

AFRICA RISK CONSULTING

Country briefing – South Africa

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Summary

The report into the R210m (\$21m) of public funds spent on President Jacob Zuma's private home pits the security-related ministries against the public protector. The cost and scope of Zuma's security requirements underscore the R30bn (\$3bn) the finance ministry says was irregularly spent by public institutions in 2012/2013. The opposition Democratic Alliance moves to recognise the importance of race and the link to societal advantage as it courts the black middle class. A construction accident in KwaZulu Natal exposes the possible municipal maladministration that allowed a private construction firm to build without the necessary permits and ignore court orders to stop operations. Eskom, the electricity utility company, warns of constrained supply. The energy department announces a third round of renewable independent power producers that will eventually produce 1,400MW.

1.1 Public protector investigates president's home costs

Public protector **Thuli Madonsela** stared down the national ministers charged with the country's security portfolios (justice, police, state security and defence) over the handling of her provisional report into the R210m (\$21m) of public funds spent on security upgrades to President **Jacob Zuma's** (2009 – present) private home in **Nkandla (KwaZulu Natal province)**. The security features include a helipad, an underground bunker and an artificial turf football pitch. The office of the public protector (ombudsman) is enshrined in the constitution and investigates the abuse of power or maladministration by state agencies. The ministers claim that the report reveals details that could jeopardise state and the president's security¹. The residence is classified as a national key point under the **National Key Points 1980 Act** which may designate an installation strategically important and allow public funds to be spent on securing it. The ministers threatened to take Madonsela to court over her handling of the report but backed down after she countered that the relevant ministries had attempted to interfere in the investigation and block the report.² She denies that her report breaches national security. On 21 November State Security Minister **Siyabonga Cwele** warned the media that

“No-one, including those in the media, is allowed to take images and publicise images even pointing out where the possible security features are.”

¹ 'Minister tried to stop Nkandla probe', ewn.co.za, 12 November 2013

² 'Minister tried to stop Nkandla probe', ewn.co.za, 12 November 2013

The following day national media outlets flouted the diktat and published photographs that have been in the public domain since 2009. Cabinet clarified Cwele's statement saying the pictures could be published but that specifically identifying security features could compromise "national security".³

The standoff between Madonsela and the 'security cluster' ministers has shone a spotlight on the independence of the institution of the public protector and the **African National Congress (ANC)** government's tendency to sometimes ignore ancillary institutions. The government has not made fully public the results of several investigations into the alleged misuse of public funds, including the Nkandla security upgrades. However, since her appointment in 2009 Madonsela, as the third incumbent, has revitalised the Public Protector's office. Previously it was a marginal organisation but it has emerged as an independent critic of the government and its tendency for profligacy and corruption. The opposition parties **Democratic Alliance (DA)** and the **Congress of the People (Cope)** celebrate Madonsela's work in an attempt to discredit Zuma's government ahead of the 2014 general elections⁴. Her predecessor **Lawrence Mushwana** was sarcastically called the 'Presidential Protector' and a 'safe pair of hands' as he was perceived to be too close to the **Thabo Mbeki** (1999 – 2008) administration⁵.

The investigation into the Nkandla security upgrades has also focused attention on the National Key Points Act of 1980. The Apartheid-era legislation allows the minister of defence to declare any area or property a national key point and thereby impose security restrictions on it. There are 197 national key points. The identity of the sites is not listed but is assumed to include airports, ports, oil refineries and important government buildings⁶. When a private plane chartered by the **Gupta** family landed at the **Waterkloof** Air Force Base on 1 May, there was a public outcry at the breach of national security. The Guptas are close associates of Zuma. They have business interests with his son **Duduzane** and employ **Bongi Ngema-Zuma**, the president's fourth wife⁷.

The media investigation into the circumstances around the plane revealed that 'Number One' (generally assumed to be Zuma) had facilitated the landing and the air force base, surprisingly, is not listed as a national key point⁸.

³ 'Jacob Zuma's Nkandla home: South African papers defy photo ban', BBC, 22 November 2013

⁴ 'Cope condemns 'attack' on Madonsela', iol.co.za, 17 November 2013; Lindiwe Mazibuko, DA parliamentary leader, statement, 11 November 2013

⁵ ANC national executive committee member and former cabinet minister

⁶ South African Police Services 2013/2014 budget

⁷ 'Gupta's bankroll Mrs Zuma's bond', M&G, 30 November 2011

⁸ 'Why is Nkandla a "national key point" but Waterkloof AFB not?', Kolher Barnard, 20 May 2013

“The Act is absurd. It’s a mess. What qualifies as a national key point is not clearly defined. What has been designated a national key point is a secret. What public funds are spent on such places is a secret. The law will be reviewed in 2014 but the police have indicated that they will oppose greater transparency. It’s an Apartheid-era law designed to hide information.”⁹

The controversy around the cost of the Nkandla upgrades has plagued Zuma since 2009. At first the government defended the upgrades as being ‘privately funded’¹⁰. The more recent response cites secrecy under the National Key Points Act and finally that the president’s security is not a topic for public debate.

