

## **Statement by Zwelinzima Vavi on the Police Minister's statement on Nkandla, 30 May 2015**

The statement by the Minister of Police, Nathi Nhleko, on the repayment of the excessive amounts of money spent on Nkandla, is a disgrace and a grave challenge to the foundations of our constitutional democracy.

The President was asked by the Public Protector to take the following remedial actions:

1. "Take steps, with the assistance of the National Treasury and the SAPS, to determine the reasonable cost of the measures implemented by the DPW at his private residence that do not relate to security, and which include Visitors Centre, the amphitheatre, the cattle kraal and chicken run, the swimming pool.
2. Pay a reasonable percentage of the cost of the measures and determined with assistance of the National Treasury, also considering the DPW apportionment document.
3. Reprimand the Ministers involved for the appalling manner in which the Nkandla project was handled and the state funds were abused."

Minister Nathi Nhleko's so called report is a kick on the mouth of the Office of the Public Protector as it seeks to deliberately and completely ignore these remedial actions and at times even misrepresents the findings in order to absolve the President and the entire Cabinet from taking political responsibility for this scandal.

This in our view is no small matter!

Even worse than the statement's laughable attempts to justify the spending on a swimming pool, amphitheatre, cattle kraal and chicken run as essential security features, is the Minister's failure to address the central issue in the scandal: the grossly excessive amount spent on the project as a whole – R246 million.

As COSATU said on 28 January 2013, when the expenditure was estimated to be R71 million, "for the government to spend such a grotesque amount of public money on any one person is shocking and grossly insensitive to the workers, the poor and the homeless." How much more was this the case when the total had risen to R246 million!

In March 2014 the federation welcomed the Public Protector's report, 'Secure in Comfort', on this huge amount of money spent on the President's residence, a statement which it rightly said "is consistent with our long-standing campaign against corruption and the waste and mismanagement of public funds and for strong action to be taken against anyone found to have been involved in such conduct. COSATU remains committed to fighting

against corruption but in a principled manner.

“Secure in Comfort provides clear, detailed and well-researched evidence of bungling, incompetence, mismanagement, reckless and runaway expenditure, and lack of control and monitoring by ministers and senior officials, which led to the massive increase in the costs of the Nkandla upgrade from R27 million to R246 million”.

The report`s many findings included:

- A failure to follow the 2003 Cabinet Policy which gives authority for security measures at the private residence of the President, and a deviation from the 16 security measures recommended in the Second Security Evaluation by the SAPS.
- Dismal failure of the organs of state involved in the Project to follow Supply Chain Management prescripts, such as section 217 of the Constitution, Treasury Regulations, and the Department of Public Works (DPW) Supply Chain Management policy.
- Key omissions, including the absence of demand management, improper delegations, failure to procure services and goods costing above R500 000 through a competitive tender process, failure to conduct due diligence leading to the engagement of service providers without the necessary qualifications or capacity for security measures, failure to ensure security clearance for service providers, and allowing `scope creep` leading to exponential scope and cost escalations.
- In the name of security, government built for the president and his family a visitors centre, cattle kraal, chicken run, swimming pool, and amphitheatre among others, which could not be consciously accepted as security measures and were carried out in the absence of an authorising instrument.
- President Zuma tacitly accepted the implementation of all measures at his residence, when he should have asked questions about the scale, costs and affordability of security upgrades. It is also not unreasonable to expect that when news broke in December 2009 of alleged exorbitant amounts... [It was] required of President Zuma to take reasonable steps to order an immediate enquiry into the situation and correct any irregularities and excesses.
- The relocation of neighbours who used to form part of the original homestead, at an enormous cost to the state was unlawful, as it did not comply with section 237 of the Constitution. The relocation of two households cost R4.2 million, while the relocation of one household cost R3.7m. The land is communal land under the Ingonyama trust and no investigation was done nor any report provided about the process leading to the removal of neighbours.
- The expenditure incurred by the state for the measures taken, including buildings and other items constructed or installed by the DPW at the request of the SAPS and Department of Defence (DoD), many of which went beyond what was reasonably required for the President`s security, was unconscionable, excessive, and caused a

- misappropriation of public funds.
- All the Ministers of Public Works provided incorrect information on the legal authority for and the extent of the works at the President`s private residence.
  - Funds were reallocated from the DPW`s Inner City Regeneration and the Dolomite Risk Management Programmes, in violation of section 237 of
  - The appointment of President Jacob Zuma`s architect, Minesshle Makhanya, was improper and did not satisfy legal requirements. He was brought in 2009 without going to tender, to act as the department of public works` principal agent, while retaining his position as Zuma`s private architect, who served as a go-between for government officials and the president, has made R16.5 million from the Nkandla project. Makhanya was often asked to design something more economic and came back with something more expensive and even luxurious.
  - The PP report follows other similar reports from the Joint Standing Committee on Intelligence (JSCI) which included members from other political parties, and the inter-ministerial task team (IMTT) led by the Department of Public Works.

COSATU added then that "All those who have been found to be behind this gross misuse of public funds must be held accountable, including any political office bearers who approved the use of these massive amounts of public money, or failed to monitor and stop the runaway expenditure".

Significantly we added that "the federation welcomes the firm commitment by the African National Congress that it will not ignore or undermine the report... and that "all public office bearers, officials and private sector companies involved in any maladministration must be brought to book and all funds that were acquired inappropriately must be recovered".

We can only hope that ANC members will remember that pledge and reject the minister`s cynical attempt to whitewash the whole scandal.

They should also remember the statement in March 2014 by Public Works Minister, Thulas Nxesi that the government task team has already uncovered evidence of "a number of irregularities with regards to appointment of service providers and procurement of goods and services", and of "various malpractices around non-adherence to supply chain, financial regulations and controls...

"The Supply Chain Management policy and prescripts were not fully complied with in procurement of goods and services in the project... The Treasury Regulations allow for a variation from an initial procurement order only up to 20%, but that in this case this was not observed."

As COSATU said then, "It is now even more urgent to implement the

minister`s decision to refer these allegations of `irregularities` to the Special Investigating Unit, the Auditor General and the SAPS, with a view to investigating any possible acts of criminality, and to add the names of all those now implicated in the Public Protector`s report.”

More than a year later we are still awaiting any real progress on prosecuting those responsible for these `irregularities`. Minenhle Makhanya, the architect who was involved in the project is under investigation, but why were those at the highest level who should have been supervising what this architect was doing not being investigated?

Minenhle Makhanya did not invite himself to direct a project that he have nothing to do with. He was invited by the President and in the process he scored a R16 million. We refuse to accept that only he must take a fall.

There must be no escape for the people at the top by finding scapegoats, just as we saw with the Guptagate Waterkloof scandal, when Bruce Kholoane was dismissed, only to be soon appointed as ambassador to the Netherlands.

Bureaucrats may indeed be part of the problem but the biggest scandal is the conduct of those betraying the trust of the people who elected them on an anti-corruption ticket - one of the ANC`s top five election manifesto priorities.

Government knew that they had budgeted R27 million for the Nkandla upgrades yet did nothing as the estimated cost rose to R71 million, then over R100 million and ultimately R246 million. They cannot now turn around and absolve themselves from the responsibility.

This dereliction of duty by our government has become endemic. It is not just this R246 million, but the R25-30 billion being lost to tender fraud according to the very government. They can`t blame bureaucrats for all of this. It is not just Nkandla where costs have escalated but in virtually every government project, such as Medupi (R52 billion up to R130), Kusile (R81 billion up to R172) and the Gautrain (from R3.5 billion to R25.4).

We also noted in 2012 when the Nkandla story first broke that the increased expenditure exposed in successive Auditor General`s reports indicating collusion between government officials and the private sector to inflate prices.

His report in 2009 that revealed that one provincial department was paying R26 for a loaf of bread and R25 for a 500 ml bottle of water for a school. He further revealed staggering variances in the building of schools of the same size and specifications in different provinces in the same country as reflected below:

1. Eastern Cape - R13.5m

2. Free State - R38
3. Gauteng - R24.7m
4. KwaZulu Natal - R19m
5. Limpopo - R27m
6. Mpumalanga - R32m
7. North West - R12.5m
8. Northern Cape - R24m
9. Western Cape - R27m

This was in 2009; we can only hope that this situation has not worsened since then!

This is at the centre of what we are grappling with – a culture in which massively inflated prices to milk tax payers are taken as normal and a route to quick profits for people in both the public and private sectors acting in collusion.

Government ministers and ultimately the President must take responsibility for such outrageous levels of overspending in all these, and other cases, and not shift the blame on to bureaucrats scapegoats.

One aspect of the Minister's statement which is particularly alarming is the contempt he displays towards the Public Protector, both to her person and to her office, and contempt for the constitution under which Chapter Nine institutions are accountable. She has already challenged the government's response to her report on Nkandla but the case is still to be heard. She may well challenge this latest statement, which is clearly a snub and an attempt to undermine her constitutional status.

The government is making up 'evidence' to contradict her well-researched and documented evidences, in effect appointing itself as the investigator, prosecutor and a judge in a case when it is the defendant. It is an attempt to render the Public Protector powerless and redundant.

If the government succeeds it will be a dark day for those struggling for democratic accountability over government, the last line of defence against arbitrary and unconstitutional rule by the executive. It will be particularly bad news for whistle-blowers who want to report corruption and fraud and expect the Public Protector to be free to expose this when there is evidence, as there clearly was in the Nkandla scandal.

Finally I want to repeat what I said the day after I was dismissed from COSATU:

"The last powerful mass weapon in the hands of working people is the

democratic trade union movement, which is now being targeted for co-option to serve the agenda of powerful interests. While workers thought they were struggling for the soul of the ANC, a hidden agenda was being hatched by forces hostile to the working class to capture the soul of COSATU.

“This all reflects the drive by a predatory elite to exercise control over all areas of society, to advance their narrow agenda of accumulation and control. Its unprincipled abuse of power is increasingly infecting all institutions of state, civil society organisations and now the trade unions. It is a deliberate political game to hollow out all organs of people’s power, and institutions which are supposed to hold leaders to account.

“If we don’t combat this abuse of power it will take us irreversibly towards a failed state and a society in which there is no accountability, run by a kleptocracy, driven by a particular brand of predatory and parasitic capitalism. The cancer of corruption is the most extreme expression of this disease.”

The minister’s statement confirms how relevant that statement was. It has become a matter of life and death for the survival of our democracy that we expose and punish corruption, fraud and the embezzlement of public funds, in government, business, civil society and indeed the trade unions.

South Africans of all walks of life are truly disgusted and are demanding that the President and the entire executive must take full responsibility not only for R246 000 million embezzled by officials under their political supervision but for the other billions lost to tender fraud.

We call on the President and his Cabinet to dig deep down in their consciences and consider if it is not in the best interest of both the country and the ANC to resign for their failure to protect not only taxpayers’ money but more importantly the Constitution.

We call on the South Africans to stand up and be counted in defence of our constitutional democracy, in particular the office of the Public Protector which is a Chapter 9 institution so critical as part of our checks and balance system.

We are calling for a national march to the Union Buildings to protect the office of the Public Protector and our hard-won Constitution and our democracy. We shall be consulting all independent and progressive civil society formations to check if they support these demands so that we begin to put a Programme of mass mobilisation round this issue.