

PUBLIC PROTECTOR
SOUTH AFRICA

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21 August 2014

His Excellency J G Zuma
The President of the Republic
of South Africa
Private Bag X 1000
PRETORIA
0001

Dear President Zuma

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

1. I am writing to you to request clarity on your comments on the report I prepared, titled *Secure in Comfort*, a copy of which was presented to you on 19 March 2014.
2. The report followed complaints received by my office, in essence alleging that:
 - 2.1 There was no legal authority for the expenditure that was allegedly incurred by the state in respect of upgrades made at your private residence in the name of security. Even if there was authority, the upgrades were excessive or “*opulent*” and transcended such authority.

2.2 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.

2.3 Your conduct in relation to the implementation of the impugned upgrades at your private residence may have been unethical and in violation of the Executive Ethics Code.

3. The investigation was conducted in terms of section 182 of the Constitution of the Republic of South Africa, 1996 (the Constitution), which states that:

"The Public Protector has the power, as regulated by national legislation-

(a) to investigate 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;

(b) to report on that conduct; and

(c) to take appropriate remedial action",

and in terms of additional powers conferred on me by sections 3 and 4 of the Executive Members' Ethics Act, 1998 and sections 6 and 7 of the Public Protector Act, 1994.

4. I am currently preparing a special report to the National Assembly regarding progress achieved by organs of state with regard to the implementation of remedial action.

5. I have noted that unlike in previous investigations aimed at assisting you as Head of the Executive and conducted under the Executive Members'

Ethics Act, 1998 and the Public Protector Act, 1994, the head of the administration in the Presidency has not favoured me with your comments on my report and an indication of your actions or intentions on remedial action. The last communication I received was a copy of your letter to the Speaker of the National Assembly, dated 2 April 2014, indicating that you awaited the report of the Special Investigating Unit to assist you in providing substantive comments.

6. I noted the contents of the *"Report to the Speaker of the National Assembly regarding the security upgrades at the Nkandla Private residence of his Excellency President Jacob G Zuma"* that you presented to the Speaker on 14 August 2014.
7. It has subsequently been reported in the media that your report purports to represent implementation of the remedial action that I took in terms of section 182(1)(c) of the Constitution, in paragraph 11.1 of my report. This remedial action reads as follows:

"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 the Visitors' Centre, the amphitheatre, the cattle kraal and chicken run and 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."

8. Your initial response to the National Assembly on my report was tabled on 2 April 2014 (on the 14th day after its release). In your letter of even date addressed to the Speaker, you expressed the view that there were differences in the findings and remedial action "*proposed*" by my report and that of the Security Cluster Task Team. You informed the Speaker that you would comment on my report on receipt of the report of the Special Investigating Unit.
9. However, on reading the contents of your report dated 14 August 2014, I realized that the public perception as reflected in recent media reports that it represents an implementation to the remedial action taken in my report, is clearly unfounded.
10. I could find no indication in your report that you were responding to the contents of my report, commenting on it and were reporting to the National Assembly on the actions that you have taken or are taking to implement the remedial action. I have also noticed that your report excludes some of my findings and remedial action.
11. Paragraph 1 of your report clearly states that it arose out of "*concerns expressed by government and certain sectors of society...*". No reference is made to the findings of and the remedial action taken by the Public Protector.
12. I have further noticed that you expressly state in paragraph 7 of your report that you were not commenting on, *inter alia*, my report and that the contents of your report to the Speaker are not reflective of the fact that you accepted its contents.

13. It is my respectful understanding accordingly that you have not reported to the National Assembly on your comments on my report and the actions that you are taking or have taken to implement the remedial action referred to in paragraphs 11.1.1 to 11.1.3 thereof.
14. Paragraph 63.2 of your report states that you deem it appropriate that the Minister of Police reports to the Cabinet on a “*determination*” of whether you are liable for any contribution in respect of the security upgrades, having regard to the relevant legislation, past practices, culture and the findings contained in the respective reports, including mine. I am respectfully finding it difficult to understand why this is deemed appropriate as:
- 14.1 The only report making a finding that you and your immediate family improperly benefitted from some of the measures implemented at your private residence by the Department of Public Works, is my report issued on 19 March 2014.
- 14.2 The only remedial action taken in this regard is to be found in paragraph 11.1 of my report, which states that:

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 the Visitors’ Centre, the amphitheatre, the cattle kraal and chicken run and 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.”


- 14.3 I have not found in your report to the National Assembly any statement that disagrees with the remedial action in my report or seeking to redress my findings in this regard.
- 14.4 In terms of your report, Mr President, the Minister of Police now has to conduct another investigation into your liability for some of the costs incurred by the state at your private residence and it will then be for the Cabinet to deal with the matter.
- 14.5 I am concerned that your decision gives an impression that you are unhappy with my finding that you should pay and point of view that the National Treasury and the South African Police Service should only assist you to quantify the reasonable amount to be paid.
- 14.6 I am further concerned that the decision you have made regarding the Minister of Police gives him power he does not have under the law, which is to review my decision taken in pursuit of the powers of administrative scrutiny I am given by section 182 of the Constitution and expected by relevant sections of the Executive Members' Ethics Act, 1998 and the Public Protector Act, 1994. This, Mr President, unintentionally requires him to usurp the review powers of the courts. Section 181(2) of the Constitution provides that the Public Protector is subject only to the Constitution and the law.
15. I have noticed the reference in your report to section 83 of the Constitution in terms of which the President must uphold, defend and respect the Constitution as the supreme law of the Republic. As already indicated above and in my report, my findings and the remedial action are in accordance with the provisions of section 182(1)(c) of the Constitution and section 8 of the Public Protector Act, 1994. As you are aware, section 181(3) of the Constitution provides that organs of state (which includes the

President) must assist and protect the institution of the Public Protector to ensure its independence, impartiality, dignity, and effectiveness.

16. As I have already indicated, reports of the Public Protector are by law not subject to any review or second guessing by a Minister and/or the Cabinet. The findings made and remedial action taken by the Public Protector can only be judicially reviewed and set aside by a court of law.
17. I accordingly would appreciate your comments to the National Assembly on my findings, indication on action taken to implement remedial action and any additional action you my plan to take.
18. Action, as contemplated in paragraph 14 above, would not augur well for expectations that the rule of law is being upheld at all levels, including at your level as the pinnacle of government. It may also encourage impunity at various levels of the state.
19. I sincerely regret having to approach you in this manner. The alternative is that I advise complainants and the National Assembly that there is no engagement on the report or implementation of remedial action.

I am looking forward to hear from you in this regard at your earliest convenience, and preferably, to assist me with my report, by not later than 4 September 2014.

Best wishes



ADIL THULI MADONSELA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA