



**Draft Report of the *Ad Hoc* Committee to consider the report of the Minister of Police in reply to recommendations in the report of the *Ad Hoc* Committee to consider the report by the President regarding security upgrades at the Nkandla Private Residence of the President dated 4 August 2015.**

## **1. Introduction**

The *Ad Hoc* Committee was established through a resolution of the National Assembly on 2 June 2015.

The House established the *Ad Hoc* Committee to –

- (1) consider the report by the Minister of Police tabled on 28 May 2015 in reply to recommendations in the *Report of Ad Hoc Committee to Consider the Report by the President regarding Security upgrades at the Nkandla Private Residence of the President*, as adopted by the National Assembly on 13 November 2014;
- (2) consist of 14 voting members, as follows: African National Congress 8, Democratic Alliance 3, Economic Freedom Fighters 1 and other parties 2;
- (3) further consist of 16 non-voting members, as follows: African National Congress 5, Democratic Alliance 2, Economic Freedom Fighters 1 and other parties 8 designated by the remainder of the other parties;
- (4) exercise those powers in Rule 138 and the rules applicable to committees and subcommittees generally that may assist it in carrying out its functions; and
- (5) submit a report to the House with its findings and recommendations, where applicable, by 7 August 2015.

The Report by the Minister of Police on the Security Upgrades at the Nkandla Private Residence of the President therefore served as the base document for consideration the the *Ad Hoc* Committee.

The following members were appointed to the Committee:

**African National Congress (ANC)**

Frolick, Mr CT

Diakude, Ms DE

Kubayi, Ms MT

Motshekga, Dr MS

Beukman, Mr F

Ngcobo, Ms BT

Maseko, Ms LM

Gamede, Mr DD

Smith, Mr VG, (Non-Voting)

September, Ms CC, MP (Non-Voting)

Coleman, Ms EM, (Non-Voting)

Mahambehlala, Ms T, (Non-Voting)

Maake, Mr JJ, (Non-Voting)

**Democratic Alliance (DA)**

Maimane, Mr M

Selfe, Mr J

Breytenbach, Adv G

Steenhuisen, Mr JH, (Non-Voting)

Majola, Mr TR, (Non-Voting)

**Inkatha Freedom Party (IFP)**

Singh, Mr N

**Freedom Front Plus (FF PLUS)**

Mulder, Dr CP

In line with Assembly Rule 153 the following members also attended Committee meetings:

**African Christian Democratic Party (ACDP)**

Swart, Mr SN

**African Independence Party (AIC)**

Ntshayisa, Mr LM

**United Democratic Movement (UDM)**

Kwankwa, Mr NLS

**National Freedom Party (NFP)**

Khubisa, Prof NM

AGANG

Plouamma, Mr A

**2. Committee Deliberations**

On 11 June 2014 the Committee was convened in terms of Assembly Rule 131 and proceeded to elect a chairperson. Mr C T Frolick was elected as chairperson of the *Ad Hoc* Committee.

Members of the Committee discussed the terms of reference of the Committee and proposals were made to call the Public Protector (PP) to the *Ad Hoc* Committee. Dr C P Mulder proposed that the Committee call all relevant people, including the Public Protector, Special Investigations Unit (SIU), the fire and cultural experts, to appear before the *Ad Hoc* Committee.

The Ad Hoc Committee also considered a proposal from Ms M T Kubayi to call the Minister of Police and the Minister of Public Works to appear before the *Ad Hoc* Committee.

The Chairperson proposed that a programme be drawn up which Members could agree to, and thereafter the Committee should hold deliberations on the issues raised in the Minister's Report and decide how the *Ad Hoc* Committee would proceed.

The Committee reconvened on 23 June 2015 in order to discuss the programme. Opposition parties indicated that they wanted the report of the Minister of Police to be fully tabled and for the Committee to also consider the Public Protector's report. Members of the Majority Party responded that National Assembly resolution establishing the committee was specific in its terms of reference for the *Ad Hoc* Committee.

