

PARLIAMENT
OF THE
REPUBLIC OF SOUTH AFRICA

**ANNOUNCEMENTS,
TABLINGS AND
COMMITTEE REPORTS**

WEDNESDAY, 13 NOVEMBER 2013

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National Assembly and National Council of Provinces

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1. Classification of Bills by Joint Tagging Mechanism (JTM)

- (1) The JTM in terms of Joint Rule 160(6) classified the following Bills as section 75 Bills:
 - (a) **Customs Control Bill** [B 45 – 2013] (National Assembly – sec 75).
 - (b) **Judicial Matters Second Amendment Bill** [B 51 – 2013] (National Assembly – sec 75).
- (2) The JTM in terms of Joint Rule 160(6) classified the following Bill as a section 76 Bill:
 - (a) **Judicial Matters Third Amendment Bill** [B 53 – 2013] (National Assembly – sec 76).

National Council of Provinces

The Chairperson

1. Message from National Assembly to National Council of Provinces in respect of Bills passed by Assembly and transmitted to Council

- (1) Bills passed by National Assembly and transmitted for concurrence on 13 November 2013:
 - (a) **South African Human Rights Commission Bill** [B 5B – 2013] (National Assembly – sec 75).

The Bill has been referred to the **Select Committee on Security and Constitutional Development** of the National Council of Provinces.

- (b) **South African Post Office SOC Ltd Amendment Bill** [B 24B – 2013] (National Assembly – sec 75).

The Bill has been referred to the **Select Committee on Labour and Public Enterprises** of the National Council of Provinces.

- (c) **Judicial Matters Amendment Bill** [B 7D – 2013]
(National Assembly – sec 75).

The Bill has been referred to the **Select Committee on Security and Constitutional Development** of the National Council of Provinces.

- (d) **Judicial Matters Second Amendment Bill** [B 51 – 2013]
(National Assembly – sec 75).

The Bill has been referred to the **Select Committee on Security and Constitutional Development** of the National Council of Provinces.

- (e) **Judicial Matters Third Amendment Bill** [B 53 – 2013]
(National Assembly – sec 76).

The Bill has been referred to the **Select Committee on Security and Constitutional Development** of the National Council of Provinces.

Correction (incorrect bill number in ATC of 12 November 2013):

- (f) **Legal Practice Bill** [B 20B – 2012] (National Assembly – sec 76).

The Bill has been referred to the **Select Committee on Security and Constitutional Development** of the National Council of Provinces.

2. Referral to Committees of papers tabled

- (1) The following papers are referred to the **Select Committee on Land and Environmental Affairs** for consideration and report:
- (a) Annex V1 to the Protocol on Environmental Protection to the Antarctic Treaty – Liability arising from Environmental Emergencies, tabled in terms of section 231(2) of the Constitution, 1996.
 - (b) Explanatory Memorandum to Annex V1 to the Protocol on Environmental Protection to the Antarctic Treaty – Liability arising from Environmental Emergencies.

TABLINGS

National Assembly and National Council of Provinces

1. The Speaker and the Chairperson

- (a) Report of the Auditor-General: Consolidated General Report on National and Provincial Audit Outcomes for 2012-13 [RP 322-2013].

- (b) Special Report of the Joint Standing Committee on Intelligence (JSCI) – Report on the Prestige Project A: Security Measures at the President's Private residence: Nkandla.



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

SPECIAL REPORT
JOINT STANDING COMMITTEE ON INTELLIGENCE
ON
Report on the Prestige Project A: Security Measures at the
President's Private residence: Nkandla

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1. INTRODUCTION

In terms of section 92(1), (2) and (3) of the Constitution, the Minister of Public Works in conjunction with the Ministers of Police and State Security in November 2012 established a Task Team to probe matters surrounding the security upgrading to President Jacob Zuma's Nkandla residence in KwaZulu-Natal.

The call for the probe was in response to cost concerns raised relating to the security upgrades at the Nkandla residence. The Minister of Public Works advised at the time that the Task Team was conducting a preliminary investigation into aspects of procedural integrity of overpricing and general supply chain prescripts. The Task Team was given specific terms of reference and a limited time within which to investigate and compile a report.

The purpose of the report accordingly was to explain the background to the Nkandla project, the legal framework that governed the steps taken by the Task Team, the investigation that was conducted, the findings thereof and recommendations the Task Team considered necessary. The investigation commenced on 12 November 2012. The report was handed to the Minister of Public Works. The report is classified "Top Secret".

On 20 June 2013 the Task Team Report on the Security Measures at the President's Private Residence - Nkandla was tabled in Parliament and because of its classification, the report was referred to the Joint Standing Committee on Intelligence (JSCI) for consideration.

The JSCI has considered the Report on the Prestige Project A: Security Measures at the President's Private residence: Nkandla. In carrying out its work the Committee, *inter alia*, met and consulted with the Task Team and considered the relevant legislation and policies. The Committee also visited and inspected the Nkandla residence and the surrounding area.

This Special Report of the JSCI covers the work done by the committee and incorporates its findings and recommendations.

2. THE TASK TEAM AND THE TERMS OF REFERENCE

The Task Team consisted of legal, security and financial experts from the State Security Agency and the Department of Public Works (assisted by officials from the Defence Force and the South African Police Service). The terms of reference of the Task Team were to:

- establish the chronology and process of declaring the Nkandla Residence Complex as a National Key Point (NKP)
- ascertain the legal, procedural and regulations that govern the declaration of premises such as Nkandla as a NKP
- determine the legal and procedural processes of declaring the Nkandla as a NKP
- ascertain in detail the recommendations made by the SAPS and Public Works and other statutory role-players in respect of the upgrading of the security measures at Nkandla
- determine in detail any other recommendations made by statutory entities on the upgrading of Nkandla on non-security aspects (i.e improvements proposed but that were not related to the securing of the complex)

- establish details of the initial funds allocation and budget to the project and by whom was it approved
- ascertain whether delivery and supply chain prescripts were followed
- ascertain whether there were any deviations from the above, and
- determine whether deviations from the above were in accordance with the legal; and procedural prescripts

3. THE WORK OF THE TASK TEAM

The investigation of the Task Team included:

- Site inspections of Nkandla followed by,
- Collection and verification of information from documents and interviews with relevant persons involved in the project
- Reviewing supporting documents
- Interviewing all relevant officials and contractors, including the principal project agent, project managers of Department of Public Works, other project and security managers
- Interviewing officials of State Security Agency on vetting procedures conducted during the accreditation phase of service providers
- Perusing documents produced by the technical experts, including quantity surveyors, structural and civil engineers appointed by DPW
- Reports of the Auditor-General on the Nkandla Prestige Project A (including Nkandla project)
- Access to classified security assessment reports

While conducting their investigation, the Task Team did not obtain information or evidence under oath but, normal secrecy documentation was completed to maintain the secrecy and the confidentiality of their investigation. The Task Team was however, not restricted in any way during its investigation. In this regard it was allowed:

- access to visit the site to verify the scope of the work, progress made, completed work, against the progress of payments to contractors and consultants.
- to interview and had access to persons involved in the project.
- access to all documentation and,
- when necessary, additional expertise relevant to provide professional assistance to conduct the required work.

The Task Team interviewed many people during its investigation. Amongst those persons interviewed were officials from the South African Police Services, the Department of Public Works, the State Security Agency and Defence and Military Veterans.

4. THE REPORT OF THE TASK TEAM

The report of the Task Team has the following "Table of Contents":

1	INTRODUCTION
2	TERMS OF REFERENCE
3	ROLES AND RESPONSIBILITIES
4	MANDATE OF TASK TEAM
5	APPLICABLE LEGISLATION

6	APPROACH AND METHODOLOGY
7	BACKGROUND
8	SECURITY ASSESSMENT
9	DECLARATION AS NATIONAL KEY POINT
10	PROJECT IMPLEMENTATION
11	SUPPLY CHAIN MANAGEMENT
12	MINISTERIAL HANDBOOK
13	CABINET DECISION OF 20 AUGUST 2003
14	FINDINGS
15	RECOMMENDATIONS

The Task Team reported that it established that during 2008 before his appointment as President of the Republic of South Africa, President Zuma and his family engaged the services of architects to design and produce plans since they intended to renovate his private residence at Nkandla.

However, after the inauguration of President Zuma in May 2009 the Department of Public Works became involved in evaluating the security situation at the Nkandla residence to ascertain to what extent the safety of the President and his immediate family could be comprised as a result of his public position.

Professional officials of the Department of Public Works after a visit to Nkandla on 21 May 2009 produced a security upgrade proposal to be effected at the residence. This assessment, however, did not have the input of the South African Police Services, the Department of Defence or the National Intelligence Agency ["NIA" as it then was].

The Task Team also established that by October 2009 the South African Police Services produced a security assessment in the form of a Needs Assessment and presented it to Public Works. The South African Police Services also did a further security assessment which contained more comprehensive security recommendations.

There were also security assessments done by the Department of Defence which involved the South African Air Force (SAAF) and the South African Military Health Services (SAMHS). These assessments related to specific matters within the competence of the Police and the Defence Force.

There was a further security assessment done in 2010 by a private contractor.

However, following a physical Security Assessment the Minister of Police on 08 April 2010 declared the private residence of President Zuma a National Key Point in terms of the National Key Points Act 102 of 1980.

The Task Team accordingly set out in their report how the security upgrades recommended by the various assessments affected the price of the project. As a consequence of the recommendations, the implementation of the security upgrades was divided into two focus areas. The two areas were:

- the State-owned land covering 5.1598 ha and,
- the property of the President covering 3.8324 ha

The recognition of the distinction of the above two separate properties is perhaps the most significant issue in their investigation and report. In this regard the report points out that the property of the President was not large enough to accommodate all the requirements recommended in the security assessments. State-owned land covering 5.1598 ha adjacent to the property of the President was therefore acquired. This State-owned property remains owned by the State and incorporates the majority of the recommended security features.

On 20 August 2003 Cabinet adopted a policy which provided for a process according to which the South African Police Services, together with the National Intelligence Agency (NIA) must evaluate the security situation of the private properties that are owned and regularly used by the President, Deputy President, former President, Deputy Presidents and their immediate family (in exceptional cases). The main consideration was to ascertain to what extent the safety of the President, Deputy President, former Presidents or Deputy Presidents or their immediate families, including their personal property could be compromised as a direct result of the public position held or previously held.

The decision of Cabinet and the policy does not place any limit on the amount to be spent on security upgrades to the residence of a sitting President or Deputy President as well as former Presidents and Deputy Presidents.

5. FINDINGS OF THE TASK TEAM

The Task Team was able to verify a number of issues and as a consequence made a number of findings and recommendations.

The following are some of the findings:

- The private residence of President Jacob Zuma was declared a National Key Point 08 April 2010 by the Minister of Police in accordance with the applicable legislation.
- The actual security upgrades and related activities commenced in June 2010
- As at 19 November 2012 the actual cost for the whole project (State and President's property) amounted to R 206 420 644-28.
- There is no evidence that the Department of Public Works paid for the construction of houses of the President.

- Supply Chain Management Policy and prescripts were not fully complied with in the procurement of goods and services related to the project.
- Despite being advised by the National Intelligence Agency that a mentioned company did not meet the required security vetting standards, the company nevertheless was involved in the project.
- Foreign nationals were employed by a mentioned company contrary to the security provisions of the MISS, policies and legislation.
- A number of mentioned companies did not go through the security clearance process as was required.

6. MANDATE OF THE JSCI

The JSCI distinct from other Parliamentary Portfolio Committees, is a statutory joint committee established in terms of section 2 of the Intelligence Services Oversight Act 40 of 1994 (Oversight Act). The JSCI is a multi-party committee. Depending on the election results political parties are entitled to serve on the JSCI but not compelled. If a political party which qualifies to serve on the JSCI decides not do so then that seat cannot be re-allocated. The ANC, DA, COPE, IFP, UDM, FF PLUS and ID all qualified to serve on the JSCI after the 2009 elections.

As provided for in the Oversight Act, all the members of the JSCI and staff members have been vetted and have "top secret" clearances. Members and staff willing to serve on the Committee also have to take an oath or affirmation of secrecy before a judge.

The security clearance of members of the JSCI accordingly allow the committee access to sensitive information and information that has been classified "confidential", "secret" or "top secret". The JSCI is therefore the only competent committee at Parliament with the statutory authority to access classified and sensitive information. However, in exercising its mandate the Committee is assisted by the Office of the Auditor General

(OAG) and the Office of the Inspector General of Intelligence (OIGI). In this regard all personal from the OAG and OIG who deal with classified and sensitive information are required to have a "top secret" clearances.

The JSCI furthermore, in terms of legislation, is required to conduct its work in a secured area. This is to ensure that classified and sensitive information is not compromised.

The regulatory framework which governs the classification of sensitive and classified information does not allow access without the necessary security clearance.

Moreover, section 6(2) of the Oversight Act provides:

"The Committee may at the request of the Parliament, the President or the Minister responsible for each Service or at any other time which the Committee deems necessary, furnish Parliament, the President or such Minister with a special report concerning any matter relating to the performance of its functions, and shall table a copy of such report in Parliament or furnish the President and the Minister concerned with copies, as the case may be."

Because of the nature of its work, the Committee has always functioned without the interference of the political parties whose members serve on the committee. National interests and national security matters are key features of the work of the JSCI and for this reason party politics has never been a dividing factor between committee members. This has been the position since the inception of the committee.

7. CLASSIFICATION PROCEDURE

In considering the question of classification of sensitive information in general it is appropriate to have regard to the matter of the *Independent Newspapers (Pty) Ltd vs Minister for Intelligence Services SA 2008 (5) SA 31 (CC)*.

In this case the Constitutional Court (Deputy CJ Moseneke) stated:

[49] I describe briefly the regulatory framework which governs the protection and classification of sensitive information. The authority of the Cabinet to make and implement national policy derives from the Constitution.⁴² The Constitution imposes upon the government the duties, amongst others, to preserve the peace and secure the well-being of the people of the Republic;⁴³ to maintain national security;⁴⁴ to defend and protect the Republic;⁴⁵ to establish and maintain intelligence services;⁴⁶ and to prevent,

⁴² Section 55(2)(b) which reads:

"The President exercises the executive authority, together with the other members of the Cabinet, by—
(b) *developing and implementing national policy".*

⁴³ Section 41(1)(a) and (b) provides:

"All spheres of government and all organs of state within each sphere must—
(a) *preserve the peace, national unity and the indivisibility of the Republic;*
(b) *secure the well-being of the people of the Republic".*

⁴⁴ Section 44(2)(a) reads as follows:

"Parliament may intervene, by passing legislation in accordance with section 76(1), with regard to a matter falling within a functional area listed in Schedule 5, when it is necessary—
(a) *to maintain national security".*

Section 146(2)(c)(i) reads:

"National legislation that applies uniformly with regard to the country as a whole prevails over provincial legislation if any of the following conditions is met:
(c) *The national legislation is necessary for:*
(i) *the maintenance of national security".*

And section 195 reads:

"The following principles govern national security in the Republic:
(a) *National security must reflect the resolve of South Africans, as individuals and as a nation, to live as equals, to live in peace and harmony, to be free from fear and want and to seek a better life.*
(b) *The resolve to live in peace and harmony precludes any South African citizen from participating in armed conflict, nationally or internationally, except as provided for in terms of the Constitution or national legislation.*
(c) *National security must be pursued in compliance with the law, including international law. National security is subject to the authority of Parliament and the national executive."*

combat and investigate crime.⁴⁷ Effect is given to these constitutional obligations through legislation, the establishment of institutions as permitted by law and by the exercise of executive authority vested in the President and the Cabinet. The Minister draws attention to the national information security policy, known as Minimum Information Security Standards (MISS), which was adopted by the Cabinet on 4 December 1998.⁴⁸ It applies to all departments of state that handle classified information in the national interest. It provides for measures to protect classified information and empowers the Minister to protect information by classifying it as restricted" or "confidential" or "secret" or "top secret".⁴⁹ In addition national legislation and regulations prohibit the disclosure of certain classified information.⁵⁰

⁴⁵ Section 200(2) states:

"The primary object of the defence force is to defend and protect the Republic, its territorial integrity and its people in accordance with the Constitution and the principles of international law regulating the use of force."

⁴⁶ Section 209(1) provides:

"Any intelligence service, other than any intelligence division of the defence force or police service, may be established only by the President, as head of the national executive, and only in terms of national legislation."

⁴⁷ Section 205(3) states:

"The objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law."

⁴⁸ MISS can be accessed by visiting <http://www.kzeducation.gov.za/policies/MISS96.pdf>, accessed on 20 May 2008.

⁴⁹ This classification is provided for in Chapter 2 of MISS.

⁵⁰ See in this regard; section 4 of the Protection of Information Act 84 of 1982, which prohibits the disclosure of protected documents or information in relation to, amongst other things, security matters; sections 26(1)(a)(iii), (f)(i) and (g) of the Intelligence Services Act, which makes it an offence for any person, members or former members of any intelligence service to disclose classified information without permission of the relevant government official; and regulation E of Part II of Chapter 1 of the Public Service Regulations, 2001 GN R1 GF 21951, 5 January 2001, which prohibits an employee from releasing official information to the public without the necessary authority.

The Courts have accordingly recognized the necessary regulatory framework that governs the classifications of sensitive information.

For example, in terms of the Minimum Information Security Standard (MISS) classified information is defined as sensitive information which in the national interest, is held by, is produced in, or is under the control of the State, or which concerns the State and which must by reasons of its sensitive nature, be exempted from disclosure and must enjoy protection against compromise.

The MISS accordingly provides that all official matters **requiring the application of security measures** (exempted from disclosure) must be classified as either "Restricted", "Confidential", "Secret" or "Top Secret".

However, the MISS specifically provides that security measures are not intended and should not be applied to cover up maladministration, corruption, criminal actions, etc, or to protect individuals/officials involved in such cases.

In dealing with contractors and tenders around security matters, the MISS specifically puts an onus on the department/institution concerned in each case to indicate expressly in documents sent to the State Tender Board or private contractors whether there are security implications that should be taken into account in advance when they perform their duties for the department/institution involved. If there are such implications, reasons must be given for the inclusion of a clause in the tender document indicating the degree of clearance required, as well as a clause to ensure the maintenance of security during the performance of the contract.

The acceptance of the tender must accordingly be made subject to the condition that both the contracting firm and its personnel providing the service must be cleared by the appropriate authorities to the level of Confidential/Secret/Top Secret. In addition acceptance of the tender must also be subject to the condition that the contractor will implement all such security measures as the safe performance of the contract may require.

In the above circumstance the Committee is satisfied that the necessary policy and legislative regulatory framework presently governing the classification process of sensitive information is in place and is applicable in this matter.

8. THE WORK OF THE COMMITTEE

8.1 Briefing by the task team - Pretoria 31 July 2013

The JSCI met the Task Team on 31 July 2013 in Pretoria and received a comprehensive briefing on the work of the Task Team, the Nkandla Report and the security measures implemented at the private residence of the President. All Committee members were present.

During the briefing the Task Team drew particular attention to the surrounding terrain where the property of the President is situated. The Task Team advised that they found that the location of Nkandla property was carefully considered and greatly affected the security assessments which recommended the upgrades and the implementation thereof.

A further key issue of confusion which the Task Team cleared up was that the property of the President was too small for the execution of the security assessment proposals.

As a consequence additional State land adjacent to the property of the President had to be acquired.

The entire security features that were carried out were therefore carried out on two separate properties. The property of the President comprises 3.8324 ha while the adjacent property which comprises 5.1598 ha and is State own

8.2 Meeting and deliberations of the JSCI

The JSCI met on numerous occasions to deliberate on the Nkandla Report. At a Committee meeting held on the 28 August 2013 the two Democratic Alliance members withdrew from the meeting. The reason given was that they were instructed by their Parliamentary Leader, Honourable Mazibuko to do so.

This apparent political interference came as a shock to Committee members particularly because the two DA members had been present at the Pretoria briefing on 31 July 2013 on the Nkandla Report and had even put questions to the Task Team members.

The JSCI has considered the conduct of the two DA members as serious and will refer the matter to the Speaker for consideration.

However, following the briefing by the Task Team and the JSCI meeting, the Committee resolved that an inspection of the Nkandla property and the surrounding area should be undertaken.

8.3 Inspection *in loco* by JSCI

On Monday 30 September 2013 the JSCI accompanied by the Minister of Public Works and members of the Task Team conducted an inspection *in loco* of the Nkandla property and the adjacent State owned property to verify the matters relating to security assessment and to observe the nature of the surrounding terrain. During the visit the committee also requested further briefings from the Task Team members and the project architect who accompanied the Task Team.

As a consequence of the inspection *in loco*, the additional briefings received on site from the Task Team, together with numerous questions raised by the Committee, the Task Team was requested to furnish the Committee with specific additional information.

On Thursday 10 October 2013 the Task Team was invited to a meeting of the JSCI in Cape Town where the Committee received a further briefing on the additional information that was requested. What follows below is a summary of the additional information provided by the Task Team.

9. ADDITIONAL INFORMATION OF THE TASK TEAM

9.1 Introduction

The Security Cluster Departments (SANDF, SAPS and SSA) are responsible for the security of sitting and previous Heads of State. This responsibility is a material obligation no matter where the principal may be at a given moment, whatever the circumstances may be. In terms of the duty, the security is to be ensured at a level in keeping with national and international norms.

All these departments have to regularly review the circumstances surrounding a particular principal and adapt the security provision to the *modus operandi* of the state and the particular circumstances surrounding the individual principal. There is no justification for a lowering of any standards, no matter the difficulty in meeting acceptable standards.

The provision of security is thus a dynamic one and is provided on a 24hr/7-day/365-day basis, in all localities and at all times by professional staff.

Any enhancement of facilities is subject to processes and procedures that are conceptually generic for all presidents and modified to the particular circumstances surrounding an individual President.

The President as Commander-in-Chief of the Armed Forces, together with his approved dependents, enjoys the protection and comprehensive health care provided by SANDF, the protection provided by the police supported by the SANDF, transport provided by the SAPS and the SAAF (South African Air Forces). An early warning and dynamic intelligence assessment guides all security provision.

The security is provided within the particular needs of the moment, whether the President may be engaged in official business or private matters.

In keeping with the mandates of the different elements of the Security Cluster Departments, the security factors surrounding the newly sworn-in President in 2009 had to be reviewed. It is this review that resulted in the security upgrades at the private residence of President Zuma in Nkandla, among others.

9.2 Geographic location of the Nkandla residence

It is necessary to appreciate that the geography of the area of Nkandla is fundamental to an understanding of some of the factors that influenced the security upgrades to the residence in question.

Nkandla is a deep rural area in the province of Kwa-Zulu Natal, with an average elevation of 1301 meters above sea level. It occupies an 1829 km² area with remote, sparsely located villages generally characterized by rough terrain, inadequate infrastructure and health facilities as well as a general lack of basic services such as water and sanitation. The area is populated with 97 people per square kilometer. Current statistics rate Nkandla among the top five poorest areas in KZN.

KwaNxamalala is one of the villages that constitute the Nkandla Municipality. It is at the heart of this remote village that the home of the sitting President of the country is situated. This is where the President takes a break from hectic government schedule to go and relax as well as spend quality time with his family, attend to his guests and private engagements. The President also host Senior State visitors.

9.3 Climate conditions

Nkandla has a climate that is classified as humid sub-tropical (dry winter, hot summer) with a subtropical dry forest bio-zone. The area is generally not cultivated and most of the natural vegetation is still intact. The landscape is mostly covered by broadleaved deciduous forest.

