

Public Protector

Fearless defender of ethical conduct – A seven-year campaign

C Thornhill

School of Public Management and Administration
University of Pretoria
South Africa

ABSTRACT

An article entitled 'The role of the Public Protector: case studies in public accountability' was published by the author in the African Journal of Public Affairs, 4(2), September 2011. That article focused on some cases that illustrate the nature and extent of the role the Public Protector in identifying and making findings on significant cases of corrupt practices and maladministration. The current Public Protector, Advocate Thuli Madonsela, is now at the end of her seven-year non-renewable appointment. It is apposite to review her contribution to promoting ethical conduct and enforcing public accountability. A single article cannot do justice to all 150 reports produced during her term of office to prove the value of the Public Protector in the South African public sector. Instead, the article presents a desktop analysis of selected reports by the Public Protector, on cases involving the national, provincial and local spheres of government. The legislation relevant to the cases is discussed, in addition to the handling of the reports by the government and Parliament and the Constitutional Court's ruling on the incumbent's powers. The Nkandla case, also called Secure in comfort, epitomises the careful research, deliberation, findings and constitutional status of the Public Protector in the South African system of democratic government.

INTRODUCTION

Public administration and management consist of a number of functions that need to be performed to facilitate the delivery of services by public (and private) institutions. These functions are based on the assumption that public institutions are created for the sole purpose of promoting the welfare of society by means of efficient and effective actions by appointed officials, acting under the political guidance of elected political office bearers. In South Africa, in the national sphere of government, these are the President and Cabinet. At the provincial level, this refers to the office of the premier and members of the executive councils

of the provincial sphere of government. In the local sphere of government, there are the mayor and executive committee/executive mayor, assisted by the mayoral committee. The decisions taken and actions performed by these role players have to conform to acceptable ethical norms and generally accepted rules regarding efficiency and effectiveness.

Ethical conduct, efficiency and effectiveness are the foundation of any democratic government. Mechanisms to test the efficacy, efficiency and adherence to ethical norms are formally assigned to institutions such as the Offices of the Auditor-General and the Public Protector (PP). In this article, the focus is the role of the contribution of the South African PP, without negating the importance of the Auditor-General. Selected cases that were investigated and reported on by the PP will be discussed to illustrate the need for an independent institution that can ensure that public accountability is maintained as a cornerstone of democracy. These examples are selected from the 150 reports submitted by the PP during her seven-year term of office, which ends in October 2016. Twenty of these reports were selected to exemplify the different categories of cases investigated, and of actions resulting from the investigation.

CONSTITUTIONAL DEMOCRACY

Section 1 of the *Constitution of the Republic of South Africa, 1996* (hereafter *Constitution*), states unequivocally that South Africa is a sovereign democratic state. However, democracy will not automatically continue to be practised unless there are suitable mechanisms to curb any attempts by political office bearers to usurp power. Lord Acton's famous dictum remains true: 'Power tends to corrupt and absolute power corrupts absolutely' (Wikipedia). Therefore chapter 9 of the *Constitution* provides for specific 'State institutions supporting constitutional democracy'. One of these institutions is the PP, the focus of this article. This does not imply that the other five institutions, namely, the South African Human Rights Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Commission for Gender Equality, the Auditor-General and the Electoral Commission, are less important. Each plays a vital role in safeguarding democracy. These institutions are independent in terms of section 181(2) of the *Constitution* and are subject only to the *Constitution* and the law. They are required to act impartially and must exercise their functions without fear, favour or prejudice. This article can only focus on one of these chapter 9 institutions as an example of the contribution of such institutions in maintaining transparency and democracy by demanding public accountability.

APPOINTMENT

The PP is appointed in terms of section 182 of the *Constitution* for a non-renewable term of seven years (section 183). All matters incidental to the Office of the Public Protector are provided for in the *Public Protector Act, 23 of 1994* (as amended by Act 47 of 1997; Act 113 of 1998; Act 2 of 2000; Act 22 of 2003; and Act 12 of 2004). The requirements for appointment are enumerated in section 193 of the *Constitution*. *Inter alia* the person appointed must be a South African citizen, must be a fit and proper person to hold the office, and must comply with the conditions set out in the Act establishing the Office of the



Public Protector (the *Public Protector Act*, 23 of 1994). The requirements in section 1A (3) currently state that the person must

- be a judge of a High Court;
- have been admitted as an advocate or an attorney and have practised for a cumulative period of ten years;
- be qualified to be admitted as an advocate or attorney or lectured in law at a university;
- have specialised knowledge of or have had experience for a period of ten years in the administration of justice, public administration or public finance;
- have been for a cumulative period of ten years a member of Parliament; or
- have acquired a combination of experience as mentioned in the relevant section.

The current PP is an advocate and is thus duly qualified as prescribed in the Act. Advocate Thuli Madonsela was appointed on 19 October 2009 by President J G Zuma, and her seven-year contract expires in October 2016.

FUNCTIONS AND POWERS

Section 182 (1) of the *Constitution* assigns a number of functions to the PP. These are mentioned in detail here, as these functions have been questioned as a result of her report *Secure in comfort* on the controversial security upgrades of the President's home in the KwaZulu-Natal province, the Nkandla complex (Report 25 of 2013/14):

- 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;
- to report on that conduct; and
- to take remedial action (my emphasis, as will be explained in my discussion of the *Secure in comfort* report).

Additional powers and functions have been assigned to the PP in terms of section 6(4) (a) of the *Public Protector Act*, 23 of 1994 (as amended). These include investigating and reporting on

- maladministration in connection with the affairs of government at any level;
- abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct;
- an improper or dishonest act, or omission or other offences as referred to in the *Prevention and Combating of Corrupt Activities Act*, 12 of 2004;
- improper or unlawful enrichment, or receipt of any improper advantage (my emphasis, see discussion of the Report: *Secure in comfort*) as a result of an act or omission in the public administration or in connection with the affairs of government at any level; or
- an act or omission of by a person in the employ of government at any level, or a person performing a public function.

In terms of Section 6(4)(b), the PP may at her/his sole discretion endeavour to resolve the dispute by

- mediating, conciliating, negotiating;
- advising where necessary regarding appropriate remedies; and/or
- adopting any other means that may be expedient in the circumstances.

During or after the investigation, the PP may disclose the commission of an offence by any person and bring it to the attention of the relevant authority charged with prosecutions. Alternatively, if the PP deems it advisable to do so, s/he may refer the matter to the appropriate public body or authority affected by it, or make appropriate recommendations regarding redress, or any other appropriate recommendation s/he deems expedient to the affected public body or authority in terms of section 6(4)(c) of the Act.

Investigating an allegation does not automatically imply that there has been wrongdoing. The PP may find that there was no wrongful action or corrupt action. For example, in her investigation into the alleged misappropriation of public funds by the former Free State Youth Commission, the Public Protector could not find any misappropriation of public funds (Report 51 of 2009/10:17). Therefore no remedial action was required. However, the PP advised the Free State Provincial Administration to ensure that in future the functions of political office bearers and those of a public entity such as the former Youth Commission should be clearly separated to prevent any possible confusion regarding party political campaigns and events financed through public funds (Report 51 of 2009/10:17). Similarly, in the alleged case of maladministration by the Department of Mineral Affairs concerning the procurement process and the role of the Bid Adjudication Committee of the Department, no improper action was identified. The Bid Adjudication Committee's actions were found to be proper and in accordance with the requirements of the *Public Finance Management Act*, 1 of 1999, and the attendant Treasury Regulations (Report 12 of 2012/13:36).

A significant finding was made regarding allegations concerning an alleged case of maladministration in the Department of Mineral Affairs with the appointment of a special advisor to the Minister (Report 17 of 2011/12). The allegations concerned the alleged appointment of an advisor who was a fugitive from justice in the United States of America in connection with failure to appear in court in the federal state of Connecticut. The PP's investigation noted section 12A of the *Public Service Act*, 103 of 1994 (Proclamation 103), which authorises a Minister to appoint no more than two special advisors. The conditions set in section 2A of the *National Strategic Intelligence Act*, 39 of 1994, were also taken into account. In this case, the non-appearance of the advisor in court in the United States was taken into account. The advisor concerned resigned. Therefore, no further or remedial action was required.

Similarly, the PP indicated in a report on the cost of travel that she found no evidence to support allegations of a violation of the *Executive Ethics Code of 2000* or section 96(2) of the *Constitution* by the Minister and Deputy Minister of Sport and Recreation, the Honourable Fikele Mbalula, MP, and Gerhardus Oosthuizen, MP (Report 18 of 2014/15:93). However, she expressed the need for the Minister and Deputy Minister to take austerity measures into account when travelling (Report 18 of 2014/15:94).

Most of the cases investigated by the PP are the result of complaints lodged by an aggrieved individual. However, the PP may also undertake an investigation on her/his own initiative to investigate a matter that s/he considers a possible case of maladministration or misuse of power. The Report: *State Power-Political Games* (Report 9 of 2012/13) into the alleged abuse of state power resulting in the alleged unlawful arrest and detention by an off-duty traffic officer

serves as an example of misuse of power, and of a case in which the PP decided to pursue the matter even though the complainant withdrew the allegation (Report 9 of 2012/13:22). In this particular case, the PP argued that the matter was already in the public domain regarding allegations against the Premier of Limpopo Province and the then Member of the Executive Council (MEC). The findings included the following (Report 9 of 2012/13:27):

- the MEC’s conduct in triggering the arrest was improper;
- the MEC’s conduct amounted to maladministration, because she abused her official position; and
- the MEC contravened section 136 of the *Constitution* concerning a conflict of interest (in this case as MEC and as a member of a political party attending a party political conference as deputy secretary of the Provincial Committee of the Party).

The PP’s remedial action included an order that

- the Premier had to take action against the particular MEC within 30 days;
- the MEC had to submit a written apology to the complainant for the treatment suffered, and an apology in the Provincial Legislature during its sitting; and
- the Speaker of the House of Assembly had to take steps to ensure that the final report was tabled in the Provincial Legislature within 30 days from the date it was issued.

The actions prescribed by the PP were to be monitored in a prescribed manner (Report 9 of 2012/13:27-28).

It can be argued that the PP has extensive powers to investigate any matter within her assigned duties. The most significant for the purposes of this discussion is the power to *take remedial action* as this was one of the prime dilemmas faced in the findings regarding the *Secure in Comfort* report concerning the Nkandla security upgrade at the President’s private residence, which is discussed in more detail later in this article.

REPORTS BY PUBLIC PROTECTOR

During the term of office of the current PP, 150 reports were completed. These covered a wide spectrum of actions, inactions, unethical conduct, maladministration and related maladies that negatively affected the efficiency and effectiveness of public policies. The distribution of the cases investigated is summarised in Table 1.

Table 1: Reports issued by Public Protector

Institutions/ authorities investigated: 2008–2016	Number
National sphere of government	46
Provincial sphere of government	34
Local sphere of government	40
Other organs of state (including other public entities)	30
Total	150

The PPs investigations cover a wide spectrum of cases as a result of her mandate, as referred to above. No absolute or precise classification is possible, because one investigation may cover more than one matter. The investigations resulting in reports are broadly classified in Table 2. Note that some reports addressed more than one allegation, so the number of complaints do not equal the number of reports submitted.

Table 2: Type of complaint investigated by the Public Protector

Complaint investigated	Number
Unethical conduct / irregular action	29
Maladministration (including abuse of power)	56
Corruption (including prejudice)	25
Individuals (e.g. clients not served, complaints not attended to)	48
Total	158

The reports cannot all be discussed in detail here, as the aim of the article is to explain the role of the PP in exposing any matter that could be detrimental to the state, society, or an individual member of the public. As Table 2 shows, the reports cover a wide variety of issues, e.g.

- allegation of misappropriation of funds by the Deputy Minister of Home affairs (1 February 2009);
- (on own initiative) suspension of Social Security Grant without good cause (18 February 2009);
- allegation of miscalculation of leave days of an employee (25 February 2010);
- allegation of irregular appointment of a headman in Tsengiwe (25 February 2010);
- allegation of poor service delivery by the Compensation Fund (10 June 2010);
- complaint concerning conflict of interest (28 September 2011)
- allegation of improper involvement of the Deputy President in a business transaction with the Islamic Republic of Iran (Report 4 September 2012);
- allegation of failure of the Department of Justice and Constitutional Development to protect a whistle-blower (Report 23, February 2013);
- allegations of impropriety and unethical conduct relating to the installation and implementation of security measures at the private residence of the President at Nkandla (19 March 2014);
- allegations of alleged irregular awarding of a tender and irregularities relating to payments for the construction of RDP houses (4 February 2016); and
- allegations of irregular distribution of food by SASSA (15 May 2016).

The investigative research by the PP before a report is issued is extensive. The following examples from report on *Docked vessels* (Report 21 of 2013/14) and the *Secure in Comfort (Nkandla)* report (Report 25 of 2013/14) provide examples of the scope of the investigation before the reports were submitted – see Tables 3 and 4.



Table 3: Investigative research: *Docked Vessels* (Report 21 of 2013/14)

Type of research	Number
Interviews/meetings	24
Correspondence with relevant parties	8
Documents consulted (e.g. tender documents)	22
Legislation/prescripts	8
Records of companies	12

Table 4: Investigative research: *Secure in Comfort* (Report 25 of 2013/14)

Type of research	Number
Interviews	23
Meetings with individuals/institutions	12
Documents related to the case	23
Relevant legislation/regulations	23
Submissions received concerning the case	11

It can be argued that the PP's reports are based on solid investigative research and are scientifically supported by proper referencing to the sources used for the investigation. It is clear that findings are only reported once an extensive investigation had been conducted. In addition to the materials listed in Table 4, for the *Secure in Comfort* report the PP also considered 12 000 pages provided by the MG Centre for Investigative Journalism (Report 25 of 2013/14:16).

VALUES AND PRINCIPLES OF PUBLIC ADMINISTRATION

Section 195(1) of the *Constitution* provides for the basic values and principles governing public administration. A reference to these preconditions is important, as they form an important baseline for the PP when allegations of maladministration and/or unethical conduct are investigated. It is important to remember that the *Constitution* is the supreme law of the country – as section 2 states, any '*law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled*' (my emphasis). Therefore, the PP is obliged to test any allegations, of misconduct, maladministration and unethical conduct irrespective of the status of the political office bearer or official or individual involved against these principles contained in the supreme law. These principles include the following:

- a high standard of professional ethics must be promoted and retained;
- efficient economic and effective use of resources must be promoted;
- services must be provided impartially, fairly, equitably and without bias;
- public administration must be accountable; and

- transparency must be fostered by providing the public with timely, accessible and accurate information.

The justification for the extensive reference to section 2 and section 195(1) of the *Constitution* will become clear when specific reports of the PP are discussed below. It should also be mentioned that the PP only investigates allegations of impropriety/inefficiency/ineffectiveness, unlawful action, prejudice, abuse of power, corruption, and conflict of interest. These phenomena unequivocally contradict the principles contained in section 195(1) of the *Constitution*, and public accountability demands that such occurrences not be tolerated in a democratic state.

ADMINISTRATIVE AND MANAGERIAL IRREGULARITIES

A selection of allegations investigated by the PP are discussed below to explain the role of the Office of Public Protector instituted in terms of chapter 9 of the *Constitution* to support constitutional democracy.

Policy deviations/ failure to act

The PP's Report 48 of 2009/10 concerns allegations that the National Prosecuting Authority (NPA) failed to discharge its mandate. In this case, the NPA failed to give effect to a decision of its Special Task Team on Missing Persons, which was established by the Truth and Reconciliation Commission. Remedial action was prescribed (Report 48 of 2009/10:12) and monitoring was undertaken by the PP to ensure that the required action was taken.

Report 25 of 2013/14 considers the question of the upgrade of the President's Nkandla residence in KZN. Section 83 of the *Constitution* requires the President, as Head of State and Head of the National Executive, to 'uphold, defend and respect the Constitution'. This implies that the President's decisions and actions are subject to the *Constitution*. All policies, whether they are contained in legislation or involve Cabinet decisions are subject to the *Constitution*. The security upgrades of the President's private residence are also subject to the guidelines provided by various policies. One such policy regarding security measures is the *Cabinet Policy of 2003* which requires the following (Report 25 of 2013/14:21):

- a request by the President or Presidency for security measures;
- a security evaluation by the South African Police Service (SAPS) and State Security Agency;
- a proposal to the Inter-Departmental Security Co-ordinating Committee for technical evaluation;
- a cost estimate prepared by the Department of Public Works;
- the SAPS to advise the Minister of Police on the proposed security measures including the cost;
- communication to the President on the approved security measures for his consent; and
- implementation by the Department of Public Works.



The legal authority to install security features at a private residence at state expense is also regulated by a number of policy prescripts, for example (Report 25 of 2013/14:17-18), security upgrades at private residences are allowed at the owner's request, and installations implemented in connection with health care services to the President and transport are regulated by prescripts guiding the Department of Defence.

The residence of the President was declared a National Key Point in accordance with the *National Key Points Act*, 102 of 1980. Section 2 of the Act authorises the Minister of Defence to declare any place or area that is 'so important that its loss, damage, disruption or immobilisation may prejudice the Republic' to be a national key point. Of particular importance to the Nkandla issue (Report 25 of 2013/14) is section 3(1) of the Act, which *inter alia* states that when a notice is issued in terms of section 2 'the owner of the National Key Point concerned shall take steps to the satisfaction of the Minister (of Defence) in respect of the security of the said Key Point'. Section 3(2) is also relevant, as it permits the Minister of Defence to take steps in respect of security if the owner fails to take steps within a prescribed period. If the owner fails to act, s/he shall be guilty of an offence and liable on conviction to pay a fine not exceeding R20 000, or to imprisonment for a period not exceeding five years. It is clear from these conditions in the Act that the owner is responsible for the security of the property, and in the case of Nkandla, the owner is the President.

The Nkandla property was only declared a National Key Point on 8 April 2010, although the upgrading commenced in 2009. The *Cabinet Policy of 2003* referred to above clearly requires that the installation of security measures is implemented 'at the request of the President or Presidency'. The PP could find no evidence (Report 25 of 2013/14:19) that the state should become involved financially in respect of any law. Nor could any evidence be found that the President had requested the South African Police Service (SAPS) or the State Security Agency to consider securing his private residence (Report 25 of 2013/14:20). The evidence indicated that work started in 2009, before the property had been declared a National Key Point. In the Declaration Certificate declaring the property a National Key Point, the Minister of Police clearly stipulated the following:

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.' (my emphases) (cited by the PP in Report 25 of 2013/14).

The Minister of Police later denied that the President was required to pay for the security measures (Report 25 of 2013/14:24). The evidence submitted to the PP contains adequate proof that serious deviations from legislation and policies occurred in the provision of security at the private residence of the President (Report 25 of 2013/14:17-29). Section 3 of the *National Key Points Act*, 102 of 1980, makes it abundantly clear that the owner (in this case the President) 'shall take steps to the satisfaction of the Minister (of Defence) in respect of the security of the said Key Point'. Therefore there is clarity on the issue that the *owner* has to take steps at his own expense (*cf.* Report 25 of 2013/14:357). Failure to comply constitutes an offence in terms of section 3(3) of the Act.

Perhaps the most serious dilemma concerning the Nkandla security project was the failure to differentiate clearly between the requirements for security as contained in the *Minimum Physical Security Standards Instrument* contained in the *Cabinet Policy of 2003* and non-security work. This resulted in the erection of a visitor's centre, cattle kraal, chicken run, amphitheatre, a marquee area and a swimming pool, which added value to the property, but could not be justified as being a security requirement.

The length limitations of an article do not permit elaboration regarding all the policy deviations relevant to the Nkandla Project. The PP stated that there were 'systemic policy gaps' that were used to authorise some of the 'security measures' (Report 25 of 2013/14:66). These deficiencies were identified in giving effect to *Cabinet Policy of 2003* concerning the President, Deputy Presidents, former Presidents and Deputy Presidents, the Department of Defence (which provides health services to the Presidential offices), the South African Police Services and the Department of Public Works (Report 25 of 2013/14:66-67).

Procurement deviations/financial mismanagement

The issue of the irregular acquisition of office space by the Police in 2010 and the report *Against the Rules* published in 2011 (Report 33 of 2011/12) has already been discussed in a previous issue of this journal (Thornhill 2011:83). This case involved financial mismanagement and non-compliance with financial prescriptions.

A case involving maladministration, improper conduct and corruption was investigated by the PP in the report titled *Postponed Delivery* into allegations concerning the leasing of the Eco Point Office Park and use of labour brokers by the South African Post Office (SAPO) (Report 5 of 2015/16). It was found that the SAPO did not follow a proper bidding process; that the acquisition of the building in question was in violation of the *Public Finance Management Act, 1* of 1999. The PP commended the Board of the SAPO for taking action against the officials involved in the irregular activities, as the reports of the officials involved were 'riddled with misrepresentations of fact and falsified information' (Report 5 of 2015/16:74). The erstwhile Board was found guilty of improper conduct and wasteful expenditure with regard to the 'upfront' payment of rental to the Eco Point Park building to the amount of R2 372 000 (Report 5 of 2015/16:75). A particularly disconcerting remark by the PP in this regard was that because of the 'insufficiency of documents' (Report 5 of 2015/16:76), it was impossible to adjudicate compliance with the prescribed Supply Chain Management processes. This heightened the risk of non-compliance with the SAPO Procurement Policy, and could prevent assurance that the system was fair, equitable, transparent, competitive (regarding the appointment of service providers) and cost-effective, as required in section 217 of the *Constitution* (Report 5 of 2015/16:76). The PP also expressed concern regarding the leasing of expensive premises in spite of the SAPO's experiencing dire financial constraints. The Report also remarked that the *Business Case* for the relocation to the Eco Point Park building 'was doctored and the relationship between a key SAPO officials behind the move and the Centurion Vision Development (Pty) Ltd, the owners of Eco Point Building, poisoned' (Report 5 of 2015/16:77).

As far as the appointment of labour brokers is concerned, the PP found that the procurement procedures, resulting in the amount of R 2 735 942 2453.22 spent, were in violation of par 3.1.1 of the SAPO's own Procurement Policy, as well as section 51(1) of

the *Local Government: Municipal Finance Management Act*, 56 of 2003, and thus also in contravention of section 217 of the *Constitution*. This led to the conclusion that the SAPO's actions constituted maladministration and dereliction of duty (Report 5 of 2015/16:78).

The PP's remedial actions regarding the SAPO case referred to above consist of seven steps (see Report 5 of 2015/16:79). In essence an amount of R22 million paid by the SAPO to Centurion Vision Development as upfront rental payment have to be recovered; proper Supply Chain Management processes and procedures have to be put in place to facilitate proper control; and employees have to be consulted on planned changes in future. The PP will monitor the implementation of the remedial actions contained in the Report (Report 5 of 2015/16:80).

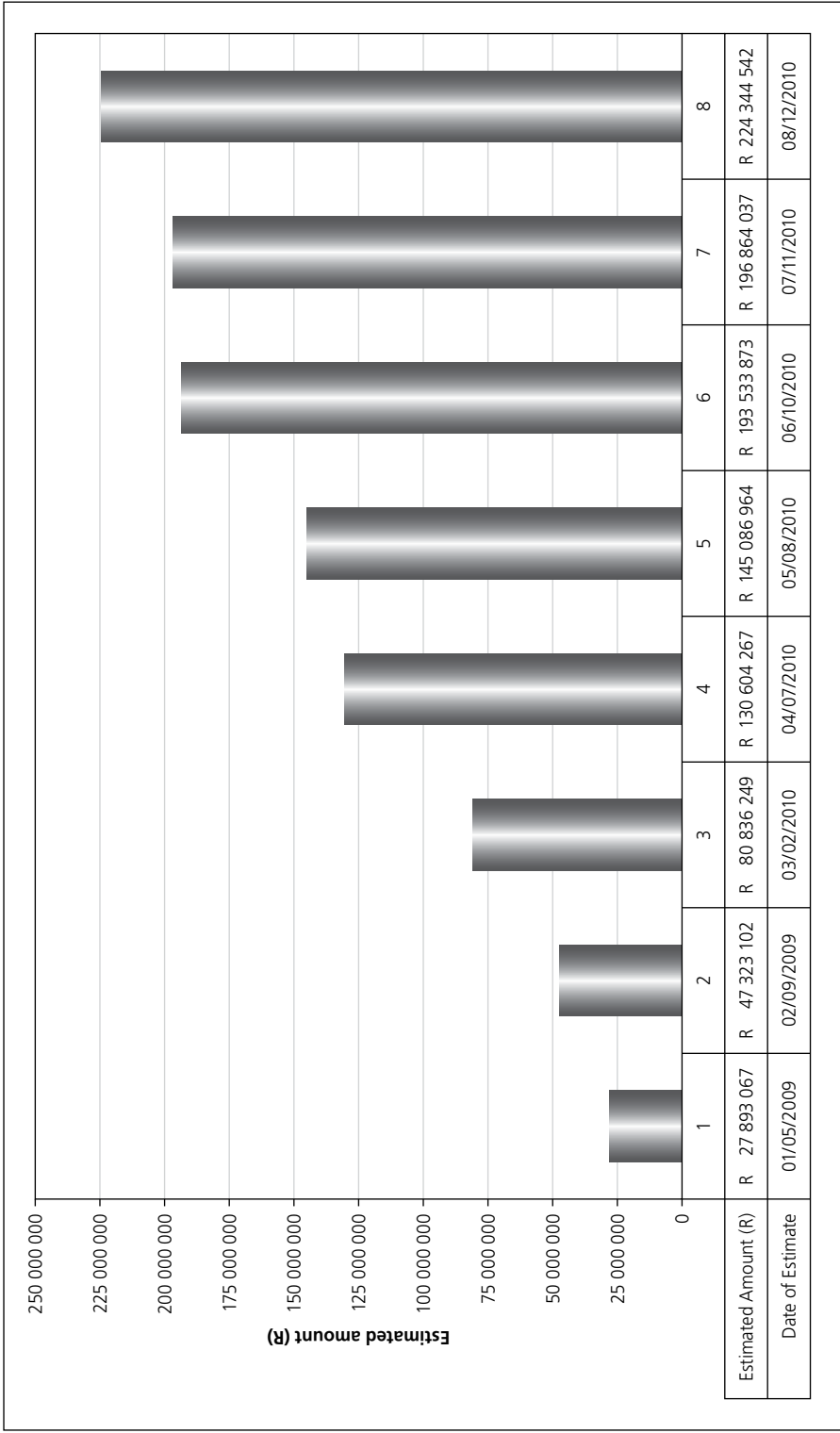
The Report on the security installations at the Nkandla residence of the President contains various examples of deviations from accepted policies regarding budgeting and procurement, for example:

- Expenditure in excess of R500 000 must be submitted to an open tender process (Report 25 of 2013/14:30), which was not adhered to in this case.
- The procurement processes followed differed from the norm usually applied by the SAPS and the Department of Defence (Report 25 of 2013/14:34). It was erroneously accepted by officials involved in the process that the work was urgent and that therefore a deviation was justified (Report 25 of 2013/14:35).
- A serious administrative oversight was also the delegation of unconditional authority from the Special National Bid Adjudication Committee (SNABC) to the Regional Bid Adjudication Committee (RBAC) regarding procurements above R20 million (Report 25 of 2013/14:35).
- No funding was provided by the Department of Public Works for the project in the applicable financial year, resulting in the reallocation of funds from other capital projects (Report 25 of 2013/14:36).
- The escalation of the initial estimates from the original R27 million to the final *estimated* cost (not the final ultimate cost) of R224 million is a serious example of financial maladministration. This is clear from the bar chart in Figure 1 (Report 25 of 2013/14:167).

This trend in the estimated cost has been labelled *scope creep* (Report 25 of 2013/14:47). The PP's Report contains various examples of additional costs that were added to the original estimates which resulted in the excessive final estimates, such as the relocation of four families whose dwellings were moved at a cost of R8.5 million (Report 25 of 2013/14:29), while RDP houses could have been built for between R100 000 and R200 000 each. Another was the construction of a safe haven (i.e. a secure area) which initially was estimated at R8 million, but ultimately cost R19 million (Report 25 of 2013/14:46). The total cost of the project was R246 631 303 (Report 25 of 2013/14:48).

The Report also notes that the different actors involved should have acted in accordance with a number of prescripts, such as the *Cabinet Policy of 2003*, the *National Key Points Act*, 102 of 1980, the *Public Finance Management Act*, 1 of 1999, the *Preferential Procurement Policy Framework Act*, 5 of 2000, various *Treasury Regulations*, *Treasury Directives* and *Practice Notes*, as well as several departmental policies and guidelines (Report 25 of 2013/14:51-52).

Figure 1: Escalation of estimates



Source: Report 25 of 2013/14:167

These prescripts were demonstrably not adhered to. This fact is stated in no uncertain terms in the PP's Report (Report 25 of 2013/14:53-54).

Because no budgetary provision had been made for the Nkandla Project, money had to be reallocated by the Department of Public Works. For example, funds were transferred from the provision for the Inner City Regeneration and the Dolomite Risk Management Programmes. This was also found to constitute improper conduct and maladministration (Report 25 of 2013/14:62).

Personnel irregularities

The PP has investigated several cases of prejudice and nepotism. These are all classified under *unethical conduct* to simplify the discussion. An example of this is the allegation of nepotism and non-compliance with the Employment Equity Plan at the Drakenstein Municipality (Report 21 of 2012/13). The investigation concerned the appointments of various employees in the Drakenstein Municipality, where at some stage family members of the appointees were involved in the appointment processes.

The PP found that the appointment of two employees whose father was also employed by the Municipality did not constitute wrongful involvement, as the correct processes were followed. However, the appointment of a third employee, whose uncle performed the test preceding this specific individual's appointment, was found to have improperly benefited the appointee (Report 21 of 2012/13:38). As far as the non-compliance with the Employment Equity Plan is concerned, the PP found that the Municipality did not meet the numerical goals set in the Plan (Report 21 of 2012/13:39). Consequently the PP proposed five remedial actions including that the Municipality's Staffing Policy should be revised, that 'fast tracking' be implemented and decisions on appointments according to scores be properly documented, that the interviewers involved have thorough knowledge of the Municipality's staffing policy; that one official be subjected to an internal disciplinary process for acting in breach of the provisions of the Municipality's Staffing Policy, and that targeted recruitment be undertaken to meet the numerical goals set in the Employment Equity Plan by September 2013. As in other cases, the PP would monitor the corrective action on set dates (Report 21 of 2012/13:41).

The report *Saved by the notice* on the alleged irregular appointment and the extension of the Chief Financial Officer's (CFO's) employment by the Senqu Municipality in the Eastern Cape, and his alleged undue influence in the appointment of his wife by a service provider contracted to the Municipality (Report 8 of 2014/2015) is not discussed in detail here, as it also relates to a matter mentioned in the previous paragraph. However, it is considered significant as it concerns a municipality's failure to comply with specific prescripts in legislation. Furthermore, it has a bearing on the dilemma faced by various public institutions because of the lack of expertise of senior officials involved in financial management.

In the Senqu case, the Council appointed a CFO who lacked the competencies prescribed in the *Local Government: Municipal Systems Act*, 32 of 2000 (Annexure A) and *Annexure A* of the *Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers* Notice GN 21 in GG 37245 of 17 January 2014. The findings were that the appointment was irregular and also in contravention of section 182(1) of the *Constitution*, amounting to improper conduct. The Municipality also failed to advertise the post when the

position of the CFO became vacant in 2012 (Report 8 of 2014/15:51). The appointment of the CFO's wife was not substantiated (Report 8 of 2014/15:51). As remedial action, the PP required that the Municipal Manager should conclude a separate performance agreement with the CFO in terms of section 57(1)(b) of the *Municipal Systems Act, 32 of 2000*, within 30 days of the Report; that the post be advertised when the current employment contract of the CFO terminates, and that the MEC concerned investigate the circumstances of the violation of the prescripts of the *Municipal Systems Act, 32 of 2000* (Report 8 of 2014/15:52). The PP would monitor the implementation of the Report.

The PP's Report on the Nkandla Project contains a number of severe statements criticising particular officials in the Department of Public Works who

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 framework in respect of the procurement of goods and services for the Nkandla Project.

The same criticism was expressed regarding officials of the SAPS and the Department of Defence. These failures constitute improper conduct and maladministration (Report 25 of 2013/14:59, 60). She praised the officials who tried to raise concern regarding the management of the Project, but whose concerns were disregarded (Report 25 of 2013/14:59).

Organisational arrangements

In the case of the Nkandla Project (Report 25 of 2013/14), difficulties were experienced in assigning accountability for the project, because the regional office and the head office of the Department of Public Works were involved. The matter was further complicated by the role that the architect (Mr Makhanya) was allowed to play. Furthermore, the South African Medical Services in the Department of Defence (who provide health services to the President) and the SAPS were involved in matters related to their departmental responsibilities (Report 25 of 2013/14:39).

Some of the reasons put forward by the officials of the Department of Public Works for their failure to follow the correct procedures were confusion regarding the roles of and accountability for procurement between the national Department of Public Works and the regional office of the Department in Durban (Report 25 of 2013/14:35). Another matter of concern regarding human resources is the apparent lack of communication between the different organisational components of the Department of Public Works. A related issue is the actions of the acting Director-General, who, as accounting officer, appointed consultants and contractors without the required negotiated procurement strategies (Report 25 of 2013/14:35).

Political interference

In the Nkandla Project (Report 25 of 2013/14), the concept of the separation of political functions and administrative functions was ignored on several occasions, resulting in politicians' becoming directly involved in the management of the Project. The PP referred in particular to a former Minister of Public Works and a former Deputy Minister who both



became directly involved in the implementation of the Project (Project 25 of 2013/14:61). Some officials were uneasy with this involvement, as they indicated to the Task Team investigating the management of the Project (Report 25 of 2013/14::61).

Unacceptable service delivery

Public administration and management are practised to provide services to society. In fact, the *raison d'être* of the public service is the delivery of services to society. Any breach of this requirement constitutes a violation in terms of section 195(1)(b) of the *Constitution*. A case in point is the Report by the PP concerning the alleged poor service delivery by the Gugulethu Community Health Centre of the Western Cape Department of Health (Report 12 of 2011/12:12). It was found that there was a lack of signage, staff discipline and cleanliness, and that there were incidents of alcohol abuse during office hours (Report 12 of 2011:13). This was ascribed to poor management, resulting in the delay in the provision of health services, thus violating the rights and principles contained in section 27(1) of the *Constitution's Bill of Rights* concerning health care, food, water and social security (Report 12 of 2011/12:29). The remedial action prescribed by the PP provided for ten actions that had to be taken to rectify the situation, to report to the PP in 30 days, and thereafter bi-monthly.

In the allegations addressed in the PP's report on the SAPO's *Postponed Delivery* (Report 5 of 2015/16) referred to earlier, it was found that service delivery standards were not met by the SAPO, as contained in the *White Paper on Postal Policy* (Report 5 of 2015/16:45). It was also alleged that some of the SAPO officials had financial interests in companies awarded contracts as labour brokers, thus contravening the prescripts of section 3 of the *Prevention and Combating of Corrupt Activities Act*, 12 of 2004. These allegations were found to be substantiated, and it was found that the correct procurement processes were not adhered to (Report 5 of 2015/16).

Section 6(4)(a)(v) of the *Public Protector Act*, 23 of 1994, makes provision for the PP to investigate an 'act or omission by a person in the employ of government at any level, or a person performing a public function, which results in unlawful or improper prejudice to any other person'. This power authorises the PP to investigate any action by a public official that may be detrimental to a private individual. This was the essence of the *Report on a negotiated Settlement of a dispute involving the Drakenstein Municipality and Mrs N I Mashiqa pertaining to the damage caused to her property by a municipal vehicle driven by a municipal employee* (Report 4 of 2010/11). Although the driver was acquitted of the charge regarding the accident in terms of the Municipality's Disciplinary Code, the owner was compensated for the damage caused. The PP recommended that the Municipal Manager comply with section 62(1)(d) of the *Local Government: Municipal Finance Management Act*, 56 of 2003, concerning the requirement that 'unauthorised, irregular or fruitless and wasteful expenditure and other losses are prevented'. The Municipal Manager was also required to report progress in the implementation of the recommendations to the PP (Report 4 of 2010/11:10).

A related investigation by the PP is contained in the Report on *Fish Farming Paralysis* into allegations of improper prejudice suffered by Aquaculture Project Consultants (APC) as a result of alleged improper conduct by officials of the Bojanala District Municipality (Report 7 of 2014/15). The PP's investigation resulted in the finding that the Municipality

had improperly reneged on an agreement with APC regarding a proposed fish farm. This was *inter alia* due to the failure of the Municipality to acquaint itself with the appropriate procurement regulatory framework, to the detriment of the company (APC). The municipal officials acted in violation of section 217 of the *Constitution* concerning the constitutional guidelines regarding procurement, section 2(d)(i) and (ii) of the *Preferential Procurement Policy Framework Act*, 5 of 2000, and section 112 of the *Local Government: Municipal Finance Management Act*, 56 of 2003, requiring that the Supply Chain Management Policy must comply with the prescribed framework. The actions of the officials also contravened regulation 10 of the *Municipal Supply Chain Management Regulations*, 2005.

The PP reported that the Municipality *inter alia* failed to ensure proper demand management, failed to follow a procurement process that is open, fair and competitive, or alternatively did not abide by applicable deviation requirements and failed to ensure that decisions were taken properly by lawfully mandated structures such as the Municipal Manager and the Municipal Council (Report 7 of 2014/15:96). The remedial action taken by the PP was in accordance with the requirements of section 182(1)(c) of the *Constitution* and the *Batho Pele* principles in the *White Paper on Transforming Public Service Delivery*, 1997. In accordance with these guidelines the Municipal Manager was instructed to apologise to the complainant in writing, the APC was to be paid a consolatory amount of not less than R100 000 to cover expenses incurred in pursuit of the feasibility study and project scoping regarding the proposed fish farm (Report 7 of 2014/15:101-102). Various other remedial actions were also prescribed, but are not discussed here as the emphasis in discussing this case is the role of the PP in ensuring fair treatment of a private company that was detrimentally affected by the actions of a public body.

Unethical conduct

It is obvious that ethical conduct by officials and political office bearers is one of the cornerstones of public office in a democratic state where society is entitled to be treated with dignity and respect (*cf.* section 10 in the *Bill of Rights* as contained in the *Constitution*). The PP investigated allegations of possible unethical conduct by President J G Zuma, who was accused of violating the *Executive Ethics Code* (Report 1 of 2010/11) concerning the acceptance of gifts in excess of R1 000 and declaring his financial interests within the prescribed time limits. The PP found that there were anomalies in the prescribed procedures regarding the Code in particular regarding the consequences of non-compliance. The PP requested that the anomalies in the *Executive Members' Ethics Act*, 82 of 1998, and in the *Executive Ethics Code* be corrected. The PP indicated that it would monitor the matter after six months.

The *Report of an investigation into an alleged breach of section 5 of the Executive Ethics Code by President J G Zuma* (1 of 2010/ 11) is significant because it clearly assigns the power to the PP to investigate any matter related to the Executive. In this regard, the President is considered part of the Executive in terms of the *Executive Members' Ethics Act*, 82 of 1998. The matter concerned the requirement that members of the Executive must declare their financial interests, assets and liabilities, and the President's compliance with the legal provision regarding accepting gifts in excess of R1 000. After lengthy correspondence with the Presidency regarding the issue, the President partially complied with the declaration of financial interests (Report 1 of 2010/11:18). However, the matter concerning gifts could not

be resolved easily. It was found that Parliament was considering amending the *Executive Members' Ethics Act*, 82 of 1998 to provide clarity regarding gifts when the President is directly involved, and to whom the PP must report in such a case (Report 1 of 2010/11:21).

In the case of the Nkandla Project, the PP found that the President had unduly benefitted from the security upgrade by tacitly accepting the implementation of all measures related to his private residence. This applies in particular to the visitor's centre, cattle kraal, chicken run, swimming pool (allegedly originally intended to be a fire pool), and amphitheatre (Report 25 of 2013/14:63). In the President's statement to Parliament that his family had paid for the construction of the residence, he omitted mentioning the building of the additional facilities referred to. In this case, his conduct could be construed as 'misleading Parliament', but could not be found to be technically in violation of the *Executive Ethics Code* (Report 25 of 2013/14:64).

The PP stated unequivocally that the President as head of state

was wearing two hats, that of 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 (Report 25 of 2013/14:65).

She further found that his failure to act in protection of state resources constituted a violation of paragraph 2 of the *Executive Ethics Code* and was thus inconsistent with his office as a member of Cabinet (Report 25 of 2013/14:65).

The PP explained the legal and regulatory framework regarding ethical conduct applicable to the Nkandla Project in detail. These measures include *inter alia* Sections 83, 91, 92(2), 92(3) and 96 of the *Constitution*, section 2 of the *Executive Members' Ethics Act*, 82 of 1998, the *Executive Ethics Code* published in terms of section 2 of Act 82 of 1998, which provides in detail the requirements that members of Cabinet have to honour; and the *Ministerial Handbook* as approved by Cabinet on 7 February 2007 (Report 25 of 2013/14:350-355).

REMEDIAL ACTION

In each of the reports referred to above, the PP identified the remedial actions required to rectify the unauthorised, illegal, unethical actions or wasteful expenditure. The report that elicited the most attention was Report 25 of 2013/14, concerning the Nkandla Project. Therefore this article will focus only on the Nkandla Project report. The remedial actions included the following (Report 25 of 2013/14:68-73):

- The President was to take steps with the assistance of National Treasury and the SAPS to
 - determine the reasonable cost of the measures at Nkandla that do not relate to security;
 - pay a reasonable percentage of the cost of such measures as determined by National Treasury; and
 - reprimand the Ministers involved for 'the appalling manner' in which state funds were abused; and report to the National Assembly within 14 days. (the requirement

of reprimanding the Ministers resulted in protracted actions, allegations and counter allegations which will be discussed in the next section).