After deliberations the programme, as presented, was subsequently adopted by the *Ad Hoc* Committee. On 21 July 2015, the Minister of Police, Minister N P Nhleko presented to the *Ad Hoc* Committee on the security upgrades at Nkandla, the private residence of the President. In his presentation he reported on the following:

- a) The Minister took his mandate from the recommendations of the previous *Ad Hoc* Committee which were agreed to by the National Assembly on 13 November 2014. These recommendations tasked the Minister to do certain things.
- b) The Speaker of the National Assembly had conveyed the resolution to his office on 29 December 2014 and requested that he submit his report on the recommendations contained in the report of the previous *Ad Hoc* Committee to the Speaker for further tabling.
- c) The Minister had established a technical team of qualified security experts to undertake an evaluation of the existing security features at Nkandla, its effectiveness, and its appropriateness in relation to the Special Investigation Unit (SIU) report.
- d) The Minister had also assessed the policy and regulatory gaps relating to securing the private residences of political office bearers and a review of the policy had been undertaken by the Civilian Secretariat for Police and currently this was before Cabinet.
- e) The alleged non-security features, namely: the swimming pool, new kraal, chicken run, culvert, visitors' centre and the amphitheatre were assessed by experts and were found to be security features.
- f) During the perusal of all reports related to Nkandla prestige project, the Minister could not find any evidence or record where the State President and /or any member of his family requested anything to be constructed including the security features.
- g) There were varying cost estimates attributed to the Prestige Project by different institutions and bodies.

- h) These ranged from R206 420 644.28 reported by the Chief Financial Officer of the Department of Public Works, R216 million by the SIU, and R246 million by the media and opposition parties, as well as R250 million attributed by *Die Burger* newspaper.
- i) The cost of the security features amounted to R71 212 621.77 including consultancy and/ or professional fees.
- j) The remainder of R135 208 022.51 was the cost of departmental operational needs, such as the clinic, SAPS and SANDF staff quarters and needs, and consultancy fees amongst others.
- k) The security upgrades actually cost R50,5 million while consultancy fees on the security upgrades cost R20 688 736.89.
- l) The SAPS and SANDF facilities together with the Helipad and clinic cost R135 208 022.51 million.
- m) There were several cost escalations from 2009 until 2010 and that the state would have to focus on who authorised these escalations.
- n) The need for the pool as additional was as a result of the inherent fire risk posed by the thatched roof buildings.
- o) Cultural experts were consulted about the construction of the cattle kraal.
- p) An animal enclosure and culvert was built to prevent cattle from interfering with the Intruder Detection System attached to the perimeter fencing.

Members posed questions to the Minister arising from his presentation and these questions focussed on, amongst other things, the construction of the cattle kraal, swimming pool, visitors centre and amphitheatre.

Some members held the following views and posed questions along these lines:

- a) The Minister was accountable to the President and that he should not have been involved in reviewing the Public Protector's Report as it amounted to a conflict of interest.
- b) The Public Protector indicated in her report that a cost determination should have been undertaken together with National Treasury.
- c) Members should be informed who the security experts were that were consulted by the Minister and what their profiles were.
- d) Both the Public Protector and the SIU reports indicated that the items listed by the Minister were not security features.
- e) The Minister had confined himself to the four items which in his view were non security features, but that there were many more non security features.

- f) It was unlikely that the Minister could have come to any other conclusion than that the President was not liable for any cost because he was appointed by the President.
- g) How the Minister had arrived at his determination that the President was not liable for any costs if he did not engage with the Public Protector and the SIU.

The majority of members posed questions along the following lines:

- a) Members referred to the recommendations of the Ad hoc Committee which recommended a security evaluation and wanted to know if it was undertaken.
- b) Whether the SAPS carried its own costs and if the costs for the no security items were separated.
- c) Whether the issues of co-ordination referred to in the recommendations of the previous Ad Hoc Committee were taken into consideration.
- d) That the Minister acted in terms of a resolution of the National Assembly.
- e) The Public Protector was not a security expert and once her report had been tabled, she had no further responsibilities.
- f) Judge Schippers was very clear in his judgement that the remedial action proposed by the Public Protector was not binding and enforceable.
- g) The mandate of the Committee was to consider the report of the Minister.
- h) The report of the Minister shed light on a number of matters which were unclear previously.

The Minister maintained that he was accountable to the Constitution and his Oath of Office. He pointed out that the President appointed a wide range of people including judges and that this did not mean that they had to make favourable judgements towards the President.

He also reported that the 21 houses for the SAPS and the SANDF were outside the perimeter of the President's home and that the Park homes were equally split between the SAPS and SANDF.

On 22 July 2015, Members visited the Nkandla residence of the President for an in loco inspection.

## 2.1 Committee reflections following the oversight visit to Nkandla, the private residence of the President

On 23 July 2015 the Committee met for further deliberations on their findings following the oversight visit to the private residence of the President. The Members generally pointed out the following:

- a) The technology seen at the Visitors Centre and what was indicated in the Report was misleading;
- b) The workmanship of the construction was shoddy;
- c) The kraal was a normal kraal and it could not have cost the amount paid for it;
- d) The swimming pool was a recreational facility that could be used for firefighting;
- e) The amount of money spent on the security and non-security items was not visible and it was clear that there was huge inflation of prices;
- f) It would be embarrassing to receive a visiting Head of State at Nkandla in its current state;
- g) The amphitheatre was not an amphitheatre, but a terrace and did not justify the descriptions attributed to it;
- h) The scale of the property did not justify what was provided;
- i) The officials who authorised the construction should be held accountable;
- j) The clinic was outside the President's home;
- k) The Minister of Public Works should account on the role of the Department of Public Works;
- l) South Africans were misled about the opulence of the private residence of the President;
- m) The security of the President was compromised;
- n) The construction could be viewed as a looting of state resources;

During further deliberations on the visit opposition parties held the following views and posed questions along these lines:

- a) There was a causal link with the 21 houses of the SAPS and SANDF because the President resides there.
- b) The community should benefit from the clinic.
- c) The security in the complex left a lot to be desired and a further assessment as to what security needs to be provided should be done.
- d) There is abject poverty and the public is not wrong in assuming that it is palatial.
- e) There is nothing luxurious about the complex.

- f) There is incomplete workmanship and responses in terms of security cameras needed to be obtained.
- g) There was a total absence of accountability and no value for money.
- h) Whether a private bond could be raised over land that did not belong to the President, but to the Ingonyama Trust.
- i) The Committee should call the former Minister and former Deputy Minister of Public Works, Mr G Q M Doidge and Ms. G L Mahlangu-Nkabinde, the architect Mr M Makhanya, Mr J Rindel of the DPW, the Public Protector, and the two main drafters of the SIU Report.
- j) Additional documents from the Minister of Police which were missing in his submission, should be provided.
- k) The Minister of Police and the Minister of Public works should be called to the Committee to explain why there was a disparity between what was in the reports and what the Members saw at Nkandla.
- l) There were additional building costs that should be recovered.
- m) There was a perception that the President had to repay R246 million. This was erroneous, as there was a very small amount that has to be repaid by the President.
- n) The findings of the Public Protector cannot be taken on review.
- o) The Minister's Report was not accepted as it was an attempt to portray the President as victim.
- p) The Minister of Police had contradicted the Public Protector's Report.

The majority of Members held the following views:

- a) The Minister of Police, in his report, had shed light on a number of matters.
- b) It was clear that the non-security features observed were not in line with what was indicated in the Public Protector's report.
- c) Only two of the ten steps required in the Cabinet memo of 2003 were followed and that the process for procurement in Prestige Projects should be redesigned and revisited
- d) The opposition parties had abandoned the process when all the reports were considered by the previous *Ad Hoc* Committee and that it was not the purpose of the meeting to re-open and re-examine all those reports afresh.
- e) The mandate of the Committee was to consider the report from the Minister of Police as expressed in the resolution of the National Assembly.
- f) There were gaps in the Public Protector's report and the Constitution did not envisage that there should be blind acceptance of the Public Protector's report



- g) There was broad agreement that both the Ministers of Police and the Minister of Public Works should be invited to the Committee.
- h) The Police barracks were built on the land owned by the Ngonyama Trust, not the President's land and they were not handed over as they are state assets.
- i) Members accepted and supported the report from the Minister of Police.
- j) The officials who authorised the buildings should be held accountable as well as the architect and the professional team.

The Committee reconvened on 29 July 2015 to consider the reports and presentation by the Minister of Police, Mr N P Nhleko and the Minister of Public Works, Mr T W Nxesi.

## **2.2 Second Briefing by the Minister of Police**

In responding to certain issues that emerged during the deliberations of the *Ad Hoc* Committee on 23 July 2015, the Minister of Police emphasized that his report was based on a technical assessment by security experts. These were included in the report, which constituted source documents in the determination of what constitutes security features.