In terms of natural hazards, Nkandla can be susceptible to strong earthquakes on an average one earthquake every 50 years, with occurrences at 5-6 Richter scale. While there is a medium-low risk of periods with extreme drought, the risk to flooding is also very high.

9.4 Infrastructure

Much as some progress has been registered (according to municipal records) in terms of infrastructural development relating to community halls and sports grounds in Nkandla, key development infrastructure such as roads, water, electricity, communications and sanitation remains a huge challenge.

- **Road infrastructure**

The condition of roads in Nkandla is generally very poor. Although the major road that links Nkandla to Empangeni, Richards Bay and Melmoth (P226) is tarred, it is nevertheless in a very bad state and is covered with potholes which have, on numerous occasions, been responsible for road accidents.

It is linked with Nquthu, Eshowe and Msinga by major roads P50/2, P50/3 and P15 which are currently being upgraded through the African Renaissance Road Upgrading Program (ARRUP) of the Department of Transport. All other roads are dangerous gravel roads that are poorly maintained, as a result of which they are not suitable for safe travel during and after rainy weather. In fact the condition of these roads is effectively the basis for the greater part of the area being immobilized.

The approximately 200km distance between the President's home and the King Shaka International Airport is a three-hour drive through these roads, which poses an even bigger transportation challenge for the President.

9.5 Available Health Services

The 140 000 odd population of Nkandla Municipality shares among itself the services of 10 (ten) primary health care facilities (inclusive of mobile clinics) and 2 (two) tertiary-level services (Nkandla and Khombe hospitals) for health care. Nkandla Hospital has six permanent doctors and four seasonal medical practitioners. To augment the services are private doctors and traditional healers. The facilities are too far away and unable to meet the standards or the nature of health care required for the President and his household.

9.6 General security considerations

Security around any household, urban or rural, in South Africa today is becoming a basic necessity, this to ensure the safety and security of families. High-quality security devices, security dogs, high security fences, burglar doors and gates and even 24-hr guard services are common feature around a lot of homes as they serve as a deterrent to criminals.

Some homes need greater protection than others, depending on their individual circumstances / profiles and/or affordability. The need becomes greater when a home belongs to a public figure or a high-profile politician as they are often more at risk of an attack or assassination than any other individual involved in politics.

A Head of State, as in the case of President Jacob Zuma, is the most at risk hence it becomes necessary to take extra precautionary measures to ensure maximum safety and security around him and his household, including his private residence, at all material times. This is the case even with former Heads of State, Presidents FW De Clerk, Nelson Mandela and Thabo Mbeki respectively.

Residents within rural communities are generally considered soft targets of crime and the family of the President may be reviewed as an even easier target for retribution on different political viewpoints. Rape is reported as being particularly on the rise, among other crimes. This is but one of the factors that necessarily place an obligation on government to tighten security even more around the residence of President Zuma.

According to the Security Cluster security specifications of a given Head of State's residence will differ from any other as it is dictated to, not only by general prescripts of the relevant laws but also by respective peculiar circumstances. These may be geographic (topographic), political or even personal in nature. The Security Cluster departments (i.e SAPS, DOD and SSA) are specifically charged by law with the responsibility to assess and determine such specifications based on a Threat and Risk Assessment which then informs the specific security items necessary to ensure such security.

In addition, an emergency situation may arise that necessitates swift evacuation of the President and/or his family through adequate transport means, using efficient communication and effective security systems all of which are not readily available in the area of Nkandla.

The Cabinet Memorandum, deriving from relevant laws and policies that govern matters of security around the current and former Presidents and Deputy Presidents respectively, prescribes the measures and level of security that they, inclusive of their entire households, are entitled to.

9.7 Political dynamics

Over and above factors that impact on the security of the President and his family, it is necessary to examine broader compelling issues such as the political dynamics in the country to give consideration to assessing and determining the safety and security of a Head of State.

In the case in point, there has been a growing trend of political assassinations generally in the history of South Africa post-apartheid. The situation is arguably bad in the provinces of Mpumalanga and KZN, with KZN being, by far, the worst stuck.

Media reports suggest that the murder of people with high political profiles has been confined almost exclusively to KZN, registering the highest number in the country since February 2011. The ANC which is the ruling party has, during the same period, registered the highest number of its members being assassinated in the same province.

After the democratic dispensation in 1994 and during his time as provincial leader of the ANC, President Zuma himself was central to the process of brokering and securing a peace deal with the IFP to quell the flames of violence then in KZN. With the commitment of both the ANC and IFP leaders who fought against warlords in both parties to keep the peace process on track, a deal was eventually struck and the province set off on a journey towards stability and progress, only to deteriorate not long thereafter.

Over the years since then, there have been sporadic threats and warnings that there could be a resurgence of political violence. In the Nkandla municipality political tensions run high and many have been ascribed to battles around patronage with the ANC and some among opposition parties themselves, as is the case between IFP and NFP.

The volatile political situation in Nkandla was, therefore, a factor that had to be considered in the bigger scheme of security evaluations of the residence of the current Head of State.

9.8 Security assessment of the Nkandla residence

The developments at Nkandla are by no means unique and are part of works that were undertaken at various security sites like Houghton, Qunu, Union Buildings, Tuynhuis, Parliament and King's House.

The approach to providing security at the Nkandla high risk area was based on a security assessment and the requirements of the Security Cluster departments. The security threat analysis pointed to a deep rural area in which there are basically none of the services that are readily available in an urban area. The water supply was erratic with it being available for hours at a time and only a few days of the week. There was no waterborne sewerage. The Eskom pylons and mountainous area made access by air (helicopter) hazardous. The steep terrain and the surrounding cliffs and mountains make any form of transport difficult in bad weather. The roads to the area were muddy and required good 4 x 4 driving skills and suitable vehicles. Given that the area is on the leeward side of the surrounding escarpment and is generally dryer than surrounding areas, the threat of fire is high.

When President Zuma was elected President, it was a requirement that the security would have to be beefed up at places of high security risk. An expert team representing

the Departments of Police Service and Defence (and Military Veterans) reviewed the circumstances surrounding the President and addressed all shortcomings. As part of meeting international standards for the security of dignitaries, plans were drawn up and implemented. As part of this process, new capacity was requested for Nkandla, in and surrounding the private residence of President Zuma. DPW was an implementing agent on behalf of other government departments.

9.9 Applicable legislation

The Cabinet decision to effect security measures on the residence of the President was taken following a memorandum (Cabinet Memorandum of August 2003) presented by the then Minister of Intelligence for an approval of policy regarding security measures at the private residences of the President, Deputy President and former Presidents and Deputy Presidents.

The adopted policy provides for the process according to which the South African Police Services and the Department of Public Works would investigate, fund and maintain such security measures. In this regard, SAPS developed Minimum Physical Security Standards (MPSS) which also served as the basis for the implementation of security upgrades to the residence of the President.

9.10 Principles governing the erection of infrastructure

It was noted that the venue was the location of many diverse type of functions. There were meetings of Heads of State, Cabinet Ministers, other high risk dignitaries, local communities, Provincial and National Government and many foreign and local other categories of dignitaries.

It was decided that the following principles would be adhered to:

- The residence of the President is a private residence which has been declared a National Key Point (as are all other presidential residences) sometime after the project had commenced. Our responsibility to protect should not unduly interfere in the privacy of the President's household.
- Security personnel and other government employees would have to be accommodated locally though the creation of a government security hub of services adjacent to the private household. To base security personnel at the nearest town, Eshowe, was impractical. Parking for security vehicles would also be needed.
- The security provision should be able to deal with any level of threat and be able to escalate to the level required. It should also allow for reinforcements to be flown in from neighbouring security bases.
- A clear separation must be made of expenses that are for the private account of the President and that which arose from the state's duty to provide appropriate security.
- Instead of continuing to land in local veld, there should be proper helipads to allow for day and night landings with statutory approval for the safety features.
- The health care provision should allow for proper health care to all government officials deployed on site (inclusive of the President and his approved dependants) and the constitutional imperative to not turn away any health emergency by health care workers. Given the threat level, there should be adequate capacity to maximize medical interventions in the "golden first hour" of trauma management.
- Occupational and environmental health requirements such as working conditions, food and water safety, and proper refuse management were to be provided for relevant government employees.
- Sufficient garaging was to be provided for.

- An aircrew pavilion was to be provided for Air Force personnel to allow for standard inter-flight rest areas.
- Military and police assets were to be properly safeguarded.
- Any new capacity should benefit the local community in the short term to the extent possible and then maximized when the principal was no longer President, for example, the clinic and security compound.
- The President would continue to receive state support when no longer President and this must be factored in as with other retired Presidents.

9.11 Guidelines submitted to architects and engineers as agreed upon by the security cluster departments

These principles, among others, resulted in the following measures to satisfy the requirements of the Security Cluster Departments:

- The reinforcing of barriers
- The erection of high security fences with detection system and cameras (cattle culvert)
- The provision of local fire-fighting capability
- The creation of safe havens as with other sites all over the country
- The relocation of pylons to allow a clear access flight plan
- Roads constructions in and around the precincts
- The building of a security compound to house security and support staff (eg police and medical)
- Improving and rendering the water safe
- The provision of waterborne sewage systems

- The provision of an air crew pavilion
- The provision of a clinic in a lower security area to allow for both dignitary care and later conversion to part of the community health service in the area
- Bullet resistant guard houses at all gates
- Control room for the monitoring of all security systems
- The provisions of interim accommodation arrangements with Park homes etc. while the construction was on-going
- Earthworks and barriers erection

9.12 High cost drivers

Beyond the higher expenditure incurred through poor project management inefficiencies, the project has been characterised by the following high cost drivers:

- The President was already busy with alterations to his household and additional security measures had to be crafted on to existing designs and plans.
- The terrain is between 40 to 70 degrees gradient and subject to flooding in storms. All construction was affected by the need to ensure proper storm water drainage and landscaping and earthworks were always required.
- Relocation of households that were within the security area required additional construction of replacement houses.
- The need for major construction immediate warranted temporary measures (park homes, grading, fire trucks, etc) in order to provide a service from day one.

9.13 Construction of specific security features

- **Retaining Wall**

The Retaining Wall, also referred to as the *Amphitheatre*, is a special feature meant for ground protection. It is constructed in front of the SAPS control facility in order to retain the sloped earth bank.

- **Design**

Installation is in excess of a 4-metre height, broken down in the form of stepped terraces and curved to give it more structural stability against the earth.

- **Chicken Roosting Area**

This feature, also known as the *Dove Cote*, is constructed within the cattle kraal. It was created as a replacement to a number of building block structures that were scattered around some of the main dwellings which were obstructions and potential hiding areas for intruders. The relocation of these structures to a dedicated area improved the security of the site.

- **Cattle Culvert**

When the assessment was conducted, the area where the cattle culvert was situated and identified as a potential security risk as the cattle and people were using the same entrance. A decision was taken that the cattle culvert be moved or relocated to the current position.

- **Water Reservoir**

In order to curb potential fire hazard and due to lack of infrastructure and water which was erratic, a water reservoir was constructed for fire-fighting purposes.

9.14 Percentage cost break-down

- **Actual Costs**

The following is a break-down in percentage terms of the total R206 420 644.00 cost to date attached to the works related to security upgrades effected on the residence of the President.

Portion	Description	Percentage
Private Residence	Security Costs	24 %
Government Hub	Infrastructural Costs	52%
Other Costs	Consultancy Fees	24%
TOTAL		100%

Note: The costs incurred for the private residence and the government hub are inclusive of variation orders.

- **Variation Orders**

In respect of Treasury Regulations, in particular paragraph 3.9.3 of Instruction Note 32 of National Treasury, variation orders pertaining to contracts may not exceed a 20% threshold.

The following table depicts variation orders relating to four contracts that performed works in the Prestige "A" Project

Phases	Security Areas	Variations	Acceptable Treasury Threshold
Phase 1	Low-security	58.90%	20%
	High-security Area	52.70%	20%
Phase 2	Low security	3.00%	20%
	High security area	27.00%	20%

10. FURTHER DELIBERATIONS OF THE JSCI

Following its inspection *in loco* and the further interaction with the Task Team, the Committee deliberated on a number of matters of concern which came to the attention of the Committee.

- The Committee was concerned that persons who did not have the necessary security clearance were given access to classified and sensitive information

and allowed access to the Nkandla property. The regulatory framework prohibits such access. The Committee viewed this contravention as extremely serious since there is a real danger that the safety and security of the President could now be compromised. The Committee accordingly resolved that the Ministers concerned be called to a meeting of the JSCI to explain their involvement in the matter.

- The Committee further questioned the relevance of the National Key Points Act 102 of 1980 in our present constitutional democracy. Act 102 of 1980 needs to be reviewed like the Protection of Information Act 84 of 1982.
- The behaviour of the two DA members of the Committee has raised a concern since it appears to be an attempt to compromise or discredit the work of the JSCI. The Committee noted that they were both present at a sensitive briefing of the Task Team in Pretoria and only thereafter withdrew from the work of the Committee in relation to the Nkandla matter.
- The Committee also discussed the question of parallel investigations that emanated from the Nkandla property and noted the unnecessary cost incurred in these investigations.
- The Committee was satisfied that the question of the "Tuck Shop" had been exaggerated and taken out of context. The "Tuck Shop" was originally inside the Zuma property and served customers from the surrounding area. In terms of the security assessment it was identified as a security risk and had to be moved to the boundary wall so that outsiders did not have to enter the premises when visiting the "Tuck Shop".

11. CONCLUSIONS AND RECOMMENDATIONS OF THE JSCI

In the above circumstances the Committee has come to the following conclusions and recommendations:

- 11.1 The Committee has noted with concern that when a matter of public interest requires investigation, the conducting of parallel civil, criminal and even departmental investigations has regularly become the practice. The appropriateness of such parallel investigations on the same matter must be seriously considered by Government, institutions and entities which have investigative powers or the authority to authorize such investigations. It heightens negative perceptions and can lead to a lack of confidence in the investigative body. This will be the case if entities involved in parallel investigations arrive at contradictory findings, conclusions or recommendations. There is also the further danger of seriously prejudicing or compromising criminal investigations or civil cases that may follow.
- 11.2 It is therefore necessary for greater co-operation between all concerned. Institutions and entities which have investigative powers or the authority to authorize such investigations should not be inappropriately motivated or influenced to launch into an investigation on a matter which has already been assigned to another entity. It is therefore recommended that the Executive give urgent attention to this matter, in particular, reviewing the necessary legislation so that unnecessary parallel investigations can be avoided.
- 11.3 The JSCI was satisfied that the members of the Task Team were highly qualified with unquestionable integrity. The Committee further found the Task Team members to be trustworthy and reliable to perform the investigation which they were appointed to do. All the officials leading the investigation were experts in their field and were open and honest during their interaction with the JSCI. The JSCI accordingly commends the Task Team on the professional manner in which they conducted their work.

- 11.4 The Committee noted that the Task Team found that there was no evidence that the Department of Public Works paid for the construction of the private houses of the President.
- 11.5 The Committee found that the apparent misunderstanding that presently exists in respect of the upgrades at the Nkandla property could be attributed to the fact that no clear distinction is appreciated between the state-owned land covering 5.1598 ha and, the property of the President covering 3.8324 ha. The State owned property does not belong to the Zuma family. It is adjacent to the Zuma property and incorporates a number buildings and other security features. Neither these buildings nor any of the security features to be found on the state-owned property belongs to the President. It should therefore be noted that over 52% of the costs of the security upgrades went to the state-owned property. The state-owned property had to be acquired because the property of the President was too small to incorporate all the recommended security measures.
- 11.6 The Committee further noted that in addition to the numerous security assessments, that the recommended security features which were ultimately incorporated on the two properties were largely informed by the surrounding terrain, the climatic conditions in the area and the poor surrounding infrastructure. This fundamentally directly influenced the high costs.
- 11.7 The JSCI is satisfied that the Nkandla Report was correctly classified having regard to the relevant legislation and government policies and for reasons set out herein above. It should be specifically noted that the Nkandla property was declared a National Key Point in terms of the National Key Points Act 102 of 1982 on 08 April 2010.
- 11.8 On the question of the disclosure of the Nkandla Report, the JSCI draws attention to the fact that the report directly relates to the security of the residence of a serving President of the Republic of South Africa. Security

matters of this kind are by its very nature sensitive, including both the assessments and the final installation of the security measures. In compiling its report the Task Team had access to sensitive and classified information. Disclosure of the contents of the report of the Task Team can be expected to compromise both the personal and property security of the President and his immediate family who occupy the property.

- 11.9 Unfortunately declassification of the report does not lie within the authority of the JSCI nor does it lie within the authority of the Task Team. It should be noted that the Task Team when compiling the Nkandla Report had access to and made use of sensitive and classified information. This information included but was not limited to classified security reports from other departments. It follows therefore that the Nkandla Report had to be classified.
- 11.10 The JSCI supports the recommendation of the Task Team that matters relating to the allocation of tenders and the appointment of contractors should be referred to the Office of the Auditor General for a full investigation in order to establish if there was any abuse or unlawful conduct. However, the JSCI believes that because of the classification aspects of the subject matter, the AG should report on this investigation to the JSCI. The JSCI will then monitor the investigation by receiving regular briefings.
- 11.11 The JSCI furthermore recommends that if any criminal activity is identified by the investigation of the Auditor General then this should immediately be referred to the SAPS and the SIU for further investigation. However, the Committee strongly recommends that it would be advisable to first wait for the finalization of the investigation of the AG before further referrals to the SAPS or SIU.
- 11.12 As stated herein above the JSCI established that persons who did not have the necessary security clearance were allowed access to classified and sensitive information and access to the Nkandla property. This was a serious

contravention that should not have been permitted since the safety and security of the President could now have been compromised. The Ministers concerned will be summoned to a meeting of the JSCI to explain their involvement in the matter.

- 11.13 The Committee has considered the conduct of the two DA Members as set out herein above, regards it as serious and it is accordingly referred to the Speaker for consideration.

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Joint Standing Committee on Intelligence
08 November 2013

Report to be considered.

COMMITTEE REPORTS

National Assembly

1. Report of the Portfolio Committee on Health on the Mental Health Care Amendment Bill [B39B - 2012] (National Assembly – sec 76), dated 12 November 2013

The Portfolio Committee on Health, having considered the *Mental Health Care Amendment Bill* [B39B - 2012] (National Assembly – sec 76), classified by the Joint Tagging Mechanism as a section 76 Bill, referred to it, reports that it has agreed to the Bill.

Report to be considered.

National Council of Provinces

1. REPORT OF THE SELECT COMMITTEE ON APPROPRIATIONS ON THE PROPOSED DIVISION OF REVENUE AND THE CONDITIONAL GRANT ALLOCATIONS TO PROVINCIAL AND LOCAL SPHERES OF GOVERNMENT AS CONTAINED IN THE 2013 MEDIUM TERM BUDGET POLICY STATEMENT, DATED 13 NOVEMBER 2013

In compliance with Section 6(10) of the Money Bills Amendment Procedure and Related Matters Act 9 of 2009, the Select Committee on Appropriations, having considered the 2013 Medium Term Budget Policy Statement and having heard comments from stakeholders, reports as follows:

1. Introduction

The Minister of Finance (the Minister) tabled the Medium Term Budget Policy Statement (MTBPS) on 23 October 2013, outlining the budget priorities of government for the medium term estimates. The MTBPS was tabled together with the *Division of Revenue Amendment Bill* [B38 – 2013] and the *Adjustments Appropriation Bill* [B37 – 2013]. In terms of the Money Bills Amendment Procedure and Related Matters Act No 9 of 2009 (herein referred to as “the Act”), committees on appropriations are required to consider and report on the proposed division of revenue and conditional grant allocations to provinces and local government as contained in the MTBPS. The report of the Select Committee on Appropriations as per

Section 6(10) of the Act must contain the following; as referred to it in terms of Section 6(8):

- The spending priorities of national government for the next three years;
- The proposed division of revenue between the different spheres of government and between arms of government within a sphere for the next three years; and
- The proposed substantial adjustments to conditional grants to provinces and local government, if any.

2. Medium Term Spending Priorities

Government prioritises its resources in the following areas:

- Expanding electricity, transport and communications capacity;
- Enhancing the quality of education;
- Improving the provision of quality health care;
- Promoting industrial competitiveness and job creation;
- Addressing challenges in mining and community development ;
- Supporting growth of our cities and special economic zones;
- Broadening rural development and expanding agricultural opportunities; and
- Strengthening public service delivery while combating waste and corruption.

The proposed allocation of resources over the next three years was informed by government's strategic priorities, in particular the National Development Plan (NDP). It sets a broad framework for inclusive growth based on a more competitive economy, a capable developmental state, and improved livelihoods of South Africans. Implementing the plan will require government to strengthen its role as an enabler of economic development and improve the ways in which policies are translated into service delivery.

3. The proposed division of revenue

The proposed division of revenue for the 2014 Budget provides for consolidated government spending of R1.24 trillion in the 2014/15 financial year, R1.34 trillion in 2015/16 and R1.44 trillion in the 2016/17 financial

year. The proposed budget framework allows for average nominal growth in the main budget spending of 8.0 percent per year over the next three years. It includes a contingency reserve of R27 billion (R3 billion, R6 billion and R18 billion for 2014/15, 2015/16 and 2016/17, respectively) for unforeseen and unavoidable requirements. The contingency reserve has been reduced by R7.5 billion over the next two years to respond to spending pressures. Debt-service costs will rise at an average annual rate of 10.4 percent, from R100.5 billion in the 2013/14 financial year to R135.4 billion in the 2016/17 financial year. The spending pressures amounting to R21.6 billion over the next three years are accommodated through reprioritisation of R8.1 billion within departmental allocations and a drawdown of R13.5 billion on the contingency reserve.

The national and provincial public sector salaries will be linked to inflation, which is forecast to be higher than previously projected at the beginning of the 2013/14 financial year. Over the next three years, the cost of inflation adjustments will be R12.2 billion, and R5.2 billion will also be required to upgrade the salary levels of clerks in the public service.

In addition to direct transfers in the form of equitable share and conditional grants, the proposed division of revenue outlines benefits that the provinces and municipalities will get from indirect grants. These are allocations that national departments spend on behalf of provinces and municipalities. Indirect grants contribute to core spending areas for which sub-national government is responsible, including infrastructure such as schools and bulk water pipelines. Government proposes significant growth in the value of indirect grants to provinces and municipalities, from R8.4 billion in 2013/14 to R14.3 billion in the 2016/17 financial year. Changes to the way these grants are managed will be considered over the period ahead, and amounts may be shifted between direct and indirect grants before the 2014 Budget is tabled.

4. The proposed provincial government funding

Over the next three years, provincial allocations will grow from R444.7 billion in the 2014/15 financial year, to R478.2 billion in the 2015/16 financial year and R507.8 billion in the 2016/17 financial year. Over the same period, the provincial baseline allocations increase by a net

R11.2 billion. This increase will be funded through drawdowns on the contingency reserve and a reallocation of national resources. The proposed changes to provincial allocations are driven by higher wage costs for the 900 000 public servants employed in the health and education sector, as well as by priorities in infrastructure and social services.

An occupation-specific dispensation for several categories of therapists in the education sector will be funded through a new conditional grant for two years, after which these funds will be incorporated into the provincial equitable share. Additions to the provincial equitable share of R2.5 billion in 2014/15, R4.3 billion in 2015/16 and R5.1 billion in the 2016/17 financial year will help fund rising wage costs, shelters for victims of abuse, as well as the roll-out of a new vaccine for the human *papilloma* virus.

4.1 The proposed conditional grant allocation to provinces

Government provides provinces with conditional grants to supplement the equitable share for specific programmes. The conditional grant allocation to provinces will be R82.3 billion in the 2014/15 financial year, R90.2 billion in the 2015/16 financial year and R95.8 billion in the 2016/17 financial year. The proposed division of revenue presents some reductions to underperforming conditional grants. These reductions to a number of grants will release funds for reprioritisation, though their allocations still grow in nominal terms over the spending period. Changes to be effected on the provincial conditional grants include the following:

- Small reductions on the Comprehensive Agricultural Support Programme Grant, the Land Care Grant, the Education Infrastructure Grant, the School Infrastructure Backlogs Grant (an indirect grant), the National Health Grant (an indirect grant) and the Expanded Public Works Programme Grant to Provinces.
- New allocations to the Human Settlements Development Grant to fast-track the upgrading of informal settlements in mining towns that are experiencing rapid growth.
- Additional resources for the Further Education and Training Colleges Grant to cover higher-than-anticipated salaries.
- Funds will be made available through the Public Transport Operations Grant to offset the rising costs of fuel and labour in provincial bus services.

4.2 The proposed local government funding and conditional grants

The proposed allocation to local government is expected to increase from R81.9 billion in the 2014/15 financial year to R101.4 billion in the 2015/16 financial year and to R106.7 billion in the 2016/17 financial year. Changes to the local government allocations shift funds towards areas that can support economic growth.

Government provides municipalities with conditional grants to supplement the equitable share for specific programmes. The Integrated City Development Grant (ICDG) provides funds to assist the eight metropolitan municipalities in their planning. It is intended to help low-income households on the urban periphery access jobs and other opportunities. An amount of R356 million will be added to the ICDG to encourage the evolution of more compact and efficient cities. The Regional Bulk Infrastructure Grant (an indirect grant) will receive an additional R934 million over the MTEF period to accelerate bulk water projects that will support broader development.

To fund these priorities and stay within the spending ceiling, government proposes moderate reductions to a number of conditional grants, including the Municipal Infrastructure Grant, the Urban Settlements Development Grant, the Expanded Public Works Programme Integrated Grant for Municipalities, the Infrastructure Skills Development Grant and the Energy Efficiency Demand-Side Management Grant.

Government has announced that by 2014 the responsibility for the housing function will be devolved from provincial to local government in six metropolitan areas: Cape Town, Ekurhuleni, eThekweni, Johannesburg, Nelson Mandela Bay and Tshwane. These municipalities will receive a total of R900 million over the MTEF to build capacity for this function.

Government has also begun a review of local government infrastructure grants, this may result in changes to the number and structure of these grants. The review is a collaborative effort involving national departments, the Financial and Fiscal Commission and the South African Local Government Association. This review will further ensure the extensive involvement and consultation with municipalities, provinces, professional associations and public entities. Proposals for changes to the grant system may be included in the 2014 Medium Term Budget Policy Statement.

A new local government equitable share formula was being phased in from the 2013/14 financial year. The formula provides funding for a package of free basic services for 59 percent of households with monthly incomes below the value of two state old age grants. The local government equitable share will grow at an average annual rate of 9.2 percent over the MTEF.

5. Submissions by stakeholders

5.1 Financial and Fiscal Commission

The Financial and Fiscal Commission made its submission on the 2013 Medium Term Budget Policy Statement in terms Section 4(4)(c) of the Money Bills Amendment Procedure and Related Matters Act, No 9 of 2006, which requires committees of Parliament to consider recommendations by the Commission when dealing with money bills and related matters.

5.1.1 Background

The Commission was of the view that, overall, government had done a commendable job through the MTBPS in signalling its intent and commitment to implement the National Development Plan (NDP). The Commission felt that an ambitious policy strategy for growth was a prerequisite if South Africa is to move further on the transition to attaining the 2030 Vision. The Commission further noted that government was looking towards infrastructural investment as the principal driver of whatever upturns if economic growth was anticipated. The corollary to the relatively high growth in gross fixed capital formation forecast by government was that the current account deficit was forecast to remain at levels above 6 percent of Gross Domestic Product (GDP).

5.1.2 Macro-economic and fiscal outlook

The Commission submitted that the economy remained vulnerable to slow global recovery and domestic factors such as the recent labour unrest. GDP growth has been revised downwards to 2.1 percent for this year, from 2.7 percent at the time of the 2013 Budget in February, and to 3 percent for next year, from 3.5 percent in February 2013. The budgeted growth for 2015 was now forecast to be just 3.2 percent, from 3.8 percent in the February budget. These downward projections confirmed the Commission's projections done in 2009.

The Commission noted that government's position on fiscal consolidation was in line with the Commission's submission on the 2014/15 Division of Revenue. The Commission felt that it was important to balance the financing needs to implement the NDP with the goal of budget consolidation. In this regard, the Commission noted that real non-interest expenditure was budgeted to grow by just 2.2 percent per year over the next three years. The thrust of fiscal discipline was centred on a significant reduction in the growth of compensation of public sector employees. The largest area of expenditure growth was unemployment and social security, at 13.8 percent. The Commission supported the growth in social security expenditure, which was in line with its previous recommendations.

5.1.3 Risks to economic and fiscal outlook

(a) Public sector wage bill pressures

The Commission welcomed the firmer stance taken by government in enforcing discipline in the hiring of new employees and to maintain staff levels over the medium term. However, the Commission emphasised that government productivity and service delivery should remain the core of recruitment policy. In this regard, the appointment of frontline staff core to service delivery should be prioritised over the filling of general, administrative positions.

(b) Persistent under-spending

The Commission was concerned that the three spheres of government under-spent by R3.14 billion in the 2012/13 financial year. Continued under-spending could jeopardise the attainment of short and long term priorities, especially since under-spending tended to be on capital spending, undermining the infrastructure-led growth strategy.

(c) Negative external balance

The Commission submitted that South Africa remained a net importer of goods and services. The current account deficit was projected at 6.5 percent of GDP in 2013; 6.4 percent in 2014; 6.2 percent in 2015 and 6.1 percent in 2016. In this regard, the Commission supported the increased diversification of South Africa's trading partners with more focus on emerging economies such as China and India.

(d) Robustness of global growth and domestic responses

The MTBPS projections are based on a rebounding American economy, as the state of the global economy was an important determining factor for the local fiscal position.

5.1.4 Domestic challenges

(a) Infrastructure

Investment in economic infrastructure was pivotal to fostering private investment and increasing and sustaining the long term growth capacity of the economy. However, the inadequacy of existing infrastructure, particularly port facilities, roads, rail, energy, water and sanitation, hampered the country's long run growth potential. Poor performance in infrastructure development and asset care was a challenge across all three spheres of government. The Commission was of the view that the President's Infrastructure Coordinating Committee (PICC) which was established to fast-track infrastructure development should assume the leadership in determining the appropriate implementation mechanisms to ensure rapid roll-out of infrastructure. In this regard, the enabling legislation for PICC should be fast-tracked so that it can become fully operational.

(b) Mobilising finances

The buoyancy of tax revenues was of concern to the Commission, particularly in the current depressed economic environment. The tax revenues to GDP ratio indicated a progressive decline in the buoyancy ratio. The Commission looked forward to engaging on the issues with the Tax Review Committee set up by government.

(c) Human capacity

The Commission submitted that structural unemployment, skills constraints and a workforce impacted by poor health standards were serious problems in the country. South Africa fared poorly on many human capital indicators. The MTBPS prioritised spending on education and health. The Commission felt it was important that such resources were used effectively and efficiently to ensure that education and health outcomes were improved and/or realised.

(d) Governance issues

The Commission reported that South Africa fared poorly relative to numerous other countries on the issue of corruption and general inefficient or unproductive government spending. The Commission noted progress in this regard, like the establishment of a Chief Procurement Officer, which would assist with value for money; but emphasised the persisting need to strengthen accountability across institutions and to create consequences for corruption.