1.2 Irregular public spending tops R28bn

The fracas over the security upgrade to Zuma’s home must be seen in the context of a public sector that is well resourced but unable to deliver basic services to the greater population. The cost and physical enormity of Zuma’s Nkandla facility is juxtaposed against the severely under-developed area. State presidents have the use of official residences in **Pretoria, Cape Town** and **Durban**. In addition, Zuma has a private residence in the upmarket **Johannesburg** suburb **Forest Town**, although the legal ownership is opaque¹¹.

The Nkandla security upgrade is an uncomfortable topic for even Zuma’s most loyal supporters. His spokesman **Mac Maharaj** admitted that he has made the conscious decision to not visit the property so he wouldn’t be in a position where he would find *“something significantly unacceptable”*¹².

Upon leaving office a public official must reimburse the state for the security costs.

*“The state accountant’s office calculates the cost of the security upgrades built with public funds at private residences: walls, cameras, rooms for the security guards, drivers, etc. There is a formula applied to account for depreciation and the owner of the property must pay the balance. It will be interesting to see how this is applied to over R200m when Zuma leaves office”*¹³.

A former ANC minister cautions:

⁹ Murray Hunter, Right 2 Know campaign national spokesman.

¹⁰ ‘Zuma’s R65m Nkandla splurge’, M&G, 4 December 2009

¹¹ ‘Mystery of Zuma utility bill’, M&G, 25 October 2013

¹² ‘The Zuma Years: South Africa’s changing face of power’, Richard Calland

¹³ ANC national executive committee member and former cabinet minister

“When you are in cabinet one must remember that the privileges of the position come with the office, it’s not because you are special. The houses, cars, drivers, it all ends when you leave office. It appears that some people can’t separate themselves from the position they occupy for now”.

In the same week Madonsela’s draft report raised the ire of the security ministers, finance minister **Pravin Gordhan** informed parliament that in 2011/2012 the public service was responsible for R28bn (\$2.8bn) in irregular spending – expenditure incurred without compliance with applicable legislation¹⁴. This figure rose by R17bn (\$1.7bn) in the past three years. Gordhan echoed the findings of outgoing auditor general **Terence Nombembe** saying that new guidelines were required to assist public service accounting officers.

1.3 President Zuma’s security in the spotlight

Apart from the Nkandla debate, President Zuma security has featured prominently. In the past month Zuma’s security detail has been enlarged with his motorcade growing from 10 vehicles to 13 with four or more outrider police motorbikes. On 18 November one of Zuma’s police guards assaulted a press photographer as the motorcade left **Nelson Mandela’s** home in **Houghton, Johannesburg**¹⁵. There is precedent for such behaviour. In February 2010 Zuma’s guards detained a jogger in Cape Town for allegedly displaying an offensive hand gesture to the passing motorcade. **Chumani Maxwele**, a political science student at the **University of Cape Town**, was blind-folded with his hands and legs restrained and detained for a day without water or food, while he was interrogated about his political affiliations and his home searched¹⁶. The **South African Human Rights Commission** found that Maxwele’s rights had been violated and the findings were upheld by a high court in 2013¹⁷.

1.4 Democratic Alliance policy fallout

In November the **Democratic Alliance’s (DA)** internal tensions came to the fore and raised questions over the suitability of its current leadership to grow its voter base. A meeting of the federal council on 23 November has sought to provide clarity on the DA’s attitude to race. The DA initially supported the **Broad-based Black Economic Empowerment Amendment Bill** in the Western Cape legislature but in early November withdrew its support in the national assembly much to the consternation of the

¹⁴ ‘Irregular spending tops R28bn: Gordhan’, iol.co.za, 19 November 2013

¹⁵ ‘VIP guard assaults EWN journalist’, ewn.co.za, 18 November 2013

¹⁶ ‘Blue light jogger ruling welcomed’, iol.co.za, 18 June 2013

¹⁷ ‘Blue light jogger ruling welcomed’, iol.co.za, 18 June 2013



party's black caucus¹⁸. The switch in policy underscores the party's internal tensions over how to grow its support among black voters and manage the expectations of the traditional base on issues like affirmative action and black economic empowerment.

To compound its confused policy, the DA 'mistakenly' supported the **Employment Equity Amendment Bill** in the national assembly. Traditionally it has advocated 'equal opportunities' and sought to downplay affirmative action. Former DA leader **Tony Leon** criticised the decision to support the bill saying it betrayed the party's commitment to non-racialism¹⁹. However, to achieve its stated ambitions of winning **Gauteng** province in the 2014 election and securing 30% of the national vote (from 19% in 2009), it must attract more black voters, the majority of whom would stand to benefit from the bills, without alienating its traditional supporters.

Party leader and **Western Cape** Premier **Helen Zille** admitted to mishandling the bills and blamed a breakdown in the party's parliamentary process. Critics asked if she was not over-extended and if the party was serious about courting black votes²⁰.

"The party is not split on affirmative action. We are engaged in robust discussions and refining our position ahead of the 2014 election. The party has never been this large, so consensus takes longer to achieve"²¹.

The federal meeting has recognised that race matters to the majority of South Africans and that it remains a proxy for 'disadvantaged', and implicitly that to grow the voter base the party must be in tune with the black voters it hopes to attract²².

"The party must walk a fine line between the traditional 'individual rights mantra' and promoting diversity, which now includes race. We don't agree with (race) quotas but can't ignore our collective history and its real legacy."²³

1.5 Construction collapse reveals flouting of law

¹⁸ "EE Bill: Is black the DA's new true blue", M&G, 15 November 2013

¹⁹ 'DA to thrash out race policies after row over employment equity bill', Business Day, 22 November 2013

²⁰ 'Dear Lindiwe Mazibuko, lets talk frankly', Daily Maverick, 18 November 2013

²¹ Wilmot James, DA Federal Chairman

²² 'DA embraces race as a political reality', TimesLives, 25 November 2013

²³ DA member and MPP

When the roof of a shopping mall under construction collapsed in the town of **Tongaat**, north of **Durban (KwaZulu Natal)** it exposed a sordid history of public-private corruption and maladministration. The collapse of the roof killed one person and injured 29 others on 19 November 2013. The developer **Gralio Precast** has a network of political supporters happy to overlook a history of poorly executed public sector tenders.

The company began constructing the mall without planning permission and ignored a court order on 14 November to stop work²⁴. Gralio's owner **Jay Singh** and his family have won contracts worth an estimated R500m (\$50m) from the **eThekweni** (Durban) municipality since 2004²⁵. Singh first came to public prominence in 2003 when he acquired the **Durban City Bus Service Company** for R70m (\$7m). Despite several bailouts from the city the privatised company failed and the city repurchased the asset-stripped company for R405m (\$45m) in 2009²⁶. In 2009 Singh was convicted for bribing a city official to not report on sub-standard construction work that barred him from being a director of a company but did not stop him winning contracts from the eThekweni municipality²⁷. The Labour Department's investigation is ongoing.

In April 2013 industry statistics revealed that the construction industry suffered about 300 fatalities a year, more than the mining sector²⁸.

*"The department of labour doesn't have the staff to monitor the building sites. Even if they could, a court order can be ignored. The industry uses a lot of casual labour so they don't have union protection. And municipalities pick smaller companies and don't care enough about quality to follow up on contractors."*²⁹

1.6 Eskom's energy crunch

The state-owned electricity generation and distribution company **Eskom** issued a warning to all consumers in late November that the reserve margin was very small and that without a sharp, immediate reduction of 10% in demand the country could experience widespread power outages³⁰. Eskom is embarking on a vital maintenance programme that will temporarily remove 6,000MW from

²⁴ 'Metro considers forced demolition of Tongaat mall', M&G, 22 November 2013

²⁵ 'Tongaat tragedy: when political connections and dodgy tenders cost lives', Daily Maverick, 20 November 2013

²⁶ 'Tongaat tragedy: when political connections and dodgy tenders cost lives', Daily Maverick, 20 November 2013

²⁷ 'Rescue efforts in Tongaat suspended', ewn.co.za, 21 November 2013

²⁸ 'Death and injury stalk construction sites', Federation of Employers Mutual Assurance Company, April 2013

²⁹ Construction health and safety association official

³⁰ '7 reasons why Eskom is on the brink', ewn.co.za, 20 November 2013

the total 40,000MW produced³¹. The company has suffered delays to the construction of two new coal-fired power stations, the first of which, **Medupi**, will only come on grid in mid-2014. It has issued a schedule for possible timed power outages to help the national grid manage.

1.7 Renewable energy sources feed into grid

The energy department has announced the winning bidders for South Africa's third round renewable energy independent power producer procurement programme. The financial closure for the 17 projects is in July 2014 and once operational should produce 1,400MW of power. The projects under development include seven onshore developers (787MW); six solar photovoltaic (450MW); two-concentrated solar power (200MW); one biomass 16.5MW bidder and an 18MW landfill gas developer³². In total when all three phases are complete they will produce 4,000MW or 10% of Eskom's current output³³.

"Across the three rounds, the total private funds committed is R150bn (\$15bn), and about two-thirds of that is debt funded. We meet with the government and Eskom every six months for progress reports and off-take negotiations. It is working well".

2 Implications

The Nkandla report pitches the government's inclination for secrecy against the public protector's constitutionally defined role to hold the state to account. The office of the public protector has been invigorated under Madonsela's leadership but it is in the minority; the police are determined to maintain the National Key Points Act and once Zuma signs the recently passed **Protection of Information Bill** into law, it will cement the government's predisposition to secrecy than transparency.

The DA will struggle to convince black voters that it identifies with their ambitions, making the target of garnering 30% of the national vote doubtful. The diminished ability of municipalities to marshal public sector contracts, together with the department of labour's inability to police standards and the ease of ignoring court interdicts will mean that the some elements of the construction industry remain dangerous for workers. The renewable energy programme is progressing but the contribution to the national grid will not be fast enough to give Eskom a comfortable margin in the short term.

³¹ '7 reasons why Eskom is on the brink', ewn.co.za, 20 November 2013

³² "Renewable energy independent power producer procurement programme – third round", Engineering News, 17 November 2013

³³ Investment banker supporting some of the winning IPP bidder