- The Secretary to the Cabinet was to
 - take urgent steps to update the *Cabinet Policy of 2003*; and
 - assist Cabinet to set clear standards on security measures;
 - determine the reasonable cost that can be incurred by the state;
 - familiarise members of Cabinet periodically regarding the parameters for enjoying executive benefits and their responsibilities; and
 - ensure that the Department of Defence creates Standard Operating Procedures regulating the implementation of benefits to the Presidential Offices.
- The Minister of Police was to
 - take urgent steps to review the *National Key Points Act, 102 of 1980*,
 - ensure that no further security measures are installed at the President's private residence, except those that are absolutely necessary, and
 - ensure that the Nkandla Project does not set a precedent for future Presidents and their deputies or former presidents and their deputies.
- The National Commissioner of Police was to establish why prescripts had not been followed by the officials involved, and assist the Minister of Police to familiarise himself with the contents of the relevant legislation.
- The Director-General of the Department of Public Works was *inter alia* to
 - identify officials who did not comply with prescripts and take the necessary disciplinary actions;
 - with the assistance of National Treasury determine the extent to which the SAPS and Department of Defence should be held liable for particular expenditure and to recover such costs accordingly;
 - review the delegation of authority to the regional offices;
 - ensure that all officials are properly trained in supply chain management;
 - comply with the provisions of the *Government Immovable Asset Management Act, 19 of 2007*, regarding the assets at Nkandla (concerning the assets not on the President's property); and
 - develop a policy for the implementation of security measures at the private residences of presidents, deputy presidents and former presidents and deputy presidents.
- The Secretary of Defence was to take steps to
 - consolidate prescripts relating to medical, transport and related functions regarding presidential offices;
 - monitor the implementation of the remedial actions identified by the PP; and
 - ensure certainty and accountability in respect of future implementation measures.

Four additional remedial actions were identified which were related to monitoring the implementation of the corrective actions required. Firstly, the President was to report to Parliament within 14 days of receipt of the Report. Secondly, accounting officers were to take remedial action by 1 May 2014 (this did not happen, due the various investigations and court cases that followed). Thirdly, status reports were to be submitted by the affected accounting officers within three months. Finally, public office bearers were to ensure compliance.



The remedial actions concerning the President's direct responsibilities as identified by the PP are enumerated in the relevant Report, indicating non-response, as well as efforts by the PP to elicit the required information. These included six occasions on which correspondence with the President as well as meetings with him were conducted (Report 25 of 2013/14:344-350). The lack of proper response ultimately resulted in the matter's being dealt with by the Constitutional Court, as discussed in the next section.

CONSTITUTIONAL COURT RULING

In the wake of her report on the Nkandla Project, there were protracted efforts to question the PP's right to take remedial action, as contained in section 6(4)(b) of the *Public Protector Act*, 23 of 1994. As a result, the matter served before the Constitutional Court on 9 February 2016 after an application was brought by the Economic Freedom Fighters (Cases CCT143/15 and CCT 171/15). This application was supported by the Democratic Alliance with the Corruption Watch (RF) NPC as *amicus curiae*. After deliberating the matter, the full bench of the Court made the following unanimous ruling (comprising 52 pages):

- 'The remedial action taken by the Public Protector against the President Jacob Gedleyihlekisa Zuma in terms of section 182(1)(c) of the Constitution is binding.'
- 'The failure of the President to comply with the remedial action taken against him, by the Public Protector in her report of 19 March 2014 is inconsistent with section 83(b) of the Constitution read with sections 181(3) and 182 (1)(c) of the Constitution and is invalid.'
- 'The Treasury must determine the reasonable costs of those measures implemented by the Department of Public Works at the President's Nkandla homestead that do not relate to security, namely the visitors' centre, the amphitheatre, the cattle kraal , the chicken run and the swimming pool only.'
- 'The National Treasury must determine a reasonable percentage of the costs of those measures which ought to be paid personally by the President.'
- 'The Treasury must report back to this Court on the outcome of the determination within 60 days of the determination of this order.'
- The President must *personally* (my emphasis) pay the amount determined by the Treasury in terms of this order 'within 45 days of this Court's signification of its approval of the report'.
- The President must reprimand the Ministers involved as identified in the remedial actions taken by the PP.
- 'The resolution passed by the National Assembly absolving the President from compliance with the remedial action taken by the Public Protector in terms of section 182(1)(c) of the Constitution is inconsistent with sections 42(3), 55(2)(a) and (b) and 181(3) of the Constitution, is *invalid and is set aside*' (my emphasis).
- 'The President, the Minister of Police and the National Assembly must pay the costs of the applications including the costs of two counsel.'

The Constitutional Court's extensive arguments are not repeated here. Suffice it to state that the Constitutional Court vindicated the PP's powers once and for all. The Treasury has

determined the amount to be paid by the President at R7,8 million on 20 June 2016. This has to be approved by the Constitutional Court. The President must then settle the account within 45 days of the Constitutional Court's approval of the amount determined by Treasury.

CONCLUSION

The PP assumed her duties in October 2009. The number of reports and the arguments put forward before she reached her conclusions prove the extensiveness of the investigations conducted concerning each case. The remedial actions prescribed are followed by a monitoring action to ensure that the remedial actions are indeed given effect to.

The Nkandla Project concerning the President's homestead elicited intense debates on the powers of the PP. Various claims were made regarding the meaning of the term 'remedial action', which some argued implies mere recommendations. Even the National Assembly tried to protect the President's failure to give effect to the findings of and comply with the remedial actions required by the PP. However, the Constitutional Court ultimately provided an unambiguous response by declaring unequivocally that *remedial action* means exactly what it says. The role of the PP has thus been vindicated. The PP is the guardian of ethical conduct in terms of chapter 9 of the *Constitution of the Republic of South Africa*, 108 of 1996, which is the supreme law of the country. This implies the President, the Cabinet and the National Assembly are obliged to give effect to its provisions.

BIBLIOGRAPHY

Articles/ Books

Acton, Lord John Dalberg. Wikipedia.

Fourie, D. 2016. Good governance in relation to public administration: future implications for service delivery performance. *Administratio Publica*, 24(1), March: 45-58.

Hendricks, C. 2016. The impact of fiscal decentralisation on the responsiveness of sub-national governments: a South African case study. *Administratio Publica*, 24(1), March 59-7.

Mantzaris, E. 2016. Innovative leadership against corruption in the public sector: the case of South Africa. *African Journal of Public Affairs*, 9(1), March: 59-69.

Saloojee, A. and Kuye, J.O. 2015. "Attacking the bureaucratic elephant" – the state of selected public administration, political and policy reforms in new democracies: from decentralisation and partnership to the responsive citizen in the governance of the state. *African Journal of Public Affairs*, 8(4), December: 1-11.

Thornhill, C. 2011. The role of the Public Protector: case studies in public accountability. *African Journal of Public Affairs*, 4(2):79-88.

Thornhill, C. 2012. *JJN Cloete's South African public administration and management*. 10th edition. Pretoria: Van Schaik Publishers.

South Africa: Legislation

South Africa (Republic). 1980. *National Key Points Act*, 102 of 1980. Pretoria: Government Printer.



South Africa (Republic). 1982. *Protection of Information Act*, 84 of 1982. Pretoria: Government Printer

South Africa (Republic).1994a. *Kwazulu-Natal Ingonyama Trust Act*, 3 of 1994. Pretoria: Government Printer.

South Africa (Republic). 1994b. *Public Protector Act*, 23 of 1994. Pretoria: Government Printer.

South Africa (Republic). 1994c. *National Strategic Intelligence Act*, 39 of 1994. Pretoria: Government Printer.

South Africa (Republic). 1994d. *Public Service Act*, 103 of 1994. Pretoria: Government Printer.

South Africa (Republic). 1996. *Constitution of the Republic of South Africa*, 1996. Pretoria: Government Printer.

