I indicated to the National Commissioner that four of what purported to be Provisional Reports in respect of different matters unfortunately leaked to the media in the last week of November 2013. I explained my reasoning for not laying any charges and requested her to advise whether she was investigating all four instances or only the Nkandla matter. The National Commissioner was also referred to the provisions of section 6(8) of the Public Protector Act in terms of which the Public Protector and her/his staff are not compellable to answer any questions in proceedings before a court of law or any other body or institution, in connection with information relating to any investigation, and that I was not willing to be subjected and to subject any of my staff to her investigation.

3.5.9. From her response, dated 24 January 2014, it was clear that the National Commissioner was only investigating the alleged leaking of my draft Provisional Report on the Nkandla Project and that she was persisting with it, for reasons unknown to me. I obtained legal advice and informed the National Commissioner on 28 January 2014 that as it is only the Public Protector that can make a determination of disclosure in terms of section 7(2) of the Public Protector Act, it is only the Public Protector that can lodge a

complaint of a violation thereof. The National Commissioner, in my respectful view, does not have the powers to decide *mero motu*, to conduct an investigation into this matter where I do not wish to press any charges. Her investigation therefore has no legal standing and I reiterated that my staff and I would not be part of it.

- 3.5.10. The investigations by the Minister of State Security and the National Commissioner of the SAPS caused discomfort among the members of the investigation team, who perceived it to be aimed at intimidating and victimizing them and me. My team and I were especially offended by insinuations that the leak originated from my office and that I had personally admitted to the leak. I was also concerned about the fact that some members of Parliament, charged with the duty to hold my office to account, while protecting it from undue attacks, joined in the unfair and unwarranted mudslinging.

#### **4. THE ISSUES CONSIDERED AND INVESTIGATED**

Based on an analysis of the complaints, the following issues were considered and investigated:

- 4.1. 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?
- 4.2. Was the conduct of relevant authorities in respect of the procurement of goods services relating to the upgrades, improper and in violation of relevant Supply Chain Management prescripts?

- 4.3. Did the measures taken and buildings and items that were constructed and installed by the DPW at the President's private residence go beyond what was required for his security?
- 4.4. Was the expenditure incurred by the state in this regard excessive or amount to opulence at a grand scale, as alleged?
- 4.5. Did the President's family and/or relatives improperly benefit from the measures taken and buildings and other items constructed and installed at the President's private residence?
- 4.6. Was there any maladministration by the public office bearers, officials and other parties involved in this project?
- 4.7. Was there any political interference in the implementation of this project?
- 4.8. Were funds transferred from other much needed DPW projects to fund this project?
- 4.9. Is the President liable for some of the cost incurred?
- 4.10. Were there ethical violations on the part of the President in respect of this project?
- 4.11. Are there other maladministration issues that arose from the complaints and the investigation process?
- 4.12. Are there systemic deficiencies regarding the administration of security benefits of Presidents, Deputy Presidents, Former Presidents and Former Deputy Presidents?

## 5. THE INVESTIGATION

### 5.1. The Scope of the Investigation

- 5.1.1. The investigation focused mainly on the period from the date that President Zuma took office on 9 May 2009 to the end of July 2013. The substantive scope focused on compliance with the law and prescripts in regard to implementation of the security measures installed and implemented and the propriety of the conduct of the President and others involved in the Nkandla Project.
- 5.1.2. Due to the lack of resources in my office, the delays in the investigation and the other challenges referred to in this report, it was not possible to investigate every allegation and suspicion of impropriety that was raised by different role players that were approached and engaged.
- 5.1.3. This investigation did not include accessing bank statements and telephone records of people with questionable relationships. Among the suspicions raised were favouritism in the selection of and overcharging by service providers contracted by the DPW and improper benefits that may have been provided to officials in return for the awarding of contracts.
- 5.1.4. Fortunately, the Proclamation issued by the President on 20 December 2013 mandated the Special Investigation Unit (SIU) to investigate, *inter alia*, overpayments and duplicate payments made to the suppliers of the DPW in respect of the Nkandla Project and any actual or potential benefits received by officials of the DPW due to their interest in the awarding contracts to certain suppliers.

5.1.5. Section 5(6)(b) of the Special Investigations and Special Tribunals Act, 1996 provides that the Public Protector may, if she or he deems it appropriate, refer any matter which comes to her or his attention and which falls within the terms of reference of a Special Investigation Unit, to such Unit.

5.1.6. I have accordingly decided to alert the SIU of the allegations and suspicions referred to above to the SIU to investigate further in terms of the said Proclamation.

## 5.2. **The Methodology Employed in the Investigation**

The investigation included:

### 5.2.1. Interviews:

Interviews were conducted with:

5.2.1.1 Ms G Mahlangu-Nkabinde, the former Minister of Public Works (telephonic) on 23 August 2013;

5.2.1.2 Deputy Minister H Bogopane-Zulu, who was the Deputy Minister of Public Works at times material to the investigation, on 14 May 2013;

5.2.1.3 The following officials of the DPW that were involved in the Nkandla Project:

(a) Ms G Pasley, the Chief Quantity Surveyor, on 21 February 2013;

(b) Ms S Subban, Deputy Director-General, on 22 February 2013;

- (c) Mr Z Rambau, the Chief Director: Security Management, on 22 February 2013;
- (d) Ms M Foki, the Director: Portfolio Performance and Monitoring, on 22 February 2013;
- (e) Mr K Khanyile, the former Regional Manager of the Durban Regional Office, on 27 February 2013;
- (f) Mr J Rindel; the Project Manager, on 4 and 5 March 2013;
- (g) Mr S Mahadeo, the original Project Manager, on 5 March 2013;
- (h) Mr S Nadu, Assistant Director: Project Budget Administration based at the Durban Regional Office, on 5 March 2013;
- (i) Mr R Danhiram, Head of Key Accounts Management and member of the Regional Bid Adjudication Committee, on 5 March 2013;
- (j) Ms S Ngubane, Director: Finance and Supply Chain Management and Chairperson of the Regional Bid Adjudication Committee, on 6 March 2013;
- (k) Mr J P Crafford, the Director: Architectural Services, on 13 and 18 March 2013;
- (l) Ms C Motsisi, the former Chief Financial Officer, on 14 March 2013;
- (m) Mr R Samuel, the former Deputy Director-General, on 20 March 2013;

- (n) Mr S Malebye, the former Acting Director-General, on 12 September 2013;
- (o) Brigadier S J Adendorff, the Head of Security Advisory Service of the South African Police Service (SAPS), on 23 May 2013;
- (p) Mr M Makhanya of Minenhle Makhanya Architects, on 5 March 2013;
- (q) Mr D Gqwaru and Ms. P Naidoo of R&G Consultants, on 7 March 2013;
- (r) Mr L Uys and Ms. G Higgins of Uys and White Landscape Architects, on 16 April 2013;
- (s) Ms P Mfeka and Mr N Mfeka of Moneymine 310 CC, on 15 April 2013;
- (t) Mr Y Ramsudh and Ms. Y Patel of Ramcon Project Managers, on 15 April 2013; and
- (u) Ms T Nene of Bonelena Construction Enterprise and Projects, on 16 April 2013.

#### 5.2.2. Meetings:

I held meetings with:

- 5.2.2.1 His Excellency President J G Zuma, on 11 August 2013;
- 5.2.2.2 Dr R C Lubisi, the Director-General in the Presidency, in January 2012 and 17 December 2013;

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- 5.2.2.3 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. 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;
- 5.2.2.4 The Minister of Justice and Constitutional Development, Mr J T Radebe, who also attended the meeting of 31 May 2013;
- 5.2.2.5 The Minister of Public Works Mr T Nxesi on 2 July 2013;
- 5.2.2.6 The Minister of Defence and Military Veterans, Ms N Mapisa-Nqakula, who also attended the meetings of 31 May and 8 August 2013;
- 5.2.2.7 The former Surgeon-General, Lt Gen V Ramlakan and his legal team;
- 5.2.2.8 Ms J Irish-Qhobosheane, the Acting Chief of Staff of the Ministry of Police;
- 5.2.2.9 Gen. B Cele, the former National Commissioner of the SAPS and the legal team that assisted him in his response to the evidence and information obtained during the investigation that appeared to implicate him, on 21 January 2014;
- 5.2.2.10 Mr M Hulley and Adv. B Makhene, the legal team that assisted the President in his response to the evidence and information obtained during the investigation that appeared to implicate him, on 21 February 2014;
- 5.2.3. Analysis of documents and/or information:
- 5.2.3.1 The following were analysed and perused:



5.2.3.2 Voluminous documents obtained from the DPW, SAPS and DOD, including:

- (a) Internal Memoranda of the DPW;
- (b) Minutes of meetings of the DPW Regional Bid Adjudication Committee (RBAC);
- (c) Minutes of progress meetings held during the implementation of the Nkandla Project;
- (d) Supply Chain Management records pertaining to the procurement by the DPW of goods and services;
- (e) Cost estimates and Bills of Quantities prepared by R&G Consultants, the Quantity Surveyors appointed by the DPW for the Nkandla Project;
- (f) Records of the WCS financial system of the DPW relating to the cost of the Nkandla Project;
- (g) Certificates of payment by the DPW of consultants and contractors appointed for the Nkandla Project;
- (h) Security Evaluations Reports of the SAPS in respect of the President's private residence, dated 28 May 2009 and 25 September 2010;
- (i) Requirement requests presented to the DPW by the South African Air Force and the South African Military Health Services;

- (j) Report of the internal Task Team appointed by the Minister of Public Works to investigate aspects of the Nkandla Project;
- (k) An SAPS needs analysis;
- (l) Correspondence between the DPW and consultants and contractors;
- (m) Documents relating to the apportionment of costs in respect of the Nkandla Project;
- (n) Internal email messages of officials of the DPW and consultants and contractors;
- (o) Designs and site plans of the Nkandla Project;
- (p) Progress reports;
- (q) A letter addressed to the President by the former Minister of Public Works, Ms G Mahlangu-Nkabinde reporting progress in respect of the project, dated 5 November 2010;
- (r) An SAPS Information Note relating to the declaration of the President's private residence as a National Key Point, signed by the Minister of Police on 8 April 2010;
- (s) A Declaration Certificate issued by the Minister of Police on 8 April 2010, declaring the President's Private residence a National Key Point;
- (t) Documents of the Industrial Development Corporation relating to its granting of financial assistance in February 2011 to Bonelena;

- (u) Numerous newspaper articles published in connection with the project;
- (v) Court papers filed in the High Court litigation between Voltex (Pty) Ltd and Moneymine in case no: 8146/12; and
- (w) The 2009-2014 DPW Strategic Plans.

5.2.3.3 I also accessed the Register of Financial Interests of Members of the National Executive, referred to in the Executive Ethics Code, on 17 December 2013.

#### 5.2.4. Correspondence

5.2.4.1 Consideration was given to the contents of correspondence with:

- (a) The President;
- (b) The Minister of Public Works;
- (c) The Minister of Police;
- (d) High Commissioner Doidge;
- (e) The Director-General of the DPW;
- (f) The Director-General of the Presidency;
- (g) The National Commissioner of the SAPS;

- (h) The Acting State Attorney;
- (i) The Legal General Manager of Voltex (Pty) Ltd; and
- (j) The complainants

5.2.5. Legislation and other prescripts:

The relevant provisions of the following legislation and other prescripts were considered and applied, where appropriate:

- 5.2.5.1 The Constitution;
- 5.2.5.2 The Public Protector Act 23 of 1994;
- 5.2.5.3 The Executive Members' Ethics Act 82 of 1998;
- 5.2.5.4 The Executive Ethics Code of 2000;
- 5.2.5.5 The Public Finance Management Act 1 of 1999 (PFMA);
- 5.2.5.6 Government Immovable Asset Management Act 19 of 2007 (GIAMA)
- 5.2.5.7 The Protection of Information Act 84 of 1982;
- 5.2.5.8 The National Key Points Act 102 of 1980 (National Key Points Act);
- 5.2.5.9 The Remuneration of Public Office Bearers Act 20 of 1998;
- 5.2.5.10 The Kwazulu-Natal Ingonyama Trust Act 3 of 1994;

- 5.2.5.11 The Treasury Regulations and Guidelines and directives issued by the National Treasury;
- 5.2.5.12 The Ministerial Handbook approved by the Cabinet on 7 February 2007;
- 5.2.5.13 The Cabinet Policy: Security Measures at the Private Residences of the President, Deputy President and former Presidents and Deputy Presidents, approved on 20 August 2003;
- 5.2.5.14 The South African Defence Review of 1998 (the Defence Review);
- 5.2.5.15 The Minimum Information Security Standards (the MISS);
- 5.2.5.16 The Minimum Physical Security Standards; and
- 5.2.5.17 The Supply Chain Management Policy of the DPW adopted on 29 April 2008.

5.2.6. Submissions:

I received submissions in terms of section 7(9) of the Public Protector Act on the evidence and information obtained during the investigation that appear to implicate several parties, from:

- 5.2.6.1 The President;
- 5.2.6.2 The Minister of Police;
- 5.2.6.3 The Minister of Public Service and Administration (who was the former Minister of Defence);

- 5.2.6.4 Deputy Minister Bogopane-Zulu;
- 5.2.6.5 Gen. B Cele, a former National Commissioner of the SAPS;
- 5.2.6.6 Mr S Malebye, a former Acting Director-General of the DPW;
- 5.2.6.7 Maj.-Gen. T Kulu, the former Head: Government Security Regulator of the SAPS;
- 5.2.6.8 Lt. Gen. V Ramlakan, the former Surgeon-General;
- 5.2.6.9 Brigadier S J Adendorff, the Section Head: Security Advisory Service of the SAPS;
- 5.2.6.10 Mr J Rindel of the DPW Durban Regional Office, who was the DPW Project Manager of the Nkandla Project from January 2010; and
- 5.2.6.11 Mr B K Khanyile, who was the Regional Manager of the DPW Durban Regional OFFICE at times material to the implementation of the Nkandla Project.
- 5.2.7. Jurisprudence and Touch Stones from previous Public Protector Reports:
- 5.2.7.1 On the issue of balancing state security considerations and open democracy and public accountability imperatives, I also considered and applied the judgment of the Constitutional Court in the case of *Independent Newspapers (Pty) Ltd v Minister for Intelligence Services; Freedom of Expression Institute In re: Masetlha v President of the Republic of South Africa and Another* (2008(8) BCLR 771 [CC]).

- 5.2.7.2 Touch stones or principles from previous Public Protector Reports were also considered. In this regard, principles regarding different responsibilities and processes in a valid supply chain process discussed in reports such as *Against the Rules* and *Against the Rules Too, On the Point of Tenders*, and *Yes We Made Mistakes* were considered during the assessment of the propriety of the conduct of various actors during various stages of the process of procuring goods and services in relation to the Nkandla Project. Principles relating to ethical standards developed in the Public Protector Report titled *“The Ethics of Staying in Comfort”* were used a part of the benchmarks when the ethical questions were dealt with.
- 5.2.7.3 I also considered precedents relating to findings on excesses in the use of executive privileges made in the Public Protector reports titled *“Costly Moves”* and *“In the Extreme”*.
- 5.2.7.4 In the case of my investigation into extravagant expenditure by the Minister of Police on hotel accommodation (Report no 7 of 2011/12), I found that the Minister, when he became aware of the extent of the expenditure, took steps to contain it and to prevent a recurrence thereof.
- 5.2.8. Inspection in loco:
- 5.2.8.1 I visited the President’s private residence and the adjacent premises of the Nkandla Project to conduct an inspection *in loco*, on 12 August 2013. During the visit, I was accompanied by a member of my investigation team, the Minister of Defence and Military Veterans, Lt. Gen. Ramlakan and officials of the State Security Agency, the DPW, the SAPS and the DOD.

## 5.2.9. Challenges resulting in a delay in finalising the investigation

- 5.2.9.1 Earlier on I indicated that the President has complained about the delay in concluding the investigation. He also submitted that his duty to account under the Executive Members' Ethics Act, including informing Parliament on how he has dealt with my findings, has lapsed due to such delay. The African National Congress, which is the governing party in this country, has periodically insinuated that I was delaying the release of the report to ensure that I release it close to and in order to influence the 2014 National and Provincial elections. Such insinuations have not only been untruthful, but hurtful to my team and I, while having the potential to erode the credibility of my office and my professional integrity.
- 5.2.9.2 The reality is that the Presidency was part of the problem as were other organs of state regarding the delays. My team and I sat in silence when organs of state that had requested extension after extension to submit submissions in response to my Provisional Report said nothing when insults were hurled at my office by their colleagues or supporters in Parliament and civil society for allegedly sitting on the report in pursuit of a political agenda. The Presidency repeated the concerns in its final submissions despite having taken a cumulative period of 9 months to supply requested information.
- 5.2.9.3 In fact, despite capacity constraints, the report should have been issued by the end of April 2013, if it were not for delays on the part of the state, including the Presidency.
- 5.2.9.4 The investigation process was hampered by a number of challenges, some of which were alluded to above. Notable among the hurdles already alluded to are the shenanigans of the security cluster as the investigation



approached finalisation in the first quarter of 2013. Other hurdles that militated against the speedy finalisation of the investigation are the following:

(a) **Resources:**

- (i) Due to a lack of resources, the assistance that could be provided to me to investigate the issues identified from the complaints that related to a procurement project on the magnitude of more than R200 million, was confined to a small investigation team operating on a part time basis while handling other investigations. For a brief period of approximately three months, an accountant from an audit firm assisted with the investigation but could not be retained for a longer period due to financial constraints. If we compare the resources given by government to Commissions of Inquiries, it must be noted that the budget we are expected to deploy towards these investigations, is hopelessly unrealistic. For example, the budget of the commission currently investigating the so-called arms deal is R42 million.

(b) **Access to classified documents:**

- (i) The fact that the investigation pertained to security measures that were taken in respect of the President presented a major challenge. Some of the information that had to be considered is classified and sensitive. It was sometimes problematic to gain access to relevant documents and information for the purposes of considering and evaluating the veracity of the allegations made in respect of the Nkandla Project.
- (ii) Gaining access to the report of the internal Task Team appointed by the Minister of Public Works that investigated certain allegations relating to the Nkandla Project was a mission. After the Minister of Public Works

issued a statement to the media on the findings of the report, I requested to be provided with a copy thereof, on 24 January 2013. Several further requests had to be made in this regard. I was only allowed access to the report of the Task Team on 2 July 2013.

- (iii) Despite my several requests, I was not furnished with a copy, but only allowed to peruse the contents thereof, after which it had to be returned to the officials of the Ministry of Public Works and the Department of State Security, due to the fact that it was classified.
- (iv) A copy of the report has since been secured from the internet following the declassification and public release of the report by the Minister of Public Works in mid-December 2013.

(c) **General delays experienced in obtaining information:**

- (i) The investigation was further hampered by delays experienced in obtaining information from the relevant departments and Ministries. The Presidency also took some time to respond to some of the document and information requests. For example, my request to the Director-General of the Presidency for information relating to the involvement of the Presidency in the Nkandla Project and the application of the Ministerial Handbook, which was addressed to him on 26 August 2013 only got an answer telephonically and from a meeting held in mid-December 2013. He apologized and advised that he had not received the correspondence in question. My request to him in his capacity as the Cabinet Secretary, for access to the Register of Financial Interests referred to in the Executive Ethics Code to enable me to verify some of the information that relates to my investigation, also suffered the same fate. However, I did finally get access in December 2013.

- (ii) When I got an opportunity to enquire from Dr Lubisi about the lack of response from his office on 31 October 2013, he explained that all enquiries to the Presidency in respect of my investigation were referred to the legal advisors. On 31 January 2014, he advised that the information that I requested in respect of the interaction between the Presidency and Deputy Minister Bogopane-Zulu would be responded to by the President. However, I never received any such response from the President.
- (iii) The table below is an indication of some of the other delays that impacted on the investigation, excluding delays due to the litigation on security concerns and extensions requested for responses to the Provisional Report.:

OFFICE BEARER OR OFFICIAL APPROACHED	DATE OF WRITTEN REQUEST FOR INFORMATION	DATE RESPONSE RECEIVED	DELAY
The President	29/01/2013	01/10/2013	9 months
DG: Public Works	15/02/2013	19/03/2013	32 days
Minister of Police	11/02/2013	22/03/2013	41 days
Lt Gen V Ramlakan	06/03/2013	31/07/2013	4 months
DG: Public Works	04/04/2013	26/08/2013	4 months

*Figure 1: Breakdown of Delays in Respect of the Investigation*

- (iv) The urgent High Court application by the Ministers of Public Works, Police, Defence and Military Veterans and State Security:
- (a) On 1 November 2013, I provided the Minister of Public Works and the Ministers of the Security Cluster with password protected electronic copies of my draft provisional report on the investigation. This was in terms of an understanding between us that they would be provided with

an opportunity to raise any issue that might, in their view, compromise the security of the President, if contained in my final report to be made public. I requested them to provide me with their response by 6 November 2013 and later extended the date to 8 November 2013, at the request of the Minister of Public Works.

- (b) However, the Minister of Public Works sent a letter to my office on 7 November 2013 insisting that a further extension be granted to 15 November 2013. He further demanded that I respond within two hours. At the time I was not in Pretoria and could not be reached by my office. Before I could further engage with the Ministers on the request, court papers in respect of an urgent application brought against me by the Ministers of Public Works, Police, State Security and Defence and Military Veterans in the North Gauteng High Court, were served on my office at approximately 09:00 on 8 November 2013. The relief that the Ministers requested from the High Court was that I should be interdicted from releasing my provisional report to other affected, implicated and interested parties, that a further extension should be granted to the Ministers to respond to the security issues in the draft provisional report that I presented to them and that once they have submitted their comments my provisional report should be revised accordingly and resubmitted to them for their approval that I had dealt with such issues to their satisfaction.
- (c) I had no option but to oppose the application to protect the constitutional independence and integrity of the institution of the Public Protector and briefed attorneys and counsel accordingly. After the filing of opposing and replying affidavits, the Ministers withdrew the application on the date of the hearing, i.e. 15 November 2013, tendering the legal costs that the Public Protector SA had to incur, which amounted to more than

R600 000, excluding the legal costs incurred by the Ministers. This excessive expenditure could have been avoided had the Ministers acted reasonably and engaged me personally on the matter instead of resorting to court action.

- (d) The court action by the Ministers also caused a further delay in the conclusion of the matter as the investigation team had to focus all its attention to it, instead of expediting the conclusion of the investigation.

#### 5.2.10. Extension of time lines for Submissions in Response to the Provisional Report

- (e) I received numerous requests for extensions of timelines within which responses, information and evidence were requested from the affected parties. A number of them were represented by multiple legal teams who adopted an adversarial approach to my proceedings and their unavailability to respond to expeditiously, compounded the delays.

#### 5.2.11. Litigation and Threatened Litigation

- (f) The investigation has had an unprecedented number of threats to litigate right up to the eve of the release of the report. Many of these threats involved an intention to prevent the publication of the report. The security cluster minister litigation saga incorporated a threat to litigate to prevent the publication of the report if the Ministers were not happy with the final look of the report regarding what they regarded as security concerns. Most of these, turned out, by the admission of the Task Team assigned to work with my team to assess the report in question, to be concerns unrelated to security.

- (g) Threats to interdict the issuing of the report were made, *inter alia*, by former Commissioner of Police, General Bheki Cele, High Commissioner Doidge and Mr Makhanya. The latter made an unprecedented demand that his name be excised from the report as he does not work for the state and the investigation, in line with “*the Public Protector’s mandate*” being confined to state affairs. Of course it was pointed out to the lawyer assisting Mr Makhanya that “state affairs” include the acts of private actors involved in state operations. It was pointed out in his case that he acted as Principal Agent for the DPW, in addition to acting as a private architect and the Principal Agent of President Zuma, as a private citizen. Reference to jurisprudence from the *Public Protector South Africa v Mail & Guardian Ltd & Others* (2011 (4) SA 420 SCA) court case regarding a PETRO SA investigation by my office did not seem to assist. The jurisprudence in question enjoins the Public Protector to follow the state’s money, amongst other things.
- (h) Some of the threats were founded on a mistaken belief that parties are entitled to a provisional report and to be given ample time. Some required periods in excess of a month, to scrutinise such report. All efforts were made to accommodate access to information needs and to create further opportunities for engagement, which inevitably caused further delays. Efforts were also made to accommodate those who felt being asked to respond in writing was not enough.

## **6. THE EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION**

### **PART A: EVIDENCE ON THE SEQUENCE OF EVENTS**

#### **6.1. The Area of Nkandla:**

- 6.1.1. President Zuma was born and raised in the Nkandla area and always regarded it as his home. His private residence is located on traditional land leased from the Ngonyama Trust in a rural village approximately 47 km from Eshowe Town.
- 6.1.2. According to the 2011 Census Report, the Nkandla Municipal area has a population of 114 416. About forty per cent (43.9%) of the population between the ages of 15 and 64 are unemployed. Only approximately 10 000 households in the area have access to electricity and more than 7000 have no access to piped water. Almost 12 000 households are still using pit latrines.
- 6.1.3. The SAPS has a satellite Police Station in the Nkandla area that is managed by the SAPS in Eshowe.
- 6.1.4. According to the records of the KwaZulu-Natal Provincial Department of Health, there are two district hospitals in the Nkandla area, namely the Nkandla Hospital, with a bed capacity of 212 and the Ekombe Hospital.
- 6.1.5. According to a report of the KwaZulu Natal Department of Health issued on 6 November 2013, the Nkandla area remains one of the most underserved in terms of the provision of health services, and greater effort is required for the improvement of service delivery to the community at large. The response

time for ambulance services, for example, is way below the norm, and this is compounded by the fact that there are no advanced life support personnel in the area.

6.1.6. These harsh conditions were advanced as the basis for the unprecedented installations in the name of security at the President's private residence. I will later allude extensively to the questions I raised with the state actors involved regarding whether or not an approach that is more in line with the role of public office bearers regarding putting citizens first, was one that provided for both the first citizen, and the caretakers. This was particularly so as there were complaints about the paucity of health facilities such as equipped hospitals, ambulances and adequately resourced police stations.

## 6.2. **The Events prior to the Nkandla Project**

6.2.1. President Zuma assumed office on 9 May 2009 as the fourth President of the Republic of South Africa, since the dawn of democracy, following national elections in April the same year. He had been the Deputy President of the republic previously and subject to the same regulatory framework for security measures for Presidents, Deputy Presidents, Former Presidents and Former Deputy Presidents.

6.2.2. It was established from the evidence of Mr Rindel, the DPW Regional Manager and Brigadier Adendorff, the Section Head: Security Advisory Service that:

6.2.2.1 At the time when Mr Zuma took office as the President of the Republic of South Africa, his private residence at Nkandla in the KwaZulu-Natal Province consisted of seven relatively small buildings, commonly referred to as



rondavels, and a kraal for farm animals. There was also a small tuck shop and a guard hut.

6.2.2.2 The ablution facilities were connected to a french drain system and there was limited water and electricity supply.

6.2.2.3 The perimeter fencing on the property consisted of a steel palisade fence, which was of poor quality.

### 6.3. **The First Steps Taken to Initiate the Upgrading of the Security at the President's Private Residence**

6.3.1. According to a letter addressed to me by the Minister of Public Works dated 05 December 2012 and the evidence of Mr Malebye, the then Acting Director-General and Mr Rambau, the Security Manager of the DPW, Messrs Malebye and Rambau visited the President's private residence on 19 May 2009 to make general observations on what was required in terms of a security upgrade of the premises, to ensure adequate protection of the President and his immediate family.

6.3.2. The professional services team of the Durban Regional Office of the DPW (the Regional Office) was briefed on the observations made. This team, consisting of an architect, quantity surveyor, civil, structural, mechanical and electrical engineers then visited the site on 21 May 2009 to conduct a more detailed scoping exercise on the immediate security measures that had to be taken.

#### 6.4. The Initial Requirements of the DOD and the SAPS

- 6.4.1. The Office of the Surgeon-General of the DOD prepared a list of its requirements in respect of a health facility for the President and his immediate family, as well as staff accommodation, offices and associated space required at the President's private residence, amounting to floor space of 239m<sup>2</sup>. These requirements were contained in a document entitled: "MILITARY HEALTH SUPPORT TO THE PRESIDENT" which was submitted to the Acting Director-General of the DPW, in a letter addressed to him on 22 May 2009. Mr J Rindel indicated during the investigation that this document was never provided to him.
- 6.4.2. Representatives of the SAPS, led by Brigadier Adendorff, visited the site of the President's private residence on 28 May 2009 and conducted a security evaluation in respect of the premises (as it was at the time), which was recorded in a Security Evaluation Report and presented to the DPW Regional Office for implementation of the proposed security measures.

#### 6.5. Getting the Project Started

- 6.5.1. According to the evidence of Mr K Khanyile, former Regional Manager of the DPW Regional Office and Mr Rindel, Mr Malebye, visited the Regional Office again in July 2009, to officially introduce the Nkandla Project to the officials that would be involved.
- 6.5.2. The Head of Projects in the Regional Office then appointed Mr S Mahadeo as the Project Manager of the Nkandla Project, in August 2009. The latter indicated in his evidence during the investigation that although the project was registered in the Region, it was primarily driven from the DPW Head Office.

- 6.5.3. On 4 August 2009, an inter-departmental meeting in connection with the Nkandla Project was held at the Regional Office, where the additional requirements of the South African Medical Health Services (SAMHS) were discussed. These additional requirements, as per the discussions held at the meeting, were confirmed in writing in a letter from the former Surgeon General, Lt Gen V Ramlakan addressed to the Acting Director of DPW on 7 August 2009, and related mainly to staff accommodation, including parking.
- 6.5.4. The Officer Commanding of the South African Air Force Base in Durban submitted its requirements in respect of the safe landing of helicopters at the President's private residence in a letter to the DPW, dated 5 August 2009, which included the removal of obstructions and the provision of crew facilities for adequate rest, relaxation and nutrition, to comply with international safety regulations.
- 6.5.5. According to the former Chief Financial Officer, Ms Motsisi and Mr Khanyile of the DPW interviewed during the investigation, the DPW's internal arrangements provided that funding for the installation of the security measures had to be approved by the Planned Maintenance Budget Committee of the DPW (PMBC).
- 6.5.6. On 6 August 2009, the Director: PPM: Prestige of the DPW submitted an Internal Memorandum to the Chairperson of the PMBC, requesting approval of the amount of R27 893 067 for the Nkandla Project. This request was approved.
- 6.5.7. Ms S Subban, the then Acting Deputy Director-General of the DPW and a member of the PMBC, made the following comment on the approval document, on 7 August 2009:

*“Due to urgent nature of service-service must be proceed (sic) and funds will be made available periodically, as and when savings materialize from prestige/DPW budget.”*

6.5.8. According to the evidence of Mr M Makhanya, who was the architect appointed by the President in his private capacity for the design of the three new houses on the premises and who was later appointed as the Principal Agent of the Nkandla Project by the DPW, the DPW and the SAPS held a meeting on site with the President, on 12 August 2009.

6.5.9. The purpose of this meeting was to inform the President of the security measures that would be installed at his three new dwellings. It was also attended by the then Minister of Public Works, Mr G Doidge.

6.5.10. On 18 August 2009, Ms Subban issued a Procurement Instruction to the Regional Manager stating, inter alia, the following:

*“In order to comply with the provisions of the Ministerial Handbook, the Department of Public Works has the responsibility of providing security measures at the residential accommodation of all members of the Executive of the Government of South Africa.*

*In giving effect to this responsibility, a project was initiated to provide security measures at the private residence of the newly elected President of South Africa, in Inkandla, district of Eshowe, Kwazulu Natal.*

*In consultation with SAPS, SANDF and NIA, the Professional Services component of the Durban Regional office compiled a draft scope of works and cost estimate for the provision of the security measures, based upon*

*which approval was obtained from the Planned Maintenance Bid Committee (sic) to implement the execution of the service.*

*You are requested to procure the services of suitably qualified specialist service providers to do the planning, design and construction of the project in compliance with the requirements of the SAPS, SANDF and NIA.*

*The estimated cost of the project amounts to R27 893 067.00 inclusive of VAT, for construction costs and professional fees, for anticipated expenditure during the current (2009/10) financial year.*

*Funding for this project will be made available from the Capital Works Baseline allocation of the Department of Public Works.” (emphases added)*

6.5.11. Mr Makhanya indicated during the investigation that a meeting was held at the DPW Regional Office on 20 August 2009 in Durban, attended by all the key role players in the Nkandla Project. Minenhle Makhanya Architects was requested to make a presentation on the design of the three new houses. The discussion related to the synchronizing of the DPW project with the private construction.

6.5.12. Mr Makhanya confirmed during the investigation that the construction of the President’s three new private dwellings commenced on 24 August 2009.

## 6.6. **The Appointment of Consultants for the Project**

6.6.1. Several of the DPW officials interviewed during the investigation stated that Mr Malebye advised in September 2009 that the President preferred that the team of people already employed on the site, should be appointed for the Nkandla Project. He accordingly instructed the Regional Office to appoint the

consultants and contractor appointed by the President for the construction of the three private residences, for the DPW project. I could however find no reference to this request by Mr Malebye in the documents perused during the investigation.

6.6.2. The Nkandla Project was to be implemented in three phases:

6.6.2.2 The First Phase was the emergency works, which consisted mainly of the most essential items that had to be installed in order to ensure a minimum level of security;

6.6.2.3 The Second and Third Phases were regarded as low security, but necessary for the safe keeping of the President and his family.

6.6.3. On 4 September 2009, the Acting Director: Projects of the Durban Regional Office of the DPW submitted an Internal Memorandum to the Regional Bid Adjudication Committee (RBAC) requesting approval for the appointment of Minenhle Makhanya Architects and R&G Consultants (quantity surveyors) for professional assistance in the Nkandla Project. The motivation for the request was as follows:

*“The instructed scope of works must be integrated with the future building plans of the owner of the property. The future plans include substantial changes. The changes are currently in design by the following consulting team as appointed by the owner:*

- *Architect: Minenhle Makhanya Architects*
- *Quantity Surveyor: R&G Consultants*
- *Engineers.*

*The security measures that the Department will be responsible for will be designed in-house (Departmental project team). This is in line with verbal instructions from the Acting DG in order to ensure better security-and cost control over this project.*

*The appointment of the architect and quantity surveyor is however essential in order to ensure complete integration between the two design teams.”(emphasis added)*

6.6.4. The Minutes of the RBAC show that it approved the appointment of Minenhle Makhanya Architects and R&G Consultants on 8 September 2009, in the estimated amounts of R415 440 and R415 440, respectively.

6.6.5. On 10 September 2009, the Acting Director: Projects of the DPW approached Mr Malebye, via the then Acting Regional Manager, with an Internal Memorandum requesting his approval for the appointment of professional consultants to design, provide tender documents and supervise the construction of relevant support buildings and the installation of security measures at the Nkandla Project. Added to the list of private consultants that was approved by the RBAC, referred to above, was the name of Ibhongo Consulting Engineers.

6.6.6. It was again emphasized that the President had appointed the consultants in his private capacity, more than two years earlier. The Internal Memorandum further stated that:

*“It is essential that the same professionals be appointed for this project for the following reasons:*

- *The appointment of the team is essential in order to ensure complete integration between the two separate projects (installation of security measures and owner's own upgrading project).*
- *It is not advisable to utilize the Departmental Professionals, as they do not carry professional indemnity.*
- *This is a fast track project and it is essential that one team work on all aspects of the project.”(emphasis added)*

6.6.7. Mr Malebye approved the request on the same day (10 September 2009). The estimated cost of the professional fees was calculated at 18.5% of the estimated cost of the Nkandla Project (R27 million at the time) and amounted to R4 995 000.

## 6.7. **Approval of Parts of the Concept Design**

6.7.2. Correspondence between Lt. Gen. Ramlakan and the Chief Architect of the DPW Professional Services dated 16 September 2009, indicate that they met on 22 September 2009 to discuss the concept design of aspects of the Nkandla Project. The Lt. Gen. Ramlakan approved the drawings of the military clinic, subject to further requirements. A copy of the drawings indicates that he also approved other designs relating to the crew pavilion for helicopter pilots, the safe haven and communication systems, subject to further additions.

## 6.8. **First Cost Estimate and List of Contractors Prepared by R & G Consultants**

6.8.2. According to Mr Makhanya, it became obvious soon after his appointment that the DPW did not take into account the full scope of the security



requirements of the SAPS in its initial evaluation of what needed to be done. These requirements were also still in a process of further development. The final details thereof were not available at that stage.

6.8.3. On the basis of the information in respect of the security and medical care requirements that were submitted to the DPW by the DOD and the SAPS by September 2009, R&G Consultants prepared a detailed cost estimation document in respect of the Nkandla Project, which concluded that the estimated cost would amount to R47 323 102. This document was addressed to the Acting Director-General, who was Mr Malebye.

6.9. **The Delegation of Authority to the RBAC and the Selection of Contractors**

6.9.2. A Procurement Certificate for the Nkandla Project was signed by several officials of the Regional Office of the DPW on 5 and 6 October 2009.

6.9.3. Mr Danhiram, the Deputy Director: Key Account Management noted on the document that *“No norms have been received”*. During the investigation, he explained in this regard that the Procurement Certificate was the start of the procurement process when the estimates based on the norms submitted by the client department are determined before a tender process commenced. In this case there were no such norms provided.

6.9.4. Mr Mahadeo, the Project Manager at the time, certified on the document that the project as designed and documented was within the approved space and cost norms. On his part Mr Nadu, the Assistant Director: Key Account Management noted that the necessity of the project had been confirmed and that funds were available.

6.9.5. The Quantity Surveyors appointed by the DPW for the Nkandla Project, R&G Consultants, presented a list of proposed contractors to Mr Mahadeo by email on 8 October 2009. R&G Consultants explained the basis for the selection of the contractors as follows:

*“Further to our meeting of even date and acting on instruction from the Principal Agent (Minenhle Makhanya Architects), we submit a list of proposed contractors who are to be invited to tender on this project. Please note as indicated at yesterday’s meeting with the Minister and Director-General of Public Works at Tshwane, the basis of our nomination is that:*

- 1. These contractors are registered with the CIDB and most of them have the necessary grading 6GB PE.*
- 2. They are currently doing in (sic) the area and therefore understand the local communities.*
- 3. We, as a professional team, have screened them, and we are satisfied that they can deliver the goods.” (emphases added)*

6.9.6. On 9 October 2009, Mr Khanyile, the former Regional Manager of the DPW Regional Office, submitted a request by means of an Internal Memorandum to Mr Malebye, to approve a delegation that would allow the RBAC to approve a procurement strategy to the value of more than R20 million. It was stated in the Internal Memorandum that:

*“The DG held a meeting with the project team, including the PM (Project Manager) on 5 October 2009. In the meeting it was confirmed that:*

- *The nominated procedure will be utilized. Contractors in larger northern KZN should be targeted in order to benefit from the works.*
- *The private QS identify firms for general building, civil engineering works and electrical installations. This would be utilized for a nominated procedure.*
- *The RBAC must approve the procurement strategy above R 20 000,000.00.*

*In order for the RBAC to complete its mandate, the following delegations is (sic) requested to be given to the committee specifically for this project in lieu of the standard delegations:*

*The required delegations are as follows:*

1. *The responsibility of selecting contractors vests with SCM in the regional office. It is requested that DG confirms that this office may deviate from this responsibility in that the list as provided by the private QS may be used.*
2. *The RBAC currently only has the delegation to approve any procurement strategy or tender below a limit of R20 000 000.00. It is requested that for this project only this delegation should be increased to above R 20 000 000.*

*This will result in this office gaining complete control over the procurement process and that any communication with the SNBAC (Special National Bid Adjudication Committee) will not delay the project.*

*If this request is denied, the RBAC will still forward the procurement strategy to the SNBAC by 9 October 2009, but no guarantee can be given on the expected date of approval.*

3. *The list of names for the nominated tender for NIA clearance had been forwarded to HO for assistance in fast tracking.” (emphases added)*

6.9.7. Mr Khanyile explained during the investigation that he requested the delegation because Mr Malebye impressed upon him that the Nkandla Project had to be fast tracked. He advised that he also knew from experience that to have involved the SNBAC could have delayed implementation.

6.9.8. On the basis of this Internal Memorandum, Mr Malebye approved the following recommendations on 9 October 2009:

- “1. *The list as provided by the private QS be regarded as acceptable (only CIDB registered contractors);*
2. *The delegation to approve the procurement strategy above R 20 000 000.*
3. *Head of Security Services assist in fast tracking the NIA clearance on the nominated contractors.”*

#### 6.10. **The Accommodation Needs Submitted by the SAPS**

6.10.2. According to the records of the DPW and a response to my enquiries by the Minister of Public Works, dated 5 December 2012, the DPW and the SAPS Divisions: Supply Chain Management and Protection and Security Service met in connection with the Nkandla Project on 12 October 2009. On 15 October 2009, the SAPS Divisional Commissioner: Supply Chain Management submitted to the Acting Director-General of the DPW “a

*certified needs assessment for accommodation to be constructed at the residence of State President (sic) Zuma as well as applicable specifications.”*

6.10.3. According to the certified needs assessment of the SAPS, it required:

6.10.3.1 1 three bedroom park home as interim accommodation

6.10.3.2 2 offices

6.10.3.3 2 guard houses

6.10.3.4 1 control room

6.10.3.5 8 bachelor flats

6.10.3.6 13 lock up garages; and

6.10.3.7 8 car ports.

6.10.4. The total estimated cost of the certified needs assessment of the SAPS amounted to R11 405 004.47.

6.10.5. However, on 23 October 2009, SAPS Divisional Commissioner: Supply Chain Management informed the Director-General of the DPW in writing that:

*“By instruction of the State President, President Zuma the existing house at Nkandla currently accommodates SAPS members, (sic) must be converted as part of the President’s household.”*

*To cater for the needs of the members currently accommodated in the house as referred to above, additional bachelor flats need to be added to the needs assessment previously provided to your department.”(emphasis added)*

6.10.6. The attached certified needs assessments almost doubled the number of required bachelor flats, lock up garages and car ports. The cost estimate for the revised needs assessment concomitantly increased to R13 260 827.63.

6.10.7. According to the evidence of Mr Khanyile, there was a need for accommodation of the staff of the SAPS and the DOD looking after the safety of the President as the nearest town, Eshowe, is about 47 km from the site and no other accommodation was available for them in the area.

#### 6.11. **Procurement Strategies Approved by RBAC**

6.11.2. The Minutes of the RBAC meetings indicate that during October 2009 it approved procurement strategies in respect of nominated procurement procedures for electrical works, engineering and construction for the Nkandla Project.

#### 6.12. **Project Manager Replaced**

6.12.2. It was explained in the evidence of officials of the DPW Regional Office that due to operational changes that occurred in the Regional Office of the DPW, the original Project Manager, Mr Mahadeo, was replaced by Mr J Rindel, in January 2010. Mr Rindel testified during the investigation that when he visited the Nkandla Project site towards the end of January 2010, he discovered that the construction of the President's three private residences was well advanced. Due to the fact that the three new residences were not

taken into account when the original security audit was conducted by the SAPS, an updated security evaluation was required.

6.12.3. Mr Rindel was of the view that the scale of the proposed project was too big for the Regional Office to handle on its own. The Regional Office does not have a Prestige Unit dealing with projects under the Prestige Programme of the DPW and has no policy or specific delegations from the DPW Head Office on how to handle such a project.

6.12.4. At the time that he took over as the Project Manager, the Nkandla Project was progressing slowly. Meetings with the consultants were only held every two to three weeks. After the former Acting Director-General, Mr Malebye, left the DPW at the end of March 2010, little guidance was provided to the DPW Regional Office. The implementation of the project was accelerated when Minister Doidge became personally involved and regular progress meetings were held.

6.12.5. It was confirmed by Mr Rindel that the Nkandla Project comprised three phases. Phase 1 consisted of the so called “*emergency works*” and was to include a perimeter fence, access control buildings, all the infrastructure upgrades for water, sewerage and electricity and the relocation of the tuck shop. Space also had to be made for the two helipads.

### 6.13. **The Second Cost Estimate**

6.13.1. The second cost estimate prepared by R&G Consultants in February 2010, shows that by that time they were provided with more detailed information on the scope of works. The increase in staff accommodation, the helicopter crew pavilion that was required as well as the increase in the size of the safe haven and the bulk earth works caused the estimated costs of the Nkandla

Project to increase from R47 323 102 to R80 836 249. The cost estimate was also prepared for and addressed to the Acting Director-General, who was Mr Malebye at the time.

#### 6.14. **The First Progress Meeting**

6.14.1. The first Progress Meeting, in respect of which minutes were found during the investigation, was held on 15 February 2010. It was chaired by Mr Khanyile.

6.14.2. It was, *inter alia*, reported that Mr Rindel had made certain observations about the security on the site during construction and concluded that due to the fact that the construction of the private dwellings was well advanced, the DPW had to expedite the implementation of security measures.

#### 6.15. **The Nominated Procurement Strategy for the Appointment of Contractors for the Emergency Works**

6.15.1. On 1 March 2010, Mr Rindel approached the RBAC with an Internal Memorandum requesting the approval of a nominated procurement strategy in respect of contractors for the emergency works that had to be performed as part of the Nkandla Project. He motivated his request for the approval of the nominated procurement strategy as follows:

*“The use of the nominated process is the process that will achieve the most speedy results when compared to other SCM processes. This is proven as follows:*

- *Open process - This cannot be concluded, as the secret information cannot be advertised openly.*



- *Pre-qualification process - The process is expected to take up to 4 months, including the NIA clearance and screening processes. This is much too long.*
- *Quotation process - same as Open process.*
- *Nominated process - This process empowers the State to select contractors that had previously been NIA screened and approved, thus allowing this office to immediately provide the approved contractors with tender documents. It is thus proven that this be the preferred and fastest method to procure the works.*

*The proposed nominated strategy shall be based on the following basis:*

- *Nominations were previously done for contractors nominated by the Private Architect as instructed by the then acting DG, Mr S Malebye. The contractors were nominated from northern KZN for the works to be concluded. This strategy was thereafter changed to a pre-qualification process.*
- *The profiles/details of the nominated contractors were handed over to NIA for screening purposes. This was concluded and the Department is in possession of the results.*
- *The criteria for the nomination of the contractors are as follows:*
- *The contractors must have passed the required NIA clearance.*
- *The contractors must be registered at the minimum CIDB grading, being 7GB, 7CE or 6 GBPE, 6 CEPE or higher.”*

6.15.2. According to Mr Rindel’s memorandum, the following contractors qualified in terms of the requirements of the nomination process and were recommended for appointment:

- 6.15.2.1 Gwabini Development Contractors.
- 6.15.2.2 Zethembe Maintenance and General Services CC.
- 6.15.2.3 Bonelena Construction Enterprize.
- 6.15.2.4 Makhathini Projects CC.
- 6.15.3. The Minutes of the RBAC indicate that it approved the nominated procurement strategy as requested by Mr Rindel, on 2 March 2010.
- 6.16. **The Negotiated Procurement Strategy for Selected Works During Phase One of the Nkandla Project**
- 6.16.1. Mr Rindel submitted a further Internal Memorandum to the RBAC on 1 March 2010, requesting it to approve the procurement of selected works on the Nkandla Project by means of a negotiated procurement process. The following extract of that memorandum is of particular significance to the matters investigated:

*“BACKGROUND*

*The scope of the works on the complete project consists of the following:*

- *New parameter security fence, complete with intruder detection;*
- *New SAPS guard rooms*
- *New hospital*
- *New helicopter landing pads*
- *Upgrading of water supply*
- *Upgrading of sewerage disposal*

- *Upgrading of firefighting installations.*

*The Owner (sic) of the property had appointed a contractor, Messrs Moneymine Investments to construct new accommodation at the site. The current status of that project is that the contractor is on site and construction is 15% completed.*

*The State has the obligation to include the security measures in the existing and new accommodation. This was confirmed by SAPS in a meeting on site on 26 January 2010.*

*The scope of the works as indicated above, intrudes on the building works of the contractor, Messrs Moneymine Investments, as the security needs to be extended into the buildings that is currently being constructed.*

...

*It is essential that Messrs Moneymine construction (sic) be appointed under the negotiated procedure to eliminate the following risks:*

- *The above works cannot be done by any other contractor (appointed by open/nominated procedure) as all guarantees that the current contractor has/will provide, will be null and void.*
- *The construction is in progress and the contractor is on program. The works that is (sic) included here is (sic) already delaying the contractor as 1 building is already at window height and the windows must be installed. This action cannot wait.*
- *The contractor is security cleared by NIA and is trusted by the Owner of the Property (sic).*

*It is thus essential that the same contractor, Messrs Moneymine Investments, be appointed to complete the works.”(emphasis added)*

6.16.2. The memorandum proposed a negotiated strategy for the appointment of Moneymine Investments (Moneymine), which was approved.

### 6.17. **The SAPS Complains About the Slow Progress**

6.17.1. On 23 March 2010 a project Progress Meeting was held. The Minutes of this meeting indicate that the SAPS complained about lack of progress made by the DPW. The “*Roll-Out Plan*” agreed on was recorded as:

*“The Public Works Regional Bid Committee had approved the implementation of the entire project through a public tender process and allowing a few negotiated sections that affected the principal’s residence.”*

6.17.2. Mr Rindel further reported that the expression of interest submissions for the entire project was due on 24 March 2010. The envisaged process at the time was a pre-qualification tender, followed by “*NIA screening of prospective tenderers.*”

6.17.3. As far as works directly related to the houses of the President were concerned, a negotiated process with the contractors on the site was decided upon. Emergency works were to be implemented by “*previously screened organisations.*”

6.17.4. In this regard, Mr Rindel explained that the building contractor that was already on the site and involved with the President’s private buildings was used for the works relating to those buildings for the sake of convenience, expedience and integration of the DPW works. As far as the other emergency

works were concerned, he proposed that four contractors that were already cleared by NIA and that were involved in the Kings House Project, be approached for competitive quotes.

**6.18. The Declaration of the President's Private Residence as a National Key Point**

6.18.1. According to a Declaration Certificate provided to me by the Ministers of Public Works and Police, the President's private residence was declared a National Key Point by the Minister of Police, in terms of the National Key Points Act, 1980, on 8 April 2010.

**6.19. The President Complains About the Slow Progress Made with the Nkandla Project**

6.19.1. Mr Rindel indicated in his evidence during the investigation that much pressure was applied on the officials involved in the implementation of the Nkandla Project from the DPW Head Office by May/June 2010, due to the fact that the President had complained about the slow progress made and the negative impact that it had on the finalization of the construction of his private dwellings.

6.19.2. At some point, according to him, the President called some of the SAPS officials involved to his house on the site to discuss the matter as he felt that the construction works were causing chaos on his property.

6.19.3. On 2 June 2010, Mr Rindel submitted a progress report to the Head of Prestige of the DPW. As far as the norms required for the Nkandla Project were concerned, the progress report stated that:

**“Defence: No norms were received. However, the architects have drawn the required facilities as indicated by the DOD Generals, and this was approved by their Top Management and signed off. These include DOD Surgeon General (New clinic) and Air Force (New helicopter landing pads).**

*SAPS: This office is in possession of the proposed norms, but is awaiting the final approval.*

*Site Clearance: The Site Clearance of this project is not clear and had not been concluded as far as I know. The ownership of the site is in question, and it is believed that it is based on agreements between the Principal and the Local Nkhosi (sic).” (emphasis added)*

- 6.19.4. The progress report further indicated that no funding was allocated for the project, which resorted under the Capital Works budget allocation of the DPW. The required funding was stated as follows:

ITEM	2010/2011	2011/2012
Contractor	R 30,000,000	R 36,165,484
Consultant	R 8,920,896	R 2,016,581
<b>Total</b>	<b>R 38,920,896</b>	<b>R 38,182,065</b>

Figure 2: Required funding as stated by Mr Rindel in the progress report to DPW Head of Prestige

- 6.19.5. It was recommended that the stipulated funding be obtained for the Nkandla Project.
- 6.19.6. The progress report referred to above was converted into an Internal Memorandum submitted by Mr Khanyile to Mr S Vukela, who by then had replaced Mr Malebye as the Acting Director-General of the DPW, on 10 June 2010, recommending the approval for the Nkandla Project for the 2010/2011

financial year of an amount of R38 920 896. Mr Vukela approved the funding on 11 June 2010, noting the following:

*“Funding must be transferred to budget to facilitate PI”*

## 6.20. The Shifting of Funds to Pay for the Project

6.20.1. On 14 June 2010, the Director: PPM of the DPW approached the Chairperson of the PMBC with a written request for the approval of the shifting of funds from the Inner City Regeneration Programme of the DPW and the DPW Dolomite Programme *“to fund a Prestige capital project WCS 047455: Installation of Security Measures & Related at the private residence of the State President in Inkandla, KwaZulu-Natal.”*

6.20.2. It was stated in the Internal Memorandum that there was no funding for the Nkandla Project and that the Acting Director-General had approved that R40 million be made available from the Capital Works Budget. It also indicated that the Deputy Director-General was instructed to source funds urgently.

6.20.3. The PMBC approved the request for the shifting of funds on 30 June 2010.

6.20.4. On 12 July 2010, the Chief Director: PPM of the DPW submitted an Internal Memorandum to the Chairperson of the Central Budget Committee of the Department in respect of the reallocation of the Capital Works budget for the 2010/11 financial year. The motivation for requesting the Committee to approve the reallocation was as follows:

*“Due to high cash flows the regional offices were requested to update the system by 17 May 2010.*

...

*Capital Works budget was overcommitted. It was however noticed that RKTP and Dolomite programmes were under spending as the results funds (sic) were transferred from the said programmes to cover Prestige urgent projects. In addition BCOCC has also identified savings from their allocation and amount of R18m will be utilized to fund security measures for Prestige and R10m for appointment of consultants for DPW for the construction of regional offices. In order to compensate for the shortfall Prestige funds had to be sourced from BCOCC as the request for security measures are critical and of high importance.*

*The Prestige original allocation was R336m and has since increased to R376m. The allocation on all the above services has been done in order to cover critical projects for Prestige and DPW.”*

6.20.5. The requested reallocation of the Capital Works budget for 2010/11 was approved by the DPW Central Budget Committee on 13 July 2010.

6.21. **Cost Estimate No 4**

6.21.1. At a Progress Meeting held on 16 July 2010, chaired by Mr Rindel, issues such as the utilization of and funding for the Military Clinic, designs for security at the SAPS Control Room, the construction of a road to the helipad, and additional parking, were raised. It was also minuted that the SAPS confirmed that it required 20 bachelor flats, consisting of 10 buildings.

6.21.2. On 28 July 2010, C A Du Toit Consulting Engineers that was appointed as the security consultants for the Nkandla Project submitted a preliminary report on the security measures that were required, which had to be



considered for implementation in conjunction with the measures stipulated by the SAPS Security Evaluation Reports.

6.21.3. R&G Consultants presented the DPW with its Cost Estimate No 4 in July 2010. It amounted to R130 604 267.02. The main reasons for the increase in the cost estimation of the Nkandla Project were recorded as the redistribution of items to correct building installations, further increase in the earth and electrical works, the installation of sprinklers, an increase in security measures based on the assessment of the security consultant and communication systems.

6.21.4. Mr Rindel explained during the investigation that from January 2010 to June 2010, the focus of the Nkandla Project was only on Phase 1, i.e. the emergency works. From June 2010, the design of Phase 2 started in earnest, which is why the cost of the project started to escalate rapidly. Mr Makhanya's initial designs were not detailed and costed as such. However, once the details started to be added, it impacted on the cost of the project.

## 6.22. **The Utilization of the Military Clinic, Discussions with the President and Appointment of a Landscape Architect**

6.22.1. The Minutes of the Progress Meeting held on 30 July 2010 recorded that Mr Makhanya confirmed that the Military Clinic would not be utilized for public use, "*but for military use only.*" Further modifications to, *inter alia*, the roads, escape hatches, perimeter fencing were also discussed. The Civil Engineer was requested to pay attention to the issue of storm water drainage and excavations.

6.22.2. It was also recorded that Mr Makhanya would discuss the road surface required for the driving of tractors with "*the principal*" (the President).

6.22.3. The Mechanical Engineer was requested to make provision for fresh air supply to all the buildings and the construction of an additional guard house at the cattle gate was requested. Ms Pasley, the Chief Quantity Surveyor of the DPW was recorded as having stated that:

*“... firm financial control must be in place and consultants must ensure strict disciplines for financial measures.”*

6.22.4. Mr Rindel approached the RBAC on 16 August 2010 with a request that the appointment of a Landscape Architect, via the Principal Agent (Mr Makhanya) is approved. He indicated during the investigation that his request was the result of instructions received from the DPW architects at head office.

6.22.5. According to his Internal Memorandum, the scope of the landscaping works fell outside that of the appointed architect and included the following:

6.22.5.1 Generation and submission of an Environmental Impact Assessment required for the new sewerage package plant;

6.22.5.2 Design and documentation for all ground levels, banks, positions of retaining walls and storm water flows;

6.22.5.3 Levelling of grounds for security fencing; and

6.22.5.4 Designing measures aimed at security, visibility and privacy in specific areas.

6.22.6. The estimated cost of the landscaping works was presented as R8.3 million and the associated professional fees as R1.5 million.

- 6.22.7. Based on a nominated procurement process that was followed, Mr Rindel recommended that the RBAC approve the appointment of the firm Uys and White Architects to do the design of the proposed landscaping.
- 6.22.8. The Minutes of the RBAC show that it approved Mr Rindel's recommendation on 17 August 2010, but noted that it was subject to the condition that: *"landscaping forms part of final scope for security measures."*
- 6.23. **Cost Estimate No 5**
- 6.23.1. On 16 August 2010, R&G Consultants submitted Cost Estimate No 5 to the Acting Director-General of the DPW. It indicated that the total estimated cost of the Nkandla Project increased by a further 11% from the previous cost estimate, to R145 086 964. The hiked cost was attributed to expansion in the scope of work, which involved:
- 6.23.1.1 *Additional blocks of staff houses;*
- 6.23.1.2 *An expanded Safe Haven;*
- 6.23.1.3 *Additional Guard House;*
- 6.23.1.4 *Additional SAPS Garages;*
- 6.23.1.5 *Additional measures around the fence; and*
- 6.23.1.6 *Landscape Architect and Environmental Consultant fees (Based on assumption that the value of their work will be around R3 mil)."*

## 6.24. Progress Reported on the Landscaping

6.24.1. A Progress Meeting of the Project Team was held on 19 August 2010. The Minutes of the meeting state that Mr Rindel confirmed that a Landscape Architect was appointed.

6.24.2. After discussions on the progress made in respect of a number of items, Mr Rindel suggested that Mr Makhanya meet with the President, “for signing off of documents.” He indicated during the investigation that both Mr Makhanya and the appointed Landscape Architect were tasked at the meeting to obtain approval of the landscape design from the President. The officials of the Regional Office were not allowed to be part of that process. No further evidence was provided indicating that the President was indeed consulted in this regard.

6.24.3. Mr J Crafford, the Director: Architectural Services of the DPW approached Mr R Samuel, former Deputy Director-General of the DPW that was involved in the management of the Nkandla Project, on 20 August 2010, providing him with a progress report in writing. He stated the following as far as the planned landscaping was concerned:

*“The appointment of the landscape architect (based in Durban) was only made during the course of the present week. Briefing and further discussions as well as a site visit could therefore only have been undertaken during the latter part of this week. The landscape architect fully comprehends the nature of her work, i.e. to reinstate the veld where interventions occur, to deal with interventions in the most sensitive terms, (large volumes of rainwater runoff generated by roads and roofs, etc.) the possible need for an EIA process, the planting of trees, the care of the dry farmland as well as the vegetable garden, the finding of alternative water sources, the laying out of pathways,*

*stairs and ramps, etc. attention to gardening and so on will only follow last on the list, although an outdoor living area common to all the houses has been identified and will be designed.”*

## 6.25. Concerns raised about the budget

6.25.1. It was noted that Mr Crafford also raised his concerns on 20 August 2010 about the cost of the Nkandla Project with Mr Samuel, as follows:

***“An item of major concern is the budget, which has assumed gigantic proportions, given the fact that:***

- *A more comprehensive overview has only now become apparent;*
- *The project is quite extensive, given the number of buildings to be erected, and*
- *Given the very humble beginnings of the project, nothing short of full township establishment now required with all the civil services yet to be put in place, inclusive of roads, storm water, potable water, telephone and electricity, standby power, security fencing, etc., and the list is growing, and*
- *Compliance with statutory requirements with reference to interventions made in the landscape has yet to be costed and included in the budget.”*  
(emphasis added)

6.25.2. According to Mr Rindel, it was only at this time that the DPW head office became aware of the full scope of the works as proposed by Mr Makhanya and the other consultants.

## 6.26. Emergency Progress Meeting and the Appointment of a Private Project Manager

6.26.1. An “*Emergency Progress Meeting*” was held on the site of the Nkandla Project on 6 September 2010.

6.26.2. According to the Minutes of the meeting, the former Minister of Public Works, Mr G Doidge, and Mr Samuel, were in attendance. After the Minister was introduced to the Project Team by the Regional Manager, Mr Doidge chaired the meeting.

6.26.3. The progress made with items such as the installation of the bullet resistant glass and the perimeter fence was raised. Additions, including the improvement of the water supply, were also discussed. It was recorded that Minister Doidge would schedule two further visits to the site.

6.26.4. The Project Team was requested to fully commit to the project. It was evident from the discussions recorded that there was an urgency to complete at least the first phase of the project by the end of November 2010.

6.26.5. On 14 September 2010, Mr Rindel chaired a Coordination Meeting relating to the Nkandla Project. It was recorded in the Minutes of the meeting that he confirmed that a private Project Manager was to be appointed by 24 September 2010, “*to accelerate works on site and to assist with NDPW critical outstanding issues.*” Mr Rindel indicated that the appointment of a private Project Manager was based on an instruction from the DPW Deputy Director-General, Mr Samuel.

6.26.6. Other issues, such as the redesign of roads, the water treatment plant, air conditioning of the houses, landscaping, the installation of the bullet resistant

glass, lights for the helipads, earth works at the cattle kraal, safe haven, electrical supply and lifts were discussed.

6.26.7. On 16 September 2010 another Emergency Progress Meeting was held on the site. According to the Minutes, Mr Rindel chaired the meeting and Mr Khanyile tendered an apology on behalf of Minister Doidge.

6.26.8. The appointment of the private Project Manager by means of a negotiated procurement process was, according to its Minutes, approved by the RBAC on 17 September 2010. The estimated cost of the appointment was R2.9 million.

6.26.9. At a Progress Meeting held on 17 September 2010, the appointment of the Private Project manager was also confirmed. It was noted in the Minutes that the primary objective of the private Project Manager was to “*get works on site accelerated.*”

6.26.10. The issue of whether or not the Military Clinic would be used by people of the village was again raised by the SAPS with the request that a decision is taken.

#### 6.27. **Cost Estimate No 6**

6.27.1. On 17 September 2010, R&G Consultants presented the Director-General of the DPW with yet another cost estimate on the project (Cost Estimate No 6).

6.27.2. It represented a further 33% increase to R193 533 873. This time the extras to the previous scope of works responsible for the increase included:

(a) *An adjustment to the Safe Haven.*

- (b) *Additions in all specialist services.*
- (c) *Additions in Landscaping.*
- (d) *Availability of Plant Room Designs.*
- (e) *Additions to Communications.*

## 6.28. **Urgency to Complete Works by 30 November 2010**

6.28.1. The next Emergency Progress Meeting was held with the Project Team on the site and chaired by Minister Doidge, on 23 September 2010.

6.28.2. According to the Minutes of the meeting, the urgency of completing the installation of the bullet resistant glass, the construction of the fences and the accommodation of the SAPS officials were attended to. The progress made with the construction of the helipads and landscaping were also discussed.

6.28.3. Minister Doidge stressed again that as much as possible of the works had to be completed by 30 November 2010.

## 6.29. **The Second SAPS Security Evaluation**

6.29.1. The Office of the Divisional Commissioner: Protection and Security Service of the South African Police Service submitted a further security evaluation to the Director-General of the DPW on 25 September 2010. It contained details of the security measures required by the SAPS in addition to what was presented to the DPW in the report on the security evaluation that was conducted on 28 May 2009.

6.29.2. According to Mr Rindel's evidence, the "new" security evaluation by the SAPS only focused on the security measures that were required. It was



based on a performance specification. The professional consultants had to determine the exact scope, specification and cost of the works for the purposes of procurement.

### 6.30. **Progress Reported in October 2010**

6.30.1. The Durban Regional Office prepared a comprehensive progress report on the Nkandla Project on 10 October 2010.

6.30.2. A Progress Meeting was held on the site on 12 October 2010, chaired by Minister Doidge.

### 6.31. **Mr Doidge Replaced as Minister of Public Works**

6.31.1. It is common cause that Mr Doidge was removed from his position as the Minister of Public Works on 31 October 2010 and replaced by former Minister G Mahlangu-Nkabinde.

### 6.32. **Minister Mahlangu-Nkabinde Reports to the President on the Progress Made with the Nkandla Project**

6.32.1. On 5 November 2010, Minister Mahlangu-Nkabinde addressed a letter to President Zuma providing him with a detailed progress report on the following activities relating to the project:

6.32.1.1 Cattle culvert

6.32.1.2 Perimeter fence

6.32.1.3 Inner high security fence

6.32.1.4 Guard House, Tuck Shop, Refuse and electrical rooms

6.32.1.5 Electrical supply

6.32.1.6 Sewer treatment plant

6.32.1.7 Relocation of families

6.32.1.8 Upgrade of water supply

6.32.1.9 Helipad

6.32.1.10 Excavation for clinic

6.32.1.11 Entrance by-pass

6.32.1.12 Services to park homes

6.32.1.13 Entrance road

6.32.1.14 A security installation relating to the safe Haven

6.32.1.15 Safe haven

6.32.1.16 Bullet Proof Glazing

6.32.1.17 High Impact Glazing.

6.32.2. She further reported that:

*“Taking the above report into consideration I am pleased to report that all the work for which my department is responsible will be completed by the deadline of the 30 November 2010 as per the commitment given to you by my predecessor. I have also taken the liberty of attaching hereto a progress report as updated on the 5 November 2010 detailing the various activities, the percentage completed per activity and comments for your information.”*

- 6.32.3. Attached to Minister Mahlangu-Nkabinde’s letter was an Internal Memorandum addressed to her by the Director-General of the DPW (Mr S Dongwana), signed by him on 5 November 2010, setting out the background of the project and including a detailed progress report prepared by the private Project Manager appointed by the DPW, Ramcon Project Managers.
- 6.32.4. Mr Samuel (Deputy Director-General) chaired the subsequent Progress Meeting held on 9 November 2010 and reported, according to the Minutes and his evidence during the investigation, that the President was informed of the progress made with the project and that he was satisfied.
- 6.33. **Cost Estimate No 7**
- 6.33.1. Cost Estimate No 7 prepared by R&G Consultants was submitted to the Director-General of the DPW on 9 November 2010.
- 6.33.2. The increase in the cost estimate from R193 533 873 to R196 864 037 was ascribed by them to additional park homes, an additional five staff houses, laundry facilities, design changes and the installation of solar power to staff houses.

#### 6.34. Further Concerns Raised About the Cost of the Project and the Consideration of Cost Apportionment

6.34.1. 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)

6.34.2. By 10 November 2010, the Regional Office started to prepare a document itemizing the scope of work and identifying what the DPW was responsible for and which items could be regarded as “*private*” i.e. for the account of the President.

#### 6.35. Feedback from Further Discussions with the President

6.35.1. One of the issues discussed at the Progress Meeting held on 16 November 2010 was the relocation of certain households as part of the project. According to the Minutes of the meeting, Mr Makhanya indicated that he was advised by the President that the households to be relocated “*is waiting for a family member to arrive before relocation can take place.*” Mr Khanyile was

requested to inform the President in writing of the circumstances relating to the relocation.

6.35.2. At the progress meeting held on 23 November 2010, it was recorded that the President had requested to be informed about the delay in their relocation from the site.

6.36. **Enter Deputy Minister Bogopane-Zulu**

6.36.1. Deputy Minister Bogopane-Zulu was introduced to the Nkandla Project Team at a Progress Meeting held on 30 November 2010.

6.36.2. The Minutes of the meeting show that she immediately became involved in the discussions regarding the progress made in respect of several elements of the Nkandla Project.

6.36.3. She also indicated to the meeting that she had discussions regarding the Nkandla Project with the President and that she would have further discussions with him regarding issues, such as the relocation of the affected households.

6.36.4. The next Progress Meeting was held on 6 December 2010 and chaired by Deputy Minister Bogopane-Zulu. According to the Minutes of the meeting, she, *inter alia*, requested the contractors to improve the security on the site, offered her assistance and provided guidance in respect of expediting the project.

6.36.5. It was also minuted that she stated that the President had requested that no new contractors be permitted to work on the site in Phase 2 of the Project.

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6.37. **Cost Estimate No 8**

6.37.1. R&G Consultants submitted Cost Estimate No 8 to the Director-General of the DPW on 8 December 2010. It indicated a 13,96% increase, stating that the following had to be added:

6.37.1.1 The 5 additional staff residential houses;

6.37.1.2 Additions to the relocation of households;

6.37.1.3 A Booster Pump Station;

6.37.1.4 Availability of certain values for direct contracts;

6.37.1.5 Inclusion of contractor rates; and

6.37.1.6 Design changes to the SAPS, Pavilion and garage buildings that had not been finalized.

6.37.2. The estimated increased from R196 864 037 to R224 344 542, as set out in the following graph:

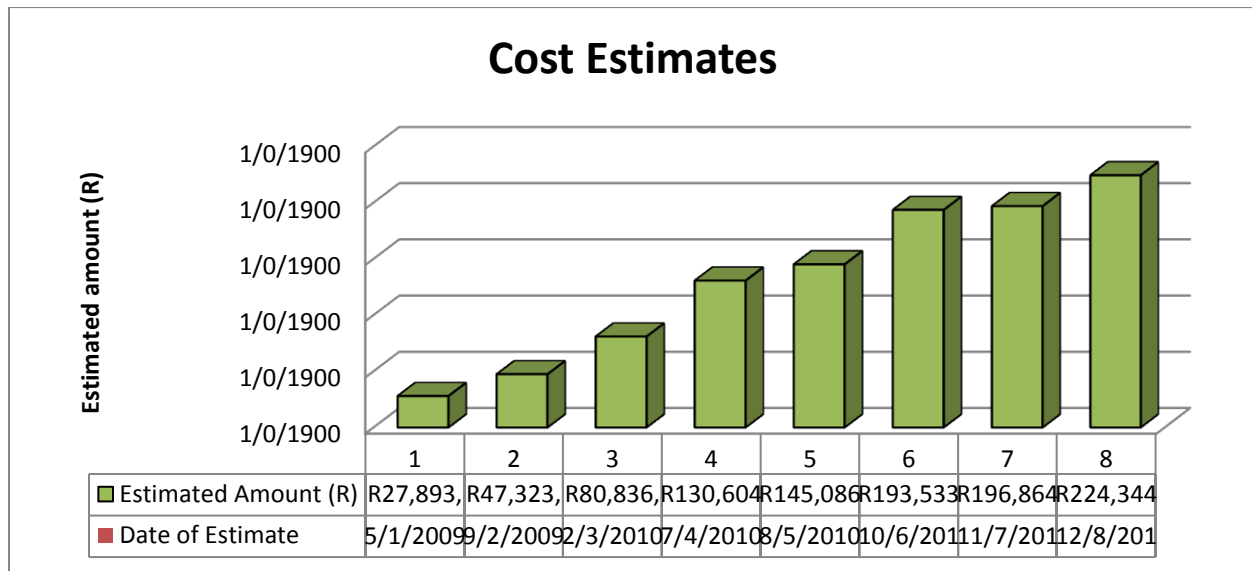


Figure 3: Estimated costing of the Nkandla Project as calculated from May 2009 to December 2010

### 6.38. Completion of Phase 1 of the Nkandla Project and the Reasons for the Delay and Escalation in Costs

6.38.1. According to Mr Rindel's evidence, Phase 1 of the Nkandla Project was completed by about 10 December 2010 and handed over to the client departments (SAPS and DOD) by February 2011.

6.38.2. The three new private residences of the President were also completed during 2010.

6.38.3. He explained that it was only by December 2010 that the Project Team had a clear indication of what the design by the consultants of Phase 2 of the Nkandla Project would look like and how much it would cost. That was after all the designs were finalized.

- 6.38.4. According to Mr Rindel, the scale of the project steadily grew from its inception, not because the basic requirements changed, but because of the design by the consultants of the implementation thereof.
- 6.38.5. Mr Makhanya, the Principal Agent, explained during the investigation that the terrain of the site is on a slope, which, according to him, posed a further challenge as did the fact that the Nkandla Project had to be implemented in a very rural area. He further stated that many of the major issues that materialized during the implementation of the project were not or could not have been envisaged at its conception. A number of designs had to change and be reconsidered, which impacted on the costs.
- 6.38.6. Mr Rindel described the implementation of the Nkandla Project during the investigation as very much *“like building a puzzle without a picture”*. He explained that almost everyone involved in the project was exposed to such a venture for the first time and they therefore basically *“wrote the rules as they went along.”* Officials of the Regional Office further expressed the view that the project was *“doomed from the start”* as the managers of the project were denied critical information and structures that were in place to manage it were often bypassed, which was unreasonable.
- 6.38.7. Mr Makhanya stated in this regard that due to the nature of the Nkandla Project, the Project Team did not have the luxury of time to plan properly in advance. Planning had to take place whilst works were being implemented. Mr Rindel also indicated that design changes were regularly presented by the SAPS and the DOD and Mr Makhanya. It was his understanding that some of the changes were as a result of comments or instructions of the President.
- 6.38.8. Mr Crafford described the Nkandla Project as working with a moving target. According to his experience, the scale of the project continued to grow, as



additional items were added practically every month. It was his impression that these items mainly came from Mr Makhanya, who in his discussions with the President and the client departments, changed his designs.

6.38.9. According to Mr Khanyile's evidence, the Nkandla Project did not follow the normal process of demand management and budget planning in the DPW. Under normal circumstances, a Planning Instruction would have been issued on the basis of which consultants would have been appointed to design the project and estimate the costs. The project would then go out on tender. In this case, he stated, the project was not fully planned in the initial stages. Information kept coming to the Project Team in pieces on what had to be done. Much of this information came forth at meetings where the DOD and the SAPS presented additional requirements. If it was a normal project there would have been proper planning and budgeting.

6.38.10. It was noted during the investigation that all the officials interviewed agreed that the pressure coming from DPW Head Office and the Ministry of Public Works in respect of the Nkandla Project was immense. Mr Khanyile stated in his evidence in this regard that:

*"The project manager and the Regional officials were even terrified that they will be fired or transferred somewhere else if they do not comply with the instructions given to them on the project."*

6.38.11. On 21 December 2010, Mr Khanyile submitted an Internal Memorandum to the new Acting Director-General (Mr Vukela) requesting approval to extend the Supply Chain Management Delegations of the RBAC to approve all procurements in respect of Phases 1 and 2 of the project in amounts above R20 million. The Internal Memorandum stated that such approval as well as

approval to utilize the nominated procurement process had been granted by the former Acting Director- General, Mr Malebye. (as referred to above).

6.38.12. The Memorandum furthermore advised that Phase 1 of the Nkandla Project (emergency works) had been 99% completed and that the Regional Office was ready to commence with Phase 2.

6.38.13. Reference was made to a meeting held with senior officials of the DPW and Deputy Minister Bogopane-Zulu on 20 December 2010, where it was indicated that the works had to be fast tracked. Mr Rindel explained that the purpose of this meeting was to confirm the scope of works in respect of Phase 2 and to discuss the final procurement processes that would be used for implementation.

6.38.14. The proposed date of the completion of Phase 2 was stated as 9 October 2011. In this regard the memorandum explained that:

*“It must be stated that it is essential that these deadlines be met as the State already delayed the Owner (sic) of the property and this caused much embarrassment to the State.”*

6.38.15. The memorandum was approved by Mr Vukela, on 21 December 2010.

### 6.39. **Reallocation of the 2010/11 Capital Works Budget**

6.39.1. The Executive Committee of the DPW approved a reallocation of the DPW Capital Works budget for the 2010/11 financial year that included an amount of R 57 545 020 under Prestige for the Durban Region, on 16 February 2011.

## 6.40. Further Interaction with the President

- 6.40.1. At the Progress Meeting held on 25 February 2011, Mr Makhanya confirmed that the design of the bullet resistant windows was in accordance with the President's request. It was also recorded in the Minutes of the meeting that Lt Gen Ramlakan requested that the designs be signed off by the President before installation could take place.
- 6.40.2. It was noted that Deputy Minister Bogopane-Zulu requested that all outstanding works in respect of Phase 1 of the Nkandla Project is completed by 1 March 2011 when the President would be going to his home for Easter.
- 6.40.3. The Minutes further state that Lt Gen Ramlakan had a discussion with the President in connection with the helipads and that it was confirmed that after his term of office the helipads could be used for civilian aircraft, subject to the approval by the relevant aviation authorities.
- 6.40.4. The issue of the utilization by the Department of Health of part of the Military Clinic was also discussed and it was recorded that the Deputy Minister would have a discussion with that Department in this regard. The possibility of the Department of Health utilizing 25% of the clinic was referred to as a "*clip-on*".
- 6.40.5. It was also reported that the Deputy Minister requested a revised estimated costing of the landscaping, which was submitted to her for her input and further discussion. She had also raised her concerns about the high estimated cost of the fire-pool (which was converted into a swimming pool).

#### 6.41. **The Exit of Deputy Minister Bogopane-Zulu**

6.41.1. Deputy Minister Bogopane-Zulu was informed in writing by the then Minister of Public Works, Ms G Mahlangu-Nkabinde, on 7 March 2011 that she was relieved from the responsibility of managing the Prestige Portfolio of the Department, with effect from 8 March 2011.

#### 6.42. **Requesting Guidance on the Apportionment of Costs**

6.42.1. Mr Khanyile submitted an Internal Memorandum to the then Minister of Public Works under the heading: *“DISCUSSION OF APPORTIONMENT OF COSTS BETWEEN STATE AND PRINCIPAL”* on 28 March 2011. The aim of the memorandum was stated as:

*“...to provide all the applicable information to Top Management in line with the apportionment of cost between the State’s responsibility and Private (cost to the owner)”*.

6.42.2. According Mr Khanyile’s evidence, the Regional Office determined the apportionment of costs with the assistance of Professional Services of the DPW Head Office. The relevant document was attached to the memorandum.

6.42.3. The memorandum stated the scope of works was divided as follows:

*“Public (State) portion: R203 079 677.18*

*Private (Owner) portion            R10 651 580.64*

*The scope of the works included in the Public (sic) is approved and agreed in the meeting held in HO on 10 March 2011 and is in the process of being implemented and shall be concluded in line with the mandate given to the NDPW.*

***The portion included under “Private” required additional attention before this can be implemented as it falls outside the scope of security measures. Please note that the implementation of some of these issues was unavoidable and some had already been completed.***

...

*It was agreed at that meeting that the Department cannot implement any of the works included in the indicated above without the written instructions from Top management to do the same. This is **a precaution that must be taken as the works fall outside the mandate given to the Department.***

*It is proposed that the works included herein be discussed between Top Management and Ministry and guidance be given to the way forward with these issues. **It may be necessary to discuss these issues with the Principal as the financial implication directly affects him (He may want to implement these issues himself without the interference of the Department or else he may want to opt to reimburse the Department after we complete the same).***”(emphases added)

6.42.4. Mr Khanyile recommended in his memorandum to the Minister:

- *“That the scope of works falling within the mandate of the Department continues as previously instructed.*

- *That the scope of works apportioned to the Principal be discussed and guidance be given to the Team pertaining on (sic) the implementation thereof before construction will continue”.*

6.42.5. R&G Consultants explained during the investigation that the cost apportionment document was prepared with their assistance. The whole professional team involved in the Nkandla Project participated and every item of significance was considered and debated before a decision was taken to qualify it as “*private*” or “*public*”. They emphasized that every item referred to in the document was not implemented.

6.42.6. According to Mr Rindel, he never received any response to Mr Khanyile’s letter. He claimed that he was never given any instruction to implement the portion that was referred to as “*private*” in the apportionment document and did not do so.

#### 6.43. **Concerns Raised About the Exclusion of the DPW Head Office Professional Team**

6.43.1. The Ms Pasley, Chief Quantity Surveyor of the DPW, complained in an email message to Mr Rindel on 30 March 2011 as follows:

*“As you are ware, we are not receiving the required monthly financial reports on the above-mentioned project.*

*The consultant Quantity Surveyors are required to submit said reports to the Department strictly on a monthly basis in accordance with item 13.6 of the QS Manual and the QS unit is required to scrutinize these reports in accordance with the Department’s revised project management delegations.*

*It is imperative that we are kept fully informed, on an on-going basis, of the financial status of each of the projects. This is unfortunately not happening.”*

6.43.2. She requested Mr Rindel to ensure that the outstanding reports were submitted urgently.

6.43.3. In his response, dated 31 March 2011, Mr Rindel requested the project team to comply with Ms Pasley’s request. He reiterated:

*“The matter indicated by Glenda is a serious issue, as financial management is core to this project, even more so since the project will probably be audited by many interested parties. Without the required inputs from all the parties, this may become a big embarrassment that will sink us. The information is further required by HO to defend any queries about the scope of works and costs included therein.”*

6.43.4. Mr Rindel explained during the investigation that due to reports that started to appear in the media in connection with the Nkandla Project, he was instructed by the office of the DPW Director-General to drastically reduce the number of people involved and to keep it at a bare minimum. This instruction included officials from DPW Head Office. The management of information leaks on the Nkandla Project at this time apparently became as important as managing the project itself.

#### 6.44. **The meeting of 1 April 2011**

6.44.1. Despite having been removed from the Nkandla Project by the Minister of Public Works on 8 March 2011, the Minutes of a Progress Meeting held on 1 April 2011 indicate that Deputy Minister Bogopane-Zulu was still very much

involved. During the investigation, the Deputy Minister denied that she attended this meeting as she had already been removed from the Nkandla Project. However, it was minuted that she expressed her concerns about the delays with the installation of the bullet resistant glass and the lifts that form part of the safe haven. As far as the Military Clinic is concerned the following was recorded in the minutes:

*“Hon. Deputy Minister H Bogopane-Zulu confirmed that the Clip-On will be an add-on to the military clinic. Further, she requested that the Clip-On design be made available for her perusal.”*

*Hon. Deputy Minister H Bogopane-Zulu said that a meeting was held with the Deputy Minister of Health who confirmed that a Primary Health Facility stage 2 is required. Standard drawings can be obtained from the Department of Health.”*

- 6.44.2. It was also recorded that the Deputy Minister raised her concerns about the apportionment of costs. Mr Rindel indicated that a document outlining the apportionment between private and public was available. The Deputy Minister requested to be provided with document.
- 6.44.3. As far as the fire-pool was concerned, it was recorded that the Deputy Minister stated that she would discuss the use of the pool by surrounding schools with the President.
- 6.45. **The involvement of Deputy Minister Bogopane-Zulu Terminated, Discussions with the President on Aspects of the Nkandla Project and further Progress Meetings**



- 6.45.1. At the Progress Meeting held on 11 May 2011, Mr Rindel reported that Deputy Minister Bogopane-Zulu was not part of the project anymore. The Minutes of the meeting indicate that there was uncertainty about the implementation of her initiative as far as the utilization of the Military Clinic was concerned, that had to be clarified.
- 6.45.2. It was further recorded that the implementation of landscaping had not been approved and that the Deputy Minister had discussions with the President in regard thereto. Mr Makhanya was requested to submit the landscaping changes that were made by the DPW to the President for his approval.
- 6.45.3. Mr Rindel reported at this meeting that the construction of the fire-pool was put on hold due to uncertainty about the apportionment of costs in respect thereof. Mr Makhanya confirmed that the design of the fire-pool was presented to the President.
- 6.45.4. The next Progress Meeting was held on 25 May 2011, where Mr Samuel confirmed that Deputy Minister Bogopane-Zulu was not part of the project anymore. It was decided to continue with the original design of the Clinic.
- 6.45.5. Mr Makhanya reported that he had met with the President about the landscaping, but that the issues raised were not concluded and that he had to reschedule a further meeting for his approval. He indicated that he would probably meet with the President during the week of 25 May 2011.
- 6.45.6. The Landscape Architect indicated that they could not proceed without the approval of the President. She also advised that an agreement had been reached that full public participation was not required for the Environmental Impact Assessment process.

- 6.45.7. Mr Makhanya was also requested to discuss the issue of the fire-pool with the President. It was recorded in the minutes of the meeting that: “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.” He was also requested to discuss the “infrastructure requirements (Marquee)” with him. (emphasis added)
- 6.45.8. The Project Team discussed the progress made again at a meeting held on 22 June 2011. The Chairperson, Mr Samuel, pointed out that the focus was to complete the project timeously. He also indicated that he was not familiar with the request for a “clip-on” as far as the clinic was concerned as it was not requested by the client department.
- 6.45.9. Lt Gen Ramlakan confirmed that the “clip-on” was not approved by the DOD.
- 6.45.10. It was further recorded that Mr Makhanya was to have further discussions with the President on infrastructure requirements. Mr Rindel indicated that the Landscape Architect was in the process of updating the design on what had been agreed with the President.
- 6.45.11. No report back on discussion with the President in respect of the fire-pool was recorded. It was noted that infrastructure requirements still had to be discussed with the President.
- 6.45.12. On 4 July 2011, a Progress Meeting was held on the site, chaired by Mr Samuel. He requested the expedition of several outstanding items. It was also recorded in the minutes of the meeting that the Civil Aviation Authority had agreed to classify the helipads as civilian landing facilities.

- 6.45.13. The Landscape Architect indicated that the kraal and the amphitheatre should not fall under the landscaping component, but under its own structural entity. The Chairperson *“pointed out that it was discussed previously that landscaping methodology is crucial.”*
- 6.45.14. It was further recorded that the fire-pool submission was with the Bid Committee for approval and that all outstanding matters discussed between the Deputy Minister and the President had been resolved. No details were provided in this regard. This confirms the evidence of Deputy Minister Bogopane-Zulu that the matter of the swimming pool was discussed with the President.
- 6.45.15. Mr R Samuel again chaired a Steering and Progress Meeting on 20 July 2011. From the Minutes of this meeting (and other similar meetings) it appears that the Security Manager insisted that the information shared at the meetings should be handled with discretion. It was specifically recorded that no correspondence by email relating to the Nkandla Project was permitted and that all documents considered at these meetings had to be returned to the Principal Agent.
- 6.45.16. Officials of the Regional Office indicated during the investigation that the instructions relating to the secrecy of the Nkandla Project created the impression that they were not allowed to discuss it with anyone that was not part of the Project Team, thus limiting them from obtaining outside advice when it was necessary.
- 6.45.17. The Chairperson requested that the pace on all aspects of the project needed to be increased.

#### 6.46. The Head Office Professional Team Excluded from Further Involvement

6.46.1. On 20 July 2011, the Mr Crafford informed members of the Project Team by email that the Minister of Public Works had given instructions the previous day that the involvement of Professional Services of the DPW in the Nkandla Project should continue. However by 28 July 2011, Ms Pasley wrote as follows to Mr Rindel:

*“We currently find ourselves in the unfortunate situation where we are no longer in touch with the project, as you have excluded us from the project for the past ± 2½ months.”*

6.46.2. The Minutes of the Progress Meeting held on 4 August 2011 recorded that the Security Manager of the DPW expressed the view that as the project was nearing completion, *“we should limit the need for new people to attend the meetings.”*

#### 6.47. Additional Funding Requested for 2012/13 Financial Year

6.47.1. Mr Rindel approached senior officials at the DPW Head Office on 16 August 2011 for the approval of additional funding for the Nkandla Project. He stated in his memorandum that:

*“The approval of the total funding amount, being R200 202 844.13 (estimated final cost) is what is needed to be authorised for this project to be successfully completed. Please note that the allocated amount in the current fin year is sufficient, being R123 900 000.00 and that no additional funding is required for this year. The additional amount is required for the next fin year in order to pay for the last works and final account in the next (2012/13) fin year. It is not clear to me who is responsible to request this approval from*

*PP&M (or other authority?) but I suspect that it may be starting with either of you. This is quite urgent as I am expected to issue instructions to the contractors for the completion of the additional works which must be completed already by 30 October 2011. Note that **failure to assist me with the financial side of this project will result in all of us failing the Principal, which will not be accepted lightly by the powers that be.***

(emphasis added)

6.47.2. The records of the DPW show that the PMTE Central Budget Committee of the DPW approved a reallocation of the 2011/12 Capital Works budget on 16 September 2011, which included a reallocated amount for “*Special and Major Projects*” (previously listed as “*Prestige*”) in the Durban Region of R132 900 497.

#### 6.48. Final Series of Progress Meetings

6.48.1. On 17 August 2011, the Project Team held a Progress Meeting on the site. According to the Minutes of the meeting, one of the issues raised was the outstanding requirements of the DOD in respect of the Military Clinic. Mr Makhanya reported that the matter was discussed with the Surgeon-General and that a list of the final requirements would follow shortly.

6.48.2. It was recorded in the Minutes of a Progress Meeting held on the site on 31 August 2011 that Mr Khanyile and Mr Rindel, expressed their concerns about the slow progress made throughout the project.

6.48.3. Subsequent Progress Meetings were also held, on 14 September 2011, 28 September 2011, 12 October 2011, 19 October 2011, and 2 November 2011.

- 6.48.4. The Minutes of the meeting of 28 September 2011 indicate that Mr Makhanya reported that the President was concerned about the progress made on the site and that it might not be available for him to use during December 2011.
- 6.48.5. The Minutes of a Steering and Progress Meeting held and chaired by Mr Rindel on 30 November 2011 indicate that a number of outstanding items of the Nkandla Project were in the process of being completed.
- 6.48.6. The staff quarters were, *inter alia*, reported as ready for handover to the user departments, the bullet resistant installations were to be completed on 2 December 2011, and safe haven installations were in the final stages. It was also recorded that works in respect of the guard houses, visitors centre, crew pavilion and VIP garages were complete or being finalized. Some work still had to be done on the roads, the helipads, the clinic, security equipment and the landscaping.
- 6.49. **Further Allocations and Reallocations of the Capital Works Budget**
- 6.49.1. The Acting Chief Financial Officer of the DPW informed its Acting Chief Operations Officer in writing on 19 November 2012 that the expenditure incurred, according to the WCS (Work Control System) of the Department, amounted to R206 420 664. According to the records, the DPW PMTE Central Budget Committee approved the Capital Budget allocation for the 2012/13 financial year on 7 March 2012. It included an allocation of R36 755 983 under the item “*Special and Major Projects*” in respect of the Durban Regional Office.
- 6.49.2. On 29 August 2012, the Deputy Director: Budget and Planning: PMTE submitted a written request for the reallocation of the DPW Capital Works

Budget, which included a reallocated amount of R39 731 029 for “*Prestige*” in respect of the Durban Regional Office. The request was approved by the PMTE Central Budget Committee on 12 September 2012.

- 6.49.3. The site was handed over to the client departments on 27 February 2013. Mr Rindel confirmed in his evidence that all the works implemented by the DPW in terms of the Nkandla Project, were paid for by the Department.

## **PART B: THE EVIDENCE ON THE GOODS AND SERVICES PROCURED BY THE DPW**

### **6.50. The Contracts Awarded by the DPW to Contractors for the Implementation of the Nkandla Project**

- 6.50.1. It was established from the records of the DPW that it awarded 12 contracts amounting to a total of R157 409 119 on the Nkandla Project.

- 6.50.2. The total value of the above contracts was adjusted/increased after taking into account variation orders, contract price adjustments (CPA) and unforeseen items. The total value of the contracts after the adjustments/increases amounted to R193 814 014.

- 6.50.3. The contracts were recorded on the WCS system of the DPW. It was noted that the total value authorised on the system amounted to R189 016 829.00 instead of R193 814 014.75, resulting in a variance of R4 797 185.75 between the amounts approved after taking into account variation orders, CPA and unforeseen items (R193 814 014.75) and the amounts authorised (R189 016 829.00).

6.50.4. Mr Rindel could not explain the above variance during the investigation, but pointed out that the total project expenditure did not exceed the total authorised amount above. It was noted that 94% of the variance (R4 520 052.54 of R4 797 185.75) was as a result of the Bonelena Construction Enterprise & Projects' contract being authorised on the Works Control System (WCS) for an amount of R64 853 188.00. The contract was approved for an amount of R69 373 240.54.

#### 6.51. **Payments Made to Contractors Appointed by the DPW**

6.51.1. During the investigation a review of the recorded payments made by the DPW to contractors was performed in order to determine the total amounts paid and whether the authorised amounts were not exceeded.

6.51.2. It was found that the total payments to contractors amounted to R161 418 824.26 and that the authorised amounts were not exceeded.

6.51.3. Although an amount of R189 016 829.00 was authorised on the WCS, the total amount paid to contractors at the time of the conclusion of the investigation was R161 418 824.26, resulting in a *saving* of R27 598 004.74 on the authorised amount.

6.51.4. R&G Consultants confirmed during the investigation that the said contracts have been completed.

6.51.5. R&G Consultants further indicated that over and above the total amount paid to contractors, six additional payment certificates amounting to a total of R3 672 748.49 had been certified for payment at the time of the conclusion of the investigation. These payment certificates were yet to be paid by the DPW and will increase the total contractor payments to R165 091 572.74.



- 6.51.6. The saving on the authorized amount referred to above will accordingly be reduced to R23 925 256.26 (R189 016 829.00 - R165 091 572.74).
- 6.51.7. R&G Consultants confirmed that they were finalising the final accounts on the Nkandla Project and that it was expected that the final contractor payments would be around R167 million.
- 6.51.8. It should be noted that that the project was segmented into 3 phases. Phase 3 had not commenced at the conclusion of the investigation.

#### 6.52. The Payments Made to Consultants Appointed by the DPW

- 6.52.1. From the investigation it was found that 7 teams of professional consultants were involved in the Nkandla Project and were paid a total of R50 352 842.93 for Phases 1 & 2 only. The list of consultants involved and total payments made to them are as follows:

#	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
<b>TOTAL</b>			<b>R 50,352,842.93</b>

Figure 4: List of Consultants and total payments made to each

### 6.53. Summary of the Works Implemented by the DPW

6.53.1. From the investigation a summary of the works implemented by the DPW and the items constructed and/or service installed was found to be 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
	<b>SUB-TOTAL CONSTRUCTION COST</b>	<b>R 146,367,209.07</b>
	ADD: CONTRACT PRICE ADJUSTMENT PROVISION	R 1,231,109.08
	LESS: PENALTIES IMPOSED FOR LATE COMPLETION OF THE CONTRACT	-R 2,781,149.08
	<b>SUB-TOTAL NET ESCALATED CONSTRUCTION COST</b>	<b>R 144,817,169.07</b>
	VAT (14%)	R 20,274,403.67
	<b>TOTAL NET ESCALATED CONSTRUCTION COST INCLUDING VAT</b>	<b>R 165,091,572.74</b>

Figure 5: 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 visitors centre (lounge) is on the first floor.

6.53.2. The above table shows that various structures/items were constructed and services installed at a cost of R165 million. This amount includes the 6 additional payments certificates amounting to R3.6 million which have been certified by R&G Consultants but not yet paid by the Department at the conclusion of the investigation.

6.53.3. It was noted that an amount of R67 964 858.55 was allocated to “*General Site Works*”.

#### 6.54. The Total Cost of the Nkandla Project

6.54.1. At the time of the conclusion of the investigation, the total expenditure incurred by the DPW in respect of the Nkandla Project amounted to R215 444 415.68 constituted as follows:

#	CONSULTANT NAME	TOTAL PAYMENTS
1	Total payments to contractors	R 161,418,824.26
2	Value of contractor payment certificates certified but no yet paid	R 3,672,748.49
3	Total payments to Professional Consultants	R 50,352,842.93
4	Cost estimate for Phase III excluding Consultants fees	R 31,186,887.36
	<b>TOTAL</b>	<b>R 246,631,303.04</b>

Figure 6: Total Expenditure in Respect of the Nkandla Project

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6.55. **The Estimated Cost to the State of the Implementation of Phase 3 of the Nkandla Project**

6.55.1. From the evidence and information obtained during the investigation, it was established that, *inter alia*, the following works still need to be completed as envisaged by Phase 3 of the Nkandla Project:

6.55.1.1 Safe Haven;

6.55.1.2 Fire truck garage and waste disposal facility to be constructed;

6.55.1.3 Rehabilitation and landscaping to park homes site to be implemented;

6.55.1.4 High security inner perimeter fence around the Military Clinic area and main entrance to be constructed;

6.55.1.5 Storm drainage to sloped earth banks to be rehabilitated.

6.55.1.6 The installation of aviation equipment to be completed.

6.55.1.7 Medical equipment to be provided and installed at the Military Clinic in accordance with the DOD standards.

6.55.1.8 Paved Road to helipad and access control to be constructed.

6.55.1.9 Landscaping and fencing to excess parking area, located to the south of the precinct.

6.55.1.10 Electrical works.

## 6.55.1.11 Civil works

## 6.55.1.12 A few other internal installations.

6.55.2. It is estimated that the above works will cost a total of **R31 186 887.36** excluding consultants' fees. Should the above outstanding works be carried out at the estimated value provided, the Nkandla Project would cost a **minimum of R246 631 303.04** calculated as follows:

#	CONSULTANT NAME	TOTAL PAYMENTS
1	Total payments to contractors	R 161,418,824.26
2	Value of contractor payment certificates certified but no yet paid	R 3,672,748.49
3	Total payments to Professional Consultants	R 50,352,842.93
4	Cost estimate for Phase III excluding Consultants fees	R 31,186,887.36
	<b>TOTAL</b>	<b>R 246,631,303.04</b>

Figure 7: Estimated Total Costs of the Nkandla Project (Including Phase 3)

6.55.3. It was noted that the Mr Rindel approached the Acting Director-General of the DPW in an Internal Memorandum, dated 15 August 2012, recommending approval of the commencing of Phase 3 of the Nkandla Project, a negotiated procurement strategy in respect of the appointment of Moneymine for the works and a delegation allowing the Regional Office to approve all procurements in respect thereof. The Acting Director-General approved the Memorandum on 16 August 2012.

6.55.4. However, it appeared during the investigation that due to the investigations into the propriety of the Nkandla Project, the implementation of Phase 3 thereof was suspended.

6.55.5. During the investigation I requested the DPW and the DOD to provide me with information relating to the security measures that were installed by the state at the private residences of former Presidents Botha, De Klerk,

Mandela and Mbeki, to enable me to make a comparison. The idea was to use the comparison to get a sense of what was the original vision of the crafters of the policy instruments authorizing security measures at private residences of Presidents, Deputy Presidents, former Presidents and former Deputy Presidents. The underlying thinking was that the cost indications would give some idea of the scale of works that was envisaged.