He further highlighted that the letter which was referred to by Senior Superintendent Mr N F Linde had no legal standing as superintendent Linde had no authority or delegated powers that he claimed to have in the letter and in which he purported to be acting on the President's instructions. The Minister reported that superintendent Linde had admitted in the SIU report that he misrepresented what was contained in the letter. The Minister further alluded that the Police barracks, clinic and the helipad, which were constructed as per the letter of Senior Superintendent Linde were situated on adjacent land which belonged to the KwaZulu-Natal Ingonyama Trust. SAPS housing policy would be used in the allocation of the units once the handover process had been completed.

The Minister further clarified that an assessment would be done to determine the extent of outstanding work which still needed to be completed, including a re-evaluation of the security situation given the extent of exposure that the homestead had undergone. Any security needs that would be necessary would be dealt with in strict compliance with applicable prescripts and regulations. Regarding the R135.2 million that was spent on the outer perimeter projects, the Minister further clarified that this amount included the costs of building the 21 housing units, the clinic, the helipad and professional fees. The Minister reported that the Cabinet Memorandum of 2003 was relied on in the determination of the security needs of the President.

During the deliberations Members raised questions and comments on the report of the Minister, including the following:

- a) Members questioned the Minister on what action had been taken against Mr. Linde for his actions.
- b) Some Members sought clarity whether it was true that the outstanding work that still needed to be completed would cost the State around R31million as was reported by Mr Rindel.
- c) Members further wanted to establish whether it was true that the President, in his engagement with the Public Protector admitted that he wanted a bigger kraal which he was willing to pay for.
- d) With regard to the barracks and clinic, some Members contended that those had been built with the sole intention of benefiting the President and his family. There was a strong feeling that if this was true, the President was required to pay back a certain portion of the costs.
- e) The Committee agreed that it could not understand how the architect, Mr. Minenhle Makhanya was allowed to wield so much power and influence over the entire project. This was a clear sign that officials had disregarded their duty completely.
- f) Members sought clarity on why the initial source documents of the project had revealed that a water reservoir had been recommended by security experts even though in the end a fire-pool was preferred.
- g) The Minister responded by saying that the capacity of water needed necessitated the building of a fire-pool since an extra 138 kiloliters of water was needed to that which could be contained by a water reservoir.
- h) Members also learnt from the Minister that the process of handing over from Department of Public Works (DPW) to SAPS and the Department of Defence was at an advanced stage and that a determination would be made to ensure that DPW recovered the costs of the surrounding infrastructure to the President's homestead.
- i) Members of the Opposition were not convinced that Senior Superintendent Linde acted on his own accord, alleging that he was under orders from senior ranking officials and politicians.

- j) There was a feeling amongst some Members that no state funds should continue to be used for outstanding work unless that money was to come from those who were to be held liable for unduly benefiting from the project.
- k) The Committee noted the summary of the particulars of the claim in the civil lawsuit between the SIU and Mr. Makhanya.
- l) There was a general feeling amongst Members of the majority party that the briefing by the Minister, prior to the in loco inspection was insightful and provided much needed clarity on what constituted security features.
- m) The involvement of the Minister of Police, including the legality of his report was said to be in accordance with the recommendations of the previous *Ad Hoc* Committee and the subsequent house resolutions.
- n) The Committee further felt that it was common cause that the pool was a swimming pool whose primary function was to extinguish fire although it could still be used for recreational purposes.
- o) The issue of the independence of Ministers and the potential conflict of interest taking into account the manner of their appointment received further attention. The Minister again pointed out that he performed his duties as guided by the Constitution and the oath of office.

### **2.3 Briefing by the Minister of Public Works**

The Minister of Public Works, Mr T W Nxesi, took the Committee through the measures which the Department of Public Works (DPW) had undertaken to comply with the recommendations of the previous *Ad Hoc* Committee in as far as the DPW was concerned. The Minister conceded that at the center of the problems experienced was poor project management, coordination, and a complete disregard of applicable laws and policies by those who were tasked with the responsibility of managing state money. A process of pursuing all individuals implicated in the wrongdoing was already at an advanced stage and this included internal disciplinary hearings, civil lawsuits and in some instances criminal proceedings being instituted. Twelve officials were charged, one official had pleaded guilty and was sentenced to three months suspension. There were delays in the internal disciplinary hearings in view of court challenges. Other matters were also referred to the South African Revenue Services for further investigations. There were four variation orders, of which three were over 20%. The process of developing a Prestige Project policy with norms and standards for political office

bearers was underway and undergoing Cabinet processes. The Minister also reported that the SIU applied for an order to declare the architect's appointment to be invalid and directing that he pays the DPW an amount of R155 million.