(e) Poverty and inequality

The Commission reported that South Africa still faces high income and asset inequality as well as significant regional inequality in incomes and assets. The 2013 MTBPS highlights the need to maintain roll-out of social assistance to qualifying individuals and households to continue the poverty eradication strategy and reduce income inequality. The Commission indicated that, while government's free basic services policy for indigent households was an important component of the poverty eradication strategy, the quality and sustainability of those services in the light of poorly maintained infrastructure, was a cause for concern.

5.2 Municipal Demarcation Board

The Municipal Demarcation Board (the Board) explained that it re-organised municipal areas in terms of Section 21 of the Local Government: Municipal Demarcation Act 27 of 1998. The Board further submitted that upon re-organising municipal boundaries, where there are major changes, the transition periods were highly involved and required both financial and non-financial resources to support affected municipalities with amalgamations and restructuring.

The Board explained that every five years it undertook municipal boundary redeterminations at its own initiative or through an application for a municipal boundary review by any interested party. The Board further submitted that it had determined municipal boundaries throughout the Republic. Two of the major municipal boundary re-determinations were in Gauteng and nine in the KwaZulu-Natal Province.

5.2.1 Demarcation implications

The Board submitted that in terms of section 14(2)(b) of the Local Government: Municipal Structures Act 117 of 1998, such restructuring or re-organisation may include amongst others:

- The transfer of staff from an existing municipality to the superseding municipality, or if there is more than one superseding municipality, to any of those superseding municipalities.
- The transfer of assets, liabilities, rights and obligations, and administrative and other records, from the existing municipality to the superseding municipality.
- The continued application of any by-laws and resolutions of the existing municipality in that area, and the extent of such application.

5.2.2 Recommendations of the Board

The Board emphasised that government needed to consider allocating financial resources by way of a special grant to affected municipalities, which would assist with their preparatory work for restructuring. Such resources should be made available for the 2014/15 and 2015/16 financial years prior to the local elections.

5.3 South African Local Government Association (SALGA)

The South African Local Government Association (SALGA) was invited to make a submission on the MTBPS which included the proposed division of revenue. In general, SALGA acknowledged the tight fiscal stance amid the national and global economic challenges. SALGA indicated that they noted the economic outlook and prudent fiscal policy. SALGA further submitted that a subdued economy and unemployment continued to negatively impact on revenue collection and service delivery in local government. In this regard, SALGA agreed with the tone of the MTBPS in that government, including municipalities, had to better use available resources to gain more value for money.

SALGA welcomed the 2013/14 financial year adjustments budget allocation of R293 million for local government and the additional funding through the adjustments budget which was aimed at disaster relief and implementation of capital projects through conditional grants. SALGA noted the proposed 9 percent annual average growth of the local government allocation over

the medium term and the phasing in of the new formula for allocation of equitable share. However, SALGA proposed that the baseline allocation should be investigated going forward as the cost of services to the poor has increased substantially over time and therefore puts municipal free basic services programmes under pressure.

SALGA put it to the Committee that national government should address the matter of unfunded and underfunded mandates at local government. SALGA indicated that local government was faced with weak compliance with legislative provisions for assigned functions. SALGA argued that in some instances service level agreements did not exist, in other instances, norms and standards were not developed, and allocated funding was transferred too late or not at all. SALGA quoted the Financial and Fiscal Commission submission for the 2012/13 Division of Revenue which estimated the extent of unfunded mandates in metropolitan municipalities to be at R4 billion per annum. SALGA indicated that there was still a revenue collection challenge in most municipalities.

SALGA made a commitment that it would continue to impress upon its members to seek value for money in their operational budgets and to increase investment in infrastructure.

6. Observations

During considering and deliberating on the MTBPS and the submissions by the Financial and Fiscal Commission, the Municipal Demarcation Board and the South African Local Government Association, the Select Committee on Appropriations observed that:

- 6.1 Despite government's fiscal stance to maintain the expenditure ceiling, the non-interest expenditure will continue to grow in real terms, averaging 2.2 percent a year over the medium term.
- 6.2 The distribution of resources is in line with the Constitutional requirement for equitable distribution of revenue nationally raised among the three spheres of government. National departments receive 47.6 percent, provinces 43.4 percent and local government 9 percent in the 2014/15 Budget.

- 6.3 The distribution of resources addresses the National Development Plan (NDP) priorities. Education receives 38.8 percent, health 25.5 percent, criminal justice 22.0 percent and economic services 7.9 percent.
- 6.4 The Minister of Finance's commitment to eliminate wastage will add value to money spent.
- 6.5 Certain grant payment schedules (such as monthly instalments as per the approved payment schedule) might create uncertainty to recipients and also compromise accountability.
- 6.6 While the rationale and legality of withholding funds is understood such an action might have unintended consequences.
- 6.7 Incidences of unfunded mandates occur because such functions are not adequately funded. Again, when the sphere delegated fails to comply with the set frameworks or lacks capacity, devolution of such functions might not improve service delivery. In some cases there are complications with accountability on service delivery.
- 6.8 There is poor infrastructure management (maintenance and repairs despite ageing infrastructure) by municipalities that contributes to increasing backlogs, wastage/spillage and poor service delivery.
- 6.9 In provinces the departments of public works is responsible for maintenance and repairs of infrastructure while the budget is situated with client departments. This creates a disjuncture between functions and budget allocations.
- 6.10 Merging of municipalities in some cases has unintended consequences such as inheritance of debts, backlogs and contractual obligations.
- 6.11 Declared under-spending, like undeclared under-spending, has the potential to compromise service delivery but might also obscure the actual performance.

- 6.12 Reduction of allocations to certain grants might compromise the planned outputs and outcomes.

7. Recommendations

After considering and deliberating on the Medium Term Budget Policy Statement and the submissions by the Financial and Fiscal Commission, the Municipal Demarcation Board and the South African Local Government Association, the Select Committee on Appropriations recommends as follows:

- 7.1 Government should ensure that growth in expenditure translates into better life for all so there is value for the money spent.
- 7.2 National and provincial spheres of government should, in terms of Section 154 of the Constitution, continue to support and strengthen municipalities to manage their own affairs and also fulfil their Constitutional mandates.
- 7.3 National Treasury should ensure that resources within departments are also aligned with the National Development Plan priorities.
- 7.4 National Treasury should timeously provide Parliament with guidelines and/or regulations that will be applied to enforce the restrictions placed on air travel, catering, car hire etc.
- 7.5 National Treasury should, where applicable, stipulate payment schedules (including amounts and dates) when the Division of Revenue Bill for 2014/15 is presented.
- 7.6 National Treasury should apply withholding as a last resort and receiving institutions should ensure that there are consequences for the officials responsible for the withholding of funds.
- 7.7 To avoid incidences of unfunded mandates and challenges with accountability, allocation of funds should follow functions and capacity to perform such functions should be ascertained before devolution of such functions.

- 7.8 National Treasury, in terms of its legal obligations and in collaboration with provincial treasuries, should continue to monitor and support municipalities to ensure that they budget adequately for infrastructure repairs and maintenance.
- 7.9 National Treasury should ensure that, at the provincial sphere, allocation of funds follows functions relating to maintenance, repairs and replacement of infrastructure.
- 7.10 Special funding should be considered to cover any extra costs that might be created by merging municipalities.
- 7.11 National Treasury should monitor and support provincial treasuries to improve on their projections and expenditure controls.
- 7.12 National Treasury should ensure that the reduction of allocations to certain grants does not compromise service delivery.
- 7.13 Having considered the Medium Term Budget Policy Statement and submissions made by stakeholders and provinces the Committee recommends the adoption of the proposed division of revenue as presented.

Report to be considered.

2. REPORT OF THE SELECT COMMITTEE ON APPROPRIATIONS ON THE ADJUSTMENTS APPROPRIATION BILL [B 37 - 2013] (NATIONAL ASSEMBLY - SECTION 77), DATED 13 NOVEMBER 2013

The Select Committee on Appropriations, having considered the *Adjustments Appropriation Bill* [B 37 – 2013], referred to it, and classified by the Joint Tagging Mechanism as a section 77 Bill, reports that it has agreed to the Bill without amendments.

Report to be considered.