- 6.55.6. The information supplied revealed 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 real Rand value, the rural nature of the Nkandla area and the size of President Zuma's household made detached dwellings. According to information supplied by the DPW, the cost involved in securing the private residences of the last five SA Presidents is as indicated in the table below:

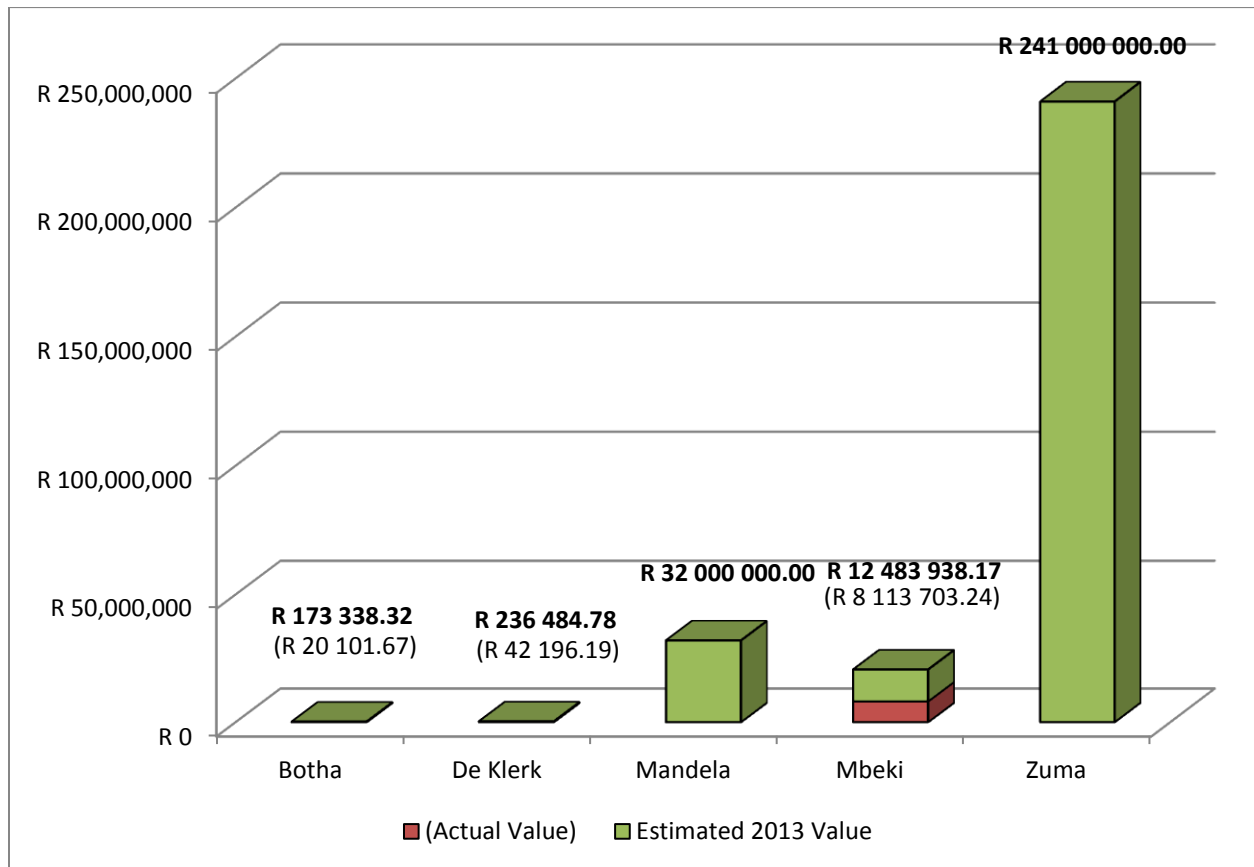


Figure 8: Past and Present Presidential Private Residence Security Costs

## PART C: THE SUPPLY CHAIN MANAGEMENT PROCESS

### 6.56. The Procurement of the Services of Consultants and Contractors

6.56.1. At the time when the Nkandla project was initiated, the internal arrangements of the DPW provided that the procurement of goods and services up to a maximum of R20 million per procurement could be approved at the level of a Regional Office. Any procurement of more than R20 million had to be submitted to the Special National Bid Adjudication Committee at the DPW National Office.

6.56.2. During the investigation it was established that Mr Malebye, the Acting Director-General of the DPW, met with the Project Team and Mr Rindel on 5 October 2009 in connection with the procurement process in respect of goods and services for the Nkandla Project.

6.56.3. The issues discussed at the said meeting appear as follows from an Internal Memorandum submitted by Mr Khanyile to Mr Malebye, on 9 October 2009:

- *“The nominated procedure will be utilized. Contractors in larger northern KZN should be targeted in order to benefit from the works.*
- *The private QS (Quantity Surveyor) identify firms for general building, civil engineering works and electrical installations. This would be utilized for a nominated procedure.*
- *The RBAC must approve the procurement strategy above R 20, 000,000.00.”*

6.56.4. Mr Khanyile described the delegations required from the Acting Director-General as follows:



- “1. *The responsibility of selecting contractors vests with SCM in the regional office. It is requested that DG confirms that this office may deviate from this responsibility in that the list as provided by the private QS may be used.*
2. *The RBAC currently only has the delegation to approve any procurement strategy or tender below a limit of R20,000,000.00. It is requested that for this project only this delegation should be increased to above R20,000,00.00.*

*This will result in this office gaining complete control over the procurement process and that any communication with the SNBAC will not delay the project.*

*If this request is denied, the RBAC will still forward the Procurement strategy to the SNBAC by 9 October 2009, but no guarantee can be given on the expected date of approval.*

3. *The list of names for the nominated tender for NIA clearance had been forwarded to HO for assistance in fast tracking. (emphasis added)*

6.56.5. Mr Malebye approved the requests on the same day (9 October 2009).

6.56.6. In his evidence, Mr S Malebye, explained that he acted as Director-General from the beginning of 2009 until 31 March 2010, when he resigned. Mr S Vukela took over from him as Acting Director-General.

6.56.7. Due to the fact that the original cost estimate of the Nkandla project, based on the analysis of the security measures that had to be taken, amounted to approximately R27 million, Mr Malebye was of the opinion, according to his

evidence, that approval of the request from the Regional Office to provide the RBAC with a delegation to approve procurements above R20 million at the time implied that the delegation would not be utilised for an amount above R27 million.

- 6.56.8. The list of contractors referred to by Mr Khanyile in his said Memorandum was prepared and sent by email to Mr Rindel on 8 October 2009, by R&G Consultants. In his email message, Mr Gqwaru of R&G Consultants stated, *inter alia*, the following:

*“Further to our meeting of even date and acting on instruction from the Principal Agent (Minenhle Makhanya Architects), we submit a list of proposed contractors who are to be invited to tender on this project. Please note as indicated at yesterday’s meeting with the Minister and Director-General of Public Works at Tshwane, the basis for the nomination is that:*

- 1. These contractors are registered with the CIDG (sic) and most of them have the necessary grading 6GB PE.*
- 2. They are currently doing in the area (sic) and therefore understand the local communities.*
- 3. We, as a professional team, have screened them, and we are satisfied that they can deliver the goods.”*

- 6.56.9. The list provided by R&G Consultants included the names of 7 general building contractors, one of which was Bonelena Construction.

- 6.56.10. Mr Khanyile submitted a further Internal Memorandum to the Acting Director-General (Mr S Vukela) on 21 December 2010, requesting reconfirmation of the delegation granted to the Regional Office by the former Acting Director-General (Mr S Malebye), in respect of which the Regional Office could

procure goods and services for the security project in amounts exceeding R20 million. The Memorandum was approved the same day.

- 6.56.11. When Mr Khanyile was provided with an opportunity to respond to the evidence obtained from the documents referred to above, he stated that the Project Manager of the Nkandla Project was subjected to unusual interference by DPW Head Office and the “*political heads*” of the DPW in the procurement of service providers.
- 6.56.12. He further explained that at the time when the Nkandla Project was initiated, the officials of the Regional Office were not aware of the involvement of Mr Makhanya and other consultants and contractors in the President’s private construction works. It was Mr Malebye that informed the Project Manager (Mr Mahadeo at the time) that Mr Makhanya was managing the President’s private project.
- 6.56.13. The procurement process of contractors consisted only of nominated and negotiated procurement strategies and direct appointments. The reasons for the deviations from the prescribed open tender process appear from the relevant DPW Internal Memoranda, Request for Approval of Procurement Strategies and the minutes of the RBAC meetings.
- 6.56.14. The main reasons for the deviations were recorded as the following:
- 6.56.14.1 Due to the security nature of the Nkandla Project, only contractors approved by NIA could be used. An open tender process would also have taken too long;

- 6.56.14.2 Contractor (Moneymine) was appointed by the President to construct private dwellings on the site. The scope of security works assigned to this contractor had to be integrated with private works.
- 6.56.14.3 *“A meeting was held with Deputy Minister Bogopane-Zulu and DDG: ICR&PS on 21 December 2010 in which she confirmed that the Principal (President) indicated that he does not want other contractors on site Phase II opposed to Phase I. The meeting agreed that the works should be negotiated. The reasons for nominating this contractor is the contractor are (sic) currently on site, performing under Phase I. The contractor’s performance is good, reached all the tight goals on time management and delivered the project on time.”*
- 6.56.14.4 *“It was identified during September 2011 that the SAPS and DOD housing during the December periods and thereafter, would not be sufficient. It was agreed with the SAPS, DOD and the Honourable Minister that additional accommodation would be provided for the clients in line with their security protocol.”* The contractor was the only park home supplier in the KZN Province.
- 6.56.14.5 Due to the installation of BRG glass in the buildings, the installation of air conditioners became critical and had to be done on an emergency basis
- 6.56.14.6 *“It became clear that it would be beneficial to the State to issue a direct order to the supplier for the following reasons:*
- *expedite the works (reduce the security risk)*
  - *No mark-up to contractor on site-financial benefit to the State.”* The order issued, was based on the instructions from Top Management, in order to procure the manufacture, supply and installation of the security

glass at the above mentioned site. *“This office (the Regional Office) was instructed to ensure that the order be given out on the same day as the decision taken.”*

6.56.14.7 Due to changes in SAPS requirements the installation of the fence became critical. Contractor the only supplier of the particular product in the country.

6.56.14.8 The Acting Director-General directed that the procurement process should be limited to one supplier due to security reasons.

6.56.15. The main reasons for the deviations for the appointment of consultants were similarly recorded as the following:

6.56.15.1 Appointed by the President in respect of the construction of private residences. Scope of works of the security project had to be integrated with private works.

6.56.15.2 The security project had to be fast tracked due to a deadline for completion set by the Ministry of Public Works.

6.56.15.3 The time period within which the project had to be completed did not allow for an open tender process.

6.56.16. Mr Khanyile stated the following in regard to reporting the deviations to the National Treasury:

*“When the project manager wanted to report deviations to Treasury, he was informed by head of security, Mr Z Rambau at head office that all deviation documents should be sent to him for discussion with the DG and Treasury.*

*When the Auditor-General requested files for project A (the Nkandla project) to be audited, the security manager at head office and DG refused that such documents for project A, be given to AG. The Region informed them that it will be regarded by the Auditor-General as limitation of scope. They refused our advice. This is one of the reasons that the Department got a disclaimer from the Auditor-General.”*

6.56.17. No evidence was presented during the investigation that any of the deviations referred to above was reported to the National Treasury.

6.56.18. Furthermore the explanation of internal memoranda that consultants procured without tenders were motivated by them being security vetted is contradicted by findings of the Ministerial Task Team that investigated the Nkandla irregularities.

#### 6.57. **Variation Orders**

6.57.1. *The National Treasury Instruction Note on Enhancing Compliance Monitoring and Improving Transparency and Accountability in Supply Chain Management issued in terms of section 76(4)(c) of the PFMA on 31 May 2011 states the following in respect of Variation Orders:*

*“It is recognized that, in exceptional cases, an accounting officer or accounting authority may deem it necessary to expand or vary orders against the original contract.*

*The absence of a prescribed threshold for the expansion or variation of orders against the original contract has, however, led to gross abuse of the current SCM system.*

*In order to mitigate against such practices, accounting officers and authorities are directed that, from the date of this instruction note taking effect, contracts may be expanded or varied by not more than 20% or R20 million (including all applicable taxes) for construction related goods, works and/or services and 15% or R15 million (including all applicable taxes) for all other goods and/or services of the original value of the contract, whichever is the lower amount.*

*Any deviation in excess of these thresholds will only be allowed subject to the written approval of the relevant treasury. Whilst provision is made for deviations, it is imperative to note that requests for such deviations may only be submitted to the relevant treasury where good reasons exist.”*

6.57.2. The motivation submitted in respect of the variation order of R11 244 652.25, which amounted to 58,65% of the original contract amount, was as follows:

- *“Additional work was given to the contractor as this was an emergency contract and the works had to be completed for the December period;*
- *The construction of the roads and helipads were required in order for the Principal (President) to gain access to the premises.*
- *All site services to be commissioned (sewer treatment plant and steel reservoir) so that entire premises is operational by December.*
- *Major earthworks for platforms had to be created for the park homes that will house SAPS and SANDF during the December period.*
- *A cattle culvert area that contained a lot of earthworks had to be created to allow for access of the livestock.”*

6.57.3. The variation order that represented 52.7% of Moneymine’s original contract related mainly to re-measurements based on changes in and additions to the designs and bulk earthworks that had to be done as part of Phase 1.

## PART D: EVIDENCE ON SPECIFIC ISSUES CONSIDERED DURING THE INVESTIGATION

### 6.58. The Budget for the Nkandla Project

#### 6.58.1. The Explanation Provided by the Director-General of the DPW

6.58.1.1 During the investigation, Mr Dlabanthu, the Director-General of the DPW, was requested to explain how the Nkandla project was budgeted for by the Department.

6.58.1.2 In his written reply, dated 19 March 2013, the Director-General stated that:

*“As far as the budget for the above mentioned is concerned, it seems that there was no specific budget allocated for the upgrade of security measures at the President’s private residence in Nkandla. The approach adopted was that funds would be made available when savings materialized from Prestige and DPW capital projects.*

*In 2010 funds were shifted from Inner City Regeneration and DPW dolomite programme for the security upgrade in Nkandla.” (emphasis added)*

#### 6.58.2. The Evidence of the Former Chief Financial Officer of the DPW

6.58.2.1 Ms C Motsitsi, who was the Chief Financial Officer of the DPW when the Nkandla project commenced, was interviewed during the investigation.

6.58.2.2 According to her, the budgetary process of the DPW entailed that the Regional Managers submitted proposed budgets for the regions for the next



financial year(s) to the Budget Committees at the Head Office, which would consider it against the total amount available for the Department, and allocate budgets according to priorities.

- 6.58.2.3 Despite having been in the position of Chief Financial Officer of the Department at the relevant times, she was not involved in the funding of the Nkandla project. The project was, in her view, not managed at the normal levels of officials as the Director-General, Minister and Deputy Minister were directly involved.
- 6.58.2.4 All she knows is that at some stage funds had to be relocated from other projects of the Department in order to fund the Nkandla project.
- 6.58.2.5 In this regard she had often raised the issue of the Prestige Programme of the DPW, which caters for the residential accommodation of members of the Executive and was often over committed and not properly budgeted for. This resulted in regular relocation of funds from other necessary projects of the DPW to the Prestige budget.
- 6.58.3. Information Provided by Ms S Subban, Deputy Director General of the DPW and Mr K Khanyile, the Former Regional Manager During the Investigation
- 6.58.3.1 Ms Subban was a member of the Capital Budget Committee of the DPW at times relevant to the Nkandla Project.
- 6.58.3.2 She explained that in June 2010, she was requested by the then Acting Director-General (Mr Vukela) to find a way of making funding available for the Nkandla project as the funding allocated to the Prestige budget was inadequate.

- 6.58.3.3 The request for funding emanated from the Durban Regional Office. It was submitted to the Planned Maintenance Budget Committee (PMBC) that approved and it was then submitted to the Capital Budget Committee of the DPW for ratification.
- 6.58.3.4 She further explained that it was initially envisaged that the Nkandla Project could be funded from the savings of the DPW on other projects, as the original amount requested was only R27 million.
- 6.58.3.5 In order for the funding of the project to be properly administered, it was registered on the Works Control System (WCS) of the DPW.
- 6.58.3.6 Mr Khanyile confirmed that the Nkandla Project was not budgeted for in advance and that the Regional Office had to approach the PMBC for additional funding in August 2009. It was regarded as an emergency due to the urgency that arose as a result of the appointment of Mr Zuma as the President in May 2009.
- 6.58.4. The Evidence of the Project Manager and the Project Budget Administration Manager of the Regional Office
- 6.58.4.1 Mr Rindel and Mr Nadu, the Assistant Director: Project Budget Administration of the Regional Office, explained during the investigation that after the initial request for funding was approved by the DPW Head Office, the Nkandla project was registered on the WCS of the DPW, which is an electronic budgetary tool that enables the Department to update the estimated costs and payments made to assist it to budget and allocate funding when necessary.

- 6.58.4.2 As the project progressed and designs by the professional team of consultants were costed, the WCS was updated. The process was reviewed every month and budget allocations reconsidered quarterly.
- 6.58.4.3 The initial cash flow projections of the DPW as recorded on the WCS in respect of the Nkandla project were as follows:

FINANCIAL YEAR	AMOUNT
2010/2011	R 36,136,364
2011/2012	R 108,817,103
2012/2013	R 18,000,000
2013/2014	R 30,939,249
<b>Total</b>	<b>R193 89 716</b>

Figure 9: DPW Cash Flow Projections in respect of the Nkandla Project

- 6.58.5. The Evidence and Information Obtained from the Records of the DPW
- 6.58.5.1 From the limited documents that I could obtain from the DPW during the investigation relating to the budget for the Nkandla Project (already referred to above), it was established that the first recorded request for funding was dated 6 August 2009, when the Director: PPM requested the PMBC to approve the amount of R27 893 067, which was granted. It soon became clear to the Project Team that the Nkandla project would be implemented over a period that would cover more than one financial year.
- 6.58.5.2 By February 2010, the cost estimate submitted by R&G Consultants indicated that an amount of R80 836 249 would be required.
- 6.58.5.3 On 10 June 2010, Mr Rindel reported in an Internal Memorandum to the DPW Head Office that no funding was allocated for the Nkandla Project. He indicated that the funding required for the 2010/2011 financial year amounted to R38 920 896 and for the 2011/2012 financial year to R38 182 065.

- 6.58.5.4 It appears from the Internal Memorandum dated 14 June 2010 that Mr Rindel's request was approved by the PMBC and the Acting Director-General approved the reallocation of R20 million from the *Inner City Regeneration Programme* and R20 million from the *Dolomite Risk Management Programme* to the Nkandla Project.
- 6.58.5.5 The minutes of the DPW Central Budget Committee meeting held on 13 July 2010 indicated that it approved the reallocation of an additional R18 million of the 2010/2011 Capital Works budget from the amount allocated to BCOCC "to fund security measures for Prestige".
- 6.58.5.6 The Executive Committee of the DPW approved a further reallocation of the 2010/2011 Capital Works budget on 16 February 2010, which resulted in a total budget allocation in respect of Prestige for the Durban Region for 2010/2011 in the amount of R57 545 020.
- 6.58.5.7 By December 2010, R&G Consultants advised the Director-General of the DPW in writing that the cost estimate of the Nkandla Project amounted to R224 344 542.
- 6.58.5.8 On 16 August 2011, Mr Rindel informed the DPW Head Office in an Internal Memorandum that a total amount of R200 202 844.13 was required to complete the Nkandla Project. He further indicated that the amount of R123 900 000 that was allocated to the project for the 2011/2012 financial year was sufficient, but that the balance would be required in the 2012/2013 financial year.
- 6.58.5.9 The DPW Central Budget Committee, according to the minutes of a meeting held on 16 September 2011, approved a reallocation of the 2011/2012

Capital Works budget based on projected “savings” from other programmes that resulted in the budget allocated to the Regional Office under for Special and Major Projects (Prestige) amounting to R132 900 497.

6.58.5.10 The approval of a reallocation of the 2012/2013 DPW Capital Works budget was recorded in the minutes of the DPW Central Budget Committee held on 7 March 2012, in terms of which the amount allocated for Special and Major Projects to the Regional Office was R36 755 983.

6.58.5.11 A further reallocation of the 2012/2013 Capital Works budget in favour of Prestige in respect of the Regional Office was approved by the DPW Central Budget Committee on 12 September 2012 (according to the minutes), taking the allocated budget to R39 731 029.

6.58.5.12 It was noted that the *Inner City Regeneration and Dolomite Risk projects* on several occasions featured as programmes from which reallocation of funds were made.

6.58.5.13 The total budget allocations to the Durban Regional office for Prestige for the financial years 2010/2011 to 2012/2013 are as follows:

FINANCIAL YEAR	ALLOCATED AMOUNT
2010/2011	R 57,545,020
2011/2012	R 132,900,497
2012/2013	R 39,731,029
<b>Total</b>	<b>R 230,176,546</b>

Figure 10: Prestige Budget Allocations by the Durban Regional Office of the DPW for certain financial years

- 6.58.5.14 According to Mr Rindel's evidence, the only Prestige Project that the Regional Office was involved in during this period was the Nkandla Project.
- 6.58.6. The Budget Projections in Respect of Prestige Projects as Reflected in the Strategic Plans of the DPW
- 6.58.6.1 It is common cause that the accommodation of members of the Executive and the associated costs in respect of security measures fall under, what is referred to by the DPW as '*Prestige*' projects or programmes. These projects of programmes form part of the Infrastructure (Capital Works) Budget of the Department.
- 6.58.6.2 It was noted during the investigation that the 2010/13 Strategic Plan of the DPW indicated the 2010/2011 budget for Prestige as R283 898 000.
- 6.58.6.3 The reference to "*Prestige*" was replaced with "*Special and Major Projects*" in the 2011/14 Strategic Plan. According to evidence presented by officials of the DPW during the investigation, the reason for this change was that there were concerns about the media's interest in the amounts spent on Prestige projects, as reflected in the Strategic Plan and the view that it should rather be referred to differently was accepted and implemented.
- 6.58.6.4 The DPW Capital Infrastructure Budget for 2011/2012 stated as amount of R725 877 331 for Special and Major Projects.
- 6.58.6.5 The 2012/2016 Strategic Plan shows a budgeted amount for 2012/2013 under Special Projects of R323 742 000.
- 6.58.7. The Inner City Regeneration and Dolomite Risk Management Programmes of the DPW from which Funds were Reallocated to the Security Project:

6.58.7.1 The main objectives of the Inner City Regeneration programme was, according to the 2010/13 Strategic Plan:

- *“to rejuvenate inner towns and cities through the provision of improved physical working environments to 40 national government departments/agencies in the various inner cities;*
- *To create a centre of excellence for project management through planning, execution, monitoring and training; and*
- *To provide built environment, procurement and contractual professional advice, support services, standards and risk mitigation services to the Department.”*

6.58.7.2 The details of the Dolomite Risk Management Programme of the DPW do not appear from the contents of the Strategic Plans of the Department. However, its importance is obvious from the substantial amounts allocated in budgets of the DPW to this programme.

6.58.7.3 In a document entitled: *“APPROPRIATE DEVELOPMENT OF INFRASTRUCTURE ON DOLOMITE: GUIDELINES FOR CONSULTANTS”* issued by the DPW in August 2003, the importance of the Dolomite Risk Management Programme is referred to as follows:

*“The objective of applying a **risk management strategy** to infrastructure is to ensure the safety of personnel and visitors, protection of property and to avoid fruitless expenditure. Avoiding sinkholes is not only important from a safety point of view, rehabilitating sinkholes and repairing buildings/infrastructure is costly.*

*In a climate of increasing awareness of individual rights, it is apparent that failure to proactively manage dolomite risk may constitute dereliction of duty and may expose the Department of Public Works, its officials, its principal agents and other consultants involved, to recourse through a number of avenues, including the Occupational Health and Safety Act of 1993. It should be clearly understood that principal agents and consultants are not absolved of their responsibilities and cannot claim ignorance in the event of damage or loss of life in a sinkhole.*

*In terms of bona mores, the criterion of reasonableness, it is essential that the Department of Public Works and its consultants “act” and are seen to act positively in order to prevent harm. Infrastructure must be appropriately designed, constructed and serviced to facilitate management of dolomite risk to this end the Department of Public Works has adopted a Centralized Dolomite Risk Management Strategy for infrastructure located on all dolomitic land.”*

**6.59. The Ownership and Legal Occupation of the Land where the DPW Constructed Buildings and Security Installations**

6.59.1. It was established from the evidence and information obtained during the investigation that President Zuma’s private residence is located on traditional land, which is owned by the Ingonyama Trust.

6.59.2. A significant part of the Nkandla project that was implemented by the DPW consisted of construction and other works on land immediately adjacent to the land that constitutes the President’s private homestead. These constructions included the two helipads, the Military Clinic, the Crew Pavilion for pilots, a guard house, a generator room, the tuck shop, the accommodation for the SAPS and DOD staff and associated buildings.



- 6.59.3. The affairs of the Ingonyama Trust are administered by the KwaZulu-Natal Ingonyama Trust Board that was established by virtue of the provisions of section 2A of the KwaZulu-Natal Ingonyama Trust Act, 1994.
- 6.59.4. Section 2(5) of this Act provides that the Board “*shall not encumber, pledge lease, alienate or otherwise dispose of any of the said land or any interest or real right in the land, unless he (sic) has obtained the prior written consent of the traditional authority or the community authority concerned and otherwise than in accordance with accordance with the provisions of any applicable law.*” (emphasis added)
- 6.59.5. The Minister of Public Works indicated in his response to my enquiries, dated 5 December 2012, that approval was sought by the DPW from the Ingonyama Trust to build on the said land and that a lease agreement was to be concluded. From the documents attached to his further response in connection with the matter addressed to me on 11 March 2011, it was established that the Nxamalala Traditional Council issued a *TRADITIONAL COUNCIL CONSENT*, on 21 October 2010.
- 6.59.6. This consent document states that at a meeting of the Traditional Council held on 21 October 2010 it was resolved that the Council had no objection to the “*application to acquire rights to land by the National Department of Public Works*” in respect of what appears to be the land that was required for the construction of buildings and other structures for the Nkandla Project.
- 6.59.7. It is important to note that the consent document specifically stated the following:

*“The form of tenure thereof (the acquiring of the land) to be agreed between the applicant and the Ingonyama Trust Board as land owner-in-law in terms of section 3 of the Ingonyama Trust Act, Act 3 of 1994, as amended. This consent is given in terms of section 2(5) of that Act.*

*The Traditional Council confirms that all persons occupying or having an interest in the land have been consulted and have no objections to the proposals.*

*The applicant (the DPW) has been advised and confirms that he/she/it will not do anything or erect any structure on the land until an appropriate tenure right has been granted to and the necessary documents have been signed with the Ingonyama Trust Board.*” (emphasis added)

- 6.59.8. From the information provided by the Minister of Public Works, the “*appropriate tenure right*” referred to in the consent document is a long term lease agreement.
- 6.59.9. The contents of the written consent granted by the Nxamalala Traditional Council was clearly only an indication that it had no objection **to the application** of the DPW to lease the land concerned. However, the Council resolved that nothing could be done and no structure could be erected on the land **before** the terms of the lease had been agreed on and the relevant lease agreement had been signed by the parties.
- 6.59.10. In his letter addressed to me on 11 March 2013, the Minister of Public Works stated that:

*“On the question of the lease agreement, I previously explained that the investigation found that there was an unsigned lease agreement between the Department of Public Works and the Ingonyama Trust that was supposed to be signed in 2011. However, for unknown reasons it was not signed. I requested my office to attend to the matter, however I was advised that the lease agreement needed to be re-negotiated as it was not in the interest of the Department.” (emphasis added)*

- 6.59.11. At the time of the conclusion of the investigation, there was no indication that a lease agreement had been signed by the DPW in respect of the land concerned.
- 6.60. **President Zuma’s Private Residence Declared a National Key Point.**
- 6.60.1. President Zuma’s private residence was declared a National Key Point by the Minister of Police in terms of the National Key Points Act, on 8 April 2010. However, the acknowledgement of receipt in the Presidency is dated 7 April 2011. The Director-General of the Presidency confirmed the accuracy of this date during the investigation.
- 6.60.2. The evidence in respect of the security evaluations conducted by and the involvement of the Security Advisory Service of the SAPS in the Nkandla project.
- 6.60.3. From the documents obtained during the investigation, it was established, as indicated above, that the Security Advisory Service of the SAPS conducted a security evaluation of the President’s private residence on 28 May 2009, i.e. 19 days after Mr Zuma took office.

- 6.60.4. The security evaluation was recorded in an 11 page report that was presented to the DPW.
- 6.60.5. Brigadier Adendorff, the Head of the Security Advisory Service of the SAPS, was interviewed during the investigation. She explained that Security Advisory Service is tasked to look after the security requirements in respect of the protection of, *inter alia*, members of the Executive as far as their official and private residences are concerned. It conducts security evaluations of the premises taking into consideration any threats to the person involved. It does not work together with the State Security Agency. The possible threat to the member of the Executive is determined by Security Advisory Service.
- 6.60.6. Her evidence was confirmed during the investigation by Major-General (Retired) T Kulu, who at the relevant time was the Head: Government Security Regulator of the SAPS. Brigadier Adendorff reported to her on the security evaluations that were conducted. Maj. Gen. Kulu left the employ of the SAPS in November 2010.
- 6.60.7. The security evaluation includes a site visit of the residence concerned and the advice is informed by the applicable training of the security advisors in such matters, benchmarking exercises and research on the latest security measures that are available.
- 6.60.8. Security Advisory Service also based its security advice on a standard that is contained in a document entitled: “*Minimum Physical Security Standards*” (MPSS) and its annexures relating to residences. This is the basic documented standard, but depending of the circumstances, deviations may be required.

- 6.60.9. She further stated that it was not possible to benchmark the security measures required in respect of the President's private residence against the security measures that are implemented by other countries as such information is not readily available.
- 6.60.10. The situation with regard to the President's private residence at Nkandla was complicated due to the fact that it consists of several dwellings and not one house that would be much easier and cheaper to secure. It was therefore, according to Brigadier Adendorff, also problematic to compare the measures taken at the private residences of former Presidents Mbeki and Mandela with the measures that had to be installed at President Zuma's private residence.
- 6.60.11. The measures that were recommended by Brigadier Adendorff in respect of the President's private residence were based on the MPSS. However, the situation at the residence resulted in a number of deviations due to the fact that it consisted of several buildings, is located in a rural area and is large in scale.
- 6.60.12. In her evidence, Brigadier Adendorff further stated that when Security Advisory Service visited the private residence of the President on 28 May 2009, the officials involved found that the residence was in a very remote and rural area. The site consisted of a few huts surrounded by a dilapidated palisade fence and an ordinary guard hut. There was no running water and that the site was very *"difficult"*.
- 6.60.13. It was observed that the site was not secure at all and security measures were recommended in the evaluation report that was prepared and submitted to the Presidency and the DPW. In the opinion of Security Advisory Service, the recommended measures would have been sufficient at the time to secure the immediate safety of the President at his residence (i.e. before the

construction of the three new residences). It was regarded as an “*immediate fix for an appalling situation*”.

- 6.60.14. At the time of this visit, the SAPS officials based at the residence stayed in a building that belongs to the President. Due to the fact that the living conditions of the SAPS officials were regarded as very poor and unacceptable, it was recommended that the accommodation for the officials should be upgraded.
- 6.60.15. Brigadier Adendorff further explained that there were discussions about the upgrading of the Nkandla Police Station, which would have included barracks where the SAPS officials assigned to the President’s residence could be accommodated. However, this plan never materialized and due to the fact that no alternative accommodation is available in the area, accommodation had to be constructed as part of the Nkandla project.
- 6.60.16. At the time of my site visit, it was established that the closest SAPS facility to the President’s residence is a satellite Police Station in the area with no accommodation facilities that is managed by the SAPS in Eshowe.
- 6.60.17. Brigadier Adendorff further stated that the DPW was supposed, on receipt of the Security Evaluation Report, to consider its recommendations, and to design and cost the works accordingly.
- 6.60.18. She confirmed that there was a meeting of the SAPS and the DPW with the President on the site in August 2009 where the planned security measures were explained to him. The discussion was based on the security evaluation, dated 28 May 2009.

- 6.60.19. Security Advisory Services was subsequently informed of the three new residences that were to be constructed by the President on the site. The new residences had an impact on the security of the premises and a new evaluation had to be done.
- 6.60.20. After the project commenced, Security Advisory Services became part of the Project Team and regularly attended progress meetings on the site. At these meetings, they made inputs in respect of the design of the security measures.
- 6.60.21. The second security evaluation conducted by Security Advisory Services was presented to the Director-General of the DPW on 25 September 2010. It contained more extensive measures that had to be implemented and the scale of the Nkandla project increased substantially due to the President's new residences and the accommodation that had to be constructed for staff of the SAPS and the DOD. The fact that the President's private residence is in a rural area also had an impact on the security measures that had to be implemented.
- 6.60.22. I noted that the covering letter of this Security Evaluation Report, signed by Maj Gen Kulu and addressed to the Director-General of the DPW and the Presidency, under the heading: "*SECURITY EVALUATION: ADDITIONAL SECURITY MEASURES FOR THE NEW DEVELOPMENT: PRIVATE RESIDENCE OF THE PRESIDENT: MR J ZUMA, NKANDLA KWA ZULU NATAL*" stated, inter alia, that:

*"The owner/occupant is responsible for the implementation of this report to ensure that the minimum standard of security is maintained. This office can assist during the implementation phase ensuring that the correct standard is achieved."*

- 6.60.23. According to the security evaluation reports and Brigadier Adendorff's evidence, the safe haven that had to form part of the security measures, was a modest facility. Initially, the idea was that it would entail strengthening certain rooms of existing buildings.
- 6.60.24. However, when the matter was discussed between her and Mr Makhanya, it was agreed there should be a central safe haven facility that could be accessed by the President from any one of the residences, at the time of an emergency. Eventually, it was decided that the ideal would be to put the safe haven where it is today.
- 6.60.25. Due to the age of some members of the President's immediate family and the possible need to remove an injured person with a stretcher underground, it was, according to Brigadier Adendorff, decided to provide lifts linked to all the residences on the premises. Much of this input came from Mr Makhanya, who was designing the features of the Nkandla project.
- 6.60.26. Brigadier Adendorff further stated that she was not involved in the specifications of the air conditioning systems that were installed in the safe haven, which can deal with different kinds of attacks. All that was required was fresh air.
- 6.60.27. She conceded in her evidence that the safe haven could have been constructed as the original modest facility, which would have cost much less. She said she was surprised with the facility that was eventually constructed, as it amounted to much more than what was required by the SAPS.



- 6.60.28. Security Advisory Services required fire-fighting capacity on the site, but did not prescribe what it should consist of. During discussions with the Project Team, it was decided that a fire pool had to be built as a water reservoir.
- 6.60.29. Brigadier Adendorff further stated that the President complained about the design of the bullet resistant windows that had to be installed in his dwellings. Due to his request, the required design was changed. The President's concern was confirmed by himself and other witnesses interviewed. In essence he did not want a place that reminded him of prison.
- 6.60.30. She explained that the new Tuck Shop also had to be fitted with bullet resistant windows as it forms part of the outer perimeter fence of the site.
- 6.60.31. The perimeter fence had to enclose the whole precinct due to the fact that the President could be anywhere on the site at any time.
- 6.60.32. Brigadier Adendorff further stated that she was not aware of the provisions of the Cabinet Policy that regulates the security measures to be taken at the President's private residence at the time of the implementation of the Nkandla Project. No indication could therefore be provided whether the procedure prescribed by the Policy was complied with by the SAPS, the DPW and the Minister of Police. According to her, NIA (State Security Agency) was not involved in the Nkandla Project, as prescribed by the Policy.
- 6.60.33. She also indicated that the Interdepartmental Security Coordinating Committee did not consider the measures that were implemented at the President's private residence.
- 6.60.34. Certain aspects of the security of the premises, such as the security of the Tuck Shop and the fire-fighting measures, were not covered in detail by the

Security Evaluation report. According to Brigadier Adendorff, it was left to the designers of the Nkandla project to deal with.

- 6.60.35. She also stated that as far as she is aware, the SAPS was never provided with a cost estimate of the Nkandla project. The SAPS did not make any payments in respect of the project as it was regarded as the responsibility of the DPW.
- 6.60.36. The Acting Chief of Staff of the Ministry of Police provided me with limited access to the copy MPSS during the course of the investigation.
- 6.60.37. I could find no indication in Brigadier Adendorff's and Maj General Kulu's evidence that they were aware of the fact that the President's private residence was declared a National Key Point by the Minister of Police on 8 April 2010.
- 6.60.38. In fact, Maj Gen Kulu stated in this regard that:

*“Whether or not the security upgrades were to be implemented and installed in terms of the Cabinet Policy of 2003, and whether they were implemented in terms of the said Cabinet Policy fell outside my scope of work, and that question cannot be addressed to me. The same applies to whether the National Key Points Act, 1980 required the President to pay for the security upgrades. That question must be addressed to DPW as the implementing agent. “*

- 6.60.39. Brigadier Adendorff was adamant in her evidence, that according to her, the SAPS did apply a proper demand management process as far as its requirements for the Nkandla Project was concerned. In this regard, she

referred to the two Security Evaluation Reports prepared by her. She also persisted in her view that the SAPS had nothing to do with the procurement process and was not responsible for determining the costs of the Nkandla Project as it was all the responsibility of the DPW. The SAPS, according to her, had no role to play in determining whether the project or any part thereof, was affordable. In this regard she stated specifically: *“It should be kept in mind that the security relates to the Head of State.”* However, she was aware of the fact that the DPW would recover the relevant portion of the cost that relate to its requirements from the SAPS.

#### 6.61. The Tuck Shop

6.61.1.1 It is common cause that at the time when the SAPS conducted its first security evaluation at President Zuma’s private residence, one of his immediate family members was running a small tuck shop business in a small rondavel structure on the premises. According to the evidence and information obtained during the investigation, she had owned this small business for many years, prior to Mr Zuma being appointed as President.

6.61.1.2 The first SAPS Security Advisory Service Evaluation Report stated in this regard that:

*“In order to achieve a safe and secured environment within the premises, the existing tuck shop must be relocated from the present position to enable the police personnel to maintain proper access control. A new hut (tuck shop) must be built closer to the perimeter protection to enable people to buy while outside the premises. When this is built, the proposed security measures must be taken into consideration.”*

6.61.1.3 Mr Rindel explained in his evidence during the investigation that, according to him, the person who owned the tuck shop could not be deprived of her business simply because the DPW had to install security measures at the President's private residence. Accordingly, it was decided to relocate the tuck shop to form part of the perimeter fencing, as required by the SAPS.

6.62. I observed during my site visit that the new Tuck Shop consists of a small room, at the entrance to the premises, which forms part of a larger building that houses legitimate security items. From the records of the DPW, the total structure, including the security equipment housed in the building cost R956 381.16.

6.62.1.1 According to Mr Rindel, the cost of the building only amounted to approximately R505 000

### 6.63. **The Relocation of the cattle kraal**

6.63.1. During my site visit on 12 August 2013, Mr Makhanya explained that the original kraal where the President's livestock were kept had to be relocated for security reasons. According to him, its original location would have caused interference to the intruder detection systems. However, the original location could not be indicated.

6.63.2. When I met with the President on 11 August 2013, he indicated that he requested the building of the kraal as the number of his cattle had increased. He also stated that he would be willing to refund the state for the cost incurred in this regard.

6.63.3. I noted that the new kraal has an elaborate design that separate facilities for goats, cattle and chickens. It is also linked to an area outside of the perimeter

fence by means of an access tunnel (culvert) with a gate that is remotely controlled. Having been to Qunu, the rural residence of former President Mandela, I noticed the difference in the kraals.

- 6.63.4. Mr Makhanya could not explain who was responsible for the ideas that resulted in his design of the new kraal. However, during the inspection *in loco*, he advised on the culvert and chicken run, that “*this is how it’s done in England.*”
- 6.63.5. Brigadier Adendorff explained during the investigation that although it was not mentioned in the SAPS Security Evaluation Reports, the culvert was designed and constructed to “*prevent cattle from causing false alarms of electronic systems on fence.*”
- 6.63.6. According to the records of the DPW, the construction of the new kraal was included under general site works. It was noted from the records of the DPW that the cost estimate of the construction amounted to R1.2 million.
- 6.64. **The Swimming Pool, Visitors Centre and Amphitheatre**
- 6.64.1. According to Mr Rindel’s evidence, it was a requirement of the SAPS and the DOD that a reservoir, had to be installed as part of the Nkandla Project to ensure that adequate water is available in the event of a fire. Running water is not readily available at Nkandla and there is no nearby municipal fire brigade. **The idea was to have a fire truck on the premises that could be filled from the water reservoir.** Fire-fighting capability was also regarded as necessary due to the fact that the President is transported to his private residence by helicopter. The evidence shows that ultimately, the swimming pool in addition to the water reservoir was constructed.

- 6.64.2. In her evidence, Deputy Minister Bogopane-Zulu stated that during her involvement, she supported the idea of the possibility of building a swimming pool, which could be used as a water reservoir and at the same time be utilised to teach children of the Nkandla community to swim. She planned to get Swim South Africa involved to teach and train children. However, she was removed from the project before her idea could be further considered.
- 6.64.3. It transpired from the investigation that what initially was supposed to be a fire-pool (water reservoir) was converted into a swimming pool. Mr Rindel explained that it was decided that as it was a requirement to have a fire-pool, to make it aesthetically pleasant as well by building it in the form of a swimming pool.
- 6.64.4. The *Motivations and Cost Allocations Document* prepared by R&G Consultants on 11 March 2011 indicate that the costing of the fire-pool was combined with the cost of parking facilities that had to be built and the motivation for these items was stated as follows:
- “i) Fire pool is a ground water storage facility intended for dual purpose. First to be used for firefighting in case of emergency. The second use is recreational within the homestead. Note: open surface water compared with reservoir storage is easily accessed in case of emergency.*
- ii) Parking garage is provided in limited space closer to the dwellings dedicated for VIP cars for the principal and first lady.”(emphasis added)*
- 6.64.5. The total cost of the swimming pool and parking garage referred to above amounted to R2 819 051.66. Mr Rindel indicated during the investigation that the parking garage for VIP cars was required by the SAPS. I noted that this was not included in the SAPS Security Evaluation Reports.

- 6.64.6. According to the records of the DPW the Visitors' Centre also houses a legitimate security feature that was identified as necessary in all the security evaluations conducted. However, the security feature occupies a small part of the double story building that boasts a large visitors' lounge with a sizeable balcony overlooking the swimming pool and a paved terrace. One of the witnesses interviewed during the investigation stated that the Visitors Centre was a requirement of the Presidency. I approached the Director-General of the Presidency in this regard in writing on 26 August 2013, and when I finally met him in December 2013 he advised that he was not aware of any involvement of that nature from the Presidency.
- 6.64.7. Brigadier Adendorff stated in her evidence that the Visitors' Centre was not a requirement of the SAPS, *"but was identified to be used as a holding area to allow for screening and processing of a large number of visitors."*
- 6.64.8. Mr Rindel stated that he was aware that the Visitors' Centre was not required by the SAPS Security Evaluation Reports. However, it was indicated by the SAPS during the implementation of the project as a requirement *"to stop people from moving over the site unattended."* It was designed by Mr Makhanya.
- 6.64.9. I noticed during my site visit that the swimming pool forms part of an area close to the Visitors' Centre that also includes an amphitheatre, which can easily accommodate about 100 people, and a lawn area that was flattened during the landscaping process to accommodate a marquee tent. My general impression was one of an enormous entertainment area that has very little connection with issues of security. The answers I got, particularly from the officials that participated in the inspection *in loco*, confirmed this conclusion as they kept saying they had to take into account an aesthetic fit to the

stature of a President and the President's needs when hosting guests. They also kept saying the approach was not different from that taken in official presidential residences.

- 6.64.10. Mr Makhanya explained during the site visit that the fire extinguisher equipment on the site was connected to the swimming pool so that its water could be used by the force of gravity in the event of a fire. However, he could not provide a satisfactory explanation why a water reservoir, similar to the one that was installed for household use would not have sufficed. It was also unclear why the same one did not suffice.
- 6.64.11. He further submitted that the construction of the swimming pool also required the building of a retaining wall as the large amount of water it holds would pose a risk of flooding due to the slope on which the residences are located. It also resulted in landscaping interventions that had to be implemented to deal with the risk of storm water.
- 6.64.12. It was explained by Mr Makhanya and the Landscape Architects during the investigation that, according to them, the amphitheatre had a dual purpose. The lay of the land and the construction of buildings during the project necessitated landscaping interventions to deal with storm water and soil erosion. As retaining walls and other methods had to be constructed, it was decided to construct it in such a way that the area concerned could also be used as an amphitheatre for functions.
- 6.64.13. However, it was obvious during the site visit that it would not be unreasonable to assume that less expensive and elaborate measures could have been taken to deal with the storm water containment. Mr Rindel confirmed during the investigation that no attempt was made to consider a comparison with less expensive landscaping methods.



## 6.65. The relocation of households of neighbours

- 6.65.1. Mr Rindel explained during the investigation that four traditional households had to be relocated due to the fact that their residential buildings were obstructing the new perimeter fence that had to be built as part of the Nkandla Project, as advised by the SAPS. Incidentally, this was never mentioned in the two SAPS Security Evaluations. As indicated earlier, no other SAPS evaluation was conducted.
- 6.65.2. The legal team assisting the President during the investigation indicated in its presentation on the President's submissions, dated 14 February 2014, that these households are not part of the Zuma family and not dependent on the President.
- 6.65.3. During my site visit, Mr Makhanya explained that the perimeter fence could not be built around the dwellings of the affected households as it would have impacted on the security of the fence and the detection systems that had to be installed. No answers were provided as to why the option of a National Key Point Precinct was not considered. In that option, the affected households would have remained in the enclosure.
- 6.65.4. It appears though that the concern recorded in the motivation documents was not the meandering fence but rather a concern raised by consultants regarding the proximity of the households. A clue in this regard can be found in the cost estimate documents of R&G Consultants, which describe the motivation for the relocation as follows:

*"A total of 4 households were found to be too close to the principal's homestead when considering safety distances and necessary stand-off*

*distances for potential threats. It was therefore necessary to relocate 4 households.”(emphasis added)*

- 6.65.5. Each of these households consisted of a number of rondavels, two small structures used as kitchen and toilet facilities, and a kraal for farm animals.
- 6.65.6. According to the evidence and information obtained, the affected families were initially reluctant to move, but after Deputy Minister Bogopane-Zulu had discussed the matter with President Zuma, she initiated dialogue with them and they eventually agreed, on condition that their households were replaced with proper buildings. Deputy Minister Bogopane-Zulu indicated that the affected persons are extremely poor and was staying in dilapidated buildings. During the site visit we were not allowed to visit those families and were advised that there was unhappiness about the relocation.
- 6.65.7. The said households were relocated to land outside of the new perimeter fences. Mr Rindel further explained, during the investigation, that due to the requirements of Building Regulations, which the DPW has to comply with, the buildings of the affected households had to be replaced with proper brick and mortar structures that complied with the applicable standard. No information was provided on the legal or policy authority to effect and fund such relocation.
- 6.65.8. Deputy Minister Bogopane-Zulu indicated in her evidence that she suggested that the DPW enquire from the Department of Human Settlements whether the affected persons qualified for RDP Housing. The response that she received was affirmative, but that it would take a long time for houses for them to be built under that programme. Under the circumstances, the DPW went ahead and relocated the four households.

- 6.65.9. It was also pointed out during my site visit that it would have been unreasonable to replace all the buildings of every household with one RDP house each.
- 6.65.10. During the investigation, it was established that the floor space of a typical RDP house is about 40m<sup>2</sup>. According to the *Centre for Affordable Housing Finance in Africa*, it costs between R100 000 and R200 000 to build an RDP house, depending on the area and infrastructure that is available. (see: [www.housingfinanceafrica.org](http://www.housingfinanceafrica.org))
- 6.65.11. The DPW documents indicated that it was effectively three and a half households that had to be relocated. One of the households affected already had an existing building in the area where they moved to, hence it was regarded as half of a relocation.
- 6.65.12. The total floor space of the households that had to be relocated that had to be constructed to put them in the same position in respect of their accommodation amounted on average to 306m<sup>2</sup> per household. It was therefore much larger than the average RDP house.
- 6.65.13. Substantial earth and site works also had to be done to relocate these households due to the slope of the land.
- 6.65.14. The records of the DPW show that the new structures built for the households included items such as electricity and water installations and connections, sewerage connections, built in cupboards, roads, fences paving and a kraal for every household. The total number of buildings that each household consisted of was replaced in each case. Linking the houses to the electrical and water infrastructure also added to the expense.

6.65.15. The total cost of the relocation of the four households, including the demolition of their old houses amounted to R7 921 517.44.

#### 6.66. **Roads, Paving and Walkways**

6.66.1. From the records of the DPW it was established that roads, walkways and paving in the amount of R12 826 158.04 were constructed at state expense as part of the Nkandla Project.

6.66.2. The roads included an access and patrol roads as well as the road from the dwellings to the helipads.

6.66.3. During my site visit, I noted that the paved roads are rather wide in certain areas to the extent that two cars can easily pass each other. It could not be explained why it was necessary to build paved roads of such an elaborate nature at a private residence. It was also noted that the areas around the entrance gate and swimming pool was extensively paved, whilst the reasoning for such measures could not obviously be linked to issues of security.

#### 6.67. **Safe Haven**

6.67.1. As already indicated, the SAPS required the construction of a safe haven for the protection of the President in an emergency. Despite the original recommendation by SAPS requiring a very modest structure costing about half a million Rand, the facility that was eventually built ended up being more elaborate and initially cost about R8m with DPW having paid according to the DPW records, R19 598 804, by the time this investigation was concluded.

The records also show that more essential work still needed to be done at an additional cost.

6.67.2. Mr Rindel indicated in his evidence that the discussions relating to the placing of the safe haven underground instead of on the surface took place between the SAPS and Mr Makhanya.

6.68. **Staff Accommodation:**

6.68.1. Mr Rindel and Brigadier Adendorff explained during the investigation that it is a requirement that the President's private residence is always protected by members of the SAPS. When he visits the residence, the accompanying protectors and staff members of the DOD responsible for the transportation and medical care of the President also require accommodation. It was therefore, according to them, necessary that the bachelor flat units had to be constructed to accommodate these staff members as there is no alternative accommodation in the area, due to its remote rural location. The total cost of this accommodation, which included a laundry facility was R17 466 309.67.

6.68.2. During our site visit, we noted that all the units were not ready for occupation and that some of the staff members were still staying in the park homes installed as temporary accommodation. Mr Makhanya said the final completion of the units was suspended due to the investigations on the Nkandla Project.

6.68.3. We also noted that each of the units consists only of one room, including an area for a kitchen, and a small bathroom and that it is not fit even for a small family.

6.68.4. When engaged about the future of the R17 million settlement, the answers suggested that no one had thought that far when the investment was made.

## 6.69. Further Comments from the Deputy Ministers

### 6.69.1. Deputy Minister Bogopane-Zulu

6.69.1.1 Ms H Bogopane-Zulu served as the Deputy-Minister of Public Works from 11 May 2009 to 24 October 2011. Currently, she is the Deputy Minister of Women, Children and Persons with Disability.

6.69.1.2 When she was interviewed during the investigation, Deputy Minister Bogopane-Zulu explained that at the time of her appointment as the Deputy Minister of Public Works, she had nothing to do with the Prestige Portfolio of the DPW under which the Nkandla project was implemented.

6.69.1.3 She only got involved in the Prestige Portfolio from 15 November 2010 to 7 March 2012 by means of a delegation of responsibility by the “new” Minister, Ms G Mahlangu-Nkabinde.

6.69.1.4 Deputy Minister Bogopane-Zulu understood the delegation to mean that she had full authority over the Prestige Portfolio and had to brief the Minister on her involvement.

6.69.1.5 However, this was denied by former Minister Mahlangu-Nkabinde that stated during her interview that the Deputy Minister was actively involved in the Nkandla project at the time that she took office on 1 November 2010 and that she was reporting on it directly to the Presidency. I raised this with the Director-General of the Presidency on 26 August 2013, but he could not

confirm it. Deputy Minister Bogopane-Zulu also denied this and provided me with a copy of her delegations from former Minister Doidge, which did not include the Prestige Portfolio. She also denied that she reported to the Presidency on the Nkandla Project

- 6.69.1.6 This evidence of Minister Mahlangu-Nkabinde was inconsistent with records of the DPW that indicate that the Deputy Minister was only introduced to the Project Team and her involvement explained on 30 November 2010.
- 6.69.1.7 Deputy Minister Bogopane-Zulu confirmed in her evidence that she requested the officials of the DPW to brief her on the Nkandla Project at the President's private residence. She then visited the site of the project on 30 November 2010 together with the Project Team. From the time of her involvement, she was chairing the Progress Meetings.
- 6.69.1.8 Her first observation was that the project was far behind schedule. One of the issues stalled at the time was the relocation of the households whose residences were obstructing the construction of the new security fence around the precinct. Others were the delay in the manufacturing of the perimeter fence and the installation of bullet resistant glass in the President's private dwellings. Very limited security was in place at the time and she also found the living conditions of the SAPS staff that were stationed at the residence to be very unsatisfactory.
- 6.69.1.9 The Deputy Minister requested a further meeting to be held with the Project Team on 3 December 2010. She discussed the context of several issues, such as the accommodation of the SAPS, the Military Clinic and the helipads with the main contractors and addressed the expedition of the project.

- 6.69.1.10 She wanted to ensure that the helipads could be used by civil aviation after the President's term expired and therefore requested the involvement of the aviation authorities.
- 6.69.1.11 The next meeting that she attended was on the 7th of December 2010. The financial issues of the project were discussed. She also requested to be informed by the meeting whether the President was briefed on the Nkandla Project on what was happening at his private residence. The response that she received was that the President was supposed to be briefed by the DPW and Mr Makhanya.
- 6.69.1.12 Deputy Minister Bogopane-Zulu stated that she raised her concern in this regard with the Minister of Public Works because it was her understanding that the implementation of the Nkandla project involved shared cost, i.e. that certain items would have to be paid for by the President and that he should be informed accordingly in advance so that he could indicate whether it was acceptable to him.
- 6.69.1.13 When she eventually met with the President in December 2010, he complained about the delay in finalizing the project.
- 6.69.1.14 She briefed the President on the project and he explained his unhappiness about a number of issues relating to the security measures. The President specifically complained about the nature of the bullet resistant windows, which reminded him of the time of his incarceration.
- 6.69.1.15 Deputy Minister Bogopane-Zulu informed Brigadier Adendorff and Lt Gen Ramlakan, that the President wanted to discuss the matter with them. She did not attend the meeting, but was subsequently informed that the President had raised his dissatisfaction over the bullet resistant windows.



- 6.69.1.16 Deputy Minister Bogopane-Zulu also raised the relocation of certain households with the President. His response was that he has known the people involved all his life. She arranged a discussion with the affected people who indicated that they were willing to move on condition that the State should provide them with housing. They are very poor and their rondavels were falling apart.
- 6.69.1.17 She requested officials of the DPW to enquire from the Department of Human Settlements whether the persons concerned qualified for RDP Housing. The response was that they do qualify, but that the process would take long. In the mean-time, houses had to be built for them as they could not be left without accommodation. She was removed from the project before she could ensure that this initiative was taken further.
- 6.69.1.18 She also considered the initial designs of the Military Clinic, which according to her observations was too small. As the community in the area does not have a clinic, she suggested to the project team that she would discuss the matter with the Minister of Health and the President to find out whether it *“would be okay that the clinic also serves the community.”* Her idea was referred to a *“clip-on”* facility.
- 6.69.1.19 Lt Gen Ramlakan was opposed to the idea. However, she discussed it with the President. He stated that he wanted the community to benefit. According to her, President Zuma said: *“If they give you grief, tell them they must come and talk to me.”*
- 6.69.1.20 The Deputy Minister consequently informed the Project Team that she had obtained approval from the President that the clinic must serve the

community. The associated security issues had to be considered and designed.

- 6.69.1.21 She then discussed her idea with the Minister of Health who indicated that he would consider the matter. She further requested the Project Team to ensure that the community component of the clinic not be paid for under the security project of the DPW.
- 6.69.1.22 As far as the supply of water for fire-fighting emergencies was concerned, Deputy Minister Bogopane-Zulu suggested that should a swimming pool be built, children in the community could be taught to swim. She requested that a cost comparison between a static water reservoir and a swimming pool be made and was informed that it amounted to R50 000. She discussed this with the President, and he agreed. She also said Swimming South Africa was also contacted in this regard.
- 6.69.1.23 It was emphasized by Deputy Minister Bogopane-Zulu in her evidence that she also made suggestions regarding the sharing of electricity connections and the construction of a waste management facility with the community in the immediate area of the President's residence. However, none of her developmental ideas were eventually implemented.
- 6.69.1.24 At a progress meeting with the Project Team she requested an apportionment of cost document to be prepared on what had already been implemented and also in terms of the estimated cost of what still had to be implemented, to enable her to discuss the matter with the President. This was because she was informed that it was a "*shared cost project*".
- 6.69.1.25 She indicated during her evidence that it took a very long time for the document to be compiled. Due to her removal from the project, she never

had an opportunity to discuss the contents of the document with the President and does not know whether it was ever submitted to him.

- 6.69.1.26 The Deputy Minister was not aware of the Internal Memorandum relating to the apportionment of costs, addressed to the Minister of Public Works by Mr Khanyile on 28 March 2011, as by that time she had already been removed from the Nkandla Project. Former Minister Mahlangu-Nkabinde denied during the investigation that she ever saw this document and indicated that she was not involved in any discussions of considerations in regard to the apportionment of costs. Mr Rindel could not explain why it did not reach the Minister or Deputy Minister as he personally hand delivered the document at DPW head office.
- 6.69.1.27 Deputy Minister Bogopane-Zulu further explained that after the progress meeting in February 2011, she attended a conference in New York. On her return on 11 March 2011, she was informed directly and in writing by Minister Mahlangu-Nkabinde that she was removed from the Prestige Portfolio. She approached the Minister and asked her for the reasons for her removal, but the Minister refused to discuss the matter with her.
- 6.69.1.28 When I discussed this with her during the investigation, Ms Mahlangu-Nkabinde only confirmed that officials of the DPW raised certain concerns with her about the Deputy Minister's involvement in the Nkandla Project and that she had discussed the matter with her. Deputy Minister Bogopane-Zulu denied that Ms Mahlangu-Nkabinde discussed the matter with her. However, she stated that rumours of discontent among officials did reach her informally upon her arrival from New York, *"but these were understood to have been unhappiness that my persistent insistence on driving costs down did not sit comfortably with some officials."*

- 6.69.1.29 During her interview, Deputy Minister Bogopane-Zulu confirmed that she also signed the letter of Minister Mahlangu-Nkabinde addressed to the President on 5 November 2010, providing him with a progress report on the Nkandla project.
- 6.69.1.30 When she was afforded the opportunity, in terms of section 7(9) of the Public Protector Act, to respond to the information and evidence obtained during the investigation that may appear to implicate her, Deputy Minister Bogopane-Zulu further explained her involvement in the Nkandla Project, inter alia, as follows:

*“The Department of Public Works implements infrastructural developments including acquisition of properties for and on behalf of various national departments. It happens in some instances that implementation of a prestige project falls behind schedule or the expenditure soars to unpredicted levels. The Minister may in appropriate circumstances deem it fit and imperative that there should be Executive intervention and oversight in order to unlock whatever delays there can be in the implementation of a project and to control an arrest escalating costs. Implementation of a security upgrade at the President’s house in Nkandla was running behind schedule and there was concern over the mounting cost; hence political intervention became imperative.*

*I participated in project team meetings (including site meetings) to familiarise myself with the challenges cause by the significant delays as well as cost escalation on the project, and which resulted in the need to strengthen political oversight, so as to enable me to provide leadership;*

*I provided leadership in these meetings by exploring alternatives which could be considered to bring costs down, to accelerate implementation and to*

*extract more value for money by looking at possible ways the surrounding communities could benefit from the public investment. I also requested an apportionment of cost between the state and the property owner, and raised concerns with regards (sic) significant challenges with the overall management of security on the project.*

*I at no stage issued any directives with regards either (sic) changing/expanding the scope of work or the procurement process to be followed.*

*I did not play a part at all in the nomination and appointment of service providers to provide services in the Nkandla Project at the inception or during its continuation.”*

6.69.1.31 Deputy Minister Bogopane-Zulu referred to the appointment of contractors for phase 2 of the Nkandla Project as follows:

*“I did not influence the further appointment of the contractors to remain on site to carry out works in Phase 2 of the construction. I submit therefore that the propriety or otherwise of the retention of the service providers for Phase 2 of the project shall be based on the first appointment and not on the comments I am alleged to have made. The Public Officials concerned were not influenced by my comments at all and they were going to retain the service providers on the same basis on which they appointed them in the first place.”*

6.69.1.32 The Deputy Minister denied that her involvement crossed the line between providing political leadership and interfering with administrative processes. She stated that:

*“In my view that the difference between political leadership and political interference can be explained as follows:*

*Political leadership focuses on providing strategic direction, including intervening where processes and projects have been red-lined as in trouble, without interfering with administrative decision-making processes.*

*Political interference in contrast occurs when an Executive Authority acts, hinders, obstructs, or impedes delivery, and/or issues instructions and directives which are administrative in nature, including the process of procurement.”*

6.69.1.33 The Deputy Minister also denied that she reported on the Nkandla Project directly to the Presidency.

#### 6.70. **The Appointment of a Private Project Manager**

6.70.1. The minutes of a meeting of the RBAC held on the 17 September 2010 indicate that the appointment of a private Project Manager by means of a nominated procurement process was approved. Ramcon Project Management Services was subsequently appointed. At the time, Phase 1 of the Nkandla Project was already underway and the design stages were complete. The appointment was shortly after Minister Doidge became involved in the project.

6.70.2. Mr R Samuel, former Deputy Director-General of the DPW, indicated in his evidence that it was decided to appoint a private Project Manager as it was clear that the DPW Project Manager was struggling and that there were serious delays in finalizing the implementation of the Nkandla Project.

- 6.70.3. Mr Rindel, agreed that there was a need to appoint a private Project Manager to manage and coordinate all the different aspects of the Nkandla Project on the site. He explained that due to the fact that he is based in Durban, it was not possible for him to manage every aspect of a project of this scale, on a day to day basis.
- 6.70.4. During the investigation, Ramcon's manager stated that its brief was to manage the different phases of the implementation of the Nkandla project as far as construction was concerned.
- 6.70.5. The role of the private Project Manager was to assist the Project Team with the management and coordination of the different construction processes that were taken place at the same time on the site. It also had to ensure the management of quality control and compliance with design specifications by the professional team involved and compliance with deadlines.
- 6.70.6. Mr Rindel was providing direction and guidance as the client and taking major decisions in respect of the Nkandla Project.
- 6.70.7. At the time when Ramcon got involved there was a substantial amount of coordination that had to be done as the project was fast-tracked. The project was not well managed and already experienced serious delays in terms of its set deadlines. *"There were a lot of struggles"*.
- 6.70.8. Ramcon together with the rest of the project team provided presentations on the progress made to the regular progress meetings, some of which were chaired by the Minister or Deputy Minister of Public Works.
- 6.70.9. According to the DPW records, the total amount paid to Ramcon by the DPW by the end of the investigation was R5 092 477.73.

## 6.71. Landscaping

- 6.71.1. Messrs Rindel, Makhanya and Crafford explained during the investigation that the construction works that had to be implemented on the premises resulted in a rigorous intervention of the landscape and vegetation that had to be rehabilitated, to bring the site back to normal. This included that attention had to be given to the flow of storm water due to the steep lie of the land.
- 6.71.2. According to them, it was therefore necessary to employ the services of a Landscape Architect to design the landscaping works that were required. Uys and White Landscape Architects were appointed as a subcontractor to the Principal Agent (Mr Makhanya) during the beginning of 2010, with the approval of the DPW.
- 6.71.3. The relevant architects of Uys and White involved in the Nkandla Project were interviewed during the investigation. According to Mr Uys, his firm had previously been involved in security projects, such as the Hoedspruit Air Force Base.
- 6.71.4. Most of their brief in respect of the Nkandla Project was given to them verbally by the DPW and Mr Makhanya at briefing meetings on the site. It related mainly to environmental control (storm water) and the replacement of facilities, such as the vegetable garden and the relocation of the kraal.
- 6.71.5. The visual access to the site, for example by a sniper, also had to be considered in respect of the kind of vegetation that was used and the landfill that had to be applied in the design of the landscape.



- 6.71.6. Initially, Mr Crafford considered and approved their designs, but as the project was implemented on the ground, the supervision and liaison were mainly done by Mr Makhanya.
- 6.71.7. At the time when the Landscape Architects got involved on the site, extensive construction works in terms of buildings and roads had taken place and the site was, according to them, extremely eroded. It required substantial land rehabilitation and in some cases retaining walls and banks to deal with storm water drainage. It also included seeding, vegetation and the planting of lawns. Lawns were planted as it is the cheapest way of controlling soil erosion.
- 6.71.8. There was no environmental legislation that the Nkandla Project had to comply with in the process of the design of the landscaping. A professional opinion was obtained in this regard.
- 6.71.9. The initial master plan design of the Nkandla Project in respect of landscaping was, according the Landscape Architects, substantially reduced due to the costing. However, the main footprint of what had to be done remained the same. The original estimated cost of the landscaping was about R19 million. The actual final cost was much lower.
- 6.71.10. Mr Uys and his colleagues indicated during their evidence that much of what was originally designed in terms of the landscaping, was not implemented, such as the pergolas, light fittings, and feature elements. They expressed the view that all those things that would have made the site “*special*” and created an ambiance of being “*stately*” were excluded.

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6.71.11. According to Uys and White Landscape Architects, the following table represents a comparison between the planned landscaping and what was actually implemented:

Comparison between what was designed and planned and what was actually built				
		Forecast based on costing Revision no 7	Actual certified to date - Phase 1 - Bonelena	Actual certified to date - Phase 2 Money Mine
<b>0</b>	Preliminary & General		R 430 000.00	R 139 120.00
<b>1</b>	Zone A: Arrival Node	R 532 250.00		R 120 488.30
<b>2</b>	VISITORS CENTRE	R 1 315 425.00		R 330 670.14
<b>3</b>	SOCIAL NODE	R 2 063 340.00		R 249 157.01
<b>4</b>	RESIDENTIAL ARRIVAL	R 1 232 820.00		R 114 670.16
<b>5</b>	ZONE C: DWELLINGS	R 4 466 400.00		R 437 551.06
<b>6</b>	EXISTING HOMESTEAD	R 398 400.00		
<b>7</b>	FACILITIES - Military Clinic etc	R 283 850.00		R 16 764.00
<b>8</b>	RING ROAD	R 585 400.00	R 480 601.00	
<b>9</b>	REHABILITATION	R 2 475 875.00		R 216 680.87

Comparison between what was designed and planned and what was actually built				
		Forecast based on costing Revision no 7	Actual certified to date - Phase 1 - Bonelena	Actual certified to date - Phase 2 Money Mine
<b>10</b>	HELIPADS	R 135 000.00		
<b>11</b>	CEREMONIAL ROUTE	R 0.00		
<b>12</b>	POLICE RESIDENCE	R 1 312 546.00	R 1 758 769.78	
<b>13</b>	OTHER	R 3 872 010.00		
<b>14</b>	MAINTENANCE		R 227 681.25	R 208 769.00
<b>15</b>	IRRIGATION			R 44 971.04
<b>16</b>	EXTRAS & REPLACEMENTS			R 513 728.36
<b>17</b>	Extra from Bonelena contract completed by Money mine		R 67 662.22	
	<b>Total Project</b>	<b>R 18 673 316.00</b>	<b>R 2 964 714.25</b>	<b>R 2 392 569.94</b>
		<b>Planned</b>	<b>Actual</b>	
	<b>Total Project</b>	<b>R 18 673 316.00</b>	<b>R 5 357 284.19</b>	<b>UYS &amp; White - Total certified to date</b>

- 6.71.12. As far as the apportionment of costs for landscaping perspective is concerned, there were in the view of the Landscape Architects no “nice to have’s” that had to be paid for by the State. Where such items were included it came about because of the view that it was a prestige project and the President’s house.
- 6.71.13. However, Ms Pasley, the DPW’s Chief Quantity Surveyor and other officials of the DPW interviewed during the investigation, held the view that the nice to have’s had to be paid for by the President if he wanted them. The Landscape Architects indicated during the investigation that they accepted that the President would be consulted on this, but were never informed whether the President actually wanted those items and consequently, it was taken out of the implementation. It should be noted that there was initially no discussion on the separation of the costs of the Nkandla Project.
- 6.71.14. As far as the contents of the letter from Mr Khanyile addressed to the Minister of Public Works on 28 March 2011 referred to above are concerned, the Landscape Architects explained during the investigation that their master plan was broken down into zones.
- 6.71.15. The reference to the “social node” in the said letter related to an area that was flattened to a space that could be utilized for a marquee tent.
- 6.71.16. The documents obtained from the Landscape Architects in this regard indicate that the brief in respect of the social node was to: “*create function area linked to swimming pool terrace.*” Mr Rindel explained that the discussions that took place among the officials in this regard indicated that the amphitheatre and terraced pavilion could be used for functions “*for which the NDPW (National DPW) would also be responsible.*”

- 6.71.17. According to the Landscape Architects, there was a very negative level difference between the social node and the visitor's area. A terrace seated zone was created as the best way to connect the spaces. It was their suggestion to create the so called "amphitheatre", which was actually a series of retaining walls, to break up the level differences.
- 6.71.18. Throughout their involvement in the project, the Landscape Architects got the sense that Mr Makhanya was keeping the President informed of developments and that he submitted their drawings to him. Mr Rindel confirmed that Mr Makhanya and Deputy Minister Bogopane-Zulu reported to the Project Team that they had discussed the landscaping with the President.
- 6.71.19. They further explained that their landscape designs were implemented by two contractors, i.e. Moneymine and Bonelena.
- 6.71.20. According to their explanation, the total measurement of the site that had to be subjected to landscaping interventions was 6.1 hectares, which can be converted into 8.6 international soccer pitches.
- 6.71.21. The total amount of Uys and White's professional fees was R1 974 457.37. It was based on the professional fee guideline of the South African Council for the Landscape Architectural Profession and calculated on drawings in respect of the original project value of R18 673 316, and not on what was actually implemented.
- 6.71.22. The actual total cost of the landscaping was as follows:

SITE WORKS	CONSULTANT'S FEE
R 5,357,289.96	R 1,974,457.37
<b>TOTAL</b>	<b>R 7,331,747.33</b>

Figure 11: Total Cost of Landscaping in the Nkandla Project

6.71.23. During my site visit on 12 August 2013, I noted that substantial landscaping works had been performed on the premises. As indicated above, the amount of paving, retaining walls and the so called social node or entertainment area specifically stood out as items that probably required better consideration in terms of alternative and more cost effective measures. It was also noted that the kraal that was constructed included separate areas for goats and cattle and even chicken nests and a culvert with a remote controlled gate. As I have already stated, Mr Makhanya could not explain whose idea the design was and whether alternatives were considered.

## 6.72. The Apportionment of Costs

6.72.1. As indicated earlier in this report, Deputy Minister Bogopane-Zulu stated in her evidence during the investigation that shortly after she got involved in the Nkandla Project, she requested the Project Team to prepare cost apportionment documents to be submitted to her.

6.72.2. The reason for her instruction in this regard was that she was told right from the start that the Nkandla Project was “*cost-shared*”, which, to her understanding, meant that the President would be responsible for some of the cost incurred during the project, due to the fact that it was implemented at his private residence and that some items did not relate to security.

6.72.3. She explained that her intention was to discuss the apportionment of the estimated costs with the President so that he was not later surprised by it and could indicate whether or not he agreed with certain items.

6.72.4. Mr Rindel and other witnesses interviewed during the investigation confirmed that a cost apportionment exercise was done with the inputs of the professional team of consultants. They further stated that every item was

debated and a decision then taken as to whether the estimated cost would be for the DPW or the President or whether it should be shared and, if so, to what extent.

- 6.72.5. From the records of the Department of Public Works obtained during the investigation, it was found that R&G Consultants was requested to record the cost allocations as agreed upon by the professional team in a document. This document is titled: “*DURBAN PRESTIGE PROJECT A: MOTIVATIONS AND COST ALLOCATIONS*” and dated 11 March 2011. It tabled the appropriation of the estimated costs as follows:

#	ITEMS	PHASE	TOTAL COST	PUBLIC	PRIVATE (R)
1	Safe Haven and Related Installations*	1 & 2	R 14,033,701.30	R 14,033,701.30	-
2	20 Residential Staff Houses and Laundry Facility	2	R 17,055,543.00	R 17,055,543.00	-
3	Relocation of Households	1	R 7,983,735.62	R 7,983,735.62	-
4	Military Clinic and Service area, Clip On & SAPS Garages	2	R 11,316,167.25	R 11,316,167.25	-
5	Visitors Centre with space for a Security Service*	2	R 7,562,141.06	R 7,562,141.06	-
6	Multipurpose security room also housing a Tuckshop	1	R 494,893.80	R 494,893.80	-
7	Guard House 1	1	R 2,293,801.31	R 2,293,801.31	-
8	Guard House 2 & 3	2	R 1,068,080.30	R 1,068,080.30	-
9	Crew Pavilion	2	R 1,633,298.00	R 1,633,298.00	-
10	Sewer Pump Station	2	R 616,138.00	R 616,138.00	-
11	Fire Pool and Parking	2	R 2,640,679.60	R 2,380,011.56	R 260,668.04
12	Sewer Treatment Plant	1	R 756,409.48	R 756,409.48	-
13	Booster Pump Station	1	R 382,337.13	R 382,337.13	-
14	Key installations to Private Residences	1	R 4,225,820.00	R 4,225,820.00	-
15	Key installations to existing Residences	2	R 315,000.00	R 315,000.00	-
16	Refuse area	2	R 1,715,000.00	R 1,715,000.00	-
17	Fire Truck Garage	2	R 365,000.00	R 365,000.00	-
19	Cattle Culvert	1	R 1,200,000.00	R 1,200,000.00	-
20	Temporary Mobile park homes	1	R 2,137,190.00	R 2,137,190.00	-
21	Stabilisation of existing SAPS park homes	1	R 37,158.00	R 37,158.00	-
22	Incoming Supply Power Upgrade and overhead Lines Relocations	1	R 773,624.00	R 773,624.00	-
23	Reticulation during negotiated contract	1	R 55,000.00	R 10,000.00	R 45,000.00
24	Reticulation during Emergency Contract	1	R 701,621.60	R 701,621.60	-
25	Reticulation during Phase 2 contract	2	R 900,000	R 890,000.00	R 10,000.00
26	Standby Generator and Fuel Tank	2	R 661,219.00	R 661,219.00	-



#	ITEMS	PHASE	TOTAL COST	PUBLIC	PRIVATE (R)
27	Security and Area Lighting	2	R 490,835.00	R 490,835.00	-
28	Lightning Protection	2	R 450,000.00	R 300,000.00	R 150,000.00
29	Temporary Generator	1	R 267,250.00	R 267,250.00	-
30	Outer Perimeter Fence	1	R 5,994,724.59	R 5,994,724.59	-
31	Inner High Security Core Fence	1	R 8,303,045.18	R 8,303,045.18	-
32	CCTV Camera Installation	2	R 1,885,000.00	R 1,885,000.00	-
33	Kinematic Fence Detection System	2	R 910,000.00	R 910,000.00	-
34	Fire detection	2	R 1,800,000.00	R 1,800,000.00	-
35	Fuel Trailer	2	R 460,000.00	R 460,000.00	-
36	Road 1	1 & 2	R 2,717,017.60	R 2,717,017.60	-
37	Road 2	1 & 2	R 622,810.18	R 622,810.18	-
38	Road 3	1 & 2	R 585,955.28	R 585,955.28	-
39	Road 4	1 & 2	R 455,616.30	R 455,616.30	-
40	Road 5	1 & 2	R 1,467,397.72	R 1,467,397.72	-
41	Road 6	1 & 2	R 710,595.58	R 710,595.58	-
42	Reticulation (Sewer, Water, Domestic, Fire Protection)	1 & 2	R 3,451,543.05	R 3,451,543.05	-
43	Steel Reservoir	1	R 290,894.45	R 290,894.45	-
44	Helipads	1 & 2	R 4,855,090.24	R 4,855,090.24	-
45	General landscaping around helipad	1 & 2	R 1,102,100.00	R 1,102,100.00	-
46	Builders work	1 & 2	R 1,200,000.00	R 1,190,000.00	R 10,000.00
	<b>Detailed Landscaping:</b>				
47	Zone A - Arrival Node	2	R 532,250.00	R 489,750.00	R 42,500.00
48	Visitors' Centre with space for Security Services	2	R 1,315,425.00	R 1,235,425.00	R 80,000.00
49	Social Node	2	R 2,063,340.00	R 884,655.00	R 1,178,685.00
50	Residential arrival	2	R 1,232,820.00	R 670,100.00	R 562,720.00
51	Zone C – Dwellings	2	R 4,466,400.00	R 1,166,236.00	R 3,300,164.00
52	Existing Homestead	2	R 398,400.00	R 231,400.00	R 167,000.00

#	ITEMS	PHASE	TOTAL COST	PUBLIC	PRIVATE (R)
53	Facilities - Military Clinic etc.	2	R 283,850.00	R 283,850.00	-
54	Ring Road	2	R 585,400.00	R 585,400.00	-
55	Rehabilitation	2	R 2,475,875.00	R 1,975,875.00	R 500,000.00
56	Helipads	2	R 135,000.00	R 135,000.00	-
57	Ceremonial Route				
58	Staff houses	2	R 1,312,546.00	R 1,312,546.00	-
59	Other	2	R 1,280,010.00	R 1,104,500.00	R 175,510.00
	<b>SUBTOTAL</b>		<b>R 135,024,749.62</b>	<b>R 128,542,502.58</b>	<b>R 6,482,247.04</b>
ADD	Preliminaries		R 14,325,703.75	R 13,353,366.69	R 972,337.06
	<b>SUBTOTAL</b>		<b>R 149,350,453.37</b>	<b>R 141,895,869.27</b>	<b>R 7,454,584.10</b>
	Contingencies		2,423,637.52	2,200,000.00	223,637.52
	<b>SUBTOTAL</b>		<b>R 151,774,090.89</b>	<b>R 144,095,869.27</b>	<b>R 7,678,221.62</b>
	Pre Tender Escalation (3months @3.8% p.a) Applicable to Lift and Security Values Only		R 2,293,115.02	R 2,293,115.02	-
	<b>SUBTOTAL</b>		<b>R 154,067,205.91</b>	<b>R 146,388,984.29</b>	<b>R 7,678,221.62</b>
	Post Escalation (9 months @ 6.5% p.a)		R 4,506,465.77	R 4,281,877.79	R 224,587.98
	<b>SUBTOTAL</b>		<b>R 158,573,671.68</b>	<b>R 150,670,862.08</b>	<b>R 7,902,809.60</b>
	Professional fees calculated on pro Rata basis (18.23%)		R 28,907,980.35	R 27,467,298.16	R 1,440,682.19
	<b>SUBTOTAL</b>		<b>R 187,481,652.03</b>	<b>R 178,138,160.24</b>	<b>R 9,343,491.79</b>
	VAT @ 14%		R 26,247,431.28	R 24,939,342.43	R 1,308,088.85
	<b>TOTAL ESTIMATED CONSTRUCTION COST</b>		<b>R 213,729,083.31</b>	<b>R 203,077,502.67</b>	<b>R 10,651,580.64</b>

Figure 12: Cost Apportionment for the Nkandla Project

\*Wording modified to address security concerns

6.72.6. According to Deputy Minister Bogopane-Zulu, she never received this document due to the fact that she was removed from the Nkandla Project subsequent to her request for it to be compiled. It appears the document has disappeared without trace.

6.72.7. The findings contained in this document were conveyed to the Minister of Public Works by Mr Khanyile in an Internal Memorandum addressed to her on 28 March 2011, under the heading: *“DISCUSSION OF APPORTIONMENT OF COSTS BETWEEN STATE AND PRINCIPAL”*. The aim of the memorandum was stated as:

*“...to provide all the applicable information to Top Management in line with the apportionment of cost between the State’s responsibility and Private (cost to the owner).”*

6.72.8. The Memorandum indicated that the estimated scope of works was divided as follows:

*“Public (State) portion: R203 079 677.18*

*Private (Owner) portion R10 651 580.64*

*The scope of the works included in the Public (sic) is approved and agreed in the meeting held in HO on 10 March 2011 and is in the process of being implemented and shall be concluded in line with the mandate given to the NDPW.*

*The portion included under “Private” required additional attention before this can be implemented as it falls outside the scope of security measures. Please note that the implementation of some of these issues was unavoidable and some had already been completed.*

...

*It was agreed at that meeting that the Department cannot implement any of the works included in the indicated above without the written instructions from Top management to do the same. This is a precaution that must be taken as the works falls outside the mandate given to the Department.*

*It is proposed that the works included herein be discussed between Top Management and Ministry and guidance be given to the way forward with these issues. It may be necessary to discuss these issues with the Principal as the financial implication directly affects him (He may want to implement these issues himself without the interference of the Department or else he may want to opt to reimburse the Department after we complete the same.)*

6.72.9. Mr Khanyile recommended in his memorandum to the Minister:

- “● *That the scope of works falling within the mandate of the Department continues as previously instructed.*
- *That the scope of works apportioned to the Principal (the President) be discussed and guidance be given to the Team pertaining on (sic) the implementation thereof before construction will continue.”*

6.72.10. Minister Mahlangu-Nkabinde denied during the investigation that she ever received this document or discussed the matter of apportionment of cost with the President. While the document appears to have disappeared without trace, virtually all members of the executive met or interviewed intermittently alluded to some of its contents.

- 6.72.11. Messrs Rindel and Khanyile stated that they never received a response to this Internal Memorandum and that they do not know whether it was ever presented to the President.
- 6.72.12. During the investigation, Mr Rindel and R&G Consultants stated that the works that were identified as “*private*” in the said document, dated 11 March 2011, were not implemented, due to the fact that no response in this regard was received from the Minister. It should be noted that the biggest portion of the estimated costs identified as “*private*” related to landscaping.
- 6.72.13. The evidence obtained during the investigation further indicated that members of the DPW professional services team specifically questioned the cost apportionment in respect of landscaping and the swimming pool. The view was expressed that the scope of landscaping went wider than was necessary and that the difference in the cost between the construction of a swimming pool and that of an ordinary water reservoir should be paid by the President.

#### **PART E: EVIDENCE ON THE INVOLVEMENT OF THE INDUSTRIAL DEVELOPMENT CORPORATION AND ALLEGATIONS OF IMPROPER BENEFITS AFFORDED TO THE PRESIDENT’S BROTHERS**

- 6.73. **The Granting of Financial Assistance by the Industrial Development Corporation to Bonelena**
- 6.73.1. As indicated above, Bonelena Construction Enterprise and Projects CC (Bonelena) was awarded construction contracts by the DPW for the Nkandla project in the amount of R98 292 299. It submitted its first proposal for the

project in terms of a nominated procurement procedure to the Regional Office of the DPW, on 23 March 2010.

- 6.73.2. The contract for the emergency works was awarded to it by the Regional Manager on 15 June 2010, in the amount of R19 174 478.52. A further contract was awarded to Bonelena for Phase 2 of the Nkandla Project. At the conclusion of the investigation it had been paid a total of R78 167 742 of the contracted amount.
- 6.73.3. The selection criteria applied in the case of Bonelena was whether the contractor:
- 6.73.3.1 Had passed the *“required NIA clearance”* and
  - 6.73.3.2 Was registered *“at the minimum CIDB grading, being 7GB, 7CE OR 6 GBPE, 6 CEPE or higher.”*
- 6.73.4. The Internal Memorandum submitted by Mr Rindel to the RBAC, recommending that Bonelena be approved as one of the nominated contractors stated that it passed the NIA clearance and that it had a CIDB grading of 7GBPE.
- 6.73.5. The grading process applied by the Construction Industry Development Board (CIDB) is prescribed by the Construction Industry Development Regulations, made in terms of the Construction Industry Development Board Act, 2000. It includes detailed scrutiny of the contractor’s financial viability and ability to successfully complete construction projects within specified ranges.

- 6.73.6. It was confirmed from the database of the CIDB during the investigation that Bonelena was registered from 16 February 2009 and had a grading of 7GB PE. The grading of 7GB PE qualified Bonalena, also in terms of the DPW SCM Policy, to undertake general building construction projects up to a value of R100 million.
- 6.73.7. During the investigation, it transpired that Bonelena applied to the Industrial Development Corporation (IDC) for financial assistance in the amount of R5 million on 28 May 2010, i.e. after it had submitted an offer to the DPW for the first phase of the Nkandla project.
- 6.73.8. Ms Nena, the sole member of Bonelena at the time, explained in her evidence that Bonelena was experiencing cash flow problems at the time when the contract in respect of the Nkandla Project was awarded to it, due to its involvement in other projects. Bonelena was growing and required funding. This was the reason why it decided to approach the IDC.
- 6.73.9. According to Ms Nena, Bonelena applied for financial assistance before it was even aware that the contract in respect of Phase 1 of the Nkandla project would be awarded to it.
- 6.73.10. The IDC required comprehensive documents from Bonelena in order to consider its application, including the:
- 6.73.10.1 Business profile;
  - 6.73.10.2 Financial statements;
  - 6.73.10.3 Bank statements;

6.73.10.4 Tax Clearance Certificate;

6.73.10.5 Contracts with the DPW and the relevant scope of works in respect thereof;  
and

6.73.10.6 Personal profile and resume of the sole member of the entity, Ms T M Nene.

6.73.11. It appeared from the documents obtained from the IDC during the investigation that the application took quite some time to be considered and that further supporting documents were requested during the evaluation process.

6.73.12. The contracts that were awarded to Bonelena by the DPW in respect of the Nkandla Project were included to support its application.

6.73.13. The information and documents provided by the IDC also indicated that Bonelena's application was put through its internal processes and detailed financial and other diligence tests and investigations.

6.73.14. The General Counsel & Divisional Executive: Legal & Post Investment Monitoring of the IDC explained during the investigation that:

*“At the conclusion of its investigations set out above, the IDC’s findings, summarized below, were inter alia that the business demonstrated economic merit and commercial viability, particularly in that amongst others the Applicant:*

- *was 100% black female owned and managed business (sic) which started its operations from home 5 years prior and thus fitted within the*



*IDC's mandate and strategy to develop and support emerging black owned businesses within the industry and the province;*

- *has thus far already managed to grow its Construction Industry Development Board (CIDB) grading from 1 to 7 GB PE;*
- *operated primarily in the KwaZulu-Natal Province and had already completed a number of contracts for the provincial government departments over the years and built a good reputation for itself which is evidenced by an Award of Excellence it received from Dr Ina Cronje (erstwhile MEC for Education in the province) for outperforming all emerging contractors;*
- *had grown its business into a sizeable operation handling projects for the South African Government inter alia schools; community halls; cultural centres; police stations; hospitals and as at the date of application it handled projects valued at circa R200 million within the province;*
- *had applied for and was awaiting the outcome of tenders for contracts worth R50 million;*
- *had recently been awarded contracts for a school construction project in Waterloo Verulam for R23 million and phase2 of Project A security measures for R61 million (the Nkandla project.);*
- *had forecasted income statements and balance sheet indicating that it would be able to service the IDC loan in accordance with the agreed terms and conditions..."*

6.73.15. On 7 February 2011 (almost 10 months after it was submitted), the IDC approved Bonelena's application for funding amounting, to R40 295 000.

- 6.73.16. The records of the IDC further indicate that one year and 5 months later, on 18 July 2012, Bonelena was placed under final liquidation at the insistence of one of its unpaid suppliers.
- 6.73.17. On 25 February 2013, the KwaZulu-Natal High Court sanctioned the offer of compromise proposed between Bonelena and its creditors and accepted by them at a meeting held on 15 February 2013, in terms of section 155(7)(b) of the Companies Act, 2008, read with section 66(1A) of the Close Corporations Act, 1984. Bonelena was discharged from liquidation and the final winding-up order issued by the Court on 18 July 2012 was set aside.
- 6.73.18. According to the IDC, its exposure due to the liquidation (by March 2013) amounted to R19,7 million. At the time of the conclusion of the investigation, the offer of compromise was still in the process of being implemented.

#### 6.74. **The Cancellation of Bonelena's Contract**

- 6.74.1. The records of the DPW indicate that Bonelena was informed in writing on 15 March 2012 that it failed to comply with the relevant Principal Building Agreement in respect of Phase 2 of the Nkandla project and that further failure would result in cancellation of the contract.
- 6.74.2. On 10 April 2012, Mr Khanyile informed Bonelena that its contract was cancelled.
- 6.74.3. Several of the DPW officials and consultants interviewed during the investigation confirmed that Bonelena was underperforming during Phase 2 of the Nkandla project and caused substantial delays. It was also indicated that Bonelena appeared to have had serious financial problems at the time. Some of the witnesses expressed the view that the company had the

capacity to perform the works in terms of the contract, but that the business was badly managed.

6.74.4. However, according to Bonalena's Ms Nene, she had no idea why the contract was cancelled. She complained that her business experienced several frustrations during the implementation of the Nkandla project, including payment delays. She is of the view that negative publicity relating to the Nkandla project, the payment and other delays were the main causes that the business was liquidated.

6.74.5. A contract for the outstanding works estimated at a cost of R5 million at the time, was subsequently awarded to Moneymine by means of an approved negotiated procurement process.

6.75. **The Allegation that the President's Brothers Benefitted from the Nkandla Project**

6.75.1. On 2 December 2012, the *Sunday Times* published an article under the heading "*OH, BROTHER*" stating that public funds allocated for the Nkandla Project had been used to pay for renovations to the homes of two of his brothers.

6.75.2. According to the article:

*"In documents seen by the Sunday Times, Michael and Joseph Zuma are listed as having had supplies by electrical company Voltex delivered to their homes as part of the 'prestige project'-as the Department of Public Works has dubbed the Nkandla upgrade.*

*Invoices for the work by the Durban-based company were submitted to a building contractor involved in the Nkandla project and have been laid bare in papers before the High Court in Durban.*

*Voltex went to court to recoup R545 249 it says was owed by contractor Pamela Mfeka. She was awarded a reported R47.6 million contract by the Department of Public Works to construct six buildings in Nkandla.*

*According to the court papers, Mfeka, 46, defaulted on the payments for electrical cables and other goods supplied for Zuma's luxury compound and his brothers' modest homestead in Nxamalala village.*

*Michael denied that any work had been done to his or his brother's home.*

...

*The court papers contain numerous invoices, dated between November 3 2011 and November 3 2012 in which Voltex billed Mfeka's company, Moneymine Enterprises, for electrical products bought for Michael's and Joseph's homes as well as the upgrade of Zuma's homestead.*

*Several of the invoices refer to the prestige project, while some list the name of the village, Nxamalala, where all three homesteads are situated.*

...

*One of the bills dated November 30 2011, showed an amount of R 3915 for electrical goods for Michael's home.*

*The matter was scheduled to be heard on Friday, but a settlement agreement was reached early in the day between the parties' lawyers."*

6.75.3. In its response to the allegations which were raised with Voltex during the investigation, Voltex expressed its outrage at what it regarded as inaccurate reporting by the *Sunday Times*. The Legal General Manager of the company stated in his response to my enquiries, dated 26 March 2013, that:

*“The Voltex Group is a wholly owned subsidiary of one of the most prominent industrial companies in the Republic of South Africa and it is common cause that Voltex’ relationship with Moneymine 310 CC trading as Moneymine Enterprises (“Moneymine”) is simply that of a supplier/customer relationship.*

*Voltex’ involvement in this matter was purely as a supplier of electrical products, in the ordinary course of its business, to a customer who had been trading with it since 2008 being Moneymine). On or about October 2012, Voltex proceeded to institute legal action against Moneymine for the recovery of amounts which were due and owing to it for goods sold and delivered to Moneymine in the ordinary course of its business.”*

6.75.4. The relevant court papers obtained during the investigation confirmed that Voltex instituted legal action against Moneymine in the KwaZulu-Natal High Court on 6 August 2012. The basis for the action was Voltex’ claim that Moneymine owed it R545 294.12 in respect of goods purchased.

6.75.5. Attached to the Particulars of Claim were several supporting documents, including statements reflecting goods purchased from Voltex by Moneymine.

6.75.6. It was noted that the items in the Moneymine statements included references to “*nxamalala*”, “*dbn prestige*”, “*Nkandla*” “*Dundee court*”, “*vuleka*”, “*highflats*” and a number of others.

- 6.75.7. Next to the date “30/11/2011” appeared the reference “Mike Zuma” and the amount reflected is R3915.33.
- 6.75.8. The statements also contained a reference to “Joseph” dated 19 March 2012 for an amount of R2249.22 and “Joseph Zuma” dated the same day for an amount of R114.00.
- 6.75.9. When approached, Voltex explained that the goods supplied under these three references were general electrical items such as cabling, switches and sockets which are ordinarily used in domestic installations.
- 6.75.10. As far as the items related to “joseph” and “joseph zuma” were concerned, Voltex were requested to deliver it to: 9A Hangerberger Road Newlands East. The request was marked: “ATT MELVIN”.
- 6.75.11. The items in respect of “mike zuma” were delivered, at Moneymine’s request, to: 19 Russell Steet, Pinetown.
- 6.75.12. Mr and Ms Mfeka of Moneymine explained when interviewed, that Moneymine was involved in a number of projects at the same time when it was involved in the Nkandla project. As a long standing and well known construction company, Moneymine has a number of clients to whom it supplies building materials and for whom it does work from time to time and that Voltex one of its regular suppliers.
- 6.75.13. They explained that Moneymine was building houses for Mr Mike Zuma in his private capacity and confirmed that Messrs Mike and Joseph Zuma are related to the President.

- 6.75.14. They advised that Moneymine ordered certain items from Voltex for the private development relating to Mr Mike Zuma. It was ordered separately from items ordered for the Nkandla Project and therefore invoiced and recorded accordingly on the statement documents.
- 6.75.15. As far as Mr Joseph Zuma is concerned, Moneymine was involved in a small project that related to the installation of electricity at his house.
- 6.75.16. They further explained that the items ordered in respect of Mr J Zuma were delivered to Melvin, Moneymine's electrician, at his address in Newlands. The submitted that orders placed in respect of Messrs Mike and J Zuma had nothing to do with the DPW project and were paid for separately as was the case of other clients of Moneymine reflected on the Voltex statements. No claim was ever submitted to the DPW for the items reflected in the said statements.
- 6.75.17. The dispute between Voltex and Moneymine has been resolved and the outstanding amounts paid.

## **PART F: THE INTERNAL TASK TEAM REPORT**

### **6.76. The Investigation of the Internal Task Team**

- 6.76.1. The Minister of Public Works, in conjunction with the Ministers of State Security and Police, appointed a Task Team of officials, from the Departments responsible for the Nkandla Project, to investigate allegations of impropriety relating to its implementation, around November 2012.

- 6.76.2. The findings of the Task Team Report were announced by the Minister of Public Works in a media statement, issued on 27 January 2013 and the report was finally declassified and made public on 19 December 2013.
- 6.76.3. It is important to note that by then the Presidency and Security Cluster were well aware of my investigation, with some having already responded to the standard document and information request from my office.
- 6.76.4. As part of my investigation, I requested on several occasions to be provided with a copy of the Task Team Report and was only eventually granted limited access by the Minister of Public Works on 2 July 2013. The report was classified by him as a “*Top Secret*” document. I was only allowed to peek into the document without copying it or keeping it beyond a few hours.
- 6.76.5. It was reported in the media that the Democratic Alliance brought an application in the High Court for access to the Task Team Report, in terms of the provisions of the Promotion of Access to Information Act, 2000.
- 6.76.6. After the report was declassified for no apparent reason, as the circumstances under which it was regarded as classified did not change from January 2013 to December 2013, the Special Advisor to the Minister of Public Works reportedly filed an affidavit in the court application stating that there was no difference between the report that was classified and the report that was released in December 2013.
- 6.76.7. Media reports on 18 February 2014 indicate that the Minister of Public Works agreed to pay the wasted legal costs of the Democratic Alliance. More public funds were therefore spent to protect information that clearly did not qualify to have been classified in terms of the MISS.



- 6.76.8. The report is now freely available to the public and I therefore do not intend to refer to all of its contents here. Suffice to say that the Task Team's terms of reference were much narrower than what was covered by my investigation.
- 6.76.9. However, I have noted the following statements made in the Explanatory Note to the report, which are of particular relevance:

*The DPW as the implementing agent in respect of the security requirements of the DOD and SAPS was supposed to have ensured that the funding required was available and budgeted for, the source of the funding identified and the procurement prescripts and requirements complied with.*

*"The major challenge identified by the Task Team was that there was no coordination between various departments that ought to have been involved in the security upgrades in order to determine the appropriate budget for the project and the costing. For instance, DPW estimated the project at R27 million before assessments were conducted by SAPS and SANDF. Notwithstanding the fact that DPW had managed projects of a similar nature in the past, poor management of the project led to the incorrect estimation of the project."*

*"The assessment of the SANDF indicated a lack of the required level of medical facility in the immediate vicinity as prescribed in the Standard Operating Procedures (SOP). The 140 000 population of Nkandla Municipality shares among itself the services of ten primary health care facilities (inclusive of mobile clinics) and two tertiary-level services (Nkandla and Khombe hospitals) for health care. Nkandla Hospital has six permanent doctors and four seasonal medical practitioners". To augment the services are private doctors and traditional healers. The facilities are too far away and*

*unable to meet the standards or the nature of health care required for the President and his household. At the time the nearest facility with the required standard was two hours away in Durban.”*

- 6.76.10. The explanation provided in regard to the Visitors’ Centre is that due to the large number of people that visit the President at his private residence there was a security challenge to control them.
- 6.76.11. The Task Team made a preliminary finding that there is a possibility of inflated prices and overcharging.
- 6.76.12. I have also taken cognizance of the following findings of the Task Team Report :
- 6.76.12.1 The Nkandla project was not included in the DPW Medium Term Expenditure Framework for the financial periods 2010-2013;
- 6.76.12.2 The DPW did not pay any contractor for the construction of the private dwellings of the President. I noted that this aspect did not form part of the Task Team’s terms of reference. There is also no indication in the report whether and how this was investigated;
- 6.76.12.3 The report further stated that *“it was also found that the then Minister of Public Works, Minister Doidge and Deputy Minister Bogopane-Zulu attended and presided over site meetings and in some instances interacted with contractors involved in the project. This was reflected in the minutes, memos generated by officials of the DPW and from evidence of the three officials and one contractor who raised uneasiness with the involvement of the executive in the project.”*

6.76.12.4 Despite the fact that the object of Nkandla Project was to secure the President and that most information relating thereto was classified as “*Top Secret*” the following service providers that were intimately involved in its implementation had no security clearance:

CONSULTANT	SERVICE
Minenhle Makhanya Architects	Principal Agent and Architect
C A Du Toit	Security Equipment
IbonghoConsultants	Civil Engineeri
Ilangalethu Consulting	Quantity Surveyor
Mustapha and Cachalia	Mechanical Engineer
IGODA	Electrical Engineer
E Magubane Information Systems*	Electronic Detection Systems

*Figure 13: Consultants Appointed without Security Clearance*

*\* This service provider who was contracted for the installation of intruder detection systems was denied security clearance in 2008 and was not subsequently issued with any such clearance for the Nkandla Project*

6.76.13. The findings of the Task Team Report in respect of the procurement processes followed and the payments made to service providers are mostly in line with the findings contained in this report, albeit less detailed and not fully supported by evidence. It should also be noted that the investigation of the Task Team was initiated by Ministers responsible for Department s who were involved with the implementation of the Nkandla Project, as opposed to my investigation as an independent Constitutional institution.

6.76.14. The report of the Task Team was noted to have made the following recommendations:

6.76.14.1 Parliament to review the National Key Points Act;

- 
- 6.76.14.2 A departmental policy to be developed for Prestige Projects;
- 6.76.14.3 A cost apportionment to be done to determine which cost should be allocated to which stake holder;
- 6.76.14.4 The justification for the delegation of authority to the RBAC to procure goods and services above R20 million in respect of the security project has to be investigated;
- 6.76.14.5 The “*surety*” made by the DPW to the IDC on behalf of Bonelena to be investigated further;
- 6.76.14.6 Irregularities identified be further investigated and any professionals who might be found to have acted unethically be reported to the relevant professional bodies and/or institutions;
- 6.76.14.7 Immediate disciplinary measures be instituted against any government officials who might be implicated in any kind of wrongdoing, including the flouting of policies and procurement procedures
- 6.76.14.8 The SSA to conduct a comprehensive information security risk assessment of the project;
- 6.76.14.9 The role of the former Minister and Deputy Minister of Public Works in the project to be clarified and investigated.
- 6.76.14.10 All DPW Supply Chain Management personnel to be security vetted;

- 6.76.14.11 The Ministerial Handbook to be reviewed to bring it in line with the National Key Points Act and the Cabinet Policy regulating security measures at the private residence of the President; and
- 6.76.14.12 Any breach of the law to be reported to the appropriate authorities.