South Africa (Republic). 1998a. *Remuneration of Public Office Bearers Act*, 20 of 1998. Pretoria: Government Printer.

South Africa (Republic). 1998b. *Executive Members' Ethics Act*, 82 of 1998. Pretoria: Government Printer.

South Africa (Republic). 1999. *Public Finance Management Act*, 1 of 1999 (PFMA) . Pretoria: Government Printer.

South Africa (Republic). 2000a. *Municipal Systems Act*, 32 of 2000. Pretoria: Government Printer.

South Africa (Republic). 2000b. *Preferential Procurement Policy Framework Act*, 5 of 2000. Pretoria: Government Printer.

South Africa (Republic). 2000c. *Local Government: Municipal Systems Act*, 32 of 2000. Pretoria: Government Printer.

South Africa (Republic). 2000d. *Executive Ethics Code* of 2000. Pretoria: Government Printer.

South Africa (Republic). 2003a. *Local Government: Municipal Finance Management Act*, 56 of 2003. Pretoria: Government Printer.

South Africa (Republic). 2003b. *Cabinet Policy of 2003*. Pretoria: Government Printer.

South Africa (Republic). 2004. *Prevention and Combating of Corrupt Activities Act*, 12 of 2004. Pretoria: Government Printer.

South Africa (Republic). 2005. *Municipal Supply Chain Management Regulations, 2005*. Pretoria: Government Printer.

South Africa (Republic). 2007a. *Government Immovable Asset Management Act*, 19 of 2007 (GIAMA). Pretoria: Government Printer.

South Africa (Republic). 2007b. *Ministerial Handbook* as approved by Cabinet on 7 February 2007. Pretoria: Government Printer.

South Africa (Republic). 2014. *Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers* Notice GN 21 in GG 37245 of 17 January 2014. Pretoria: Government Printer.

South Africa (Republic). *Treasury Regulations; Treasury Directives and Practice Notes*.

South Africa (Republic). *Treasury Regulations and Guidelines*.

South Africa (Republic). Directives issued by the National Treasury;

South Africa: Public Protector

South Africa: Public Protector. 2010a. Report on an investigation into an allegation that the National Prosecuting Authority failed to discharge its mandate as recommended by the Truth and Reconciliation Commission (*Report No 48 of 2009/10*).

South Africa: Public Protector. 2010b. Report on an investigation into an allegation of the Misappropriation of Public Funds by the former Free State Youth Commission (*Report No 51 of 2009/10*).

South Africa: Public Protector. 2011a. Report of an investigation into an alleged breach of Section 5 of the Executive Ethics Code by President JG Zuma (*Report No 1 of 2010/11*).

- South Africa: Public Protector. 2011b. Report on a negotiated settlement of a dispute involving the Drakenstein Municipality and Mrs N I Mashiqua pertaining to the damage caused to her property by a municipal vehicle driven by a municipal employee (*Report No 4 of 2010/11*).
- South Africa: Public Protector. 2011c. *Against the Rules* (33 of 2010/11).
- South Africa: Public Protector. 2012a. Report on an investigation into alleged poor service delivery at the Gugulethu Community Health Centre (Western Cape Department of Health) (*Report No 12 of 2011/12*).
- South Africa: Public Protector. 2012b. Report on an investigation in connection with the Alleged Irregular Appointment of the Special Advisor, Dr P Ngobeni (*Report No 17 of 2011/12*).
- South Africa: Public Protector. 2013a. Report of the Public Protector on an Investigation into Allegations of Alleged Abuse of State Power Resulting in Alleged Unlawful Arrest and Detention by an Off-Duty Traffic Police Officer (*Report No 9 of 2012/13*).
- South Africa: Public Protector. 2013b. Report on an investigation into allegations of maladministration and Improper Conduct by the Department of Mineral Resources Pertaining to the Procurement of Services (*Report No 12 of 2012/13*).
- South Africa: Public Protector. 2013c. Report on an investigation into allegations of nepotism and non-compliance with the Employment Equity Plan of the Drakenstein Municipality (*Report No 21 of 2012/13*).
- South Africa: Public Protector. 2014a. Report on an investigation into alleged shortages and incorrect supply of workbooks by the National Department of Basic Education to Eastern Cape schools (*Report 19 of 2013/14*).
- South Africa: Public Protector. 2014b. Report on an investigation into an allegation of maladministration by the Department of Public Works, Roads and Transport in the awarding of tenders for shop leases in Pilgrims Rest (*Report 20 of 2013/14*).
- South Africa: Public Protector. 2014c. Report on an investigation into allegations of improper and irregular awarding of a tender to Sekunjalo Marine Services by the Department of Agriculture, Forestry and Fisheries (*Report 21 of 2013/14*).
- South Africa: Public Protector. 2014d. Report on an investigation into allegations of maladministration, systemic corporate governance deficiencies, abuse of power and the irregular appointment of Mr Hlaudi Motsoeneng by the South African Broadcasting Corporation (SABC) (*Report 23 of 2013/2014*).
- South Africa: Public Protector. 2014e. 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 (*Report 25 of 2013/14*).
- South Africa: Public Protector. 2015a. Report on an investigation into allegations of improper prejudice suffered by Aquaculture Project Consultants (APC) as a result of alleged improper conduct by officials of Bojanala District Municipality (*Report No 7 of 2014/2015*).
- South Africa: Public Protector. 2015b. Report on an investigation into the alleged irregular appointment and the extension of the Chief Financial Officer's employment contract by the Senqu Municipality in the Eastern Cape and his alleged undue influence in the appointment of his wife by a service provider contracted to the municipality (*Report No 8 of 2014/2015*).
- South Africa: Public Protector. 2015c. Report on an investigation into alleged maladministration by the George Municipal Manager relating to the appointment of the Area Coordinator in Touwsrante (*Report 9 of 2014/2015*).
- South Africa: Public Protector. 2015d. A report on an investigation into allegations of a violations of the Executive Ethics Code and the Constitution by the Minister and Deputy Minister of Sport and Recreation, the Hon. Fikile Mbalula, MP and Gerhardus Oosthuizen, MP (*Report No 18 of 2014/2015*).
- South Africa: Public Protector. 2016. Report on an investigation into allegations of maladministration, corruption and related improper conduct relation to the leasing of the Eco Point Office Park and utilisation of labour brokers by the South African Post Office (*Report No 5 of 2015/2016*).



South Africa: Public Protector. 2017. Report on an investigation into allegations of maladministration regarding Operation Hlasela of the Free State Provincial Government and alleged conflation between party and state (*Report 1 of 2016/17*)

White Paper

South Africa (Republic). 1997. *White Paper on Transforming Public Service Delivery (Batho Pele)*. Pretoria: Government Printer.

South Africa (Republic). *White Paper on Postal Policy*

Court Ruling

South Africa. Constitutional Court of South Africa. 2015 Cases CCT143/15 and CCT 171/15 in the matter of the Economic Freedom Fighters (Applicant) and the Speaker of the National Assembly, President Jacob Gedleyihlekisa Zuma, the Public Protector; and in the matter of the Democratic Alliance (Applicant) and the Speaker of the National Assembly, President Jacob Gedleyihlekisa Zuma Minister of Police with Corruption Watch (RF) NPC *Amicus Curiae*.