



COUNCIL
FOR THE ADVANCEMENT OF THE
SOUTH AFRICAN
CONSTITUTION

MEDIA STATEMENT

Public Protector's Report on Nkandla

24 March 2014

The Public Protector is appointed under the Constitution to strengthen constitutional democracy by probing improper conduct and maladministration in state affairs. In her report on the upgrades at the President's private residence at Nkandla she has found that the President has violated the Constitution.

The Council for the Advancement of the South African Constitution (CASAC) believes that under these circumstances, it is necessary to consider whether the violation is of such a serious nature to require invoking the provisions of section 89 (1) of the Constitution. In our opinion, the issue is whether it would be constitutionally intolerable for the President to remain in office.

The Public Protector has made a positive finding that the President acted in breach of section 96(1) and (2) of the Constitution (paragraphs 10.10.1.5 and 10.10.1.6 of the Public Protector's report). These sections place two obligations on the President. First, he must comply with the code of ethics for members of the Executive. Second, he must not act in a manner inconsistent with his office or expose himself to a situation of a conflict of interest.

CASAC Executive Secretary, Lawson Naidoo says:

"The Public Protector has found that the President violated both constitutional duties. First, by wearing "two hats" as guardian of the country's resources and as a direct personal beneficiary of improper privileges, he violated the duty to avoid placing his personal interests in conflict with those of the state. Second, by failing to cause an investigation as soon as he became aware of the expenditure into his home, he acted in a manner inconsistent with the duty to protect public funds."

Council for the Advancement of South African Constitution

Telephone: [+27 21] 685 8809 • Facsimile: [+27 21] 685 8819

info@casac.org.za

www.casac.org.za

Section 89(1) (a) provides that the President may be removed from office by a resolution supported by two thirds of the members of the National Assembly, for a "serious violation" of the Constitution or the law, or in terms of s. 89 (1) (b) for "serious misconduct". Given the findings of the investigation as a whole, the quantum of the monies expended and the role of the President, it would be difficult to sustain any argument that the findings of the Public Protector do not amount to serious violations or misconduct.

CASAC therefore believes that it would be constitutionally intolerable for Parliament not to consider whether the constitutional violation or the misconduct identified by the Public Protector fall within the category of violations in section 89 (1).

We call upon the Speaker of the National Assembly to convene a sitting of that House to deliberate on this matter.

For further enquiries please contact

Lawson Naidoo
073 158 5736 or 021 685 8809
Lawson@casac.org.za