### **PART G: THE RESPONSES SUBMITTED BY THE PRESIDENT IN REPLY TO QUESTIONS PUT TO HIM DURING THE INVESTIGATION**

6.77. On 29 January 2013, I wrote to the President to inform him of my investigation of the complaints referred to in paragraph 2 above. I specifically stated the details of the complaint lodged by Prof De Vos in connection with the statement that the President allegedly made to the National Assembly on 15 November 2012 that the development of the first phase of his private residence was financed by a commercial bank that secured a mortgage bond in respect of the property.

6.78. My letter also stated that:

*“You will be afforded an opportunity to respond in full to the allegations, once I am in a position to provide you with more detailed information regarding the matters concerned.*

*It would be of assistance to me to consider the merits of the complaint lodged by Prof De Vos, if you could request the Presidency to provide me with a copy of the registered bond relating to your private residence and any other relevant documentation and/or information pertaining to the funding thereof. Such documentation and information will, due to the nature thereof, be kept secure and handled with the appropriate discretion and confidence.”*

- 6.79. I received no response from the Presidency in respect of my request for information, despite having approached it again in this regard on 11 April 2013, 21 June 2013 and 19 August 2013. I also wrote to the President directly in this regard again on 29 July 2013, but received no response.
- 6.80. Eventually, I personally met with the President in connection with my investigation on 11 August 2013, a day before my inspection of the works implemented by the DPW at his private residence at Nkandla. I have made reference to my discussions with the President on certain aspects of the Nkandla Project under different headings in this report.
- 6.81. During our meeting, I also provided the President with a set of written questions that related to my investigation and in respect of which I required his response. The President undertook to provide me with a written response.
- 6.82. As no response to my questions was forthcoming, I approached Dr Lubisi, the Director-General in the Presidency, again requesting his assistance in this regard, on 26 August 2013.
- 6.83. A copy of my written questions with annexures had to be provided to the Presidency, at its request, on 27 August 2013.
- 6.84. Eventually, I had to write to the President directly on 16 September 2013 to again request his response to my set of questions.

6.85. My questions were as follows:

1. *“Did you or the Presidency request that security measures be installed at your private residence at Nkandla after you were appointed as the President in May 2009, as provided for in the Cabinet Policy on Security Measures at the Private Residences of the President, Deputy President and former Presidents and Deputy Presidents, dated 20 August 2003? If so, kindly indicate who made the request, when and how.*
2. *Were the measures that the Department of Public Works intended to implement at your private residence communicated to you by the Minister of Police, as contemplated by the Cabinet Policy? If so, what were your impressions of the proposed measures and did you formally consent thereto?*
3. *Were you at any stage informed of the cost of the proposed security measures? If so, who presented the cost to you, what was the amount, and how did you respond to it?*
4. *Your private residence was declared a National Key Point by the Minister of Police, in terms of the National Key Points Act, on 8 April 2010. According to the evidence obtained during the investigation you were notified accordingly by means of a notice (Annexure A) signed by the Minister of Police. Can you kindly confirm that this notice was served on you?*
5. *What was your understanding of the declaration of your private residence as a National Key Point in terms of your responsibilities as the owner?*

6. *Did you at any stage respond in terms of the notice by taking measures to secure your private residence, as required by the National Key Points Act and the notice? If so, what measures were taken?*
7. *From the evidence it appears that the Minister of Police acted on your behalf, as contemplated by section 3A of the National Key Points Act, when he had your private residence secured. Were you notified of this, as is required by the Act and if so how?*
8. *Were you ever advised by the Minister of Police that any part of the cost of securing your private residence as a National Key Point would be recovered from you? If so, when and how?*
9. *According to the evidence, you met with representatives of the Department of Public Works and the South African Police Service at your private residence on 12 August 2009, where you were briefed on the security measures that were to be installed in the three new dwellings that you were constructing. Is this correct, and if so can you kindly explained what transpired at this meeting.*
10. *The evidence obtained during the investigation also indicates that you complained on several occasions about the slow progress made with the implementation of the security project. Is this correct, and if so can you kindly explain the reasons for your concerns and how it was addressed?*
11. *According to the evidence, you requested the former Minister of Public Works, Mr G Doidge, to look into the delay. Is that correct? If so, did he report back to you and what were the nature of his reports?*



12. *Mr M Makhanya, the architect that you appointed in respect of your private construction on the premises, was also appointed by the Department of Public Works as the Principal Agent for the security project. Did he present you with the designs of the Department of Public Works' security project? If so, can you recall which designs were presented to you and how you responded to it?*
13. *According to the documentation obtained during the investigation, former Minister of Public Works, Ms G Mahlangu-Nkabinde, informed you in writing of the progress made with the implementation of the security project, shortly after she was appointed, on 5 November 2010. (Annexure B) Can you kindly look at the copy of this letter and indicate whether you received it and how you responded to it.*
14. *Former Deputy Minister of Public Works, Ms H Bogopane-Zulu indicated during the investigation that she discussed the security measures with you. She also raised the possible apportionment of costs of the security measures between you and the state with you and requested a document to be prepared by the project team in this regard. The document was prepared and delivered to the Ministry of Public Works. (Annexure C) Can you please look at this document and indicate whether it was presented to you, and if so what your response was?*
15. *If the document was not presented to you, was the apportionment of costs ever discussed with you? If so when and by whom?*
16. *Did you ever enquire into it, and if so what was the response that you received?*

17. *Deputy Minister Bogopane-Zulu also indicated that she discussed the conversion of the fire-pool on the premises into a swimming pool with you and that you supported the idea that it could be used to teach children of the village to swim. Is this correct?*
18. *Kindly indicate whether you are aware of the reasons why the fire-pool was converted into a swimming pool and whether the additional and apportionment of such costs were discussed with you. If so, who discussed it with you, and what was your response?*
19. *The implementation of the security project resulted in the relocation of four households that were living on the site. Were you consulted in connection with the relocation and, if so, what was your response? Did you issue any instructions in this regard?*
20. *According to the evidence, you apparently indicated that you were opposed to more contractors working on the site when Phase 2 of the project commenced, that is the construction of staff housing, etc. Is this correct and if so why were you opposed to more contractors? Did you issue any instructions in this regard?*
21. *Deputy Minister Bogopane-Zulu further indicated during the investigation that you supported her idea that the military clinic should be designed in such a way that it could also be used by members of the community. What is your response to that?*
22. *It was also indicated during the investigation that you raised concerns about the bullet resistant glass that was installed in your houses. Is this correct and if so, can you kindly explain?*

23. *A newspaper report alleged that two of your brothers, Messrs Joseph and Mike Zuma improperly benefitted from the security project when items that were destined for it were delivered at their houses. What is your comment on this allegation?*
24. *As indicated in my letter addressed to you on 29 January 2013 (Annexure D), I have also received a complaint in connection with a statement that you made to Parliament about the bond on the property concerned. I have repeatedly requested to be provided with the relevant documents to enable me to deal with this complaint. Are you now in a position to provide these documents?*
25. *Would you be willing to disclose the amount that you paid for the construction of the three new dwellings?*
26. *How often do you use your private residence at Nkandla for official purposes?*
27. *Is there any particular reason why you would prefer to use your private residence for official business rather than any one of the official residences that are available to you?*
28. *Did you at any stage enquire into the cost of the security project, which was obviously extensive? If not, did you not feel obliged to do so as the head of state and as a substantial amount of public money was obviously being spent?*
29. *How would you describe your involvement in the security project that was implemented by the Department of Public Works at your private residence?"*

- 6.86. The President provided me with a response under a covering letter from the Acting Secretary of the Cabinet, dated 1 October 2013. His response was in the form of a statement, signed by him on 30 September 2013.
- 6.87. In the opening paragraphs of his statement, the President denied that he was ever apprised of the fact that his conduct formed part of my investigation.
- 6.88. He proceeded by explaining the location of his family homestead at Nkandla and the history of his occupation of the property. Of particular significance to the subject of my investigation, is the following extract of the President's statement:

12

*"As the political environment stabilized in the coming years with the advent of our new democracy, I now felt more confident to effect improvements to the family homestead in order that it could cater for our needs more adequately.*

13

*I proceeded to engage a building contractor to effect the improvements to my homestead. Several new rondavels, each self-contained, were constructed.*

14

*These improvements were financed by a home loan obtained from one of the four largest commercial banking institutions in the Republic upon satisfaction of their collateral requirements. The property is still subject to a mortgage and I continue to meet my financial commitments in terms thereof.*

15

*In the ensuing years and as I began to play a leading role in government, I had to submit to the security protocols which senior government officials are*

subjected to. Static security was provided from the South African Police Services (SAPS), (sic) Ulundi, while protection services were provided from SAPS Eshowe.

16

*This meant that additional rondavels were constructed on my homestead in order to cater for the accommodation of those police officials assigned for my protection, given the lack of infrastructure in Nkandla. In addition, a car port and storerooms were also constructed.*

17

*In 1999 I was appointed as the Deputy President of the Republic. As a consequence of my increased responsibilities in government I received a higher volume of frequent guests at my home in Nkandla. This, coupled with the fact that my family had grown over the years, my family and I decided to embark on fairly extensive and modern improvements to the property.*

18

*To this end we engaged contractors and commissioned the building of three new houses which would be developed in phases over additional neighbouring land which we acquired with the consent of the local chief.*

19

*The construction of the houses commenced under the direction of Minenhle Makhanya Architects.*

20

*In 2009 I was appointed as President of the Republic. Immediately upon my inauguration, members of the security cluster informed me regarding the*

*results of the security assessment which attached to the office that I now hold, including my residence at Nkandla.*

21

*As President of the Republic I have the benefit of residences at Mahlambhandlophu in Pretoria, Genadendal in Cape Town and John Dube House in Durban, all of which I make extensive use of. Equally, I maintain my private residence at Nkandla.*

22

*Like most South Africans, I am particularly proud of my community and never miss an opportunity to go home to Nkandla-the demands of my work schedule permitting. I sometimes wish it otherwise, but I do not shed my status as President when I am at home in Nkandla. People continually visit me, seek my advice, support and counsel on a whole range of matters. Similarly, matters of government do not grind to a halt during these all too infrequent visits to my homestead.*

23

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

24

*I thereafter facilitated a meeting between the same grouping of persons and Minenhle Makhanya Architects, the consultant who was already engaged with building work at my home so that there would be as little disruption as possible to the work already commissioned.*

25

*From time to time I received briefings both formally and informally from the various Ministers engaged with the security enhancements although I was not intimately involved with the finer details.*

26

*At these briefings I expressed concern with what appeared to be inordinately lengthy delays which impacted on my family. Equally, I found some of the security features like the bullets-proof (sic) windows an excessive encroachment on my use and enjoyment of my property.*

27

*Regarding the rationale for the adoption of particular security features, I deem it neither prudent nor proper for me to comment, particularly where the Public Protector has had access to a range of Ministers and officials properly tasked with this responsibility.*

28

*The security upgrades are to be distinguished from the construction of buildings which provide infrastructural support for security personnel (sic).*

29

*I take exception to the continued conflation of the security upgrades with the construction of buildings for the benefit of security personnel. Whilst neither were at my behest, the latter is directly attributable to the fact of my residence being located in a rural area with all the attendant challenges. Even people drawn from rural communities can play a role in the development of our constitutional democracy.*

30

*With regard to my address to parliament, I submit with respect, that insofar as it is alleged that I have misled parliament on the existence of my bond over the Nkandla Property, parliament is best placed to enquire into this matter should it so desire.*

31

*Likewise, it is not proper for me to account for alleged conduct of members of my family who are not dependents of mine. Transgressions of the law by whomsoever should be reported to the appropriate authorities.”*

- 6.89. As the President’s statement did not provide answers to most of my written questions listed above I replied to him on 8 October 2013, listing the outstanding responses that were required and stated that:

*“I regarded it as prudent to provide you with an opportunity to respond to these matters as part of my investigation and it would be appreciated if you could still consider doing so, to enable me to include your version of the events in my report”*

*As far as your response in respect of my investigation into the complaint relating to the statement that you reportedly made to Parliament pertaining to the existence or not of a bond over your property is concerned, you will recall that I raised this with you when I informed you of my investigation, in my letter dated 29 January 2013.*

*I indicated in my said letter that the concern raised by the complainant is the impression that you might have violated the provisions of the Executive Ethics Code by misleading Parliament. I also referred you to the public statement of the Presidency of 20 November 2012 that the information*



*pertaining to your bond would be made available to “an authorized agency or institution empowered by the law of the land”. You will respectfully agree with me that this includes the Public Protector.*

*In addition to the normal manner in which I approach investigations, I relied on the commitment in the Presidency’s statement when I approached you with the request on this aspect of my investigation.*

*I accordingly wish to appeal to you to provide me with the relevant documents pertaining to the bond that you referred to. The information contained in these documents will be handled discreetly as it relates to your private affairs. All that I really need to verify in this regard is that the bond exists and that it relates to your private residence at Nkandla. Providing me access to the documents in the presence of your legal advisors or the Secretary to the Cabinet will also suffice in this regard.”*

6.90. In his reply, dated 24 October 2013, the President indicated that he required copies or excerpts of evidence, reports and documents that were referred to in my questions, before he could respond. He further stated that:

*“Regarding your request that I make available my personal bond documents for your perusal, I attach hereto the relevant transcript extracted from Hansard which bears out the following:*

- *The Zuma family has built their own home;*
- *The home has been there for a long time;*
- *I engaged the banks and am still paying a bond on the first phase of my home;*
- *I am still paying a bond this day.*

*Having regard to the content and context, it becomes abundantly clear that such bond relates to the first phase of the development and well before I assumed the office of President. As I understand, it does not relate to the period of your investigation nor does it shed light on any aspect thereof.*

*Accordingly, I hold the view that the disclosure you seek would be unnecessary.”*

- 6.91. I again regarded it as necessary to respond to the President to clarify my earlier requests. In my letter addressed to him on 29 October 2013, I reiterated that the complaint that I received in respect of the bond does not relate to the security measures that were installed and implemented at his private residence, but to the statement that he made in the National Assembly on 15 November 2012, the contents of which are contested. I explained that:

*“It was in order to clarify this issue that I requested you to provide me with access to the bond documents. As matters stand at the moment, I am not in any position to make a finding on the merit of this complaint and would therefore urge you to reconsider my request in this regard.”*

- 6.92. The President was also referred to the fact that a number of my questions do not refer to any evidence, reports or documents. In respect of questions that did relate to documents, I provided him with copies of such, which were also attached to my original questions and later resubmitted to his office. As far as the references to “*evidence*” were concerned, which only related to three of my questions, I indicated that it would be covered extensively in this Provisional Report, a copy of which will be presented to him for his comments. The President’s reply is still awaited.

- 6.93. The following excerpt of the Hansard that I was referred to by the President in his letter of 24 October 2013 is of particular significance to the matters considered during the investigation:

*“When I became the President, all of us in the family agreed to extend our home, as I was extending it. Then government came and said that it had to install security features at my residence. By the time government came, the contractors were on site that had been enlisted by the family and not by the government or Public Works. Government had a plan regarding what it wanted to do. Government wanted to improve the fence, etc. I told government that I had my own plan-which was a comprehensive plan- to extend my home. What then happened was that I allowed government to meet with the contractors who were already on site because government, from a security point of view, insisted that they needed to participate.*

*So, even the manner in which the question was asked-the question being: have you instructed the Minister to tell the contractors to stop working-suggests that the contractors were brought by Public Works. Public Works found those contractors constructing my home.*

*They had to agree to what government wanted them to do at my home. The government had specific things they wanted to do to my houses, not build houses for me. A wrong impression has been created in the country, that the government has built a home for me. That is not true”*

- 6.94. I never received a further response from the President to the questions posed to him.

## **7. EVALUATION OF THE EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION**

### **PART A: SEQUENCE OF EVENTS**

#### **7.1. The Initial Steps Taken and the Recommendations of the SAPS and the DOD in Respect of the Security Measures that Needed to be Implemented**

7.1.2. The evidence and information obtained during the investigation shows that the security measures at the President's private residence were completely inadequate at the time when he took office. It basically consisted of a dilapidated palisade fence with a gate and a guard hut.

7.1.3. The Security Advisory Service of the SAPS and the DOD assessed the security situation and presented the DPW with its requirements for the measures that had to be taken, during May and early August 2009, respectively.

7.1.4. When the Director of the DPW responsible for Prestige Accommodation requested funding for the recommended security measures to be implemented, the amount indicated was approximately R27 million.

7.1.5. At that stage, the DPW was of the view that the measures to be taken could be afforded from savings on its Capital Works budget.

7.1.6. However, in August 2009, the private construction of the President's three new dwellings on the premises commenced. Security measures also had to be installed in the three new buildings and due to its location, the scale of the area that had to be secured increased accordingly.

- 7.1.7. Officials of the DPW involved in the Nkandla Project were told that the President preferred that the contractors and consultants appointed by him for his private construction should also be appointed for the Nkandla Project. This clearly had an impact on the decisions that were taken in respect of the appointment of service providers. I refer to this in more detail below.
- 7.1.8. The evidence also indicates that due to the direct involvement of the Acting Director-General of the DPW, Mr Malebye, when the Nkandla Project commenced and the later involvement of a Deputy Director-General, the Deputy Minister and the Minister, the officials at the Regional Office that were mainly responsible for the implementation of the project, were convinced that it was driven from the Ministry and the DPW Head Office and that they had to do as they were told.
- 7.1.9. After the professional consultants, such as Minenhle Makhanya Architects and R&G Consultants (Quantity Surveyors) were appointed by the DPW for the Nkandla Project, it transpired that the full scope of the security requirements of the SAPS and the DOD was not properly taken into account by the DPW when the cost estimate of R27 million was presented to the PMBC.
- 7.1.10. When R&G Consultants prepared its first cost estimate for the Nkandla project in September 2009, it amounted to almost double the original estimation of R27 million, i.e. R47.3 million. At this stage the main focus of the designs and cost estimations in respect of the Nkandla Project was Phase 1, which consisted of what was referred to as the emergency measures that had to be taken to secure the President and his family at his private residence.

- 7.1.11. The evidence of Mr Malebye, that he was under the impression that the Nkandla Project would not cost more than R27 million is inconsistent with the first cost estimate prepared by R&G Consultants, which was addressed to him as the Acting Director General and accounting officer.
- 7.1.12. Mr Khanyile's evidence indicated that from the time that the Nkandla Project commenced, the procurement procedures followed were different from the norm and failed to comply with the prescribed standards of proper demand management and budgeting. The officials involved clearly thought that due to the fact that the Nkandla Project related to the security of the President, which was why it was regarded as urgent, and as it was driven from the DPW Head Office and the Ministry of Public Works, the deviation from the norms were justified and not to be questioned.
- 7.1.13. The following statements by Mr Khanyile in his response to the evidence and information obtained during the investigation, are of particular significance in this regard:

*“What was abnormal is that:*

*Head office was running the project directly interfering with the duties of the project manager and Region (Durban Regional Office). DG being the accounting officer was directly involved in operational issues of the project by coming to site, met the professionals, the project manager and gave instructions that were contrary to policies of the state.*

*The Minister being political head of the Department was supervising the project every two weeks by,*

- *Chairing the project site meetings,*

- *Give (sic) instructions to the consultants, contractors, and the project manager,*
- *Visiting the suppliers in Johannesburg to discuss materials to be used on windows, interfering with the supply chain process of the department and the functioning of the project manager.*

*They took and approve (sic) the decisions that were contrary to the policies of the state. They became the referee and the player; they took decisions, gave instructions, approved them and went to project site to implement their decisions, overruling the project manager and the Region.*

*It is clear even from (sic) a man on the street that the project manager and the Region:*

- *Were overruled,*
- *Intimidated*
- *Hand tied,*
- *Undermined,*
- *Compelled.*

*There is no tail that can wag the head on such a high profile project of the first citizen of the country. The decisions and the instructions of the commander of war are not to be blamed on the soldiers.”*

- 7.1.14. Mr Malebye even went so far as to allow a deviation from the internal directive that all procurements above R20 million had to be approved by the SNBAC and delegated unlimited and unconditional authority to the RBAC.

- 7.1.15. He also approved the appointment of consultants and contractors for millions of rand by means of nominated and negotiated procurement strategies, which do not cater for the ordinary processes of proper competition and selection, on the basis that the Nkandla Project had to be fast tracked.
- 7.1.16. The cost estimates prepared by R&G Consultants gradually started to escalate from February 2010, as items relating to the project, and specifically Phase 2 thereof were added.
- 7.2. **The lack of planning and proper budgeting continued**
- 7.2.2. The DPW Regional Office clearly experienced challenges to manage the implementation of the Nkandla Project, from its inception. By March 2010, the SAPS started complaining about the slow progress, as did the President from May 2010. By then, not much had been achieved and the project was already a year old.
- 7.2.3. The failure of the DPW to pay proper attention to the Nkandla Project and plan for its implementation was also evident from the fact that by June 2010 no funding had been allocated to it for the applicable financial year, resulting in reallocation of the DPW Capital Works budget.
- 7.2.4. There was a substantial increase in the estimated cost of the Nkandla Project by July 2010, to approximately R130 million after the report of the consultant involved in the detailed security measures and the additional earth works that had to be done, were added to the list. This should clearly have been taken into consideration and planned for by the departments involved when the Nkandla Project started more than a year earlier, in May 2009.



- 7.2.5. The scale of the Nkandla Project and its impact on the premises where it was implemented grew to such an extent due to all the measures being added and implemented, that by August 2010 the Project Team regarded it as necessary to employ the services of a Landscape Architect to advise on rehabilitation of the land.
- 7.2.6. At this stage, additional requirements were added by the client departments, which resulted in an extended size of the safe haven, additional guard houses and a stronger perimeter fence. The estimated cost of the Nkandla Project increased to approximately R145 million.
- 7.2.7. The evidence shows that due to a combination of poor planning , budgetary lapses and a lack of controls the scale and cost of the Nkandla appear to have been without boundaries. As more requirements were raised, designs were added, cost estimates prepared accordingly and funds within the DPW budget reallocated. It is therefore not surprising that the Director: Architectural Services raised his concern to the Deputy Director-General of the DPW by the end of August 2010, stating that:
- “Given the very humble beginnings of this project, nothing short of a full township establishment is now required...”*
- 7.2.8. A former Minister of Public Works (Mr G Doidge) became personally involved in the Nkandla project from September 2010. Shortly thereafter, a private Project Manager was appointed to expedite the process, resulting in an additional cost of approximately R 5 million.
- 7.2.9. From the evidence stated above it was clear that the appointment of the private Project Manager was the result of the pressure from the Ministry of

Public Works for the Nkandla Project to be completed and the fact that the Regional Office was struggling to manage it, due to its scale. All of this could have been avoided if the project was properly planned when it commenced 16 months before.

- 7.2.10. Further additions to the safe haven and landscaping, *inter alia*, pushed the estimated cost to more than R190 million by mid-September 2010.
- 7.2.11. The Minutes of Progress meetings and the evidence of Brigadier Adendorff and other officials that were involved in the Nkandla Project show that the SAPS Security Advisory Service did not play a significant role in the design of the Nkandla Project. It submitted certain proposals, but the ultimate design details were left in the hands of especially Mr Makhanya, irrespective of the costs involved.
- 7.2.12. I could find no indication that the ever escalating cost and lack of planning of the project were ever attended to as serious issues by the respective DPW, SAPS and DOD accounting officers during the implementation of thereof.
- 7.2.13. The concerns that were raised in this regard by members of the DPW Professional Team seem to have been ignored as no action was taken and they were eventually side-lined, as referred to below.
- 7.2.14. One of them, Mr Crafford, expressed his amazement during the investigation that the scale of the Nkandla Project was just allowed to grow as and when Mr Makhanya submitted new designs and suggestions. To him, the Nkandla Project was like “*working with a moving target*”.
- 7.2.15. The following statement by one of the other DPW officials during the investigation was also of particular significance in this regard:

*“Further, the project manager and regional manager was in a further disadvantage, as the architect appointed (Mr Makhanya) was having direct access to the President, taking instructions from him and incorporating this into the design works. This turned out to be counterproductive in some instances, as the architect then instructed the project manager as to what to do!”*

7.2.16. Although there was some understanding amongst most of the witnesses interviewed that part of the expenditure relating to the Nkandla Project would be recovered from the President, his prior consultation and approval of the measures concerned do not appear to have been material or a prerequisite as far as continuing with the implementation thereof was concerned.

### 7.3. **The Exclusion of Professional Services of the DPW during the Implementation of the Security Project**

7.3.1. The evidence obtained during the investigation indicates that the staff members of the Chief Directorate: Professional Services, who were involved in the Nkandla Project from the beginning, started to feel excluded and complained accordingly to Mr Rindel, from March 2011. This was confirmed in writing by Ms Pasley, the Chief Quantity Surveyor of the DPW.

7.3.2. If Ms Pasley’s request for a scale and cost containment had been heeded, scope creep and the escalation of costs could have been arrested as early as December 2010, when she wrote a memo indicating her concerns and suggested action.

7.3.3. In his evidence, Mr Rindel conceded that the professional team had been side-lined towards the latter part of the project. However, according to him, the reason for leaving them out was that the President had indicated that he did not want so many people involved in the project. This is difficult to understand given that these professionals had been included earlier.

7.3.4. Mr Rindel also stated that he received instructions from the DPW Head Office in the beginning of March 2011 that persons not directly responsible for the Nkandla Project had to be removed from it.

#### 7.4. **How Much Did the Nkandla Project Cost the DPW?**

7.4.1. The evidence indicated that by the time that the investigation was concluded, the total expenditure of the Nkandla Project for the DPW amounted to R 215 444 415.68. The estimated cost of Phase 3 of the project that has not been implemented is R 31 186 887.36, which would bring the total estimated cost of the project to R 246 631 303.00.

### **PART B: THE GOODS AND SERVICES PROCURED BY THE DPW**

#### 7.5. **The Contracts Awarded by the DPW**

7.5.1. It was established from the evidence and information obtained during the investigation that the DPW awarded twelve contracts to contractors and employed seven consultants for the implementation of the Nkandla project.

## 7.6. Buildings Constructed

7.6.1. Besides the helipads, safe haven, security fences and other security installations more than two dozen new buildings were constructed by the DPW in the implementation of the Nkandla project.

7.6.2. In addition, new buildings costing approximately R8 million were built for the relocation of households.

## 7.7. General site works

7.7.1. According to the evidence, the implementation of the Nkandla project also involved the installation of lighting, monitoring equipment, access control facilities, bulk earth works and landscaping.

7.7.2. Mobile accommodation for the SAPS staff and mobile generators were also required during implementation.

7.7.3. The general site works amounted to more than R67 million.

## **PART C: THE SUPPLY CHAIN MANAGEMENT PROCESS**

### 7.8. The Procurement of the Services of Consultants and Contractors

7.8.1. None of the parties have disputed the amount of money spent by DPW on security and related upgrades to the President's private residence at Nkandla, which by the time of concluding the investigation stood at about R215 million. It was also not disputed that the prescribed open tender

process was not utilized for the procurement of the goods and services required at any stage of the implementation thereof.

- 7.8.2. It is also common cause that only nominated and negotiated procurement strategies were utilised, and in some cases there were direct contractual appointments of service providers.
- 7.8.3. The evidence of members of the RBAC also revealed that they regarded the Committee merely as a rubber stamp of decisions that were taken at the DPW Head Office and at Ministerial level.
- 7.8.4. The implementation of the Nkandla project to date consisted of two phases. Phase 1 was referred to as “*Emergency Works*” and described as the measures that had to be taken immediately after Mr Zuma was appointed as the President, to secure his private residence. Phase 2 consisted of the additional measures that had to be implemented to establish security, medical and logistical support on a long term basis at the President’s private residence.
- 7.8.5. The evidence shows that the consultants Ibhongo Consulting, Igoda Projects, R&G Consultants and Minenhle Makhanya Architects were direct appointments by the DPW, and approved by Mr Malebye.
- 7.8.6. The main motivation for these direct appointments was that the consultants had already been appointed by the President for the private works that he planned on the site and that there was a need to integrate the scope of works of the Nkandla Project with the private works. A closer look at the process does though, does not support this as the legitimate basis for the appointment.

- 7.8.7. Mr Malebye explained during the investigation that he regarded the security of the President, the indication that the cost of the project would be in the region of R27 million (which to him was not exorbitant) as factors to consider. He was of the view that it would have been impractical to introduce a “new” team of consultants to implement the Nkandla Project. Again, given the different tasks to be performed it is unclear why these had to do everything. The question becomes more relevant given that no evidence was presented indicating that these consultants had been undertaken similar work to the DPW brief on Nkandla before.
- 7.8.8. Bonelena was appointed by the DPW for “*emergency works*” in Phase 1 of the of the Nkandla Project by means of a nominated procurement strategy, which was approved by the RBAC on 2 March 2010, i.e. almost 10 months after Mr Zuma was appointed as the President and the Nkandla Project had commenced.
- 7.8.9. The motivation for the nominated strategy was that the contractors who qualified to be considered had been approved by NIA (SSA) to work on the Nkandla Project and that they qualified in terms of the required CIDB grading.
- 7.8.10. As indicated earlier, we now know that most of these did not have security clearance. The RBAC approved the recommendation by Mr Rindel that Moneymine be appointed as a contractor for certain selected works during Phase 1 of the implementation of the Nkandla Project, by means of a negotiated procedure. The request was motivated on the basis that Moneymine had been appointed by the President to construct private dwellings on the site and that the scope of the selected works would intrude on the private construction.

- 7.8.11. Furthermore, it was stated that the selected works could not be done by another contractor as all guarantees that Moneymine would provide would be null and void. In addition, that Moneymine had been cleared by NIA for the Nkandla Project and was trusted by the President.
- 7.8.12. It should be noted that the scope of selected works, as presented to the RBAC, included new SAPS guard rooms, a new “hospital”, helicopter landing pads and perimeter security fence, which clearly did not intrude on the construction works performed by Moneymine in respect of the President’s private buildings.
- 7.8.13. When confronted with evidence on irregularities, Mr Rindel indicated, that the DPW “*top management*” started to become more actively involved in the Nkandla Project from May/June 2010. He said that other officials of the Regional Office got the impression that the top management of the department had a different expectation of the implementation of the project and the following was the result of instructions given to them that they could not question:
- 7.8.13.1 To remove the installation of the bullet resistant glass from the contracts awarded to Moneymine and Bonelena and to enter into a direct contract with BRG;
- 7.8.13.2 To change the original idea of constructing a safe haven inside the new residences and place it where it is today;
- 7.8.13.3 To remove the installation of the high security fence from the contract awarded to Bonelena and to enter into a direct contract with Beta Fence SA;
- 7.8.13.4 To upgrade the specification of the low security fence; and



- 7.8.13.5 To procure park homes, an emergency generator and air-conditioning by means of a direct contracts.
- 7.8.14. The evidence further shows that the appointment of the private Project Manager was made shortly after former Minister Doidge became involved in the project, due to the concerns about the delay raised with him by the President. By that time, the project had already been running for one year and four months.
- 7.8.15. The evidence also shows that Mr Doidge became personally involved in discussions with the selected supplier, SA BRG Glass. According to Mr Rindel's Internal Memorandum submitted to the RBAC in this regard, the order for the bullet resistant glass in the amount of R3 035 694.60 was issued on the instructions of *"Top Management"*.
- 7.8.16. On 23 September 2010, Mr Khanyile approved a request from Mr Rindel to utilize *"the urgent/emergency delegation"* to directly procure bullet resistant glass for installation as part of the implementation of the Nkandla project.
- 7.8.17. It was noted that this request was also made shortly after former Minister Doidge became involved in the Nkandla project. The request stated that the emergency installation had to be implemented as per instructions given by the Minister, the Director-General, the SAPS and the DOD.
- 7.8.18. The evidence further shows that it was decided in September 2010 to procure park homes for officials of the DOD and the SAPS that had to be accommodated on the site, as an interim measure until Phase 2 of the Nkandla Project was completed. Park homes in the amount of R2 436 396.60

were directly procured from the only supplier in KwaZulu-Natal, Natal Park Homes (Pty) Ltd.

- 7.8.19. According to Mr Rindel's evidence and that of R&G Consultants, the extent of the Nkandla Project was better defined by December 2010. The designs were at an advanced stage and the costing had been done by the quantity surveyors. Phase 1 of the Nkandla Project was underway and Phase 2 could commence.
- 7.8.20. On 10 January 2011, the RBAC approved the appointment of Bonelena for the construction of 25 new buildings and related works as part of Phase 2, by means of a negotiated procurement process.
- 7.8.21. The RBAC's decision was clearly directly influenced by what was regarded as instructions from the Deputy Minister.
- 7.8.22. Similarly, the RBAC approved a negotiated procurement strategy for the appointment of Moneymine for the construction of 6 new buildings as part of Phase 2 of the Nkandla project, on 17 January 2011. The motivation provided by the Mr Rindel and accepted by the RBAC was exactly the same as in the case of the appointment of Bonelena, referred to above.
- 7.8.23. The installation of the bullet resistant glass resulted in a lack of ventilation in the affected buildings, which caused serious discomfort to its occupants. In an Internal Memorandum addressed to the RBAC on 3 March 2011, Mr Rindel stated in this regard:

*"The scope of works included in phase did not include the installation of the air conditioning units, as this was originally planned to be part of phase II.*

*Meetings were held with the previous Honourable Minister G Doidge and later with the Honourable Deputy Minister Bogopane-Zulu and DDG: ICR on a 2 monthly/weekly basis.*

*It was identified during November 2011 that the installation of the air conditioning units had become critical, as the BRG windows had been installed and the houses became operational. This resulted in a possibility that the air circulation was not sufficient and the air-conditioners was (sic) then required to improve the situation.*

*The meeting agreed that the Durban Regional office must issue an instruction to a (sic) acceptable service provider within 24 hours to proceed with the works. The delegation was granted by the Regional Manager and the Project Manager actioned this by instructing the contractor to continue with the works.*

*An order had also been issued to the contractor on 30 November 2010 to the value of R 1 528 904.16.”*

- 7.8.24. The deviation in this case was therefore the direct result of poor planning on the part of the DPW that caused the discomfort.
- 7.8.25. From the evidence it was further established that the direct appointment of Betafence Projects SA for the installation of the perimeter fence for the Nkandla Project was due to the fact that it is the only supplier in the country that specializes in the product, which is required by the SAPS.
- 7.8.26. I could find no indication in the documents that was obtained and accessed during the investigation that the reasons why the RBAC approved a nominated procurement procedure in respect of the installation of lifts in the amount of R2 069 607.70 was approved.

7.8.27. According to the evidence the Acting Director-General of DPW directed that the procurement process in respect of electronic security systems should be limited to a negotiated process with one service provider, due to security reasons. Messrs E Magubane was appointed as the service provider for the amount of R11.2 million. It was not clear from the evidence who identified the service provider. However, it did transpire during the investigation that the service provider did not comply with NIA's (SSA's) security screening standard. The contractor that installed some of the most sensitive security equipment for the safeguarding of the President at a cost of more than R11 million did not comply with the prescribed vetting standards. It is not clear to what extent the security of the President could be compromised as a result of this.

## 7.9. Variation Orders

7.9.1. In the case of the Nkandla Project two variation orders exceeding 20% of the contract amount were approved by the RBAC. In the first case, a variation order of 52.7% was approved on 10 January 2011 and in the second case the RBAC approved a variation order of 58.6% on 24 January 2011.

7.9.2. Both variation orders related to Phase 1 of the Nkandla Project and the high percentages are indicative of the absence of proper planning on the part of the DPW.

## PART D: SPECIFIC ISSUES CONSIDERED DURING THE INVESTIGATION

### 7.10. The Budget for the Security Project

7.10.1. It is not in dispute that the DPW paid for every aspect of the implementation of the Nkandla Project despite the fact that the client departments were the SAPS, DOD and the Presidency.

7.10.2. In his response in this regard to the evidence and information obtained during the investigation, the former National Commissioner of the SAPS, Gen B Cele, stated that in his view the only role of the SAPS was to identify the operational requirements and that it was for the DPW to fund *“any structural additions and amendments to President Jacob Zuma’s residence necessary to optimise the execution of the SAPS mandate. I submit that it is precisely for this reason that the SAPS never funded the Nkandla Project...”*

7.10.3. However, Mr Malebye who was the Acting Director-General of the DPW when the Nkandla project commenced does not agree. He stated that:

*“It was always contemplated that the DOD and SAPS would contribute to the expenditure to be incurred. That contribution would be determined once the procurement strategy had been developed and budget and funds had to be allocated to the project. The allocation of funds would therefore include and require a prior agreement with the SAPS and DOD in respect of their respective contributions to the project. “*

7.10.4. He further explained that the DPW, as the department responsible for the implementation of the Nkandla Project, would incur the costs initially and

would recover the appropriate portions thereof from the DOD and the SAPS. Brigadier Adendorff was also of the same understanding.

- 7.10.5. It is not disputed that the DPW to date has not recovered any amount spent on the Nkandla Project from the other departments involved.
- 7.10.6. The current Director-General of the DPW conceded during the investigation that there was no specific budget allocated for the Nkandla Project and that the approach was to fund it from the savings made on other capital projects.
- 7.10.7. From the evidence and information obtained during the investigation, it was established that the implementation of the Nkandla project spread over three financial years. When it commenced in May 2009, the amount requested by the Regional Office was in the region of R27 million. It was indeed approved on the basis that it would be sourced from savings made from other projects.
- 7.10.8. Mr Malebye, who was the Acting Director-General of the DPW when the Nkandla Project commenced until the end of March 2010 stated that he was of the firm belief that the cost would not exceed R27 million. As indicated above, the cost of the Nkandla Project by February 2010 was estimated to be more than R80 million. He denied having been aware of this.
- 7.10.9. However, Mr Malebye could not explain how it was possible that he, as the accounting officer of the DPW, was not informed by the officials responsible for the implementation of the Nkandla Project when the estimated costs rocketed from R27 million to more than R80 million, especially as systems to do so were in place. He further contended that: *“The client departments would obviously also at this stage, have to be involved prior to final approval and allocation of budget.”*

- 7.10.10. It was also established that the Nkandla Project was not budgeted for in the next financial year, i.e. 2010/2011. When Mr Rindel requested funding for it in the amount of R38.9 million, the (new) Acting Director-General, Mr Vukela, directed that R40 million should be reallocated to it from the Inner City Regeneration and Dolomite Risk Programmes of the DPW. A further R18 million was reallocated to the Nkandla Project from the Border Control Operation Coordinating Committee Programme.
- 7.10.11. Although the evidence indicates that the 2011/2012 DPW budget allocated an amount of R123 900 million to the Nkandla Project, it was again insufficient and a further R9 million had to be sourced from other programmes of the DPW.
- 7.10.12. The same happened in the 2012/2013 when reallocation of the budget from other programmes of the DPW to the Nkandla project resulted in an allocated amount of R39.7 million.
- 7.10.13. The Inner City Regeneration and Dolomite Risk programmes of the DPW, which were specifically affected by the reallocation of substantial amounts of the budget allocated to it to the Nkandla Project, are important as both relate to service delivery and safety issues. It is not clear from the evidence that the reallocation related to funds that could be regarded as “*savings*”, as indicated by the Acting Director-General and contemplated by the relevant provisions of the PFMA referred to below.
- 7.11. **The Construction of Buildings and Other Structures on Land that Belongs to the Ingonyama Trust**
- 7.11.1. It is not in dispute that at the time of the conclusion of the investigation referred to in this Provisional Report, the DPW had no lease agreement with

the Ingonyama Trust in terms of which it could legally occupy the land on which it constructed buildings and other structures as part of the Nkandla Project (i.e. excluding the land privately occupied by the President).

7.11.2. In terms of the provisions of the KwaZulu-Natal Ingonyama Trust Act, 1994, the Kwazulu-Natal Ingonyama Trust Board required the written consent of the relevant traditional authority or community before it could enter into a lease agreement with the DPW.

7.11.3. According to the information obtained during the investigation, the Nxamalala Traditional Council only resolved that it had no objection to the application of the DPW to acquire rights to the land concerned. However, it was specifically recorded that the DPW would not erect any structure on the land until such time as an appropriate lease agreement had been concluded.

#### 7.12. **Measures Taken Under the Provisions of the National Key Points Act**

7.12.1. As I have indicated above, the President's private residence was declared a National Key Point by the Minister of Police on 8 April 2010.

7.12.2. In his response to the evidence and information obtained during the investigation, the Minister of Police furnished me with a copy of an SAPS Information Note that he approved on 8 April 2010. The purpose of the Information Note is stated to recommend to the Minister of Police to approve the declaration of the President's private residence at Nkandla *"to the status of a National Key Point"*.

7.12.3. It further states that the SAPS Division: Protection and Security Services had conducted a physical security assessment at the President's private residence (no date provided) and that *"with the recent spade of security*



*transgressions of private individuals at the residence occupied by the President, maintenance and improvement of the security of the President as well as security stability of the Country (sic), it is imperative to ensure that his residence is upgraded to the level of a National Key Point.”*

7.12.4. Surprisingly though, the Information Note then states the following:

*“In the absence of the National Key Point Committee, the Government Security Regulator would **like to recommend** that the private residence of the President of South Africa at **8 Epping Road, Forest Town be classified as a National Key Point.**”* (emphasis added)

7.12.5. The Information Note makes no recommendation in respect of the President’s private residence at Nkandla.

7.12.6. It was recommended by the then National Commissioner of the SAPS, Gen B Cele on 6 April 2010.

7.12.7. Gen Cele indicated during the investigation that his signing of the Information Note did not impose any obligation on him as the National Commissioner, to assist the Minister of Police in the performance of his functions in terms of the National Key Points Act.

7.12.8. I was not provided with a copy of the *“physical security assessment”* referred to in the Information Note, despite having requested it several times.

7.12.9. The relevant Declaration Certificate issued by the Minister of Police on 8 April 2010 in respect of the President’s private residence at Nkandla informed him that he was obliged to take measures at his own cost and to the satisfaction

of the Minister “to prevent or counter subversion, espionage and sabotage and/or to apply emergency measures in a situation of emergency and disaster.”

...

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

- 7.12.10. No evidence was presented to me or could be found during the investigation that the President complied with this obligation. All the security measures that were subsequently installed and implemented at his private residence were procured and paid for by the DPW.
- 7.12.11. The Declaration Certificate further informed the President that his “*protecting unit*” is the local “SAPS Station”. It further stated that:

“The total safeguarding of a National Key Point (NKP) comprises not only the security 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 of the NKP which must be implemented by the protecting 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.” (emphases added) I could find no indication during the investigation that the local Police Station in the area where the President’s residence is located was involved in any security or protection measures, as contemplated by the Certificate.

There is also no evidence that a Joint Planning Committee was ever established.

- 7.12.12. That the Declaration Certificate expected of the President to pay for the security measures that had to be installed at his private residence also appears from the following statement:

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

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

- 7.12.13. I have noted from the copy of the Declaration Certificate that was provided to me by the Minister of Police that it was received by Dr Lubisi, the Director-General of the Presidency, on behalf of the President. For reasons unknown to me, the acknowledgement of receipt was dated 7 April 2011. It was established that Dr Lubisi was appointed as the Director-General on 1 November 2010.
- 7.12.14. In the absence of a denial by the President, it can be safely assumed that the Declaration was forwarded to him between April 2010 and April 2011.
- 7.12.15. If so it can also be safely assumed that he knew that the contents asked him to pay. There is no evidence of him protesting nor of the Minister of Police revoking the decision that the security upgrades be on the President’s account.

- 7.12.16. I also could find no indication that the DPW Regional Office was informed that the President's residence had been declared a National Key Point and of the implications thereof. Mr Rindel indicated during the investigation that if the officials of the Regional Office had been informed, they would probably have recommended that the project be stopped as very little of the planned works had been implemented at the time.
- 7.13. **The security measures taken in terms of the Cabinet Policy: Security Measures at the Private Residences of the President, Deputy President and former Presidents and Deputy Presidents**
- 7.13.1. During the investigation, the Minister of Public Works indicated that the Nkandla Project was based on this Policy and the provisions of the National Key Points Act.
- 7.13.2. The witnesses involved in the implementation of the Nkandla Project that were interviewed during the investigation, had no knowledge of the provisions of this Policy or that the Nkandla Project was based thereon. This is apparent in the evidence of Lt Gen Ramlakan and Brig Adendorff among others.
- 7.13.3. It is also clear from the interviews conducted and the documents perused during the investigation that there was a general understanding and/or acceptance among the officials that the security measures were installed at the President's private residence by virtue of the provisions of the Ministerial Handbook.
- 7.13.4. For example, the initial public statements made by the Minister of Public Works, Mr T Nxesi, in connection with this matter, it was evident that he also

held such view. In his public statement issued on 27 January 2013, the Minister stated in this regard that:

*“In May 2009 after the inauguration of President Zuma, the Department of Public Works in line with its obligation to effect security measures at the President’s private residence which is regularly used by the President, became involved in the Nkandla residence.*

*The responsibility of Public Works in this regard is contained in the Ministerial Handbook and the Cabinet Decision of 20 August 2003 which is now known as the Policy on Security Measures at Private Residences of the President, Deputy President and former Presidents and Deputy Presidents.”* (emphasis added)

7.13.5. As indicated below, the Ministerial Handbook does not apply to the President.

7.14. **The Security Evaluations Conducted by the Security Advisory Service of the SAPS and the Security Measures Installed**

7.14.1. The table below represents a comparison between the security measures recommended by the Security Advisory Service of the SAPS after its first visit to the President’s private residence (Mr Zuma had already taken office at the time), the recommendations contained in the second security evaluation report, which was conducted approximately 16 months later and the measures that were actually installed by the DPW. The DPW list differs significantly. Worth noting are the items that are on neither of the security evaluation lists. This begs the question regarding their origin. It must be further noted that the items in question are primarily the ones that were constantly mentioned in conversation alluding to the owners account, or



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matters discussed between Mr Makhanya and the President or to be discussed between the two, according to the minutes.

