



**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.(as at 10am on 5 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 sub 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 *Ad Hoc* Committee.

On 24 June 2015 the Speaker referred the letter of the Minister of Public Works to the *Ad Hoc* Committee.

The following members were appointed to the Committee:

**African National Congress (ANC)**

Frolick, Mr CT

Dlakude, Ms DE

Kubayi, Ms MT

Motshekga, Dr MS

Beukman, Mr F

Ngcobo, Ms BT

Maseko, Ms LM

Gamede, Mr DD

Smith, Mr VG, (Alternate)

September, Ms CC, MP (Non-Voting)

Coleman, Ms EM, (Non- Voting)

Mahambehlala, Ms T, (Alternate)

Maake, Mr JJ, (Non-Voting)

**Democratic Alliance (DA)**

Maimane, Mr M

Selfe, Mr J

Breytenbach, Adv G

Steenhuisen, Mr JH, (Alternate)

Majola, Mr TR, (Non-Voting)

Dreyer, Ms A M, (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

**PAC**

Mbinda, Mr L.R.

**APC**

Godi, Mr T

**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. A document was tabled by one of the members serving on the *Ad Hoc* Committee that stated the party view as a point "in limine" that the Committee is unconstitutional.

Some Members of Committee supported this view and expressed their concerns that their participation in the Committee could be giving legitimacy to the process.

Members of the Committee discussed the terms of reference of the Committee and the constitutional imperatives thereof. The Chairperson indicated that the Committee is setup according to Rule 214 and will conduct its work in terms of Rule 138.

. Proposals were made to call the Public Protector, Special Investigations Unit (SIU), the fire and cultural experts, the Minister of Police and Minister of Public Works.

The *Ad Hoc* Committee also considered a proposal from another Member to call the Minister of Police and the Minister of Public Works to appear before the Committee. The Committee unanimously supported a proposal for the Chairperson to draft a programme for consideration by the Committee.

The Committee reconvened on 23 June 2015 to discuss the programme tabled by the Chairperson. Some Members 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. The majority of Members 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 tabled by the Chairperson, was adopted by the *Ad Hoc* Committee.

On 21 July 2015, the Minister of Police, Minister N P Nhleko presented his report to the *Ad Hoc* Committee on the security upgrades at the Nkandla, the private residence of the President. In his presentation he reported inter-alia as follows:

- 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.
- 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 the SAPS and SANDF departmental operational needs, such as the clinic, Helipad 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) There were several cost escalations from 2009 until 2010 and that the state would have to focus on who authorised these escalations.
- m) The need for the pool as additional was as a result of the inherent fire risk posed by the thatched roof buildings.
- n) Cultural experts were consulted about the construction of the cattle kraal.
- o) 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, his mandate, the construction of the cattle kraal, swimming pool, visitors centre and amphitheatre.



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.

The Minister responded that he took his mandate from the resolution establishing this Ad Hoc Committee and had not engaged with the PP

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 private residence of the President for an inspection in loco.

## **2.1 Committee deliberations following the oversight visit to the Nkandla 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. Members held the following views:

There was general agreement amongst the Members that:

- There was no value for money spent on the project;
- It was clear that there was a gross inflation of prices;
- The workmanship was shoddy and of a poor quality;
- Most of the work was incomplete especially those that relate to security monitoring and the current security arrangements were insufficient and incomplete;
- There was general consensus that those responsible for deviations from the PMFA should be held accountable and the money must be recovered from those found guilty of these transgressions; and
- There was a gross exaggeration of the scope, scale and cost of the project.

After lengthy deliberations, the Committee agreed to re-invite the Minister of Police to clarify certain matters in his report and to provide more information on what Members saw at Nkandla. The Committee further agreed to invite the Minister of Public Works to present his report to the Committee and to respond to Members' concerns about the role of the Department of Public works in the entire project. A specific interest for members was clarity on the R135, 2 million spent on the houses built for the SAPS and SANDF personnel and the clinic.

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 NF 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 stated 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's 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.

The Committee further deliberated on the presentation of the Minister and their visit to Nkandla, private residence of the President. The Minister after deliberations responded to the issues raised.

## **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 wrong doing 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 at the President's private residence at Nkandla 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:
  - 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.
  - Members welcomed the efforts to ensure that all those implicated in wrongdoing are pursued and face the full might of the law.



- 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.
- 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.

The Committee was in agreement that State monies must be recovered from all persons that will be found guilty of wrongdoing that on the Project.

After the presentation of the Minister of Public Works, certain Members still insisted that the Public Protector be invited to present her report to the Committee. No agreement was reached on the matter and it was referred to informal discussions between parties.

The Committee reconvened on 30 July 2015 to agree on a way forward.

In the meeting, it was reported, after consultations, that:

- The parties could not reach consensus on the calling of further persons before the Committee;
- The majority of members in the meeting stated that the matter is not being re-investigated;
- The Committee should follow its mandate to deal with the report of the Minister of Police.

After deliberations on the matter of calling more people to appear before the Committee, the matter was called to a vote. The majority of members voted against the proposal. The vote was 7 against 4.

### **3. Findings**

To be discussed

### **4. Recommendations**

To be discussed