

Nkandla

President Jacob Zuma and his legal team this week added more falsehoods to the large number already heaped up around Nkandla. But what has been widely seen as a concession by Zuma, an offer to repay the state, is nothing of the sort. In fact, Zuma and his team reneged on commitments

to act against the Cabinet ministers who had overseen the spending of more than R247-million in public funds at his private home. But the proposal Zuma's team made to the Constitutional Court did not buy him out of bruising legal arguments to come in a hearing set to go ahead next week

JZ conjures up new Nkandla story

NEWS ANALYSIS
Phillip de Wet

The legal strategy was more subtle but the public-relations approach was as blunt as a brick.

President Jacob Zuma, the presidency said in a statement on Wednesday morning, had proposed a way to settle the long-running legal disputes around the public protector's report into state spending at his Nkandla compound.

"The report specifically found no wrongdoing of any kind by the president," the presidency said in a press release.

It was not an isolated statement.

"There has been no adverse finding made by the public protector that renders the president culpable on any matter," said Zuma's legal advisor Michael Hulley in a video statement the presidency uploaded to YouTube on Wednesday afternoon.

But, in her March 2014 report on Nkandla, public protector Thuli Madonsela found Zuma had made himself guilty of ethical violations through his "failure to act in protection of state resources".

Zuma's conduct, Madonsela said, was both inconsistent with the constitutional duties that come with his office and a violation of the executive ethics code.

It was the most direct finding of wrongdoing, but not the only one. Zuma had misled Parliament on Nkandla, Madonsela said, albeit inadvertently, and in one case "allowed or caused extensive and excessive upgrades that go beyond necessary security measures to be made to his private residence, at state expense".

The legal submission described by the deceptive statements repre-



This shouldn't take long: After years of wrangling, President Zuma has proposed to settle the legal disputes around the public protector's report into his state spending spree at Nkandla. Photo: David Harrison

sented no new proposed solutions to the Constitutional Court challenge brought by the Economic Freedom Fighters on Nkandla. Zuma believed the auditor general should be involved, alongside the treasury, in determining how much he owes the state, his lawyers told the ConCourt in papers filed on Tuesday.

He had made the same proposal late in 2015, proposing "the determination of the reasonable costs of the security and non-security related features should be undertaken by the auditor general and an apex official from the national treasury".

He had alluded to such an approach earlier in the year.

On Tuesday, though, he proposed a 90-day deadline for the proposed new accounting team to report its findings to the ConCourt.

But this week's submission was notable for its attempt to sidestep a previous commitment to rebuke the ministers who had been involved in Nkandla.

Third on the list of remedial action Zuma should take on Nkandla, Madonsela had said in March 2014, was to "reprimand the ministers involved for the appalling manner in which the Nkandla project was handled and state funds were abused".

In a previous sworn statement, Zuma undertook to do just this, after

a proper investigation and with a fair hearing for the ministers.

On Tuesday, however, his team said "the issue of reprimands has fallen away, as neither then-minister holds office".

Geoff Doidge, the minister of public works responsible for much of the Nkandla work, is the current ambassador to Sri Lanka. The one-time deputy public works minister, Hendrietta Bogopane-Zulu, is now the deputy minister of social development. Nathi Mthethwa, minister of police at the time that police determined security measures to be implemented at Nkandla, is the current minister of arts and culture.

Zuma's bill starts at R10m

President Jacob Zuma on Tuesday agreed with the public protector that the amount of money he owes the state on Nkandla should be calculated "taking into account" a March 2011 cost apportionment by the department of public works that held him responsible for R10.7-million.

That, the department said at the time, was the estimated "private portion" of state work being done at Nkandla, money several technocrats in the department believed should be for Zuma's account. It includes R260 000 or about 10% of the then estimated cost of the infamous fire-pool, and some R6-million in landscaping costs.

All involved at the time stressed that the costs were only estimates and the numbers were loaded with contingencies and escalations.

But in August 2014 a very different investigation came to a similar number on an entirely different basis.

Working on the basis of a proclamation by Zuma himself, the Special Investigating Unit found that the state had spent about R11-million on the Zuma family: R4-million on air conditioning in private residences, R4.5-million for two roads exclusively used by the family, and R3.3-million on landscaping around private residences. — *Phillip de Wet*

Six years of obscuring home truths

President Jacob Zuma's bald statement that the public protector never found wrongdoing on his part continues a long tradition of blatant deception on the issue of Nkandla:

- December 2009: The department of public works tells the *Mail & Guardian* the construction work visible at Nkandla is not happening;
- October 2012: The department of public works says that officials who disclose the amount of money spent on Nkandla will go to jail, after officially disclosing the figures to Parliament itself in a public document;
- November 2012: Zuma tells Parliament that "all the buildings and every room we use in that residence were built by ourselves". The public protector later says this untruth appeared to have been a genuine mistake;
- January 2013: Public Works Minister Thulas Nxesi says Zuma had no knowledge of the cost of Nkandla work. Both documents and simple logic refute that;
- March 2014: Zuma says he did not ask for the security upgrades. He had earlier told the public protector he had asked for the cattle kraal the state constructed; and
- May 2015: Police Minister Nathi Nhleko invents several websites and facts in a report that sets the amount of money Zuma is liable to repay for Nkandla at zero. — *Phillip de Wet*

No 1 has a date with ConCourt

The Constitutional Court is due on Tuesday to hear the argument by the Economic Freedom Fighters (EFF) that Parliament's National Assembly failed to force President Jacob Zuma to do what the public protector said he should.

The party also wants the court to declare that Zuma failed the Constitution, and must implement the Nkandla remedial action within a month.

Zuma and National Assembly speaker Baleka Mbete have promised to argue that the EFF is mistaken in law, misguided in fact and is being politically opportunist to the extent that the ConCourt should throw the case out entirely.

On Tuesday Zuma said he "adheres" to his criticism of the protector's Nkandla findings, even as he proposed to repay what money the auditor general and the treasury may find him to owe.

The remedial action demanded of him by public protector Thuli Madonsela, Zuma says, "is in the process of being implemented, and



Home improvements: The president's home in Nkandla, KwaZulu-Natal. Photo: Madelene Cronjé

will continue to be implemented". Madonsela, on the other hand, says to date Zuma "has yet to comply".

Zuma would have to comply, Madonsela holds, because her remedial action "is binding and enforceable, and it must be com-

plied with unless and until it is set aside by a court". Mbete counters that Madonsela holds "no constitutional powers of prescription to the National Assembly".

Zuma, meanwhile, argues that people too cannot be held respon-

sible to do as Madonsela says. "The contention that an individual must comply with such [a] conclusion as if a judgment of a court of law, unless he or she specifically reviews it, is quite extraordinary," he says in an affidavit. — *Phillip de Wet*