SECURITY MEASURES RECOMMENDED IN 28 MAY 2009 SAPS EVALUATION	SECURITY MEASURES RECOMMENDED IN 25 SEPTEMBER 2010 SAPS EVALUATION	INSTALLATIONS IMPLEMENTED BY THE DPW	COST OF INSTALLATION
<p><b>Perimeter protection:</b></p> <p>Brick and mortar wall on a height of 2,4 m fitted with six strand electric fence and CCTV camera system</p>	<p><b>Perimeter protection:</b></p> <p>“Green fence” around the entire homestead with a minimum height of 3m, supported with intrusion detection and single/double welded mesh fence with deterrent capability. “Due to the size of the property there is a need for a path between the fences that will be used for patrol purposes.”</p>	External High Security Fence	R 6,238,892.57
		Internal High Security Fence	R 8,103,045.18
		Patrol roads paving and walkways	R 12,826,158.04
		Relocation of households obstructing construction of perimeter fence	R 7,921,517.44
<p><b>Entrance gates:</b></p> <p>Three gates. First gate next to guard hut for access control</p> <p>Second gate for live stock</p> <p>Third gate for emergencies</p>	<p><b>Entrance gates:</b></p> <p>Main entrance to the premises to consist of a sliding steel gate, motorized and remote controlled.</p> <p>Other gates for internal use.</p>	Included in perimeter protection	

SECURITY MEASURES RECOMMENDED IN 28 MAY 2009 SAPS EVALUATION	SECURITY MEASURES RECOMMENDED IN 25 SEPTEMBER 2010 SAPS EVALUATION	INSTALLATIONS IMPLEMENTED BY THE DPW	COST OF INSTALLATION
<p><b>Security control room:</b> The unused guard hut at the emergency entrance to be used for the monitoring of all security systems. Guard hut to be strengthened and secured.</p>	<p><b>Security control room:</b> New security control room to be constructed, highly secured with bullet resistant glass, security door and installation of all monitoring systems.</p>	Visitors Centre and Control Room	R 6,720,852.95
<p><b>Illumination:</b> Security illumination to be installed around the premises to illuminate all dark areas.</p>	<p><b>Illumination:</b> Security illumination to be installed around the residence to illuminate all dark areas without illuminating the residence itself. Illumination also to be installed at the vehicle entrance to assist CCTV camera system</p>	Street and area lighting	R 914,002.75
<p><b>Glazing:</b> The glazing of the three main houses and study room to be replaced with bullet resistant glass. The rest of the glazing on the premises to be replaced with laminated glass</p>	<p><b>Glazing:</b> All the glazing in the sensitive areas to be replaced with bullet resistant glass. The rest of the glazing on the premises to be replaced with high impact laminated glass.</p>	Security measures and air conditioning at residences	R 5,038,036.33
<p><b>External doors:</b> All the external doors of the three main huts to be replaced with solid wooden doors with security locks and security gates</p>	<p><b>External doors:</b> All external doors within the premises to be replaced with wooden doors of good quality with security locks and security gates.</p>	Part of security measures referred to above	



SECURITY MEASURES RECOMMENDED IN 28 MAY 2009 SAPS EVALUATION	SECURITY MEASURES RECOMMENDED IN 25 SEPTEMBER 2010 SAPS EVALUATION	INSTALLATIONS IMPLEMENTED BY THE DPW	COST OF INSTALLATION
<p><b>Burglar proofing:</b> All windows to be fitted with burglar proofing secured into the walls.</p>	<p><b>Burglar proofing:</b> All windows to be fitted with burglar proofing secured into the walls</p>	Part of security measures referred to above	
<p><b>Fire Fighting Equipment:</b> A special fire detection and suppression system to be installed in all the huts on the premises. At least two water hydrant pipes to be installed for emergency use</p>	<p><b>Fire Fighting Equipment:</b> A fire detection system linked to the control room and proper fire-fighting equipment approved in terms of the National Fire Regulations to be installed</p>	Fire pool and parking	R 2,819,051.66
<p><b>Intruder alarm system:</b> To be installed at the premises to cover all sensitive areas within the premises.</p>	<p><b>Intruder alarm system:</b> To be installed at the premises to cover all sensitive areas within the premises.</p>		
		Security work consisting of:	
		· Data network	R 1,786,890.00
		· Access control	R 220,449.50
		· Builders work	R 1,274,419.13
<p><b>CCTV Camera System:</b> To be installed to cover all entry points, the entire perimeter and parking areas</p>	<p><b>CCTV Camera System:</b> To be installed to cover all entry points, the entire perimeter and parking areas. The system to be linked to the control room and guard hut</p>	CCTV Camera system	R 3,389,690.02

SECURITY MEASURES RECOMMENDED IN 28 MAY 2009 SAPS EVALUATION	SECURITY MEASURES RECOMMENDED IN 25 SEPTEMBER 2010 SAPS EVALUATION	INSTALLATIONS IMPLEMENTED BY THE DPW	COST OF INSTALLATION
<p><b>Safe haven:</b> All three main bedrooms of the huts/houses to be protected by means of a double brick and mortar wall, reinforced roof, fire suppression system, fire-fighting equipment, bullet proof glass, doors with security locks and panic buttons</p>	<p><b>Safe haven:</b> The high risk option proposed was a secure room that cannot be surveyed or reached from outside the house. It was to consist of enforced brick walls and ceiling, bullet resistant windows and a bullet resistant door</p>	Safe haven (underground), corridor link, walkway and emergency exit	R 19,598,804.10
<p><b>Police Barracks:</b> <i>“The existing police barracks must be upgraded to be suitable for human occupation. Ablution facilities to be used by the SAPS members performing static guard duties must be also be upgraded. “</i></p>	<p><b>Police Barracks:</b> 14 Bachelor flats, 12 lock up garages, 14 carports and. 2 offices and 2 guard huts (This was not mentioned in the SAPS Security Evaluation Report, but was submitted by the SAPS to the DPW as a separate needs analysis on 15 October 2009.</p>	20 Residential staff houses (40 units)  Laundry facility	R 17,466,309.67
<p><b>Water supply:</b> A new borehole to be sunk to improve the water supply to the premises.</p>	<p><b>Water supply:</b> A new borehole to be sunk to improve the water supply to the premises. Alternatively, a mini sewer treatment plant to be built on site</p>		
		Site reticulation ( fire water, storm water and waste)	R 2,961,936.01
		Booster pump station and steel reservoir tank	R 571,278.25
		Sewer treatment plant	R 1,030,673.68
		Sewer Pump Station	R 807,782.16

SECURITY MEASURES RECOMMENDED IN 28 MAY 2009 SAPS EVALUATION	SECURITY MEASURES RECOMMENDED IN 25 SEPTEMBER 2010 SAPS EVALUATION	INSTALLATIONS IMPLEMENTED BY THE DPW	COST OF INSTALLATION
<b>Guard hut:</b> The existing guard hut to be upgraded and secured to serve as a control room.	<b>Guard hut:</b> A new secured and security equipped guard hut to be built at the new main gate to replace the existing one	Guard House 1	R 1,205,827.49
		Guard Houses 2 & 3	R 1,367,770.87
<b>Tuck shop:</b> <i>"In order to achieve a safe and secured environment within the premises, the existing tuck shop must be relocated from the present position to enable the police personnel to maintain proper access control. A new hut (tuck shop) must be built closer to the perimeter protection to enable people to buy while outside the premises."</i>	No reference	A building consisting of the Tuck Shop, Transformer and LV Room, Genset Room & Refuse Area	R 956 381 16
<b>Parking area:</b> As the existing parking area was open, the entire area had to be monitored by the CCTV camera system	No reference	Included in CCTV installation	
<b>Study/Office:</b> The existing study/office to be secured, including the installation of security doors, panic buttons, bullet resistant glass, CCTV camera system and reinforcement of the roof	No specific reference	Included in security measures referred to above	



SECURITY MEASURES RECOMMENDED IN 28 MAY 2009 SAPS EVALUATION	SECURITY MEASURES RECOMMENDED IN 25 SEPTEMBER 2010 SAPS EVALUATION	INSTALLATIONS IMPLEMENTED BY THE DPW	COST OF INSTALLATION
<b><u>General recommendations:</u></b>			
The existing generator to be serviced and maintained	<b><u>General recommendations:</u></b> The existing generator to be serviced and maintained. A new standby generator to be installed at the premises to cater for domestic and security requirements.		
Electronic security equipment to be connected to uninterrupted power supply/backup	Electronic security equipment to be connected to uninterrupted power supply/backup		

Figure 14: Comparison between the initial and subsequent SAPS recommendations and the actual installations conducted by DPW

- 7.14.2. More than a year lapsed from May 2009 before the Security Advisory Service of the SAPS submitted its second security evaluation report in respect of the President's private residence, in September 2010, despite the fact that it was represented on the Project Team throughout. A number of the security measures recommended in the second security evaluation report, and more, had by then already been included in the designs and estimated costing of the Nkandla project. The report of the security consultant on the detailed security measures was already presented to the DPW in July 2010. The elaborate safe haven in a location different from the first Security Evaluation Report was already in design, while the second Security Evaluation Report of the SAPS still recommended a modest safe haven on the surface of the site.
- 7.14.3. I noted that the estimated costs of the Nkandla Project escalated from an initial approximately R27 million in May 2009 to approximately R224 million in December 2010 as a result of significant changes and additions.
- 7.14.4. The table below indicates the respective escalations over the period and items added that were not reasonably directly related to the President's security as recommended by the SAPS Security Evaluation Report.

LEGEND	A	B	SIGNIFICANT CHANGES
A: May 2009	R 27,893,068	R 47,323,102	<ul style="list-style-type: none"> <li>· Lift installation for safe haven</li> <li>· Visitors Centre</li> </ul>
B: Sep 2009			
A: Sep 2009	R 47,323,102	R 80,836,249	<ul style="list-style-type: none"> <li>· Increase in number of staff accommodation</li> <li>· Increase in size and location of safe haven</li> </ul>
B: Feb 2010			

LEGEND	A	B	SIGNIFICANT CHANGES
A: Feb 2010	R 80,836,249	R 130,604,267	· Increase in earthworks- roads, paving specification changed
B: July 2010			
A: July 2010	R 130,604,267	R 145,086,964	· Increase in staff accommodation · Safe haven further extended · Landscaping
B: Aug 2010			
A: Aug 2010	R 145,086,964	R 193,533,845	· Additions to safe haven · Landscaping
B: Oct 2010			
A: Oct 2010	R 193,533,845	R 196,864,037	· Additional staff houses
B: Nov 2010			
A: Nov 2010	R 196,864,037	R 224,344,542	· Additional staff houses · Laundry facility for staff houses · Additions to the relocation of households
B: Dec 2010			

Figure 15: Escalations and Significant Changes between various stages of the Nkandla Project

## 7.15. The Tuck Shop

7.15.1. From the security evaluation reports of the Security Advisory Service of the SAPS obtained during the investigation and the observations made during my site visit to the premises, it was obvious that it would not have been ideal, from a security point of view, to have allowed the owner of the business to continue with it at its original location. The business was relocated during the implementation of the Nkandla Project. The new location of the small tuck shop is at the entrance gate to the premises and consists only of a very small

room that forms part of a larger building, which relates to the security measures that were implemented.

## 7.16. The Military Clinic

- 7.16.1. The documentary evidence and that of Lt Gen Ramlakan show that SAMHS is obliged, in terms of the Defence Review, that translated into a national policy for the SANDF to provide medical care to the President
- 7.16.2. However, Lt Gen Ramlakan could not shed any light on the specific legal authority for installation of stationary and permanent medical facilities at the private residence of the President. The legal and policy frameworks he referred me to, are generic and normative in nature. Counsel assisting Lt Gen Ramlakan during his evidence conceded that there is no law, regulation, policy or any other provision that authorizes the Surgeon General or the SAMHS to request the construction of a permanent health care facility for the President and his dependents at his private residence. He submitted that Lt Gen Ramlakan's decision in respect of the request for the construction of the Military Clinic at President's Zuma's private residence was a discretionary one. However, I was not referred to any instrument that afforded Lt Gen Ramlakan with such discretionary powers. Incidentally, DPW internal memoranda seemed to note with concern that norms were not submitted by the DOD. A document submitted by Gen Ramlakan as an assessment on their part, indicates that relevant DOD Doctrines and Treasury prescripts will suffice, where the legal framework was required.
- 7.16.3. The appraisal of what was required to enable the SAMHS to provide medical care to President Zuma at his private residence, focused, according to Lt Gen Ramlakan on the "*worst case scenario*"
- 7.16.4. I noted that at the time when Lt Gen Ramlakan requested the DPW to provide a permanent health care facility at the President's private residence

(in May 2009, shortly after President Zuma was appointed), he had a clinic costing between R15 to R18 million in mind.

- 7.16.5. The appraisal considered the medical care that could be provided by the District Hospitals in the area and found it to be inadequate. However, there is no indication that it considered improving the facilities at these hospitals so that it could serve the SAMHS requirements for medical care and the community at large.
- 7.16.6. I could find no indication that the decision seriously considered the more economic and sustainable option of the provision of a mobile medical facility, as was stationed at former President Mandela's private residence, instead of constructing a permanent structure at state expense that would be adjacent to the President's private residence forever. According to Lt Gen Ramlakan's evidence, medical care has been provided to the President by the SAMHS from a temporary park home since his appointment 5 years ago. There is no evidence that this caused any difficulty, except for the storage of drugs that could have been accommodated in one of the many other buildings that were constructed as part of the Nkandla Project.
- 7.16.7. I was referred by counsel assisting Lt Gen Ramlakan in his evidence to the provisions of section 41 of the Constitution, providing for cooperative governance, and specifically subsection (1)(h) that requires of all organs of state and all spheres of government to cooperate with one another in mutual trust and good faith by, inter alia, assisting and supporting one another and coordinating action. The submission was that it was on the basis of this constitutional imperative that the SAMHS cooperated with the DPW in the Nkandla Project.
- 7.16.8. The evidence of Deputy Minister Bogopane-Zulu indicates that the possibility of also utilizing the clinic for the medical and health care of the community where the President's private residence is located was suggested by her



when she got involved in the Nkandla Project. She believed that she was supported in her views by the President, as she had discussed it with him. It is worth noting that the Project Team's progress minutes indicate that soon after the Deputy Minister left the project, Lt Gen Ramlakan reported that the DOD had decided not to use the Military Clinic for the public.

- 7.16.9. In his submission, Lt Gen Ramlakan objected on the basis that it would have been illegal to do so. He argued that the provisions of section 18 of the Defence Act were not complied with. His explanation on why no attempt was made to approach the President or the Minister of Defence to authorize the sharing of the medical facilities in the interest of the community of Nkandla, in compliance with the Act, was that it was not his responsibility to do the work of the Minister of Health. This was in contrast with his legal counsel's opening remarks who had said that all was done in pursuit of cooperative governance as envisaged in section 41 of the Constitution.
- 7.16.10. I found Lt Gen Ramlakan's attitude in this regard astonishing, especially in the light of his counsel's submissions on the constitutional imperative of cooperative governance. Cooperative governance apparently never came to Lt Gen Ramlakan's mind when he requested the construction of a medical facility at a cost of between R15 to R20 million, for the exclusive use of the President, his dependents and the staff looking after him, in an area where the majority of people are impoverished and have to be satisfied with a lack of proper medical facilities.
- 7.16.11. Curiously, the Minister of Defence and Military Veterans was reported on the DOD website on 19 February 2013 as having assessed the location and size of the Military Clinic, it is the DOD's view that save for minor adjustments, the clinic has adequate capacity to serve both requirements of the President as well as to provide services to the community of Nkandla. No mention was made of this reported view of the Minister in Lt Gen Ramlakan's evidence.

- 7.16.12. Lt Gen Ramlakan also raised the issue of the security risk to the President should the Military Clinic be utilized for the benefit of the community. However, his contentions in this regard do not indicate why the same security measures that apply to the President during his daily travels, locally and abroad, could not be implemented by all the security personnel that have houses on the site.
- 7.16.13. I also could find no evidence that the possibility of building the medical facility required in respect of the President in the vicinity of his residence, but in an area that would be accessible to ordinary members of the community, with a view of using it also as a community health facility, in consultation and with the assistance of the KwaZulu-Natal Department of Health, was properly considered and explored. Deputy Minister Bogopane-Zulu's ideas were clearly not allowed to gain any momentum.
- 7.16.14. Lt Gen Ramlakan's evidence that there was no community facility available at the time when the Nkandla Project commenced where the requested medical facilities could be placed cannot be accepted. A report of the KwaZulu-Natal Department of Health, provided to me by Lt Gen Ramlakan and relied on by him to show that lack of medical facilities in the Nkandla area, state that in 2009, there were at least 14 such community facilities that could have been considered.
- 7.16.15. The following reference in this report, dated 5 November 2013, is of particular significance:

*"Nkandla remains one of the most undeserved areas requiring greater effort for the improvement of service delivery to the community at large. The funding constraints have led to the curtailment of certain infrastructure development projects and this exacerbates the health challenges in the area whilst basic services have improved marginally, so too has health service delivery. Some gains have been made with the introduction of family health*

*teams, planned patient transport vehicles which persist with referrals to high levels of care, maternity obstetric unit as well as school health promotion teams. The response time for ambulance services is well below the norm (less than 60 minutes in rural areas) and this is compounded by the fact that there are no advanced life support personnel in the sub-district...”*

- 7.16.16. During the President’s tenure and thereafter, the medical personnel deployed to the clinic will be idle most of the time. Their services could just as well have been utilised in the interest of the community of Nkandla, without jeopardizing the medical care that has to be provided to the President and staff members of the DOD and the SAPS. Additional security arrangements could obviously have been made whenever the President had to attend at the clinic.
- 7.16.17. The issue of the poor road infrastructure is also not convincing as the President and his security entourage has access to all kinds of vehicles provided by the state and he travels by helicopter.
- 7.16.18. I am also not convinced that the option of utilizing mobile structures, such as park homes or the mobile facilities provided for Mr Mandela’s medical care, was properly considered by the SAMHS. According to Lt Gen Ramlakan, the main consideration why park homes could not be used, was that it would be illegal to store drugs in such a structure. I could find no confirmation for his contentions in this regard. The Good Pharmacy Practice in South Africa, a policy document setting minimum standards for pharmacy premises facilities and equipment, of the South Africa Pharmacy Council, provides for the storing of medicine in mobile facilities. The only conditions stated relate to ventilation, insulation and hygiene standards.
- 7.16.19. However, even if it is undesirable, I could find no indication in the evidence that any cheaper option than to build a clinic was considered. There is also no evidence that the President, his dependents or the staff treated with

medical care from park home structures on the site for the past five years were prejudiced or worse off than they would have been, had the care been provided from the permanent Military Clinic that was built at a cost of millions of rand.

- 7.16.20. Counsel assisting Lt Gen Ramlakan in his submissions opted to draw an analogy between the Medical Clinic that was built for the exclusive use of the President, his dependents and the staff supporting him and the airport that was built by the former government in George in the Western Cape, allegedly for the late President P W Botha, whose private residence was in Wilderness, some 23 km away. I found the logic in this argument difficult to follow. The airport referred to is a public and not a military facility, used by several airlines and thousands of patrons annually. It was not built on the doorstep of where former President Botha's private residence was situated and it was not used exclusively by him and his dependents.
- 7.16.21. According to Lt Gen Ramlakan's evidence it was accepted from the start that that the DPW would be responsible for the cost of the Military Clinic and that the DOD was not regarded as a client department, is inconsistent with that of the Acting Director General of the DPW, Mr Malebye, who indicated that it was expected of the DOD and the SAPS to refund the DPW for the procurement of their requests and that the DPW was therefore only regarded as implementing agent. It is also inconsistent with the information provided by Mr Doidge, who was the Minister of Public Works at the time when the project started, stating that the DOD and the SAPS were of the DPW "*client departments*".
- 7.16.22. The documentary evidence show that the Nkandla Project was paid for from the Prestige Programme in the DPW Capital Works budget, which regularly had to be augmented by means of reallocation from other necessary service delivery programmes. Mr Malebye and the current Director-General of the DPW stated during the investigation that initially, the Nkandla Project was

supposed to have been funded by savings made on other programmes of the Capital Works budget.

7.16.23. Lt Gen Ramlakan's version that the Military Clinic was supposed to have been funded from a special category in the DPW budget, is therefore not supported by the evidence of other witnesses and the documentary evidence obtained during the investigation

7.16.24. I noted during my site visit that due to the fact that the R11 million double storey building is located on a steep slope, substantial earth works had to be performed in the construction of the military clinic. It also includes garages for vehicles. I also observed that the clinic was not commissioned and the parking garage not utilized.

#### 7.17. **The Helicopter Landing Pads and Crew Pavilion**

7.17.1. The evidence and information obtained during the investigation indicated that the South African Air Force is responsible for the air transportation of the President during his tenure.

7.17.2. Due to the decision taken that the President has to be transported to his private residence by air, adequate and safe landing facilities had to be constructed. It was also necessary to provide the helicopter pilots with adequate rest and nutrition facilities that comply with international aviation standards.

7.17.3. It was noted during the investigation that the helicopter landing pads could be used for civil aviation purposes, once the President's term of office expired. However, it could not be indicated with certainty who would be interested in using a helicopter landing pad in such a rural area or that placing it closer to community facilities where it could serve a dual purpose, was considered.

## 7.18. The Park Homes

- 7.18.1. The evidence indicated that the procurement of park homes as temporary accommodation for staff was only done in March 2011, i.e. one year and ten months after the Nkandla Project commenced and Mr Zuma was elected as the President.
- 7.18.2. It could not be determined with certainty where all the affected staff stayed from May 2009 to March 2011, except that a private dwelling of the President was utilized for SAPS members.
- 7.18.3. The records of the DPW and the evidence of witnesses clearly indicated that the decision to provide temporary accommodation was as a result of instructions given by the Minister or Deputy Minister of Public Works
- 7.18.4. Although it is not in dispute that temporary accommodation was required for the staff assigned to look after the security of the President, it could not be established why this obvious need was not planned for by the DPW when the Nkandla Project commenced.
- 7.18.5. The fact that permanent accommodation has been constructed at huge cost to the state for the staff and that it is currently not used, is disconcerting. The continued occupation of the park homes also deprives other state institutions of temporary accommodation that is required by it.
- 7.18.6. The park homes belong to the state and should be utilized in a manner that constitutes value for money.

## 7.19. The relocation of the kraal and culvert

7.19.1. It was explained by the officials and consultants involved in the Nkandla Project that the President's kraal for his farm animals had to be relocated for security reasons.

7.19.2. However, during my site visit, I noted that the new kraal has an elaborate design and that it is linked to a culvert that allows animals to exit and enter under the fence. It was also not clear why the animals could not use a normal gate.

7.19.3. The construction of the kraal, incorporating a chicken run and culvert, was included in the general site works, at an estimated cost of R1.2 million.

7.19.4. Although reference was made during the investigation to the *relocation* of the kraal, the position of the original kraal could not be indicated to me during my site visit. There was still a kraal at the centre of the original homestead that is clearly being used. It was explained to me that it is only used for ceremonial purposes.

7.19.5. During my meeting with the President in regard to the investigation on 11 August 2013, he indicated that when the movement of the kraal was discussed, he had engaged "*government*" on a relocated larger kraal to accommodate his increased livestock, while keeping the existing one as a ceremonial kraal. He further indicated that he would be amenable to refunding the state for the cost incurred.

## 7.20. The Swimming Pool, Amphitheatre and Visitors' Centre

7.20.1. The evidence indicated that the idea of a fire-pool was at some stage of the Nkandla Project combined with the idea of building a swimming pool for the occupants of the President's private residence.

- 7.20.2. The amphitheatre was clearly designed and constructed with a view of open air functions.
- 7.20.3. The Visitors' Centre forms an integral part of the entrance to the President's private residence. It could not be established why visitors could not be accommodated at the adjacent clinic or the guard house at the entrance gate. At the time of my site visit, I noted that the Visitors' Centre had recently just been used for a private function, which confirmed the impression that it has little, if anything to do with the security of the President.
- 7.20.4. In the absence of clear justification for the costly choices, it is difficult not to conclude that the designers of the project decided to create a recreational area close to the President's dwellings, under the auspices of combining the facilities with the need for a fire-fighting capability in terms of a water reservoir and landscaping to rehabilitate soil. The Visitors' Centre was added to complete the picture. There is no indication in the evidence that alternatives, such as the installation of a water reservoir similar to the one that was installed for household purposes, other landscaping methods and alternative facilities for visitors were seriously considered.
- 7.20.5. The lack of explanation regarding why more economic options were ignored, and the snippets regarding minutes regarding aesthetic fit (for the President) leave a distinct impression that this was again a situation of designing the ideal stately environment, because it is the President's residence, rather than focusing on what was necessary and affordable.

## 7.21. **Relocation of Adjacent Households**

- 7.21.1. Two different justifications can be gleaned from the evidence of why the neighbours were moved.



- 7.21.2. Mr Makhanya said it was to ensure a straight fence, while the motivation in the relevant internal memo was “too close for security”. I could find no evidence that the possibility of keeping the households where they were and finding alternatives for the security installations that could save the expense of relocation, were properly investigated and considered. There was also no indication that any comparison of the cost to adapt the security detection systems and the fence to accommodate the households was ever made and evaluated.
- 7.21.3. It was pointed out earlier that neither of the two security evaluation reports of the Security Advisory Service of the SAPS recommended the relocation of the households or identified their presence as a risk to the security of the President.
- 7.21.4. It is common cause that the modest rondavels were replaced with 15 modern rondavels, at a cost to the state of almost R8 million (R2 million per household), which equates to the construction of at least 40 RDP houses.
- 7.21.5. As in the case of other items referred to in this report , the only inference that I can draw from the evidence relating to the relocation of the households is that the DPW allowed the consultants to decide what should be done and to design accordingly. I got the impression from the observations made during my site visit that it was probably rather the aesthetic impact of leaving the dilapidated structures where they were that bothered the designers of the Nkandla project, than the impact it could have had on security.

## 7.22. **Roads, Paving and Walkways**

- 7.22.1. It was very obvious during my site visit that the implementation of paving at the premises was elaborate.

- 7.22.2. Although the evidence indicated that paved roads and walkways were required in certain areas as part of the Nkandla Project, such as the patrol roads, the construction of the swimming pool and amphitheatre included a large area of paving, which could clearly have been avoided, if reasonable care had been taken.
- 7.22.3. The impression also in this case was unavoidable that the DPW allowed the consultants to design as they pleased and that very little, if any, consideration was given to alternatives and the quantity of roads and paving that was really necessary for the effective protection of the President.
- 7.23. **The Safe Haven**
- 7.23.1. The first Security Evaluation Report of the Security Advisory Service of the SAPS dated 28 May 2009, recommended reinforcement of one room of the President's dwelling with various security features identified in the Minimum Physical Security Standards. Brigadier Adendorff stated in her evidence that these measures were sufficient to protect the President in case of an emergency.
- 7.23.2. The estimated cost of creating a safe haven as determined by R&G Consultants in February 2010 was R457 971. There was no indication at that time that the more elaborate facility that was eventually built was envisaged.
- 7.23.3. However, by July 2010 there was already a plan to construct a security services safe area and the estimated cost increased to more than R3 million.
- 7.23.4. Cost Estimate 5 prepared by R&G Consultants on 16 August 2010 clearly indicate that a more elaborate and differently located safe haven was designed, which was initially estimated at R8.3 million but had escalated to about R19 million by the time this investigation was concluded.

- 7.23.5. I was surprised to note that despite the fact that the more extensive facility was already designed and costed by August 2010, the second Security Evaluation Report of the SAPS issued in September 2010 still recommended a modest facility on the surface. Even more disconcerting is that Brigadier Adendorff appears to have been aware of the intention to jettison the plan for a modest safe haven in favour of the extensive and expensive design as she was part of the Project Team and had discussed the idea with Mr Makhanya. As a result, the original approach on the safe haven changed substantially.
- 7.23.6. No reasonable explanation could be provided by the officials involved in the Nkandla Project as to why it was decided to build the extensive and expensive safe haven. Mr Rindel regarded it as an instruction from DPW *“top management”*.
- 7.23.7. From the evidence it appeared that the idea originated from Mr Makhanya and that it was supported by the SAPS, despite its formal recommendation of a far less elaborate and much cheaper option. Again, the ideal situation was pursued rather than the necessary and affordable one.
- 7.23.8. At the time of the conclusion of the investigation the cost of the safe haven had escalated to more than R19 million. The scope of this part of the Nkandla Project started at a cost of about half a million Rand and was allowed to increase to about R19 million, i.e. with approximately R18.5 million. The reality is that at R19 million the safe haven still needed some work at additional cost at the time when the investigation was concluded.
- 7.24. **The Staff Accommodation**
- 7.24.1. The location of the President’s private residence in a rural area about 47 km from the nearest small town and the fact that his security involves several staff members of the SAPS and the DOD necessitated the provision of accommodation for them.

- 7.24.2. However, there was no prescript in respect of the design of the accommodation units nor was there any justification for anything more than a small block of flats or barracks, instead of individual units.
- 7.24.3. During the site visit, I noted that the buildings constructed in this regard were clearly designed to blend in with the thatched roof designs of the other structures that conformed to the design of the President's houses.
- 7.24.4. The bachelor rondavels that were built consist of one bedroom with a kitchen facility and a very small bathroom, which would clearly not be suitable for the accommodation of a small family. Yet, the accommodation was built at a cost of R17,5 million, which equates to R437 500 for a unit that is smaller than an RDP house.
- 7.24.5. Lt Gen Ramlakan indicated to me that as these buildings belong to the state and do not form part of the President's residence, it would be possible to utilize some of it for community purposes when the President's term expires.
- 7.24.6. However, on questioning, it was clear that there was no plan on what the state could use these buildings for in the future. The houses built for the staff are not in the immediate vicinity of any community facility and it would therefore be problematic to utilize the precinct effectively. I could find no evidence that the possibility of locating the staff houses closer to community facilities or to base them at the satellite police station in the Nkandla area with a view of effective and economic utilization in the interest of the community when the President's tenure expires, was interrogated and considered.
- 7.24.7. I could also not find any reasonable indication why the possibility of temporary accommodation in the form of park homes was not considered, due to the fact that the accommodation would not be required indefinitely.

7.24.8. During my site visit I noted that that some of the staff already based at the President's private residence was in any event still living in the temporary park homes as some of the flats had not been completed. Officials of the DPW and the SAPS indicated that all works stopped when investigations into the project were launched. The impact of this is that the state already paid for buildings that are not being used, whilst temporary accommodation that could be moved and utilized elsewhere is still being occupied.

#### 7.25. **The Private Project Manager**

7.25.1. The appointment of the private Project Manager at an additional cost of R5 million was only considered when there were already substantial delays in the completion of the Nkandla Project and after a former Minister of Public Works started, to intervene due to the complaints of the President.

7.25.2. The evidence indicated that this could have been avoided if the DPW planned the implementation of the Nkandla Project properly and capacitated the Regional Office to enable it to manage the project when its scale was known and construction commenced.

7.25.3. Mr Rindel indicated in his evidence that he realized early in the process that the scale of the project was too large for him to handle alone. However, I could find no indication during the investigation that he complained or requested assistance. It should also have been obvious to Mr Khanyile, who was directly involved, and to the DPW and other officials that formed part of the Project Team.

## 7.26. Landscaping

- 7.26.1. The fact that the Nkandla Project was implemented on what was previously largely indigenous veld on a steep slope, required considerations of storm water management and resettlement of vegetation that had to be removed.
- 7.26.2. However, it is the scale of the landscaping that was implemented that I found disconcerting.
- 7.26.3. The evidence indicated that the Landscape Architects were subcontracted under Mr Makhanya and that he was mainly responsible for their designs.
- 7.26.4. It was clear from the evidence and original designs of the Landscape Architects that they understood their brief to create a stately residence and the fact that it was a private residence and that the landscaping interventions had to be paid for by public funds, had no impact on their original ideas. This was evident from their original designs that were costed at R18.6 million, excluding their professional fee.
- 7.26.5. The consideration of alternatives that were really necessary in respect of landscaping and reasonably affordable does not seem to have been their brief when they were appointed. They obviously designed the ideal and then scaled down instead of looking at the real need and cost to the tax payer.
- 7.26.6. Despite the fact that the original design was scaled down quite dramatically, the landscaping in the end still amounted to more than R7 million.
- 7.26.7. Reference is made in this report to elaborate paving of walkways, patrol roads and the entrance area. The construction of an amphitheatre, a terrace around the swimming pool and an area where a marquee tent can be erected (the so called “social node”) was elaborate and do not appear to relate in any manner to the security of the President. One of the officials involved in the

project confirmed in a response to the evidence and information obtained during the investigation that discussions relating to the areas including the amphitheatre and the terraced pavilion that, at the time it was designed, related to expected future functions for which the DPW would be responsible.

7.26.8. The unavoidable impression from my investigation is that a substantial amount of public funds could have been saved in respect of the expenditure incurred for landscaping, if more care had been taken by the DPW.

## 7.27. **The Apportionment of Costs**

7.27.1. When Deputy Minister Bogopane-Zulu became involved in the Nkandla Project she got the impression that some of the planned expenditure might have to be for the account of the President, as it did not relate directly to security issues.

7.27.2. The document indicating an apportionment of the estimated costs between the DPW and the President was only prepared in March 2011, i.e. one year after the appointment of the contractors was approved and 22 months after the Nkandla Project commenced.

7.27.3. I noted from the contents of the apportionment document that the majority of items listed under “*private*” related to landscaping, some of which, according to the evidence of Mr Rindel, was not implemented.

7.27.4. Other items that were listed for the account of the President included “*builders work*”, “*lightning protection*”, “*reticulation*”, and a portion of the “*fire pool and parking*”.

7.27.5. I could find no evidence that the President, Minister or Deputy Minister of Public Works ever responded to the submission of the apportionment of cost estimates.

- 7.27.6. However, during my meetings with the Ministers of Public Works, State Security and Police, they indicated that they were aware of the document, but did not agree with its contents and were making further enquiries. It was not clear to me how the document got to the Ministers as there was uncertainty in the evidence whether it ever reached the former Minister of Public Works and the President.
- 7.27.7. The fact that the DPW did not ensure from the time that the project commenced that the President was informed and that his response was obtained in respect of any planned interventions on the land that he occupied that he might have to pay for, is a further indication of the lack of planning and management.

## **PART E: THE INVOLVEMENT OF THE IDC AND ALLEGATIONS OF IMPROPER BENEFITS AFFORDED TO THE PRESIDENT'S BROTHERS**

### **7.28. The Financial Assistance Provided to Bonelena by the IDC**

- 7.28.1. The evidence in this regard indicates that although Bonelena applied for financial assistance from the IDC shortly before the first contract for the Nkandla project was awarded to it by the DPW, the later awarding of the contract was part of the information that was considered in its application.
- 7.28.2. However, the records of the IDC also contain information about other projects that Bonelena were involved in and other contracts awarded to it.
- 7.28.3. The investigation by the IDC into the financial affairs of Bonelena was extensive and conducted over a period of months. The fact that Bonelena was registered at the CIDB at the time that it conducted its own due diligence into Bonelena's affairs before it awarded it a grading of 7GB PE, was also considered by the IDC.



- 7.28.4. I found no indication in the information that could be obtained during the investigation that the decision by the ICD to approve Bonelena's application for financial assistance was improperly influenced or that it was not properly considered in terms of its mandate, powers and functions.
- 7.28.5. The financial exposure of the IDC due to Bonelena's liquidation was mitigated by its offer of compromise that was accepted and its discharge from liquidation in February 2013. At the time of the conclusion of the investigation, the ICD was in a position to continue with the recovery of the financial assistance that it provided to Bonelena in February 2011.
- 7.29. **The Allegation that the President's Brothers Benefitted from the Security Project**
- 7.29.1. The allegation that two brothers of the President, Messrs Micheal and Joseph Zuma received electrical equipment that was destined for or ordered under the Nkandla Project and paid for by the state, was based only on the contents of invoices that were attached to court papers relating to a civil proceedings between a supplier (Voltex) and a contractor involved in the Nkandla Project (Moneymine).
- 7.29.2. The civil claim related to a dispute about payment for certain items supplied by Voltex to Moneymine for its different projects, including the Nkandla Project. No other evidence or information was provided supporting the allegations that Messrs Zuma received electrical equipment that was paid for by the state.
- 7.29.3. From the investigation, it was established that the said invoices contained references to the supply of goods to Moneymine in connection with a number of its clients, including Messrs Zuma, "Nkandla", "dbnprestige", "vulekela", "highflats" and others. The items that were ordered from Voltex for Messrs

Mike and Joseph Zuma were of a general electrical nature and included cabling, switches and sockets. The total amount of these items was R6 278.55. It was invoiced under their names and there is no indication on the invoices that it formed part of orders that related to the Nkandla project.

- 7.29.4. The evidence obtained during the investigation confirmed that Moneymine had a number of other clients during the period that it was involved in the Nkandla Project. It is an established construction company and has been doing business in the KwaZulu-Natal Province for years. The address and references that appeared on the invoices were also not related to the Nkandla Project or the President's private residence.
- 7.29.5. I could find no evidence in the payment certificates and other procurement documents of the DPW relating to the Nkandla Project or from the witnesses interviewed that Moneymine or Voltex was paid by the DPW for items that Messrs Joseph and Mike Zuma purchased.
- 7.29.6. The explanation provided by Mr and Mrs Mfeka of Moneymine that Messrs Mike and Joseph Zuma ordered the items concerned as separate clients in terms of their own small projects, was supported by the contents of the invoices and also the information provided by Voltex.
- 7.29.7. Accordingly, I could find no substance during the investigation for the allegations in this regard which could have warranted further investigation.

### 7.30. **The Evidence in Respect of the President's Involvement in the Project**

- 7.30.1. The evidence indicates that officials of the DPW and the SAPS met with the President at his private residence on 12 August 2009 to inform him of the security measures that were to be installed at his three new dwellings, the construction of which commenced on 24 August 2009. The minutes of a Progress Meeting held shortly after the Deputy Minister was taken off the

project seem to suggest that the matters she raised with the President were resolved.

- 7.30.2. In his submissions on the evidence and information obtained during the investigation, dated 14 February 2014, the President stated that at this meeting he introduced Mr Makhanya as his architect to senior government officials *“and to appraise each other of their respective plans.”* He denied influencing Makhanya’s appointment as Principal Agent.
- 7.30.3. By May/June 2010 the President complained about the slow progress made with the implementation of the Nkandla Project, which was impacting on his private and family life.
- 7.30.4. The President stated in his submissions in this regard that *“my request to expedite the construction was a genuine attempt to address the delays and not to otherwise influence the process.”*
- 7.30.5. According to the evidence Mr Makhanya supposedly had discussions with the President about the landscaping of the premises in August 2010 and May 2011. He also presented the President with the design of the swimming pool. In fact there are numerous references to reported or contemplated design meetings between the two in the project progress minutes alluded to in the evidence.
- 7.30.6. Deputy Minister Bogopane-Zulu stated in her evidence that the President supported her idea that the fire pool should be converted into a swimming pool to be used by the children of the village. She labelled this a developmental approach. The evidence further indicates that Mr Makhanya apparently discussed the possibility of private costing in respect of the conversion of the fire-pool to a swimming pool with the President as well as *“infrastructure requirements.”*

- 7.30.7. It is common cause that the President requested a former Minister of Public Works, Mr G Doidge, to look into the delay of the project, as a result of which the latter got directly involved in order to expedite the process.
- 7.30.8. The evidence further show that the former Minister of Public Works, Ms Mahlangu-Nkabinde, informed the President in writing, on 5 November 2010, of the details of the progress made with the implementation of the Nkandla Project. According to the evidence of officials of the DPW, it was their impression that the President indicated that he was satisfied with the progress report presented to him.
- 7.30.9. When Deputy Minister Bogopane-Zulu became involved in the Nkandla project, she, according to her evidence, discussed the details thereof with the President. According to her, he raised concerns about the relocation of the households as he has known them all his life and he did not want them to be prejudiced. The President also told her that he did not want new contractors on the site. He indicated that he was opposed to more contractors being involved during phase 2 of the project than those that were implementing phase 1.
- 7.30.10. Deputy Minister Bogopane-Zulu further indicated in her evidence that the President supported her idea that the Military Clinic should also be used for community purposes. The minutes corroborate anticipated discussions between these two in this regard.
- 7.30.11. The minutes of a Progress Meeting held on 28 September 2011 recorded that Mr Makhanya stated that the President had raised his concern about the slow progress of the Nkandla Project and that the premises might not be available for him to use during December 2011.
- 7.30.12. The evidence of Brigadier Adendorff and Mr Rindel also indicated that the President raised his concern about the design of the bullet resistant windows

that had to be installed. This resulted in a change of the design that was implemented.

7.30.13. As already alluded to above, the President indicated to me during the investigation that he was involved in the decision to build a new kraal. In his response to the Provisional Report, the President did not deny this.

7.30.14. I could find no evidence or indication that the President ever enquired into the scale of the Nkandla Project that was being implemented at his private residence or the cost thereof.

7.31. **The President's Reply to My Questions:**

7.31.1. The statement that the President provided to me in response to written questions put to him relating to the matters investigated confirmed that he:

7.31.1.1 Initiated private improvements of his private residence at Nkandla and appointed Minenhle Makhanya Architects in this regard;

7.31.1.2 Was briefed by former Minister Doidge and senior officials of the SAPS and other government departments on the security requirements that had to be implemented at his private residence, shortly after he took office;

7.31.1.3 Was present at a meeting between these officials and Mr Makhanya where the impact of the security measures on his private dwellings was discussed;

7.31.1.4 Received briefings on the project from time to time from various Ministers and Mr Makhanya;

7.31.1.5 Expressed his concern about the delay in the implementation of the project; and

- 7.31.1.6 Complained about the initial design of the bullet resistant windows that was installed.
- 7.31.2. The President declined the opportunity to respond to the allegation that he misled Parliament by making a false statement about the financing of the private development at his private residence and referred me to Parliament in this regard. He also declined me the opportunity to have access to his bond documents.
- 7.31.3. However, with the assistance of the Director-General of the Presidency, I established on 17 December 2013 from the Register of Financial Interests that the President has declared a mortgage bond in respect of his private residence at Nkandla since 2009. I was also given the assurance by the President's legal team that the mortgage bond is still in place
- 7.31.4. The President furthermore did not respond to my questions in connection with:
- 7.31.4.1 Whether he or the Presidency requested that security measures be installed at his private residence;
- 7.31.4.2 Whether he was at any stage informed of the cost of the proposed security measures;
- 7.31.4.3 Whether a notice declaring his private residence a National Key Point was served on him;
- 7.31.4.4 What he understood to be his responsibilities as the owner of a National Key Point;
- 7.31.4.5 What measures he took to secure his private residence as required by the National Key Points Act;

- 7.31.4.6 Whether he was advised that some of the cost of securing his private residence as a National Key Point would be recovered from him;
- 7.31.4.7 Whether he was presented by Mr Makhanya with the designs of the project;
- 7.31.4.8 Whether he received the letter consisting of a detailed report on the progress made with the project that was addressed to him by former Minister Mahlangu-Nkabinde on 5 November 2010;
- 7.31.4.9 Whether he received the document setting out the apportionment of cost for the project that was prepared by the DPW;
- 7.31.4.10 Whether Deputy Minister Bogopane-Zulu discussed the conversion of the fire-pool to a swimming pool with him and whether he was aware of the reasons for this conversion;
- 7.31.4.11 Whether he was consulted about the relocation of the households that were affected by the implementation of the project;
- 7.31.4.12 Whether he was opposed to more contractors working on the site during phase 2 of the project;
- 7.31.4.13 Whether Deputy-Minister Bogopane-Zulu discussed the design of the Military Clinic with him;
- 7.31.4.14 Whether he would be willing to disclose the amount that he paid for the construction of the new dwellings on his property;
- 7.31.4.15 How often he uses his private residence for official business;

- 7.31.4.16 Why he would prefer using his private residence for official business rather than one of the official residences available to him;
- 7.31.4.17 Whether he at any stage enquired into the cost of the project; and
- 7.31.4.18 If not, whether he as the head of state did not feel obliged to do so as a substantial amount of public money was obviously being spent.
- 7.31.5. On 13 January 2014, I provided the President with a copy of my Provisional Report on the investigation and afforded him the opportunity to respond to any information or evidence that appeared to implicate him.
- 7.31.6. The President provided me with submissions on the contents of the Provisional Report on 14 February 2014, which were presented to me by the legal team assisting him, on 21 February 2014.
- 7.31.7. In his submissions, the President referred to my compliance with the Executive Members Ethics Act and my views on the application of the National Key Points Act.
- 7.31.8. Referring to how the contents of the Provisional Report, in his view, related to him as a person, the President stated, *inter alia*, that:

*“At no stage have I been appraised of the fact that my conduct forms part of any investigation either by the Public Protector or any other institution and my statement is framed in the light of this appreciation.*

*It now appears apparent that unbeknown to me, my conduct, ethical and otherwise in fact forms part of the Public Protector’s investigation.*

*Had I in fact known that my conduct was under investigation by the Public Protector, I most probably would have elected to approach the matter*



*differently, not least of which would have been to persist in my request by all means possible for access to the documents and statements upon which certain assertions were based.*

*I consider this to be unfair and a breach of my constitutional right to be made aware of my role in the investigation and the case that I have to meet. Consequently, this impacts on the findings and evaluations contained in the report insofar as they relate to me. I have no way, notwithstanding the opportunity to comment on this provisional report, to address this apparent procedural unfairness.*

*The Public Protector is aware that I have made repeated requests to be furnished with copies of documents which are the bases for certain averments and allegations in order that I may better understand the context and import of such.*

*These requests have been consistently denied under the blanket approach of protecting the identity of the complainants/witnesses, notwithstanding that fact that some of these persons are known to me, others government officials, others still political leaders and oft quoted academics.”*

7.31.9. I was quite astonished by these submissions of the President, for the following reasons:

7.31.9.1 Shortly after I received the first complaint in connection with the security upgrades at the President’s private residence on 13 December 2011, I informed the Director-General of the Presidency of the complaint and met with him in regard thereto in January 2012. I believe that it was reasonable to accept that Dr Lubisi informed the President accordingly.

7.31.9.2 On 15 February 2012, I wrote to the President directly, informing him of the complaint that I received from a member of the public that was based on the

article published by the *Mail & Guardian* newspaper on 11 November 2011 (referred to in paragraph 2.1 above) and that I would be investigating the matter.

- 7.31.10. I informed Dr Lubisi accordingly in writing on the same day.
- 7.31.11. On 20 February 2012, I received an acknowledgement of receipt of my letter addressed to the President from the Administrative Secretary: Presidential Support Services that stated that it was received and would be brought to his attention.
- 7.31.12. I received further complaints in December 2012.
- 7.31.13. In my letter addressed to the President dated 29 January 2013, I informed him of the further complaints and stated *inter alia* that:

*“The Parliamentary Leader of the Democratic Alliance, Ms L Mazibuko, lodged a further complaint against you in terms of the provisions of the Executive Members’ Ethics Act, 1998. Her complaint is based on allegations published by the media on 2 December 2012, alleging that Messrs Michael and Joseph Zuma, members of your family, benefitted improperly from the development project at your private residence when they received supplies destined for it, delivered to their homes. Ms Mazibuko requested that I establish whether these allegations are true, and if so whether or not it constituted conduct in violation of the Executive Ethics Code on your part.*

*Prof P De Vos of the University of Cape Town lodged a complaint with me relating to a statement that you made in the National Assembly on 15 November 2012, when you reportedly indicated that the development of the first phase of your private residence was financed by a commercial bank that secured a mortgage bond in respect of the property.”*

7.31.14. I further explained to the President that subsequent media reports suggested that no such bond was registered and that, according to Prof De Vos there is no clarity whether the non-security related construction works at his private residence was indeed financed by him. I stated that:

*“He (Prof De Vos) contends that it is in the public interest for the Public Protector to determine whether you ‘willfully mislead’ the National Assembly in regard to this matter, which in his view, would constitute a violation of the Executive Ethics Code.”*

7.31.15. In addition, I requested the President to provide me with a copy of the registered bond and other relevant documents relating to his financing of his private residence.

7.31.16. On 11 March 2013, I informed the President that my investigation was progressing and requested him to provide me with the documents previously requested. My office received an acknowledgement of receipt from the Chief of Staff in the Private Office of the President, on 12 March 2013.

7.31.17. Mr J S Mabelane, the Acting Head: Legal and Executive Services of the Presidency wrote to me on 4 April 2013, requesting copies of the complaints referred to in my letters addressed to President on 29 January 2013 and 13 March 2013.

7.31.18. In my response on 11 April 2013, I explained the reasons why the Public Protector, as a matter of principle, does not provide interested and affected parties with copies of letters of complaint. However, I provided him with a detailed outline of the complaints, which I also included in the Provisional Report that was provided to the President on 14 January 2014.

- 7.31.19. On 29 July 2013, I wrote to the President, informing him of my intended visit to the Nkandla Project and again requested the information previously requested that was still not provided.
- 7.31.20. I met with the President on 11 August 2013 in connection with my investigation and presented him with a set of written questions with the relevant documents, which he agreed to respond to.
- 7.31.21. The Director-General in the Presidency addressed a letter to me on 10 September 2013 requesting information to enable the President to respond to the questions presented to him on 11 August 2013.
- 7.31.22. The President responded to me on 30 September 2013 as indicated in paragraph 6.86 above.
- 7.31.23. Due to fact that I was concerned that the President had not responded fully to all my questions, I provided a further opportunity in my letter addressed to him on 8 October 2013.
- 7.31.24. In his response, dated 24 October 2013, the President, requested more information, to which I responded in detail on 29 October 2013. I attached to my response copies of documents that had already been provided to him earlier, which included:
- 7.31.24.1 The Declaration Certificate declaring his private residence a National Key Point signed by the Minister of Police on 8 April 2010;
- 7.31.24.2 The Internal Memorandum signed by the former Minister of Public Works on 5 November 2010 informing the President in detail of the progress made with the implementation of the Nkandla Project; and

- 7.31.24.3 A document dated 11 March 2011 prepared by R&G Consultants and the DPW setting out the apportionment of costs of the Nkandla Project.
- 7.31.25. The correspondence with the President and the Presidency referred to above, my personal meeting with him and the fact that the President was provided with a copy of my Provisional Report of more than 300 pages setting out in detail the complaints that I received and the issues that were investigated, in my respectful view, provided the President with sufficient and detailed information to enable him to respond to areas of the evidence and information that appeared to implicate him.
- 7.31.26. I therefore could not find any merit in his submissions that he was unaware of my investigation and the complaints lodged against him and that he was not provided with sufficient evidence and information to enable him to respond thereto. I informed the President accordingly in a letter addressed to him on 4 March 2014 in response to his submissions, setting out the sequence of my interactions with him and the Presidency relating to my investigation, attaching copies of the relevant correspondence.
- 7.31.27. In concluding his submissions of 14 February 2014, the President expressed the views that the investigation was *“allowed to drag on for a lengthy period with all manner of comments and judgments by all and sundry.”* He also referred to the leaking of what purported to be versions of my Provisional Report to the media and the impact that it, in his view, had on the investigation and the integrity of the office of the Public Protector.
- 7.31.28. In summary, the President submitted that my Provisional Report:
- “Is tainted by lack of proper procedure;*
- Has not applied the rules of natural justice;*

*Suffers from a lack of integrity in that this has been compromised by persistent leaks and public pronouncements;*

*Has adopted the incorrect legal framework in assessing the implementation of the security upgrades.”*

- 7.31.29. As I have already indicated, all the affected and interested parties were afforded a full opportunity to engage me on the evidence and information obtained during the investigation that appeared to implicate them. I have considered every comment and submission, including that of the President for the purpose of this final report and made changes and corrections, where applicable to my provisional views, conclusions and findings. I have also alluded in detail to compliance with the relevant legislation and legal processes, after having considered the submissions made in this regard by the different parties, including the President.
- 7.31.30. Earlier in the report I have addressed the concerns regarding leaks and delays. I have also addressed the procedural fairness. In my respectful view, the President’s concerns have no basis in fact or law.

## **8. THE LEGAL AND REGULATORY FRAMEWORK**

### **8.1. The Legal Framework Regulating the Ethical Conduct of the President and Other Members of the Cabinet and that of Deputy Ministers**

#### **8.1.1. The Constitution**

- 8.1.1.1 Section 83 provides that the President is the Head of State and that he/she must uphold, defend and respect the Constitution as the supreme law of the Republic.

8.1.1.2 The Cabinet consists, in terms of section 91, of the President, as head of the Cabinet, a Deputy President and Ministers.

8.1.1.3 Members of the Cabinet are, by virtue of the provisions of section 92(2), collectively and individually accountable to Parliament for the exercise of their powers and the performance of their functions. They must, in terms of section 92(3) act in accordance with the Constitution.

8.1.1.4 Section 96 provides that:

*“(1) Members of the Cabinet and Deputy Ministers must act in accordance with a code of ethics prescribed by national legislation.*

*(2) Members of the Cabinet and Deputy Ministers may not*

*(a) undertake any other paid work;*

*(b) act in a way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; or*

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

## 8.1.2. The Executive Members’ Ethics Act

8.1.2.1 Section 2 of this Act provides for the publishing by the President of a code of ethics, as contemplated by section 96 of the Constitution.

8.1.2.2 The Public Protector must, by virtue of the provisions of sections 3 and 4 investigate complaints against a Cabinet member (which includes the President) or a Deputy Minister when it is lodged by a member of the National Assembly.

8.1.2.3 A report on the investigation against a Cabinet member must, in terms of section 3, be submitted to the President, who has to submit a copy thereof and any comments thereon to the National Assembly within 14 days, together with a report on any action taken or to be taken in regard thereto.