In addition, the Minister made the following points:

- a) The Prestige Project was not properly budgeted for.
- b) Supply Chain Management (SCM) due process was not followed in appointing contractors. Prescripts and regulations in terms of procurement processes were totally disregarded.
- c) There was no value for money in the project and the acting Director General failed to comply with the prescripts of SCM processes.
- d) The committee made the following comments:
  - a) The Committee was satisfied with the manner of compliance with the recommendations of the previous *Ad Hoc* Committee, particularly in the area of strengthening of budget processes.
  - b) Members welcomed the efforts to ensure that all those implicated in wrongdoing are pursued and face the full might of the law.
  - c) The Committee pleaded with the department to ensure expeditious conclusion of the matters in order to allow for the finalization of who must pay what, including the Department of Defence and SAPS in respect of surrounding infrastructure projects.
  - d) Some of the Members of the Committee noted that the court appearances of Mr. Makhanya would assist with clarity on how the project was managed.
- e) The Committee was in agreement that state monies must be recovered from the various officials that worked on the Project and the Private Professional Team.
- f) Members of opposition parties insisted that the Public Protector must be invited to the Committee as she had reported that the President introduced the architect to the project team.
- g) Members supported Minister Nxesi for stopping the project and wanted clarity on whether the President was in any way involved in the project directly or indirectly.
- h) Members felt that insinuations made of a conflict of interest of Ministers were not correct and without substance. It was unfair to question the Minister's objectivity under the circumstances.
- i) Members felt that the disciplinary processes against the officials should be fast-tracked.

- h) The reports of the SIU and the Public Protector could not be compared to the reports from the Minister of Police and the Minister of Public Works.
- i) The reports were diametrically opposed to each other.
- j) The Public Protector had never been extended the courtesy of presenting her report in Parliament.
- k) The perception of corruption that South Africans hold would not cease if the Public Protector was not called.

The majority of members held the view that:

- a) The remedial action proposed by the Public Protector was not binding and enforceable in terms of the Schippers judgement.
- b) Parliament was not sitting as a court of law, and had to respect the decisions of the courts
- c) Differences of opinion should not be viewed as scare tactics and Members were required to be critical.
- d) The Committee was operating in terms of a resolution of the National Assembly.
- e) .
- f) As the President had not called for the expenses, there was no value for money in the non-security items, the kraal, and the question of undue benefit did not arise.
- g) Section 56 of the Constitution was underscored by the two referrals of the Speaker in terms of the mandate to the *Ad Hoc* Committee.
- h) In addition, the *Ad Hoc* Committee had access to the minutes of the previous *Ad Hoc* Committee, all the source documents, the SIU Report, Public Protector Report, and all the minutes of those meetings and these reports had been deliberated on
- i) It was cogent why the Ministers were called in terms of the report of the previous *Ad Hoc* Committee. The Ministers appearing before the Committee was agreed prior to them appearing before it.
- j) The Members had had the opportunity to see for themselves the upgrades and compare this to what was contained in the reports of the Ministers.
- k) Given the information available to it the *Ad Hoc* Committee was able to reach conclusions.

- l) The objects of the *Ad Hoc* Committee were not to change or review the Public Protectors report. Only a court of law could undertake that. The Committee should in terms of its mandate, receive, consider and deliberate of the Minister's report.

The opposition Parties formally moved that the Public Protector, drafters of the SIU Report, Mr. Makhanya, Mr J Rindel, the quantity surveyors, the former Minister and Deputy Minister of Public Works and Senior Superintendent Linde be called to the Committee. The motion to call the Public Protector and other listed role-players was voted upon and defeated by 7 votes to 4.

### **3. Findings**

To be discussed

### **4. Recommendations**

To be discussed

**DRAFT**