8.1.3. The Executive Ethics Code

8.1.3.1 This Code was published in terms of section 2 of the Executive Members' Ethics Act.

8.1.3.2 Paragraph 2 requires of Cabinet members *inter alia* to:

- (a) perform their duties and exercise their powers diligently and honestly;
- (b) **act in good faith and in the best interest of good governance;**
- (c) act in all respects in a manner that is consistent with the integrity of their office or the government.

8.1.3.3 Paragraph 2.3 provides, *inter alia*, that members may not act in a way that is inconsistent with their position.

8.1.3.4 *When considering appropriate international bench marks I came across the Code of Ethics for US Government Service, which constitutes a transversal Code of Ethics for all public office bearers and employees in the United States of America (USA). The Code provides that :*

*“ Any person in Government service should:*

*1. Put loyalty to the highest moral principles and to country above loyalty to Government persons, party, or department.*

*2. Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.*



3. *Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.*
4. *Seek to find and employ more efficient and economical ways of getting tasks accomplished.*
5. *Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.*
6. *Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.*
7. *Engage in no business with the Government, either directly or indirectly which is inconsistent with the conscientious performance of his governmental duties.*
8. *Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.*
9. *Expose corruption wherever discovered.*
10. *Uphold these principles, ever conscious that public office is a public trust."*

8.1.3.5 While our Constitution is brief on the specific provisions regarding ethics, if we take the provisions of section 195 on principles of public service and section 237 of the Constitution requires that constitutional obligations be performed diligently and without delay. This import of our constitutional architecture on the ethical standards expected of public office bearers and I believe, officials cannot be far from the 10 ethical standards expected of all

persons entrusted with public power and control over public resources in the USA.

8.1.3.6 At a workshop on ethics, hosted by the Joint Chairpersons of the Parliamentary Joint Committee on Ethics and Members Interests, it was agreed that a universal code of ethics for all entrusted with public power and control over public resources should be developed and implemented throughout the public sector and that there were gaps in the Parliamentary Codes of Ethics, the Executive Code of Ethics and other sector codes, which should also be addressed.

## 8.2. **The Legal and Policy Framework Regulating the Installation and Implementation of Security Measures at the Private Residence of the President**

### 8.2.1. The Application of the Ministerial Handbook as Approved by the Cabinet on 7 February 2007

8.2.1.1 The Ministerial Handbook (“the Handbook”) regulates the privileges to which members of the Executive are entitled, by virtue of the offices that they occupy.

8.2.1.2 A “*member*” is, for the purposes of the application of the provisions of the Handbook defined as a Minister, Deputy Minister, Premier, Member of the Executive Council (MEC) and a Presiding Officer/Deputy Presiding Officer in Parliament or in the Provincial Legislature, except in cases where specific categories of the above members are mentioned as national or provincial members.

8.2.1.3 The President is therefore not a “*member*” of the Executive for the purposes of the general application of the provisions of the Handbook.

- 8.2.1.4 Chapter 4 that deals with residences only applies to “members”.
- 8.2.1.5 Annexure E to the Handbook consists of the *Policy on Security Measures at the Private Residences of Public Office Bearers*, which was approved by the Cabinet on 11 June 2003.
- 8.2.1.6 This Policy provides that that the Minister of Public Works may approve a state contribution of a non-recoverable maximum amount of R100 000 in respect of security measures taken at the private residence of a public office bearer. If the cost exceeds R100 000, the difference shall be paid by the public office bearer.
- 8.2.1.7 It should be noted in this regard that the *Remuneration of Public Office Bearers Act, 1998* excludes the President specifically from the definition of “office bearer”. This is also evident from the fact that the salary, allowances and benefits of the President are provided for separately in this Act.
- 8.2.1.8 It is furthermore clear from the provisions of Annexure E that the initiative for security measures has to be that of the Public Office Bearer, who has to be satisfied with the cost estimation and is responsible for contracting with service providers. The involvement of the DPW is limited to assisting with determining the scope and costs of the measures to be taken and providing a financial contribution of not more than R100 000.
- 8.2.1.9 Annexure E therefore clearly does not apply to the project referred to in this report.

- 8.2.2. The Cabinet Policy: Security Measures at the Private Residences of the President, Deputy President and former Presidents and Deputy Presidents, approved on 20 August 2003
- 8.2.2.1 This Cabinet Policy provides that at the request of the President or the Presidency, the SAPS together with the National Intelligence Agency (NIA) (now the State Security Agency) evaluate the security situation of private properties that are owned and regularly used by the President, and in exceptional circumstances, his immediate family.
- 8.2.2.2 The evaluation is based on a threat analysis conducted by the NIA.
- 8.2.2.3 Based on the evaluation the SAPS and the NIA have to formulate a proposal on appropriate security measures (staff and structures) that should be put in place by the State. These measures have to be submitted to the Inter-Departmental Security Coordinating Committee, for technical assessment.
- 8.2.2.4 The DPW then has to prepare cost estimates of the proposed structural security measures and submit it to the SAPS.
- 8.2.2.5 Thereafter, the SAPS have to advise the Minister of Police on the proposed safety measures, including the cost thereof.
- 8.2.2.6 Whatever measures are accordingly approved by the Minister of Police shall be communicated to the President for his or her consent.
- 8.2.2.7 The SAPS then has to submit the measures, as approved by the President to the Minister of Public Works for approval of the structural components.
- 8.2.2.8 The security measures agreed to in the above process have to be implemented as follows:

- (a) SAPS personnel and related costs have to be provided and funded by the SAPS;
- (b) structural additions and amendments have to be provided, maintained and funded by the DPW.
- 8.2.2.9 This Policy further provides that the security situation at the private residence of the President shall from time to time be revisited by the SAPS based on the findings of a threat analysis done by the NIA. The SAPS has to report its findings to the Minister of Police. This may at any time lead to the upgrading, downgrading or termination of security measures.
- 8.2.3. The National Key Points Act, 1980
- 8.2.3.1 Section 2 of this Act provides that if it appears to the Minister of Police at any time that any place is so important that its loss, damage, disruption or immobilization may prejudice the Republic, or whenever he/she considers it necessary or expedient for the safety of the Republic or in the public interest, he/she may declare that place a National Key Point.
- 8.2.3.2 When in the opinion of the Minister it will contribute to the safeguarding of two or more National Key Points if certain steps in respect of their security are taken jointly by their owners, he may, in terms of section 2A(1), declare, those Key Points a National Key Points Complex.
- 8.2.3.3 The owner of the affected place has to be provided with a written notice of the declaration.
- 8.2.3.4 Section 3 provides further that on receipt of the notice, the owner, after consultation with the Minister of Police, has to take steps at his/her own expense and to the satisfaction of the Minister in respect of the security of the place.

- 8.2.3.5 Should the owner fail to take such steps, the Minister may by written notice in terms of section 3(2) order him/her to take within a specified time in the notice and at his or own expense take such steps in respect of the security of the Key Point as may be specified in the notice. If the owner without reasonable cause refuses or fails to comply with the notice, it amounts to a criminal offence.
- 8.2.3.6 If the owner refuses or fails to take the steps specified in the said notice within the period specified, the Minister may take or cause to be taken the steps and may recover the cost thereof to such extent that the Minister may determine.
- 8.2.3.7 Section 3A affords the Minister of Police with the power to take over the duties of the owner to secure the place declared as a National Key Point. He/she may do so at any time and will then be acting on behalf of and with the consent of the owner to take the steps or cause it to be taken, which are or may become necessary to secure the National Key Point. The owner shall in such a case be liable for the cost of the steps taken to the extent determined by the Minister.
- 8.2.3.8 A Special Account for the Safeguarding of National Key Points is established in terms of section 3B of this Act. It provides that money appropriated by Parliament is paid into the account, as well as money recovered from the owner of a National Key Point.
- 8.2.3.9 The moneys in the account are to be utilised, *inter alia*, to render assistance to the owner of a National Key Point in respect of the steps that need to be taken to secure the place.
- 8.2.3.10 The Minister of Police has to designate a person in the service of the State to be the accounting officer of the account.

8.2.3.11 The account is to have its own bank account and has to be audited by the Auditor-General.

#### 8.2.4. The South African Defence Review

8.2.4.1 In May 1996, Parliament approved the *White Paper on National Defence for the Republic of South Africa* that constituted the Defence Policy for the new democratic state.

8.2.4.2 The White Paper provides for a Defence Review, the aim of which was to elaborate on the Defence Policy Framework.

8.2.4.3 The South African Defence Review was issued in 1998. Chapter 7 of the Defence Review provides for the Non-Military tasks to be performed by the South African National Defence Force (SANDF).

8.2.4.4 Paragraph 9 of this Chapter states that the SANDF provides VIP air transport for the President, the Deputy President, the Minister and Deputy Minister of Defence and, where capacity allows, for other Cabinet Ministers and Premiers.

8.2.4.5 Paragraph 22 provides that:

*“The SAMHS (South African Military Health Service) also provides medical care to the President, the Deputy President, the Minister and Deputy Minister of Defence and, at the request of the Department of Foreign Affairs, foreign VIPs visiting South Africa.”*

### 8.3. **The Relevant Provisions Relating to the Protection of Information Pertaining to the Security Measures Implemented at the Private Residence of the President**

8.3.1. The Cabinet Policy: Security Measures at the Private Residences of the President, Deputy President and former Presidents and Deputy Presidents, approved on 20 August 2003

8.3.1.1 The Cabinet Policy does not contain any reference to the protection of information that relate to the security measures implemented at the President's private residence.

8.3.2. The National Key Points Act, 1980

8.3.2.1 Section 10(2) of this Act provides in this regard that:

*“Any person who furnishes in any manner whatsoever any information relating to the security measures, applicable at or in respect of any National Key Point or in respect of any incident that occurred there, without being legally obliged or entitled to do so, or without the disclosure or publication of the said information being empowered by or on the authority of the Minister, except as may be strictly necessary for the performance of his functions in regard to his employment in connection with, or his ownership of, or as may be necessary to protect, the place concerned, shall be guilty of an offence and on conviction liable to a fine not exceeding R10 000 or to imprisonment for a period not exceeding three years or both such fine and such imprisonment. (emphasis added).*

8.3.3. The Protection of Information Act, 1982

8.3.3.1 The relevant provision that applies to the information referred to in this report is section 4 of this Act.

8.3.3.2 It provides that any person who discloses information that is in his or her possession or under his/her control or at his/her disposal on account of



holding an office under the Government, that he/she knows or should reasonably know, the security or other interests of the Republic demands to be kept secret, to anyone other than:

- (a) someone lawfully entitled to it; or
- (b) someone to whom he/she has a duty to disclose it in the interests of the Republic shall be guilty of an offence.

#### 8.3.4. The Minimum Information Security Standards

8.3.4.1 The Minimum Information Security Standards (MISS) is the National Information Security Policy, approved by the Cabinet on 4 December 1996.

8.3.4.2 The Preface to this Policy states that it was compiled as an official government policy document on information security, which must be maintained by all institutions that handle sensitive or classified material.

8.3.4.3 Chapter 1 of the Policy provides that government institutions should compile its own rules of procedure in respect of the protection of information, based on the minimum standard set by the Policy. In so doing, it is expected of all institutions to strive for reconciliation between the requirements of sound administration and effective security.

8.3.4.4 The classification of official matters is referred to in Chapter 2. Paragraph 2 of this Chapter provides that the head of an institution is responsible for the classification of a document. Paragraph 1.2 of Chapter 4 states in this regard that:

*“The responsibility for the gradings and regradings of document classifications rests with the institution where the documents have their*

*origin. This function rests with the author or head of the institution or his (or her) delegate(s)."*

8.3.4.5 The head of an institution is defined by paragraph 21 of Chapter 2 as:

*"The person who is serving as the head of the institution, whether defined by law or otherwise, including the official acting in his place".*

8.3.4.6 The classification can, in terms of paragraph 3.1, be as follows:

- (a) Restricted;
- (b) Confidential;
- (c) Secret;
- (d) Top Secret.

8.3.4.7 The following note appears under paragraph 3.4 of Chapter 2 of the Policy:

*"Security measures are not intended and should not be applied to cover up maladministration, corruption, criminal actions, etc, or to protect individuals/officials involved in such cases."*

8.3.4.8 The definition of the classification of "Top Secret", which is relevant to the matters referred to in this report, is, in terms of paragraph 3.4.4. of Chapter 2 of the Policy, as follows:

*"TOP SECRET is the classification given to information that can be used by malicious/opposing/hostile elements to neutralise the objectives and functions of institutions and/or state."*

8.3.4.9 The test to be applied to determine whether information should be classified as TOP SECRET is whether the compromise thereof:

- (a) *“can disrupt the effective execution of information or operational planning and/or plans;*
- (b) *can seriously damage operational relations between institutions;*
- (c) *can lead to the discontinuation of diplomatic relations between states;*  
*and*
- (d) *can result in the declaration of war.”*

8.3.4.10 The following explanation of the classification is provided:

*“TOP SECRET is used when the compromise of information results in:*

- *The functions of a state and/or institution being brought to a halt by disciplinary measures, sanctions, boycotts or mass action;*
- *The severing of relations between states; and*
- *a declaration of war.” (emphasis added)*

8.3.4.11 *“Compromise”* is defined in paragraph 7 of Chapter 2 as:

*“The unauthorised disclosure/exposure or loss of sensitive or classified information, or exposure of sensitive operations, people or places, whether by design or through negligence.” (emphasis added)*

#### 8.4. The Legal and Policy Framework Regulating the Procurement of Goods and Services by the DPW

##### 8.4.1. Legal framework

8.4.1.1 Section 217 of the Constitution is the basis upon which all procurement practices within the public sector are developed. The Constitution demands that when an organ of state contracts for goods and services it must do so in accordance with a system which is fair, equitable, transparent competitive and cost effective.

8.4.1.2 In terms of section 195, the public administration must be governed by the democratic values and principles enshrined in the Constitution, including the promotion of the efficient, economic and effective use of public resources.

8.4.1.3 The key instrument regulating procurement is the Public Finance Management Act, 1999 (PFMA) the purpose of which is set out in the preamble to the Act, that reads as follows:

*“To regulate financial management in the national government and provincial governments; to ensure that all revenue, expenditure, assets and liabilities of those governments are managed efficiently and effectively; to provide for the responsibilities of persons entrusted with financial management in those governments; and to provide for matters connected therewith.”*

8.4.1.4 In terms of section 76(4)(c) of the PFMA, the National Treasury may make regulations or issue instructions applicable to all institutions to which the PFMA applies concerning, inter alia, the determination of a framework for an appropriate procurement and provisioning system which is in keeping with the dictates of Section 217(1) of the Constitution.

- 8.4.1.5 The DPW business processes require a client Department to confirm availability of funding prior to the procurement process being embarked upon. The DPW, upon receiving a request to satisfy a need, embarks upon a process of estimating the costs to the client Department. This document allows the client Department to estimate the costs it would possibly incur and allows the Department to assess its budget and to plan for future budgets.
- 8.4.1.6 The Supply Chain Management (SCM) framework is set out in Regulation 16A of the Treasury Regulations, which are applicable to all departments in national and provincial governments.
- 8.4.1.7 The Treasury Regulations set out the areas that form the SCM framework and this is to be found in Regulation 16A.3.2 which reads as follows:

*“A supply chain management system referred to in paragraph 16A.3.1 must –*

- (a) be fair, equitable, transparent, competitive and cost effective;*
- (b) be consistent with the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);*
- (c) be consistent with the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); and*
- (d) provide for at least the following: –*
  - (i) demand management;*
  - (ii) acquisition management;*
  - (iii) logistics management;*
  - (iv) disposal management;*
  - (v) risk management; and*
  - (vi) regular assessment of supply chain performance.”*

- 8.4.1.8 Regulation 11(a) of the Regulations issued in terms of the Preferential Procurement Policy Framework Act, 2000, provides that an organ of state must, prior to making an invitation for tenders properly plan for and as far as

possible, accurately estimate the costs of the provision of services or goods for which an invitation for tenders is to be made.

#### 8.4.2. Supply Chain Management Guidelines

8.4.2.1 In February 2004, the National Treasury issued a document entitled “*Supply Chain Management: A Guide for Accounting Officers/Authorities*” (SCM Guide). The purpose of the SCM Guide was to give guidance to accounting officers in fulfilling their roles within the SCM framework.

8.4.2.2 Paragraph 3 of the SCM Guide sets out guidelines in regard to demand management and reads as follows:

#### **“Demand management**

##### 3.1 *Introduction*

3.1.1 *Demand management is the first phase of SCM. The objective is to ensure that the resources required to fulfil the needs identified in the strategic plan of the institution are delivered at the correct time, price and place and that the quantity and quality will satisfy those needs. As part of this element of SCM, a total needs assessment should be undertaken. This analysis should be included as part of the strategic planning process of the institution and hence will incorporate the future needs.*

3.1.2 *It is vital for managers to understand and utilise sound techniques to assist them in their planning, implementation and control activities. **As part of the strategic plan of the institution, resources required for the fulfilment of its obligations should be clearly analysed.** This includes a detailed analysis of the goods, works and services required, such as how much can be accomplished, how quickly and with what materials, equipment, etc.” (emphasis added)*

8.4.2.3 This Guide is applicable to all accounting officers and contains the following principles:

- (a) The identification of a need is the initiating trigger to a procurement process.
- (b) The fulfilment of the need should form part of the strategic objectives of the department and a needs analysis should therefore be part of the strategic planning process.
- (c) Sound techniques should be utilised in conducting the needs analysis.
- (d) The need should be linked to the budget.

8.4.2.4 Paragraph 1.3.2.2 of the SCM Guide states that Demand Management is the beginning of the supply chain where:

- (a) a needs assessment is done to ensure that goods or services are acquired in order to deliver the agreed service;
- (b) specifications are precisely determined;
- (c) requirements are linked to the budget; and
- (d) the supplying industry has been analysed.

8.4.2.5 Planning therefore plays an integral part in supply chain management.

8.4.3. The Government Immovable Asset Management Act, 2007 (GIAMA)

8.4.3.1 The purpose of this Act is to provide a framework for the management of immovable assets held by a national or provincial department and to provide

minimum standards in respect of immovable asset management. Section 5 of the Act sets out the principles of asset management and reads as follows:

*“(1) The following are principles of immovable asset management:*

- (a) an immovable asset must be used efficiently and becomes surplus to a user if it does not support its service delivery objectives at an efficient level and if it cannot be upgraded to that level;*
- (b) to minimise the demand for immovable assets, alternative service delivery methods that do not require immovable assets must be identified and considered;*
- (c) in relation to an acquisition, it must be considered whether—*
  - (i) a non-immovable asset solution is viable;*
  - (ii) an immovable asset currently used by the state is adequate to meet a change in its service delivery objectives; and*
  - (iii) the cost of the immovable asset as well as operational and maintenance cost throughout its life cycle justifies its acquisition in relation to the cost of the service;*
- (d) immovable assets that are currently used must be kept operational to function in a manner that supports efficient service delivery;*
- (e) When an immovable asset is acquired or disposed of best value for money must be realised. . .” (emphasis added)*

8.4.3.2 The effect of GIAMA is, *inter alia*, to enforce optimal use of immovable property. GIAMA, through section 21, creates a criminal offence should an accounting officer wilfully or negligently contravene or fail to comply with any provision of this Act.

8.4.3.3 This Act further provides that the DPW must annually prepare a custodian asset management plan (C-AMP). A comprehensive C-AMP will include an



acquisition plan, refurbishment plan, maintenance & repairs, and disposal plan. In the interim, the needs for built environment, professional services, construction, building and contracting services, land, buildings and facilities will have to be estimated based on the annual budget and the business plan of the units involved in the acquisition of construction related services.

#### 8.4.4. The Requirements in Respect of the DPW Budget

8.4.4.1 The DPW business processes require of a client department, such as the SAPS and the DOD, to confirm availability of funding prior to the procurement process being embarked upon. Although the DPW is involved in the actual acquisition and procurement of property and goods and services relating thereto, the costs are to be borne by the client department.

8.4.4.2 The DPW, upon receiving a request to satisfy a need, embarks upon a process of estimating the costs to the client department. This allows the client department to assess its budget and to plan for the budgeting of the expected expenditure.

8.4.4.3 As stated earlier, the National Treasury guidelines expect a need to be linked to a budget and strategic objectives. Each department is expected to have a strategic plan in place that identifies the aims of the department and provides a budget towards achieving the said aims.

8.4.4.4 Regulation 5.1 of the Treasury Regulations makes it mandatory for the accounting officer of an institution to prepare a strategic plan for the forthcoming Medium Term Expenditure Framework (MTEF) cycle.

8.4.4.5 In terms of Regulation 5.2.2 the strategic plan must, inter alia, include details of proposed acquisitions of fixed or movable capital assets, planned capital investments and rehabilitation and maintenance of physical assets.

- 8.4.4.6 The PFMA, together with the Treasury Regulations and guidelines, ensure that proper planning is in place, a need is identified, analysed, and included in the strategic planning and therefore budgeted for.
- 8.4.4.7 The Medium Term Expenditure Frame Work (MTEF) issued by the National Treasury in 2007, which covers the period under review in this Report, emphasises this point and the following is contained in the document –
- “The link between strategic planning, budgeting and spending plans is important in compiling a credible budget, as inadequate planning could lead to budgets which do not give effect to strategic priorities”.*
- 8.4.4.8 Section 38(2) of the PFMA reinforces this principle of proper planning. This section reads as follows:
- “An accounting officer may not commit a department, trading entity or constitutional institution to any liability for which money has not been appropriated.”*
- 8.4.4.9 Expenditure must be in accordance with the vote of the department and the main divisions within the vote. This requirement is encapsulated in section 39 of the PFMA. Read with section 38(2), the principle of proper planning is once again highlighted.
- 8.4.4.10 The PFMA, however, recognises situations where a need is not linked to a budget. In these instances four options are available to a department to fund such needs.
- 8.4.4.11 The first option deals with a situation where no funding has been appropriated, but due to an emergency, funds are required for the purposes of procurement.

8.4.4.12 Section 16 of the PFMA allows the Minister of Finance to authorise the use of funds from the National Revenue Fund to defray expenditure provided that:

- (a) the expenditure is of an exceptional nature;
- (b) expenditure is not currently provided for; and
- (c) the expenditure cannot be postponed to a future appropriation cycle without serious prejudice to the public interest.

8.4.4.13 The second option is in the form of section 43 of the PFMA which allows an accounting officer to utilise a saving in an amount appropriated under a main division within a vote towards the defrayment of excess expenditure under another main division within the same vote. This virement of funds is, however, limited to 8% of the amount appropriated under that main division and a report concerning the utilisation of the savings must be presented to the Executive Authority (Minister) and the relevant treasury.

8.4.4.14 The third option open to departments is to request further funds from National Treasury. This is, however, limited in its application and would only be applicable to situations where:

- (a) a department inherited new functions; or
- (b) where due to policy decisions new needs arise.

8.4.4.15 The fourth option is to re-prioritise expenditure within a main division of a vote to accommodate the need.

8.4.5. The Prescripts Relating to Urgency

- 8.4.5.1 The PFMA and Treasury Regulations require that the default position in regard to procurement is that a competitive bid procedure be embarked upon.
- 8.4.5.2 However, the legislation recognises that in certain cases it is impractical to invite competitive bids and as such it is permissible to procure goods or services by other means, provided that reasons for the deviation are recorded and approved by the accounting officer (Regulation 16A6.4).
- 8.4.5.3 The National Treasury issued Practice Note 8 of 2007/08 wherein, inter alia, urgent, emergency or sole supplier cases were further regulated. Paragraph 3.4.3 thereof provides as follows:
- “Should it be impractical to invite competitive bids for specific procurement ,e.g. in urgent or emergency cases or in case of a sole supplier, the accounting officer / authority may procure the required goods or services by other means, such as price quotations or negotiations in accordance with Treasury Regulation 16A6.4. The reasons for deviating from inviting competitive bids should be recorded and approved by the accounting officer / authority or his/her delegate. Accounting officers/authorities are required to report within ten (10) working days to the relevant treasury and the Auditor-General all cases where goods and services above the value of R1 million (VAT inclusive) were procured in terms of Treasury Regulation 16A6.4. The report must include the description of the goods or services, the name/s of the supplier/s, the amount/s involved and the reasons for dispensing with the prescribed competitive bidding process.”(emphasis added)*
- 8.4.5.4 The SCM Guide at paragraph 4.7.5.1 notes that in urgent and emergency cases, an institution may dispense with the competitive bidding process, but must act in a manner that is in the best interest of the State.

8.4.5.5 The SCM Guide defines an “*emergency case*” as –

*“A case where immediate action is necessary in order to avoid a dangerous or risky situation or misery.”* (emphasis added)

8.4.5.6 An “*urgent case*” is defined as “*a case where early delivery is of critical importance and the invitation of competitive bids is either impossible or impractical.*”. This definition is, however, subject to the qualification that “*A lack of proper planning should not be constituted as an urgent case.*” (emphasis added)

8.4.5.7 The following principles can be gleaned from this definition of urgency:

- (a) The early delivery is the key requirement which would decide the success or failure of the project;
- (b) The time period available for the acquisition makes it impractical or impossible to pursue a competitive bid process;
- (c) The urgency was not foreseeable or the result of dilatory conduct; and
- (d) For a situation to be classified as urgent all three the above requirements must be met.

#### 8.4.6. The Responsibilities of Accounting Officers in Respect of SCM

8.4.6.1 Section 38(1)(a)(iii) of the PFMA prescribes that the accounting officer of a department must ensure and maintain an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective.

8.4.6.2 In terms of section 38(1)(c)(ii) of the PFMA, an accounting officer must take effective and appropriate steps to prevent unauthorised, irregular and fruitless and wasteful expenditure. It is expected of the accounting officer to take effective and appropriate disciplinary steps against any official in the service of the department who makes or permits an unauthorised, irregular and fruitless and wasteful expenditure. Irregular, unauthorised or fruitless and wasteful expenditure is regarded as an act of financial misconduct in terms of section 38(1)(h)(iii) of the PFMA.

8.4.6.3 An accounting officer is, in terms of section 86(1) of the PFMA guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years, if he or she wilfully or in a grossly negligent way fails to comply with a provision of, inter alia, section 38, referred to above.

#### 8.4.7. Assignment of Powers and Duties by Accounting Officers

8.4.7.1 In terms of section 44 of the PFMA, the accounting officer for a department may in writing delegate any of the powers entrusted or delegated to him/her to an official in that department.

8.4.7.2 However, in terms of section 44(2) (d) of the PFMA, a delegation to an official does not divest the accounting officer of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.

#### 8.4.8. The Responsibilities of Other Officials

8.4.8.1 Section 45 of the PFMA provides that an official in a department must ensure that the system of financial management and internal control established for that department is carried out within the area of responsibility of that official.

8.4.8.2 Officials are also responsible for the effective, efficient, economical and transparent use of financial and other resources within that official's area of

responsibility. They must take effective and appropriate steps to prevent, within his/her area of responsibility, any unauthorised, irregular and fruitless and wasteful expenditure.

#### 8.4.9. The Powers of the National Treasury

8.4.9.1 Section 6(2) of the PFMA provides that the National Treasury must intervene by taking appropriate steps to address the serious material breach of the Act by a department and may do anything further that is necessary to fulfil its responsibilities effectively.

#### 8.4.10. The SCM Policy of the DPW

8.4.10.1 The relevant SCM Policy (the Policy) of the DPW was approved by the Director-General on 29 April 2008 and came into operation on 1 May 2008.

8.4.10.2 Paragraph 14 of the Policy provides that its purpose is to formalize the DPW's SCM Policy within the context of the Treasury Regulations and that it consists of the following three main components:

- (a) Directives, providing specific direction on supply chain management and key decision points;
- (b) Delegations, assigning specific responsibilities to DPW role players, in terms of section 38 of the PFMA; and
- (c) Business processes, aligning the DPW's day-to-day procedures with the overall requirements of the policy, directives and delegations.

8.4.10.3 The primary objective of the Policy, in terms of its paragraph 15, is to create an environment that enables the DPW to manage the supply of goods, services and works in a manner that is fair, equitable, transparent,

competitive and cost effective. One of its focus areas in this regard is demand management *“to link SCM practices to the strategic planning and budgeting processes and to improve strategies and planning for acquisition, maintenance and disposal.”* Another is *“introducing the concept of value for money to balance socio-economic and black economic empowerment objectives with the cost of the product and services, through appropriate scoring models.”*

8.4.10.4 Paragraph 18 provides for special measures to accommodate empowerment initiatives as far as the construction industry is concerned. Potentially emerging contractors will, in terms of paragraph 25 be invited to tender for work in a category that is one higher than that in which they are graded by the CIDB, provided that they are part of the DPW’s contractor development programmes.

8.4.10.5 The purpose of demand management is described in paragraph 37 of the Policy as:

*“...to ensure that resources to fulfill the needs identified in the strategic plan are delivered at the correct price, time, place, quantity and quality to satisfy the needs.”*

8.4.10.6 Paragraph 38 states that following in this regard:

*“Proper demand management practices will allow the SCM unit to prepare itself and the supplier base to meet the need for services by DPW. Introducing demand management will require:*

- a. that a needs assessment is conducted prior to the beginning of the MTEF period;*
- b. specifications are precisely determined; and*
- c. the supplier industry has been analysed.”*



8.4.10.7 The needs assessment process must, according to paragraph 41, “be embedded in the business planning and budgeting processes as part of the annual budgeting and business plan cycle.” As far as immovable assets are concerned, it is provided that:

*“In terms of the Government Immovable Asset Management Act, (GIAMA), DPW must annually prepare a custodian asset management plan.”*

8.4.10.8 The DPW must, in terms of paragraph 47 of the Policy, have a register of suppliers. This register is regarded as a key instrument to ensure that the DPW has sufficient appropriately qualified suppliers to provide the department with goods or to perform required services. The stated objectives of the Supplier Register are, inter alia, to

*“assess the profile of suppliers available in the market;*

*maintain an approved list of suppliers to aid the quotation method of acquisition;*

*reduce the administrative and bidding/quotation costs for both the Department and the supplier.”*

8.4.10.9 The accounting officer of the DPW must, in terms of paragraph 60 of the Policy, ensure that appropriate delegations are in place for acquisitions in line with the Treasury Regulations and prescripts.

8.4.10.10 The Chief Director: Supply Chain Management of the DPW issued a “*DIRECTIVE: ACQUISITION AND DISPOSAL MANAGEMENT*” in terms of the Policy, on 19 February 2010. The following acquisition procedures to acquire goods and services provided for under paragraph 18 of the Directive are of significance to the project referred to in this report:

PROCEDURE	STANDARD APPLICATION FOR GOODS AND SERVICES AND FOR ENGINEERING AND CONSTRUCTION	VALUE THRESHOLD
Open Procedure	<p>All bids above the value threshold must be solicited through the Open Procedure.</p> <p>Vendors may submit bid offers in response to an invitation by the Department to do so.</p> <p>The Open Procedure must be used for ad hoc contracts above the value threshold, to award term contracts and to establish a panel of preferred service providers.</p>	Above R500 000
Negotiated Procedure	<p><b>The Negotiated Procedure is the least desirable of all acquisition procedures and Bid Adjudication Committees may approve this procedure as a last resort</b></p> <p>Bids or quotations are solicited from a single vendor. The negotiated procedure may be used in the following circumstances only:</p> <p>If the goods or services must be acquired as a matter of urgency or emergency and a competitive bidding process or other acquisition procedures are impractical, provided that the circumstances giving rise to the urgency were neither foreseeable by the users nor the result of dilatory conduct on their part;</p> <p>Owing to a catastrophic event there is an urgent need for the goods, works or services, making it impractical to use other methods of procurement because of the time involved in using those methods;</p> <p>If the market was tested and no responsive bids were obtained;</p> <p>If there is no competition and only one vendor exists.</p> <p>The reason for using the negotiated procedure must be motivated in the sourcing strategy for approval by the BAC.</p>	Any value

PROCEDURE	STANDARD APPLICATION FOR GOODS AND SERVICES AND FOR ENGINEERING AND CONSTRUCTION	VALUE THRESHOLD
Nominated Procedure	<p><b>The Nominated Procedure is not a desirable acquisition procedure and the relevant BAC may approve this procedure as a last resort</b></p> <p>At least three vendors are nominated from the supplier register or panel of vendors to provide a written or verbal quote.</p> <p>This procedure must be motivated to the BAC.</p> <p>The Nominated Procedure may be used:</p> <ul style="list-style-type: none"> <li>· In emergency cases; or</li> <li>· Where there are time constraints in carrying out the service;</li> <li>· For the supplying of the goods or where the services required are of a specialized nature</li> </ul>	

Figure 16: Acquisition Procedures in terms of DPW policy

8.4.10.11 Paragraph 23 of the Directive relates to *Ad hoc* contracts and provides as follows:

*“Ad hoc contracts will be utilized as follows:*

- a. Goods or services that are required infrequently, or on a once off basis, or where there are no term contractors or panels in place for the required goods or services, will be acquired on an ad hoc basis, either through the open bid procedure or the quotation procedure;*
- b. Vendors will enter into a contract with the Department to render services on a once off basis;*
- c. Ad hoc contracts will be entered into for a contract that has a definite scope of work, timeframe and price (as submitted by the vendor).”*

8.4.10.12 Variation orders are provided for in paragraphs 29 to 33 of the Directive. According to these provisions contract variations refer to any change in the scope of work, specifications or time which was not provided for in the original contract. Variation orders must be recorded in writing. Project

managers are required to confirm the availability of funds before obtaining approval of any variation order.

8.4.10.13 *“Emergency and/or urgent acquisitions”* are provided for as follows in paragraphs 44 to 50 of the Directive:

- “44. A lack of proper planning does not constitute an urgent or emergency case.*
- 45. Under the following circumstances, the Department may dispense with the invitation of bids and may obtain the required goods, works or services by means of quotations or in any other manner that is determined to be in the best interest of the State:*
- a. urgent circumstances; or*
  - b. emergency circumstances.*
- 46. Goods or services may be acquired in an urgent or emergency situation using the following standard acquisition procedures:*
- a. Nominated Procedure;*
  - b. Quotation Procedure;*
  - c. Negotiated Procedure.*
- 47. All urgent and emergency acquisitions for goods and services will be approved verbally by the relevant Regional Manager and in the case of Head Office the Chief Director: SCM.*
- 48. For works related acquisitions the Project Manager will record the reasons and justification for the urgent and/or emergency related acquisitions.*

49. *On completion of the emergency or urgent acquisition, a fully motivated report must immediately be forwarded to the BAC for merit assessment and ratification.*
50. *Negligence on the part of officials in obtaining the necessary approvals will be dealt with in terms of the Department's internal disciplinary proceedings."*

8.4.10.14 The functioning of the BAC is provided for in paragraph 216 of the Directive in terms of which it conducts, inter alia, the following specific tasks in the acquisition process:

- (a) Approval of sourcing strategy. In this regard it is expected of the BAC to consider the strategy that will ensure that the most favourable acquisition process is followed;
- (b) Assessment and award of bids recommended by the BEC;
- (c) Consideration of variation orders;
- (d) Approval of urgent and emergency acquisitions; and
- (e) Awarding of contacts;
- (f) Approval of variation orders. Paragraph 223 provides in this respect that:

*"The BAC must ensure that the variation order does not exceed the scope of work to the extent where the variation order could be perceived as a new contract, or which could have the potential to have prejudiced other vendors by not being included in the original scope of work."*

- 8.4.10.15 In terms of paragraph 190 of the Directive, the BAC operates under delegations as approved by the Accounting Officer of the DPW.
- 8.4.10.16 Annexure C to the Directive deals specifically with the acquisition of professional service providers in the built environment. It provides for only two acquisition procedures, namely quotations in respect of projects with a percentage or time based fee value not exceeding R500 000, and Open Tender.
- 8.4.10.17 It must be noted that in terms of the DPW's SCM Circular of 2009/10, issued on 25 May 2009, a Special National Bid Adjudication Committee (SNBAC) was appointed for acquisitions exceeding R20 million.
- 8.4.11. The Role of the DPW Regional Offices in the SCM process in Respect of the Procurement of Goods and Services
- 8.4.11.1 It was established through the course of the investigation that under normal circumstances the client department submits a needs analysis and funding confirmation to the Key Accounts Management (KAM) division located at the Head Office of the DPW.
- 8.4.11.2 The KAM division then fully assesses the client's need, including the nature and extent of the goods and services required.
- 8.4.11.3 When satisfied that the relevant requirements are met the KAM division then issues a Procurement Instruction (PI) to the DPW Regional Office in whose area the goods and services are to be procured.
- 8.4.11.4 The PI requires of the Regional Office to follow the SCM principles, procedures and processes in the procurement of the goods and services to the satisfaction of the client department, in terms of the approved norms and cost.

- 8.4.11.5 If the cost exceeds R20 million a recommendation relating to an appropriate procurement strategy must be submitted to the (Special National Bid Adjudication Committee (SNBAC) for approval.
- 8.4.11.6 Once approved by the SNBAC, the procurement strategy must be implemented by the Regional Office.
- 8.4.11.7 The Regional Office then becomes responsible for the initiation of the procurement process in compliance with the approved procurement strategy.
- 8.4.11.8 The Regional Office is required to provide regular feedback to the KAM division of the progress made throughout the procurement process.
- 8.4.12. The Delegations to the Project Manager and Other Officials of the DPW
- 8.4.12.1 On 3 October 2005, the Director-General of the DPW issued delegations to officials of the Department, in terms of the provisions of the PFMA, in a document entitled *“DELEGATION OF POWERS, DUTIES AND FUNCTIONS WITH REGARD TO THE MANAGEMENT OF SITE CLEARANCE-, BUILDING-, LEASING-OR ENGINEERING PROJECTS, VESTED IN THE DIRECTOR-GENERAL BY VIRTUE OF HIS ROLE AS DIRECTOR-GENERAL/ACCOUNTING OFFICER OF THE DEPARTMENT OF PUBLIC WORKS.”*
- 8.4.12.2 Mr Rindel indicated during the investigation that the delegations referred to in this document still applied at the time of its implementation.
- 8.4.12.3 The Introduction to the delegation document states that delegations apply to posts and therefore to any person formally appointed to that post. It is further required of the officials affected by the delegations to be conversant with the relevant legal and policy frameworks that apply to their functions. The

document further provides that the delegations empowered managers to take decisions for which they would be held accountable and that:

*“Although duties have been delegated to the official, the Accounting Officer is still held accountable together with the person who has been delegated.”*

8.4.12.4 A Project Manager is defined by the delegation document as:

*“An official appointed in terms of these delegations to manage a site clearance-,building, leasing-or engineering project on behalf of the Director-General and shall deem to include all professional staff members of the Chief Directorate: Professional Services tasked with projects, related to the built environment, aimed at compiling policy documents, norms, standards, pro-forma documentation, manuals and all other related assignments, including the management of Consultant appointments to achieve the desired end products(s).” (emphasis added)*

8.4.12.5 In terms of paragraph 1.6 of the delegation document, the approval to improve privately owned land can be granted at the level of a Deputy Director-General. However, it has to be based on an accepted feasibility study and recommendation by the relevant Chief Director: Key Account Management and the Chief Director: Professional Services.

8.4.12.6 The acceptance of a Procurement Instruction was delegated to a number of officials at Director Level on condition that the Procurement Instruction must be complete in all respects, including funds allocation, preliminary programme, cash flow/budget particulars and registration on the WCS.

8.4.12.7 Paragraph 4.1 delegated the approval and amendment of sketch plans in the case of a building project to the Directors: Projects and Maintenance, Professional Services, Project Management Support, Special Projects and the Transaction Manager. The approval was subject to the recommendation



of the Project Manager and the following general notes and conditions applied:

- “1. *Sketch plans and/or preliminary design reports of all projects consisting of:*
  - (a) new work;*
  - (b) upgrading or alterations to existing buildings/installations/ engineering infrastructure or*
  - (c) repair and renovation/maintenance in excess of an estimated value larger than R5 000 000*

*must be subjected to the scrutiny and comment of the Scrutiny Com at Regional Level for projects with an estimated value of less than R10M and to the Scrutiny Com at Head Office level for projects with an estimated value of more than R10M.*

2. *If serious or far reaching comments were passed by the Scrutiny Com, and the Professional Team was required to re-submit an amended/revised design, such amended/revised design must first be completed before final approval stages, referred to below, can be considered. PM (Project Manager) to consider a further round at the Scrutiny Com.*
3. *The final approval power (delegated power as above) must only be executed subject to the comments by the Scrutiny Com, design documents being in compliance with the prescribed space norms and cost limits, funds being available and the Client Department having expressed its satisfaction and granted written approval on the drawings/report.*

4. *Approvals given against advise (sic) of Professional Services/Scrutiny Committee will be at the risk of the approving authority in terms of this delegated power.*
5. *The amendments must not be of such extensive nature that it constitutes a new project or new design and may not exceed 5% of the project estimate. PM to supply full motivation as to the necessity for the amendment. Amendments may not violate space norms and cost limit set for the project. If the 5% margin stated herein is exceeded, the comments of the Scrutiny Com are to be obtained again.”*

8.4.12.8 The *Scrutiny Committee* referred to above is defined by the delegation document as:

*“A Committee at Head Office or Regional Office level, comprising of one member of each of the built environment professional sections in the Unit: Professional Services, chaired by the member of Architectural Services in the case of a building project or a member of the relevant Engineering profession in the case of an engineering project. The D/TP Services (Director: Town Planning Services) to form part of the said Committee to verify if the proposed development is in line with Site Development Plans and/or development conditions as negotiated during site creation.”*

## 8.5. **Other rules and policies**

8.5.1. Section 237 of the Constitution which provides that *“all constitutional obligations must be performed diligently and without delay”* is considered relevant in guiding the use of limited state resources. Principles of Public Administration referred to in section 195 was also considered relevant. Section 195(1)(b) provides for *“efficient, economic and effective use of resources to be promoted.”*

- 8.5.2. As one of the principles of public administration, the *Batho Pele White Paper Transforming the Public Service Delivery* was also considered. Key in this policy paper is the principle of putting, first in the context of transforming the Public Service, towards one that is people centred.

## 9. ANALYSIS AND CONCLUSION

### 9.1. **The Legal Authority For The State To Provide Adequate Security At The Private Residence Of The President And The Compliance With The Prescribed Processes**

#### 9.1.1. The Cabinet Policy: Security Measures at the Private residences of the President, Deputy President and former Presidents and Deputy Presidents

9.1.1.1 The Ministerial Handbook does not apply to the provisioning of security measures by the state in respect of the private residence of the President.

9.1.1.2 The President and Deputy President have a special security regime created by the Cabinet Policy: Security Measures at the Private residences of the President, Deputy President and former Presidents and Deputy Presidents, dated 20 August 2003.

9.1.1.3 The key requirements prescribed by the Cabinet Policy which have to be complied with before the DPW commences with the installation of security measures at a President's private residence are set out in the table below:

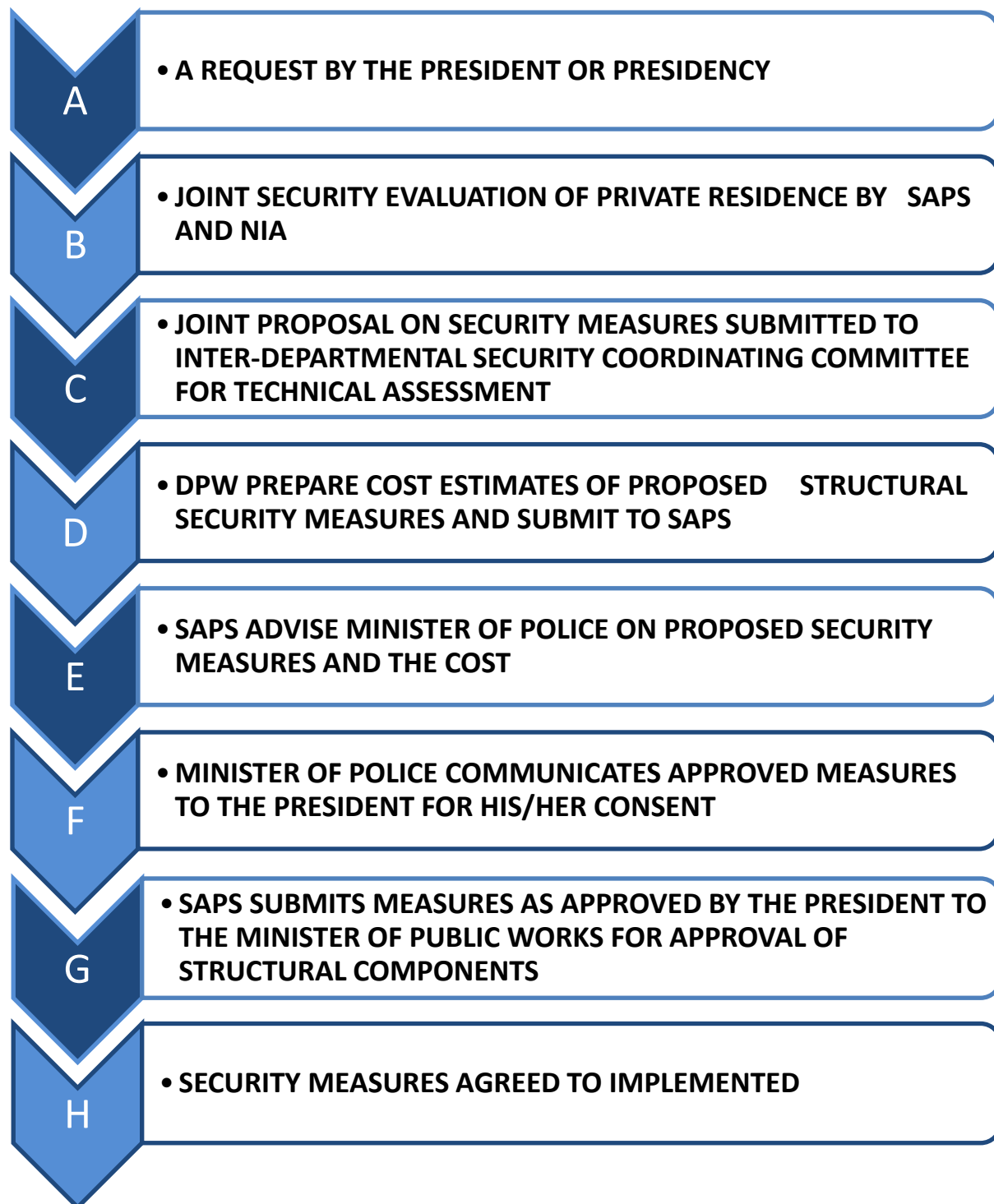


Figure 17: Key Requirements as prescribed by the Cabinet Policy

9.1.1.4 It should be noted that the Cabinet Policy provides that the security measures agreed to have to be implemented as follows:

- (a) SAPS personnel and related costs have to be provided and funded by the SAPS;
  - (b) Structural additions and amendments have to be provided, maintained and funded by the DPW.
- 9.1.1.5 None of these requirements of the Cabinet Policy were complied with in respect of the Nkandla Project, but for the two security evaluations that were conducted by the SAPS. However, there was no indication in the evidence of Brigadier Adendorff that the evaluations were conducted jointly with NIA (SSA) or that it was submitted to the Inter Departmental Security Coordinating Committee for technical assessment.
- 9.1.1.6 Brigadier Adendorff stated that she was not aware of the existence of the Policy, and therefore the Minister of Police was never advised accordingly. Mr Rindel was also not aware that the Nkandla Project was based on the Policy.
- 9.1.1.7 From the investigation it was evident that the SAPS officials involved just accepted that they had to present security evaluations to the DPW and be involved in the Nkandla project, without having a clear understanding of the relevant and applicable regulatory prescripts and requirements. They took no interest in the extent and outrageous escalation of the cost of the Nkandla Project, as they regarded it as DPW's problem despite the fact that large parts thereof related to their areas of responsibility, as contemplated by section 45 of the PFMA.
- 9.1.1.8 The Minister of Police probably did not inform the President and requested his consent, as he was required to have done in terms of the Policy, because he was not advised accordingly by the SAPS.

- 9.1.1.9 The Policy further provided that the security measures that relate to the personnel of the SAPS had to be funded by it. However, in this case all the costs were carried by the DPW.
- 9.1.1.10 I could find no indication that the DPW's accounting officer or the officials to whom he delegated responsibility for the implementation of the Nkandla Project ever enquired into the legal and policy framework in respect of the provision of security measures at the President's private residence. The Policy was already adopted by the Cabinet in 2003, i.e. 6 years before Mr Zuma became the President, and therefore clearly applied in respect of the security measures that were installed at the private residences of former Presidents Mandela and Mbeki. It is therefore highly unlikely that senior officials involved in those projects were not aware of it.
- 9.1.1.11 Some of the officials involved in the Nkandla Project were mistakenly under the impression that the provisions of the Ministerial Handbook applied in this case.
- 9.1.1.12 The failure by the DPW and the SAPS to ensure compliance with the Policy was probably also the result of the absence of a DPW policy framework regulating the installation of security measures at the private residences of the President, Deputy President and former Presidents and Deputy Presidents.
- 9.1.1.13 The result of the failure on the part of the DPW and the SAPS to comply with the provisions of the Policy was that neither the Minister of Police nor the President was accordingly advised of the proposed measures and the cost thereof. It further resulted in the DPW funding the total bill in the absence of an authorizing instrument, which was irregular.
- 9.1.1.14 The non-compliance of the SAPS and DPW with the Cabinet Policy was improper and constitutes maladministration.

## 9.1.2. The National Key Points Act

- 9.1.2.1 The President's private residence was declared a National Key Point by the Minister of Police, in terms of section 2(1) the National Key Points Act, 1980, on 8 April 2010. In the Declaration Certificate the Minister of Police directed the President to pay for all security upgrades at his homestead, which now constitutes a National Key Point.
- 9.1.2.2 The Minister of Police personally signed the Declaration Certificate. I therefore have to accept that he was aware of the provisions of the National Key Points Act at the time.
- 9.1.2.3 The President's private residence was only declared a National Key Point 11 months after he was appointed. By that time the Nkandla Project was already underway. It was not explained during the investigation why this was not done when the project commenced in May 2009 and was regarded as urgent.
- 9.1.2.4 As indicated above, the Cabinet Policy was not complied with and therefore did not constitute legal authority for the expenditure incurred by the DPW in respect of the Nkandla Project. The declaration of the President's private residence as a National Key Point on 8 April 2010 therefore had the result that as from that date, he was required to secure his private residence at his own cost. His failure to do so without reasonable cause would have constituted a criminal offence.
- 9.1.2.5 It is common cause that the President did not implement any security measures in respect of his private residence, as was required of him in terms of section 3 of this Act.

- 9.1.2.6 There is no evidence that the Minister of Police issued a notice in terms of section 3(2) of this Act ordering the President to within a specified period and at his own expense takes steps to secure the premises.
- 9.1.2.7 The Minister of Police could, in terms of section 3A of the National Key Points Act, only have taken over the duties of the President to secure his residence as a National Key Point, on his behalf and with his consent. In such a case, the President was liable for the cost of the steps taken, to the extent determined by the Minister.
- 9.1.2.8 I requested the Minister of Police on several occasions during the investigation to submit the relevant documents and/or correspondence indicating that the President was informed of the actions taken by the Minister as far as securing his private residence was concerned, that he consented to it, that a decision was taken accordingly and that he was informed of his liability for the costs involved.
- 9.1.2.9 No such documents and/or correspondence could be provided and I could find no evidence or indication that the Minister invoked the provisions of section 3A of the National Key Points Act at any time.
- 9.1.2.10 When I raised my views on the evidence pointing at non-compliance with the provisions of the Cabinet Policy of 2003 and the National Key Points Act with the Minister of Police during the investigation, he contended that:

*“There is no provisions in the NKP (National Key Points) Act which requires the President as the owner of the Key Point to pay for the security measures that are implemented at the Key Point if the security measures (security upgrades) are implemented to provide for his own security as a President and not the security of the Key Point. The only instance the President as the owner of the Key Point would be required to pay for the security measures*



*implemented at the Key Point is when such security measures are implemented in order to protect the Key Point and not the President.*

9.1.2.11 I found the reasoning of the Minister difficult to follow as the purpose of the National Key Point Act is the safeguarding of a “*place*” and not a person.

9.1.2.12 The Minister correctly contended that:

*“What is patently clear from the reading of Sections 2 and 3 of the NKP Act is that the security that is required to be implemented by the owner of the Key Point at his cost or expense is the security of the Key Point and not the security or safety of the owner.”*

9.1.2.13 This in my view clearly means that once the Minister had decided that the “*place*” i.e. the President’s private residence had to be declared a National Key Point, the focus was on safeguarding it and not the President. It was the Minister himself that informed the President in the Declaration Certificate that he had to take the safeguarding measures at his private residence at his own cost. The anomaly in this regard is that the President’s private residence was obviously only regarded as a National Key Point, due to the fact he it is his home. If anyone else was living there, it would not have been so declared. It is therefore clearly different from an airport or military installation that would remain a National Key Point, irrespective of its occupants.

9.1.2.14 The Minister maintained that the security measures were implemented by the DPW at the President’s private residence in terms of the Cabinet Policy of 2003. He stated further that:

...

*It is illogical to suggest that the State’s obligation to implement security measures ceased to exist the moment his private residence was declared a Key Point. The State’s obligation to implement security measures at the President’s private residence continued beyond its declaration as a Key Point*

*on 8 April 2010 because the Cabinet Policy of 2003 enjoins the State to provide for the President's safety at his private residence by implementing security upgrades at his private residence. For the above reasons there would have been no legal basis for me as the Minister to have required the President to pay for the security upgrades post 8 April 2010 as required by Section 3(1) of the NKP Act for the simple reason that Section 3(1) of the NKP Act does not apply to the security upgrades that were initiated and implemented in (sic) the President's private residence."*

9.1.2.15 The difficulty I have with the Minister's view is that the Cabinet Policy was not complied with. The measures implemented up to 7 April 2010 were therefore not based on compliance with the relevant instrument. The Minister's submissions further fail to accept that it was he who ordered the President to pay under the National Key Points Act.

9.1.2.16 In his submissions in this regard, the President stated that the security measures implemented at his private residence should not be *"measured against the prescripts of the National Key Points Act."*

9.1.2.17 The President contended in this regard that:

*"A national key point does not out of necessity imply that security features must be present;*

*The regulatory framework of the National Key Points Act relates to the security of the place;*

*security features are assessed and evaluated with specific regard being had to the person, in this instance my position as President of the Republic of South Africa;*

*security measures may be implemented without the declaration of a National Key Point and vice versa;*

*any discussion regarding a contribution by me to the costs of the key point in terms of section 3 relate to the security of the place and not its construction.”*

- 9.1.2.18 As already indicated, I agree with the contention that the purpose of the National Key Points Act is the safeguarding of a place and not a person.
- 9.1.2.19 During their presentation on his submissions, the President’s legal team submitted that a place can be safeguarded without security measures and that the security of a place such as the President’s private residence does not have to involve construction. I found this argument difficult to accept as I could not envisage the safeguarding of a private residence without any security measure, even if it only a palisade fence, that would not involve construction.
- 9.1.2.20 The legal position in my view is therefore that the National Key Points Act was not complied with. The other authorising instrument, being the Cabinet Policy of 2003 was not fully complied with as the prescribed procedures were not adhered to and the boundaries thereof exceeded.
- 9.1.2.21 The expenditure incurred by the DPW in respect of the Nkandla Project was accordingly irregular.
- 9.1.2.22 The failure by the Acting Directors-General of the DPW, to ensure that the expenditure incurred by the DPW in respect of the Nkandla Project was based on a valid authorizing instrument constituted a violation of the provisions of section 38 of the PFMA, was improper and amounts to maladministration.

### 9.1.3. The South African Defence Review

9.1.3.1 The South African Defence Review was issued in 1998, by virtue of the *White Paper on National Defence for the Republic of South Africa*, which constitutes the National Defence Policy.

9.1.3.2 Chapter 7 of the Defence Review provided for the non-military tasks to be performed by the South African National Defence Force (SANDF).

9.1.3.3 In terms of paragraph 9 of this Chapter, the SANDF provides VIP air transport for the President, the Deputy President, the Minister and Deputy Minister of Defence and, where capacity allows, for other Cabinet Ministers and Premiers.

9.1.3.4 Paragraph 22 provides that:

*“The SAMHS (South African Military Health Service) also provides medical care to the President, the Deputy President, the Minister and Deputy Minister of Defence and, at the request of the Department of Foreign Affairs, foreign VIPs visiting South Africa.”*

9.1.3.5 It has already been indicated that no specific documents were provided that expressly authorize the building of a clinic. Another regulatory instrument cited was the Military Doctrines authorising SAMHS to provide medical assistance, including specialised health facilities to government departments on request. It did not seem to make sense that the President’s private household would be classified under government departments. Lt Gen Ramlakan conceded that much of the ground traversed in Nkandla had no previous trail from its own activities in relation to predecessors. A mobile clinic given to former President Mandela in the last years of his life was the closest precedent. Then there was an airport said to have been built a stone throw away from former President Botha’s house in George, which turned out

to be a public airport built 23 km from private residence at Wilderness. In fact, this provided precedence of the approach that keeps the people first while meeting the unprecedented needs of an important dignitary such as the first citizen.

**9.2. The relevance to security of the measures installed and buildings and other items constructed during the project and the excessive expenditure incurred**

9.2.1. As I have indicated above, it was alleged and/or suggested by some of the complainants that the Nkandla Project went beyond addressing the security elements that are necessary for the protection of the President and that it constituted an improper improvement and extension of his private residence.

9.2.2. It is not disputed that the security at the President's private residence had to be improved when he took office in May 2009.

9.2.3. The SAPS, DOD and DPW were responsible for the implementation of the Nkandla Project and the SAPS and the DOD had to carry most of the cost, as the client departments.

9.2.4. In the absence of a clear DPW policy on the implementation of security measures at the private residence of the President, the details and extent of the Nkandla Project were to be informed by the requirements itemised in the security evaluations. The DOD part needed to be based on precedent and where none existed a request for a higher authorisation from a higher authority, such as Cabinet, should have been considered.

9.2.5. It must be understood that the legal and policy framework regulating security measures at the President's private residence do not allow for discretionary decisions regarding additional measures that could be taken. As far as such

discretion was to be exercised, it should in any event have been exercised reasonably.

- 9.2.6. There is a clear mismatch between some of the “big” items in the list and the lists in the Minimum Physical Security Standards instrument, and the list prepared by the security experts. The table below shows this discrepancy.

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MEASURES AUTHORISED BY PRESCRIPTS	MEASURES NOT AUTHORISED BY PRESCRIPTS BUT RECOMMENDED BY SECURITY EVALUATIONS OR INCIDENTAL THERETO	MEASURES NEITHER AUTHORISED BY PRESCRIPTS NOR RECOMMENDED BY SECURITY EVALUATIONS OR INCIDENTAL THERETO
Safe haven Secure room on the surface that could not be reached or surveyed from outside the residence. Should consist of enforced brick walls and ceiling, bullet resistant windows and a bullet resistant door		Safe haven facility underground with air-conditioning and lifts
CCTV Security System		
Intruder alarm system		
Solid walls and bullet resistant glass in certain rooms	Bullet Resistant Glazing installed in all the areas regarded as sensitive	Bullet resistant glass installed in the President's houses and all buildings that he regularly use
Security doors in certain rooms		
Burglar proofing of certain rooms	All windows to be fitted with burglar proofing secured to the walls	
A new secured and security equipped guard hut to be built at the new main gate	2 Additional guards huts	
Brick and Mortar Perimeter fence External and internal perimeter fence around the entire homestead	High security parameter fence	

MEASURES AUTHORISED BY PRESCRIPTS	MEASURES NOT AUTHORISED BY PRESCRIPTS BUT RECOMMENDED BY SECURITY EVALUATIONS OR INCIDENTAL THERETO	MEASURES NEITHER AUTHORISED BY PRESCRIPTS NOR RECOMMENDED BY SECURITY EVALUATIONS OR INCIDENTAL THERETO
Fire-fighting equipment in certain rooms Fire detection system linked to the Control Room and proper fire-fighting equipment in all the buildings of the President	Fire extinguishers and fire hydrants	A fire-pool converted into a swimming pool
Illumination of the residential area		
Security gate at the main entrance		
Security control room		
	Secure garage parking	
Living quarters for SAPS staff with parking facilities		20 thatched roof buildings with a laundry facility, paved roads, landscaping constituting a small residential village
A new borehole to be sunk to improve the water supply to the premises, alternatively, a mini sewer treatment plant to be built	Steel water reservoir and mini sewer treatment plant	





MEASURES AUTHORISED BY PRESCRIPTS	MEASURES NOT AUTHORISED BY PRESCRIPTS BUT RECOMMENDED BY SECURITY EVALUATIONS OR INCIDENTAL THERETO	MEASURES NEITHER AUTHORISED BY PRESCRIPTS NOR RECOMMENDED BY SECURITY EVALUATIONS OR INCIDENTAL THERETO
Tuck shop inside the residential area to be relocated	Tuck shop relocated	
Standby generator for uninterrupted power supply to security systems	Standby generator for uninterrupted power supply to security systems	
Health care facility		Military clinic consisting of a permanent structure furnished with specialized equipment and facilities for the exclusive use of the President, his family and staff.
Helicopter landing pads		
Temporary accommodation for SAPS and DOD staff Park Homes		
		Construction of a new kraal and installation of culvert with remote controlled gate
		Amphitheater and area for marquee tent

MEASURES AUTHORISED BY PRESCRIPTS	MEASURES NOT AUTHORISED BY PRESCRIPTS BUT RECOMMENDED BY SECURITY EVALUATIONS OR INCIDENTAL THERETO	MEASURES NEITHER AUTHORISED BY PRESCRIPTS NOR RECOMMENDED BY SECURITY EVALUATIONS OR INCIDENTAL THERETO
		Relocation of 4 households
Patrol roads between fences		Elaborate paved roads, terraces and walkways
		Visitors Lounge
	Landscaping necessary to rehabilitate land and address storm water	Other landscaping

Figure 18: Breakdown of Authorised, Unauthorised and Non-Security Related Measures Implemented in the Nkandla Project

- 9.2.7. The Minister of Police suggested during the investigation that one would require the opinion of a security expert to determine whether the measures that were implemented by the DPW went beyond what was required for the security of the President.
- 9.2.8. There is no evidence indicating that Mr Makhanya had any experience in the design of security related projects. The argument presented that being an architect qualifies him to design security installations has the same implication as arguing that just because I am a lawyer I am an expert at any area of the law. That cannot be logical.
- 9.2.9. Regarding how I was to determine legitimate installations in the name of security I agree with the concession made by the President's legal team in its submissions that the determination of what constituted security provisions for the President had to be made on the list contained in the two SAPS Security Evaluation Reports. There is no evidence that any of the security measures that are not referred to in these reports and that were installed in addition thereto were based a proper security evaluation. The evidence, as alluded to earlier, shows on-going casual discussions and measures implemented on an impromptu idea, with most of these ideas coming from Mr Makhanya.
- 9.2.10. The excessive expenditure incurred by the state was the result of a failure on the part of the SAPS and DPW officials responsible for the implementation of the Nkandla Project to guard against expenditure that was not authorised or necessary for the security of the President and, to focus on what was reasonably affordable. Whatever the discretionary powers that were exercised in this regard, such powers were clearly not applied within reason. I noted that the escalation in the estimated cost of the Nkandla Project from approximately R27 million to approximately R225 million was also the result of additions that were not recommended or requested by security experts.

- 9.2.11. I also noted that the National Key Points Act, which one of the instruments is relied upon in terms of which the Nkandla Project was implemented, provides for security measures to be taken at the expense of the owner of the National Key Point, in this case the President. This, in my view, is indicative of the fact that the Legislature regarded the measures that have to be taken to be reasonable and affordable to the owner of the National Key Point. This principle was clearly not applied by the DPW, SAPS and DOD in the implementation of the Nkandla Project.
- 9.2.12. One of the other reasons for the excessive expenditure, which resulted in a misappropriation of public funds, was that Mr Malebye, the Acting Director-General of the DPW delegated, against the law, unconditional and unlimited authority for the procurement of goods and services to the Regional Office in respect of the Nkandla Project.
- 9.2.13. Mr Makhanya also indicated that the Project Team did not have the luxury to plan in advance but that planning took place while the works were being implemented.
- 9.2.14. The extent of the difference between the expenditure incurred by the state in respect of the security measures installed at the private residences of former Presidents Botha, De Klerk, Mandela and Mbeki and incurred at President Zuma's private residence is an indication that the enabling policy framework anticipated something more modest. This is so even if we take into account the location and remoteness of the area of Nkandla, as is indicated in the table below:

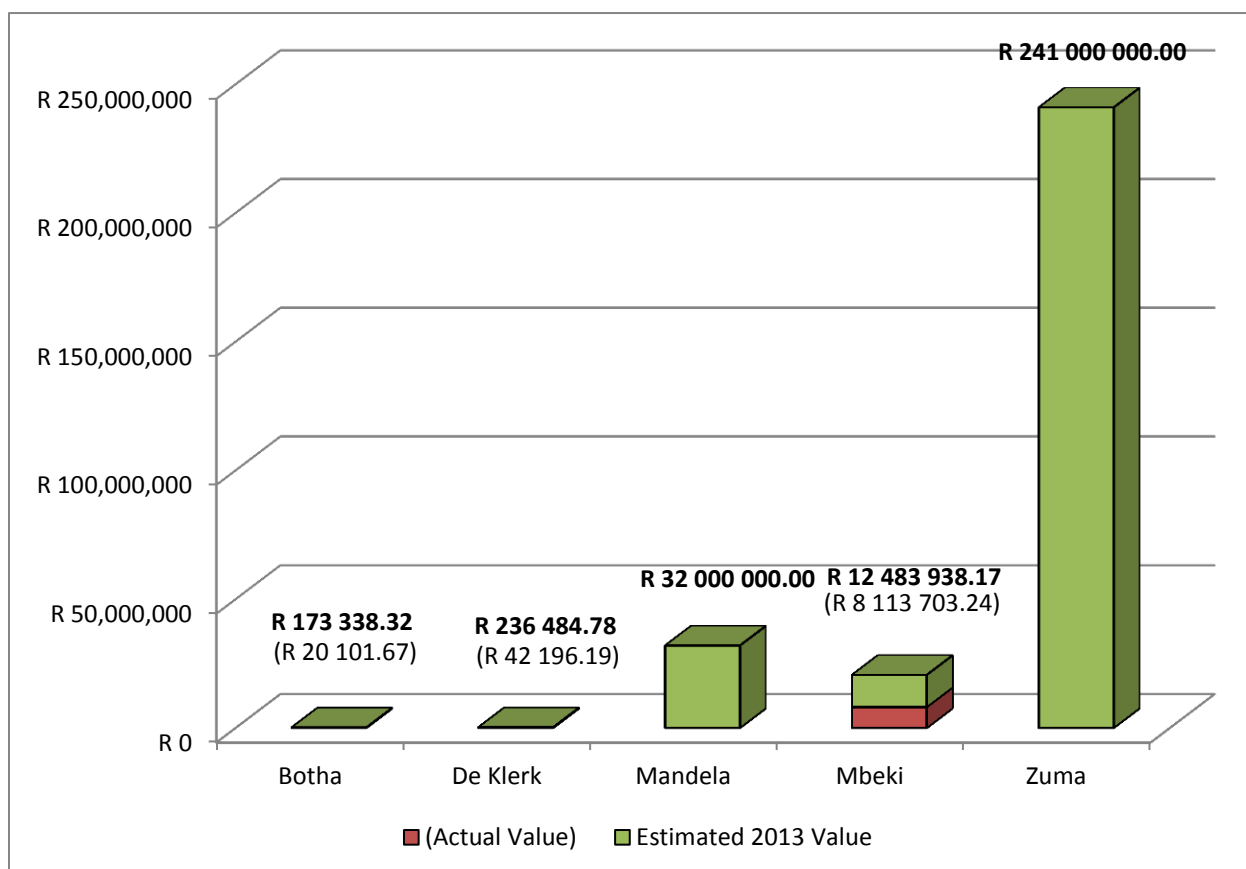


Figure 19: Comparative Expenditure on Security Related Upgrades

9.2.15. Lt Gen Ramlakan referred to the fact that the DOD had placed a field hospital at former President Mandela's rural home, the replacement costs of which amounts to more than R17 million. However, this is a mobile facility that can in the future be utilized elsewhere and is not a permanent fixture, as is the case of the military clinic that was constructed at the Presidents private residence at a cost of R11 million.

9.2.16. The table below indicates the measures that were installed by the state as part of the Nkandla Project that constitutes an improvement of the President's private residence in comparison with the measures that constitute state facilities:

MEASURES INSTALLED THAT FORM PART OF OR ARE DIRECTLY LINKED TO THE PRESIDENTS PRIVATE RESIDENCE AND CONSTITUTE AN IMPROVEMENT	MEASURES INSTALLED THAT FALL OUTSIDE OF THE PRESIDENTS PRIVATE RESIDENCE AND FORM PART OF STATE FACILITIES
Security systems installed in all the Presidents houses and other buildings	Military Clinic
Security fence and patrol roads around the Presidents private residence	Security fence and patrol roads outside of the President's private residence and around buildings and facilities of the state
Visitors' Centre	Security Control Room
Swimming Pool	Helipads
Amphitheatre	Crew Pavilion
Grassed area for Marquee Tent	Staff accommodation and parking facilities
Paved areas around the swimming pool, Visitors Centre and amphitheatre and paved walkways	Park Homes
Safe Haven	Guard house and entrance gate at main entrance
New houses for relocated households	Landscaping of the terrain occupied by the state
Emergency electricity facilities	SAPS Garage
New kraal and culvert	Transformer & LV Room and refuse area
New Tuck Shop	
Steel water reservoir and mini sewer treatment plant	
Illumination around the residence	
Fire detection systems	
Bullet resistant glazing	
Security doors in certain rooms of buildings of the President	
Burglar proofing of all buildings of the President	
Landscaping of the terrain of the President's residence	
Air conditioning of President's houses	

Figure 20: Comparison between Private Residence and State Facilities Upgrades

9.2.17. There is no question that the President's private residence was substantially increased due to some of the measures taken by the state. Clearly, items such as the Visitors Centre, swimming pool and terrace, amphitheatre, elaborate paved roads, terraces and walkways and the building of the kraal,

with an aesthetically pleasing structure, a culvert with a remote controlled gate and chicken run, added substantial value to the property.

- 9.2.18. The excessive nature in which the Nkandla Project was implemented went a long way to beautify the President's private residence and to add comfort to its infrastructure, which was not the objective of security measures that had to be implemented for his protection.
- 9.2.19. If one takes into account the condition and extent of the President's private residence when the Nkandla Project started and compares it with its current stature, it is obvious that the state has made a major contribution to the President's estate at the expense of the taxpayer.
- 9.2.20. The relocation of neighbours households, at the substantial cost to the state of approximately R8 million has no legal basis apart from the issue of legality, no sensible and affordable alternative was considered.
- 9.2.21. Regarding the outside installations, it is clear that there is a legal and policy *lacuna* or gap. The first gap relates to whether these installations can be implemented at or near a private person's household when the person at the time is a president or another qualifying dignitary. The law advanced does not seem to support Lt Gen Ramlakan. The second gap refers to what exactly can be implemented as privileges for a public office bearer. Should such bulk facilities be directed at a deserving dignitary and his or her family or placed in the community for collective benefit, in a manner that gives convenient access to the deserving dignitary? The third gap is related to whose onus is it? Is it the DOD or the DPW, and if so, for whose account?

### 9.3. **The Allegation That The President's Family Improperly Benefitted From The Project**

9.3.1. On the original allegation that the President's brothers may have benefitted, there is no evidence. Had this happened, the law is clear that this would have been unlawful.

9.3.2. There is no question that his family benefitted from these as they now form part of the President's estate.

9.3.3. The question that arises is whether or not the family has and will continue to unduly benefit from the luxurious items not recommended in the security evaluation.

### 9.4. **Compliance of the Public Office Bearers and the Officials with the Regulatory Framework Regulating the Procurement of Goods and Services In Respect of the Nkandla Project**

9.4.1. The evidence obtained from officials of the DPW approached during the investigation confirmed that the practical application of the prescribed regulatory framework in respect of the implementation of a new project would be as follows:

9.4.1.1 Any new project is generated based on a needs assessment prepared by the client department, as approved by its accounting officer and presented to the DPW head office.

9.4.1.2 The request for the implementation of the project is registered as a programme and managed in accordance with the following principles:



- (a) Scope management-the client department's request and needs are clearly identified, documented and approved. This includes any standard norms, policies and standards that are applicable;
- (b) Finance and time management- the project cost is determined and budgeted for over the Medium Term Expenditure Framework cycle;
- (c) Procurement and management-once the scope of the project has been finalized and funds allocated, the prescribed procurement processes are implemented. The procurement plan must be in line with the relevant regulatory framework;
- (d) Communication Management-the project manager is the centre point of communication between the DPW, the client department and the professional team; and
- (e) Quality management.

9.4.2. It is not in dispute that the SAPS, the DOD and the DPW did not implement and apply a proper demand management process in respect of the implementation of the project, as was expected of the respective departments in terms of the PFMA, the Treasury Regulations and the DPW Supply Chain Management (SCM) Policy.

9.4.3. The original scoping of the Nkandla Project conducted by the Regional Office was inadequate, which resulted in a misconception of the actual cost involved.

9.4.4. The explanation provided to me during the investigation that it was not possible to plan in advance due to the urgency of the Nkandla Project,

cannot be accepted, if one takes into account that the appointment of contractors for Phase 1 of the project was only approved in March 2010, i.e. 10 months after the project commenced.

- 9.4.5. No reasonable explanation was presented as to why a comprehensive needs assessment could not have been drafted, costed and submitted by the client departments to the DPW in order for everyone involved to participate in decisions in respect of what measures were really necessary and reasonably affordable.
- 9.4.6. It was also not clear why the DPW accepted that it was responsible for the cost of the Nkandla Project despite the fact that the requirements in respect of it came from the SAPS and the DOD as the client departments.
- 9.4.7. The designs of the Nkandla Project became more expensive and in certain cases elaborate as time passed, which made it difficult for the DPW (that mistakenly accepted responsibility for all the cost) to budget for its implementation.
- 9.4.8. The sensitivities, importance, scale and cost of the Nkandla project clearly warranted regular meetings between high level officials of the departments involved, including the accounting officers, to discuss the extent of the project, the expenditure involved, the value for money for the state and the progress made, on a regular basis. This did not happen and everything was basically left in the hands of the consultants and the DPW office bearers and officials involved.
- 9.4.9. I could find no indication in the evidence that the officials of the DOD and SAPS involved in the project reported to their respective accounting officers on the involvement of their departments and its liability in terms of the

expenditure. The National Commissioner of Police and the Chief of the SANDF were clearly left in the dark due to the fact that the officials looked at the DPW to foot the bill of their requirements. The accounting officers of the SANDF and the SAPS were therefore not placed in a position where they could perform their functions and take responsibility for the involvement of their departments, in terms of section 38 of the PFMA.

- 9.4.10. The failure of the SAPS, DOD and DPW to implement a sensible and affordable demand management process in respect of the Nkandla Project was not in accordance with proper supply chain management practices that could have linked it to strategic planning and budgeting processes, as is envisaged and required by the PFMA, the Treasury Regulations and the DPW SCM Policy. It was therefore improper and constitutes maladministration.
- 9.4.11. As I have indicated above, the DPW does not have any policy that regulates the implementation of security measures at the private residences of Presidents, Deputy Presidents, former Presidents and former Deputy Presidents, as authorized by the relevant Cabinet Policy. The absence of any guidelines in this regard left the officials involved with little direction and their inability to manage the process properly was further compounded by the involvement of the Minister and Deputy Minister, which was extraordinary.
- 9.4.12. It was expected of the DPW, the SAPS and the DOD, by the provisions of the PFMA, the Treasury Regulations and Guidelines of the National Treasury to budget properly and in advance for the Nkandla Project, which budgeting had to be linked to the demand management process. The DPW erroneously accepted responsibility for the cost of the project right from its inception.

- 9.4.13. Although the DPW probably could not have budgeted in advance for the project prior to May 2009, as Mr Zuma's election as the President was not a certainty, it was well aware of the need to secure the President's private residence by August 2009.
- 9.4.14. However, the DPW still failed to include it during the 2010/2011 budget. It also underestimated the extent of the expenditure in respect of the 2011/2012 and 2012/2013 budgets, clearly as a result of not implementing a proper demand management process, which resulted in the budgeted amounts allocated to other necessary capital works programmes of the DPW being negatively affected.
- 9.4.15. The evidence of Ms Motsisi, the former Chief Financial Officer of the DPW, also indicates that the DPW had a tendency at the time of the implementation of the Nkandla Project to over commit its Prestige Budget, which then had to be corrected by shifting funds from other necessary projects.
- 9.4.16. The acceptance by the DPW of the responsibility for the cost of the Nkandla Project and its failure to budget properly was contrary to what is required by the PFMA and the Treasury Regulations. It was therefore improper and constitutes maladministration.
- 9.4.17. Treasury Regulation 16A6.4 provides for a deviation from the default position of inviting competitive bids in cases where it is impractical to do so.
- 9.4.18. Under such circumstances it would be permissible to procure goods or services by other means, provided that the reasons are recorded and approved by the accounting officer.

- 9.4.19. The typical circumstances covered by the directives and guidelines issued by the National Treasury are urgent or emergency cases and where the service or product can only be provided by a sole supplier.
- 9.4.20. In all cases where goods and services above the value of R1 million were procured in terms of Regulation 16A6.4, it had to be reported to the National Treasury and the Auditor-General.
- 9.4.21. The DPW records show that at the time when the Nkandla Project commenced, the DPW's internal directives provided that procurement of goods and services amounting to more than R20 million per procurement, had to be submitted to and recommended by the Special National Bid Adjudication Committee (SNBAC).
- 9.4.22. However, in the case of this project, procurement strategies were submitted to and approved by the Regional Bid Adjudication Committee (RBAC), in terms of a delegation issued by the then Acting Director-General, Mr Malebye, authorizing it to do so in amounts above R20 million.
- 9.4.23. The only motivation in the evidence obtained during the investigation for the decision to delegate unlimited authority to the RBAC, was that the Nkandla Project had to be fast tracked due to the fact that it related to the security of the President and that submission of requests for the approval of procurement strategies to the SNBAC would only have caused delays.
- 9.4.24. Although this decision of the Acting Director-General was within his powers and authority in terms of section 38 of the PFMA, it does not seem to have taken into account the fact that the SNBAC was established at the National Office of the DPW, consisting of senior and experienced staff to ensure proper compliance with the relevant Supply Chain Management Policy and

prescripts, responsible procurement strategies and value for money, in cases where the expenditure of public funds was to go as high as R20 million.

- 9.4.25. I could find no indication in the evidence that any measures or strategies to expedite submissions to the SNBAC in the case of the Nkandla Project, as a special arrangement, was investigated or considered.
- 9.4.26. It is not clear to me how the RBAC suddenly became better qualified to consider procurement strategies and procurement of goods and services of more than R20 million in the case of the Nkandla Project, when other such projects, still had to be submitted to the SNBAC.
- 9.4.27. Mr Malebye's decision in my view failed to comply with the standard of care required of an accounting officer in terms of section 38 of the PFMA was therefore improper and constitutes maladministration.
- 9.4.28. Regarding the appointment of Mr Makhanya, as Principle Agent and overall architect, the first issue is whether or not it was proper to do so without going on tender. On the basis of the original quotes, which were under R500 000, only three quotes were needed. Once the project scope became wider, it needed to go on tender, the alternative being "allowed deviations". His appointment did not satisfy the requirements of the legal framework.
- 9.4.29. The next issue is that of conflict of interest. Conflict of interest arises when a person is placed in a position of serving two masters. The President's legal team disagreed in their submissions with my view that Mr Makhanya had a conflict of interest as far as his involvement in the Nkandla Project was concerned. According to them, there is nothing wrong with an architect acting on behalf of a private client (who also happens to be the head of state) and

as the Principal Agent and architect for the state in designing works for the same premises. It was not clear to me how they envisaged Mr Makhanya was supposed to have dealt with a situation where the interests of the state clashed with that of his private client.

- 9.4.30. Mr Makhanya, in my view, allowed himself to be placed in a precarious position as a professional consultant. He had to look after the personal interests of the President in respect of his private construction works and also after those of the state in respect of the implementation of the project. The fact that he was appointed by the President, had direct access to him and reported to him on the project from time to time, naturally had an impact on the officials involved who would have been reluctant to confront him as the Principal Agent, on his designs. The evidence indicated that he was directing the Project Manager what to do, instead of the opposite.
- 9.4.31. There is no indication in the evidence that the DPW considered Mr Makhanya's qualifications and appropriate experience to design a security project of this magnitude. He should, in my respectful view, not have been involved in the Nkandla Project. Instead, he should have been consulted where there were overlaps between the project and the President's private works.
- 9.4.32. No other convincing or acceptable reason pointing at the requirements of Treasury Regulation 16A6.4 could be provided to me during the investigation for the deviation from the competitive process required by section 217 of the Constitution, in this case.
- 9.4.33. Under the circumstances, the failure to comply with the prescribed competitive bidding process as far as the procurement of the services of the

consultants referred to above is concerned, was improper and amounts to maladministration.

- 9.4.34. The DPW *Directive on Acquisition and Disposal Management* provides that the nominated procurement strategy is undesirable and may only be approved as a last resort. It may be used in emergency cases, where there are time constraints in carrying out the service or for the supplying of goods or where the services required are of a specialized nature.
- 9.4.35. It is not in dispute that there was no emergency when the appointment of the private Project Manager (Ramcon) was considered, that required a deviation from an open competitive bidding process. The only urgency indicated at the time was that due to the President's complaints, the Ministry of Public Works had determined a target date for completion that had to be complied with.
- 9.4.36. The records of the DPW, including the Minutes of Progress Meetings, indicate that at the time when it was decided to appoint a private Project Manager there were serious delays in the Nkandla Project and that the DPW Project Manager was struggling. The time constraints were therefore self-imposed and the result of inordinate delays in the project on the part of the DPW, which was clearly, as confirmed by the evidence, the result of a lack of proper planning and management.
- 9.4.37. The decision to deviate from an open and competitive bidding process to appoint a private Project Manager by means of a nominated procurement strategy did not comply with the requirements of section 217 of the Constitution, the PFMA, the Treasury Regulations and the SCM Policy and prescripts of the DPW. It was therefore improper and amounts to maladministration.



- 9.4.38. I could find no indication that the situation at the time when it was decided to approve a nominated procurement strategy in respect of the appointment of a contractor for the so called “*emergency works*”, constituted an emergency or urgency that was not caused by inordinate delays and a lack of planning on the part of DPW itself. The Nkandla Project was already 10 months old by then and no attempt had been made to appoint contractors to implement works that were described as “*emergency*”.
- 9.4.39. The DPW records furthermore do not indicate that an informed decision was taken by the RBAC that it was impractical to utilize an open and competitive bidding processes, even if it was shortened. The argument presented by Mr Rindel that the screening of contractors would take up to four months to complete was only based on previous experience.
- 9.4.40. There is no indication in the evidence and information that I obtained during the investigation that the DPW approached NIA (SSA) to assist it in expediting the screening process, should an open tender process be followed, especially as the Nkandla Project related to the private residence of the President. It is also not clear to me why the details of the scope of works could not have been provided to qualifying interested contractors after the screening process had been completed.
- 9.4.41. The decision of the RBAC to approve the nominated procurement strategy which resulted in the appointment of Bonelena was not in accordance with the requirements of competitive bidding, as contemplated by section 217 of the Constitution, the PFMA, Treasury Regulations and the DPW SCM Policy and directives. It was improper and constitutes maladministration.
- 9.4.42. The DPW *Directive on Acquisition and Disposal Management* regards the negotiated procurement strategy as the least desirable, provides that it can

only be approved by the Bid Adjudication Committee as a last resort and that it may only be used, *inter alia*, in urgent or emergency cases when the competitive bidding process is impractical, provided that the circumstances giving rise to the urgency were neither foreseeable by the DPW nor the result of the dilatory conduct on its part.

- 9.4.43. I found no indication during the investigation that the motivation for the deviation considered by the RBAC in respect of the appointment of Moneymine 310 CC (Moneymine) in Phase 1 of the project included any reference to emergency or urgency.
- 9.4.44. The evidence further does not indicate that the suggestion by Mr Rindel in respect of the impact of the appointment of another contractor on the guarantees provided to the President by Moneymine, was properly interrogated and informed. No reasonable explanation was presented to me why the issue of integration with the private works and the providing of guarantees could not have been negotiated and agreed upon between Moneymine and another contractor.
- 9.4.45. I cannot reasonably conclude that the circumstances 10 months after the Nkandla Project commenced, could have been such that a competitive bidding process was impractical and that the negotiated procurement process followed to appoint Moneymine was the last resort available to the DPW.
- 9.4.46. The decision by the RBAC to approve the negotiated procurement strategy was probably influenced by the fact that Moneymine had been appointed by the President for his private construction works. It was not in compliance with the requirements of competitive bidding, as contemplated by section 217 of

the Constitution, the Treasury Regulations and the DPW SCM Policy and prescripts, was therefore improper and constitutes maladministration.

- 9.4.47. No reference was made to emergency, urgency or whether it was at all impractical to employ an open and competitive bidding process to procure the services of contractors for the implementation of Phase 2 of the project, costing millions of rand.
- 9.4.48. The RBAC's decision to approve negotiated procurement strategies in respect of Bonelena and Moneymine for Phase 2 was clearly influenced by what was regarded as instructions from the Deputy Minister.
- 9.4.49. I could find no reasonable indication from the evidence of the officials and the records of the DPW why the negotiated procurement strategy was regarded as the last resort. The decision of the RBAC in this regard did not consider the prescribed requirements for deviation and was not in compliance with the provisions of section 217 of the Constitution, the Treasury Regulations and the DPW SCM Policy and directives. It was therefore improper and constitutes maladministration.
- 9.4.50. By the time that the order for bullet resistant glass was issued, Mr Zuma had been the President for 1 year and 10 months. It therefore cannot be argued that an immediate emergency or urgency arose, that was not prevalent at the time of his appointment, which could have justified a deviation from a competitive bidding process for a procurement of more than R3 million.
- 9.4.51. If there was an emergency, it was in any event the result of poor planning and management of the project on the part of the DPW. There is also no indication in the evidence that it was impractical to have utilized a more competitive procurement process.

- 9.4.52. A direct order was placed and the procurement prescripts violated by the officials involved because of instructions given by the Minister, who was under pressure from the President.
- 9.4.53. If the installation of the bullet resistant glass had been properly planned, the impact on ventilation would have been obvious. This could then have been addressed by means of a more competitive procurement process. The DPW was solely responsible for the urgency that arose and the resultant deviation from the prescribed procurement process.
- 9.4.54. I am of the view that the deviations from the default procurement process, i.e. open and competitive bidding in the procurement of bullet resistant glass from SA BRG Glass and the air conditioning units, were not in compliance with the standard prescribed by section 217 of the Constitution, the PFMA, Treasury Regulations and the DPW SCM Policy and prescripts. It violated the constitutional imperative of competition, was therefore improper and amounts to maladministration.
- 9.4.55. The failure by the DPW to record the reasons and decisions relating to the procurement of lifts of more than R2 million without following an open bidding process was a violation of the provisions of the Treasury Regulations and constitutes maladministration.
- 9.4.56. From the evidence there is also no clear indication as to why a deviation from a competitive bidding process was justified as far as the procurement of the lifts for the safe haven was concerned. The decision of the RBAC to approve a nominated procurement strategy therefore has to be regarded as having violated the standard prescribed by section 217 of the Constitution, the

PFMA, Treasury Regulations and the DPW SCM Policy and directives. It was therefore improper and constitutes maladministration.

- 9.4.57. The DPW was requested on numerous occasions during the investigation to submit copies of the notifications to the National Treasury of all the deviations of more than R1 million, but no such evidence was provided. I therefore have to accept that the DPW failed to comply with the directive to report such deviations to the National Treasury, which is improper and amounts to maladministration.
- 9.4.58. The delegations issued by the Director-General of the DPW on 3 October 2005 provided that a reference to a “*Project Manager*” included all the professional staff members of the Chief Directorate: Professional Services, tasked with projects relating to the built environment.
- 9.4.59. The obvious purpose of this requirement was to ensure that the Project Manager is provided with and has access to professional advice during the implementation of a project in order to achieve the desired result and product.
- 9.4.60. The side-lining of the professional team during the implementation of the Nkandla Project was not in line with the delegations of the Director-General that established the position and authority of the Project Manager, which was subject to their involvement in the project. It was therefore improper and constitutes maladministration.
- 9.4.61. In terms of the said delegations, the sketch plans and/or preliminary designs of the Nkandla Project had to be subjected to a Scrutiny Committee at the DPW Head Office. The final approval of these plans and designs could only have been executed subject to comments by the Scrutiny Committee.

- 9.4.62. I could find no evidence that any of the sketch plans or the designs of the Nkandla Project was ever submitted to a Scrutiny Committee, either at the Regional or Head Office.
- 9.4.63. The approval of the plans and designs and amendments thereto therefore did not follow the prescribed process of evaluation and scrutiny, as per the authority delegated by the accounting officer in terms of the PFMA.
- 9.4.64. The failure of the DPW to comply with the requirements of the delegations in this regard was improper and constitutes maladministration.
- 9.4.65. The DPW conceded during the investigation that it failed to comply with the provisions of GIAMA in respect of the assets that it required as a result of the implementation of the Nkandla Project. This failure was improper and constitutes maladministration.
- 9.4.66. The manner in which the Nkandla Project was administered and implemented gave me the impression of a toxic concoction of a lack of leadership, a lack of control and focused self-interest. The fear factor among officials was (and in some cases still is) prevalent due to the fact that the project related to the President's house and that the Minister and Deputy Minister were directly involved.

## 9.5. **The President's Alleged Ethical Violations**

- 9.5.1. It is common cause that the President was briefed by officials of the SAPS and DOD when the Nkandla Project started on the measures that had to be installed in his private dwellings. He has not denied that he was informed from time to time on certain aspects of the project by Mr Makhanya and

Deputy Minister Bogopane-Zulu and reports were occasionally forwarded for his attention.

- 9.5.2. The President was also provided with a detailed progress report on 5 November 2011 by the former Minister of Public Works.
- 9.5.3. The President was therefore aware of what the Nkandla Project entailed. He obviously also observed the scale and extent of the project when he visited his private residence during the period of implementation.
- 9.5.4. The fact that he complained on more than one occasion of the lack of progress made with the project and the impact that it had on his private life and that of his family clearly shows that he was aware of the measures taken and the status of its implementation.
- 9.5.5. We have also ascertained some direct involvement related to his request that the design of the bullet resistant windows be changed and a kraal be built.
- 9.5.6. There is no evidence that the President raised his concern or disapproval on the scale of the project that was being implemented at his private residence or the cost thereof with the Ministers or officials involved.
- 9.5.7. The mere magnitude of the Nkandla Project, the many buildings constructed, including underground facilities and substantial landscaping interventions, the swimming pool and terrace, amphitheater, kraal and culvert, Visitors Centre, elaborate paving and the space created for a marquee tent, would, in my view, have prompted any reasonable person in the position of the President to seriously question the need for certain items and the expense to the fiscus of funds that could have been used somewhere else where there are service delivery needs, poverty and unemployment.

- 9.5.8. Regarding his ethical conduct I considered it proper to ask him 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. These included did he raise any concerns about obvious extravagant and expensive measures that were being implemented by the state at his private residence?
- 9.5.9. In the case of my investigation into extravagant expenditure by the Minister of Police on hotel accommodation (Report no 7 of 2011/12), I found that the Minister, when he became aware of the extent of the expenditure, took steps to contain it and to prevent a recurrence thereof.
- 9.5.10. The standards of ethical conduct set by the provisions of section 96 of the Constitution and the Executive Ethics Code require of a person in the position of the President to have been concerned about the obvious elaborate scale of the project that was being implemented at his private residence and the cost thereof to the state.
- 9.5.11. As the ultimate upholder of the values of the Constitution and custodian of public funds, it was, in my respectful opinion, expected of him to have interrogated the need for measures, such as the underground safe haven, the relocation of households, the construction of a Visitors Centre, swimming pool, amphitheatre etc. which were both extensive and in some instances had no obvious relation to his protection and the security of the premises.
- 9.5.12. The evidence in connection with the changes that were made in the design of the bullet resistant windows after he complained about it and the building of the kraal, is indicative thereof that any other concerns that he would have



raised would have been taken seriously. A substantial amount of public money would have been saved, had the President raised his concerns in time. By failing to do so, the President allowed or caused extensive and excessive upgrades that go beyond necessary security measures to be made to his private residence, at state expense.

9.5.13. Another question regarding ethical conduct by the President related to him reportedly telling Parliament and the nation that no building was constructed for him by government. The evidence shows that these structures were constructed for him at state expense. The structures on the homestead part of the fence include the Visitors' Centre, cattle kraal with chicken run, swimming pool and amphitheatre. Misleading Parliament is prohibited by the Executive Ethics Code. My decision on his conduct is in the findings.

9.5.14. The pertinent question related to the fact 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 deal with this in the findings.

## 9.6. **Other Observations**

### 9.6.1. The Construction Of Buildings And Other Structures On Land That Belongs To The Ingonyama Trust

9.6.1.1 In terms of the provisions of the KwaZulu-Natal Ingonyama Trust Act, 1994, the Kwazulu-Natal Ingonyama Trust Board required the written consent of the relevant traditional authority or community, before it could enter into a lease agreement with the DPW.

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

## 10. FINDINGS

I make the following findings:

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

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

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

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

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

- 10.2.3. 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.
- 10.3. **Did the measures taken by the DPW at the President's private residence, go beyond what was required for his security?**
- 10.3.1. 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.
- 10.3.2. 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 amphitheatre, 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.

10.3.3. 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.

10.4. **Was the expenditure incurred by the state in this regard excessive or amount to opulence at a grand scale, as alleged?**

10.4.1. 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.

10.4.2. 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.

**10.5. Did the President's family and/or relatives improperly benefit from installations implemented by the state at his private residence?**

10.5.1. 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.

10.5.2. 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.

10.5.3. 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 non-security comforts such as the Visitors' Centre, such as the swimming pool, amphitheatre, 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.

- 10.5.4. 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.
- 10.5.5. 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
- 10.6. **Was there any maladministration by public office bearers, officials and other actors involved in the project?**
- 10.6.1. Public Office Bearers:
- 10.6.1.1 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.
- 10.6.1.2 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.
- 10.6.1.3 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 accessing 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

10.6.2. Officials of the DPW:

10.6.2.1 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.

10.6.2.2 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.

10.6.2.3 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.

10.6.3. Officials of the SAPS:

10.6.3.1 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.

10.6.3.2 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

10.6.4. Officials of the DOD

10.6.4.1 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.

10.6.4.2 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.

#### 10.6.5. The Contractors

10.6.5.1 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.

#### 10.7. **Was there any political interference in the implementation of this project?**

10.7.1.1 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.

10.7.1.2 The Task Team Report also indicated that officials were uneasy with the operational involvement of politicians in the Nkandla Project.

10.7.1.3 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.

10.8. **Were funds transferred from other much needed DPW projects to fund this project?**

10.8.1.1 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.

10.9. **Is the President liable for some of the cost incurred?**

10.9.1.1 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 Points and directs him to secure the National Key Point at his own cost.

10.9.1.2 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 under the. 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.

- 10.9.1.3 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.
- 10.9.1.4 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.
- 10.9.1.5 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.

10.10. **Were there ethical violations on the part of the President in respect of the project?**

10.10.1.1 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 at his private residence a Visitors' Centre, cattle kraal and chicken run, swimming pool and amphitheatre among others. The President and his family clearly benefitted from this.

10.10.1.2 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.

10.10.1.3 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.

10.10.1.4 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 client and benefactor.

10.10.1.5 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.

10.10.1.6 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.

10.10.1.7 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.

#### 10.11. **Other Findings of Maladministration**

10.11.1.1 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.

10.11.1.2 The conduct of some of the role players unduly delayed the investigation.

#### 10.12. **Systemic Deficiencies Observed During the Investigation**

10.12.1.1 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.



10.12.1.2 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.

10.12.1.3 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.

10.12.1.4 Need for a clear demarcation of the roles of the SAPS, DPW and DOD in respect of such projects.

### 10.13. **The Impact of the Nkandla Project**

10.13.1.1 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.

10.13.1.2 The military clinic also requires maintenance, supplies and permanent human resources as long as it exists, which may be beyond the President's lifetime.

10.13.1.3 The future of the buildings constructed at the request of the SAPS also need to be determined.

## **11. REMEDIAL ACTION**

**Remedial action to be taken in terms of section 182(1)(c) of the constitution is the following:**

### **11.1. The President is to:**

11.1.1. 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 amphitheatre, the cattle kraal and chicken run, the swimming pool.

11.1.2. Pay a reasonable percentage of the cost of the measures as determined with the assistance of National Treasury, also considering the DPW apportionment document.

11.1.3. Reprimand the Ministers involved for the appalling manner in which the Nkandla Project was handled and state funds were abused.

11.1.4. Report to the National Assembly on his comments and actions on this report within 14 days.

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- 11.2. **The Secretary to the Cabinet to take urgent steps to:**
- 11.2.1. Update the Cabinet Policy of 2003 to provide for a more detailed regime;
- 11.2.2. 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;
- 11.2.3. 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
- 11.2.4. 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.
- 11.3. **The Minister of Police to:**
- 11.3.1. 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

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- 11.3.2. 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.
- 11.3.3. 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
- 11.4. **The National Commissioner of the SAPS to:**
- 11.4.1. 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
- 11.4.2. 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.
- 11.5. **The Director-General of the DPW to take urgent steps to:**
- 11.5.1. 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;

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- 11.5.2. 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;
- 11.5.3. 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;
- 11.5.4. 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;
- 11.5.5. Take urgent steps to relocate the park homes to another organ of state that requires temporary accommodation;
- 11.5.6. Review the delegation of authority to Regional Offices of the Department;
- 11.5.7. Ensure that all DPW staff involved in supply chain management is properly trained on deviations from the normal prescribed procurement processes;
- 11.5.8. Ensure that all DPW staff involved in the implementation and execution of projects are properly trained and capacitated to manage projects assigned to them;

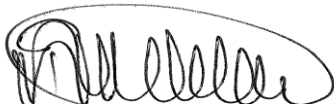
- 11.5.9. Comply with the provisions of GIAMA in respect of the assets acquired as a result of the Nkandla Project; and
- 11.5.10. Develop a policy for the implementation of security measures at the private residences of the President, Deputy President and former Presidents and Deputy Presidents.
- 11.6. **The Secretary for Defence, to take urgent steps to:**
- 11.6.1. Consolidate prescripts relating to the medical, transport and evacuation of Presidents, Deputy Presidents, former Presidents and former Deputy Presidents;
- 11.6.2. 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
- 11.6.3. Ensure certainty and accountability in respect of the future implementation of measures relating to 11.6.1 above.

## 12. **MONITORING**

- 12.1. In order to monitor and ensure the implementation of my recommendations indicated above, the following steps must be taken:

- 12.2. 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.
- 12.3. Accounting Officers of all organs of state required to take remedial action, are to provide implementation plans to my office not later than 01 May 2014.
- 12.4. Status reports on implementation 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.
- 12.5. Public Office bearers in affected organs of state are to ensure compliance.

*"Let it never be said by future generations that indifference, cynicism or selfishness made us fail to live up to the ideals of humanism which the Nobel Peace Prize encapsulates."* President of South Africa, Nelson Rholihlahla Mandela



**ADV. T. N. MADONSELA**  
**PUBLIC PROTECTOR**  
**REPUBLIC OF SOUTH AFRICA**  
19 March 2014

**Assisted by the Branch: Good Governance and Integrity, Public Protector SA**