

## Democracy and Majority Rule in South Africa: Implications for Good Governance

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**Abstract:** South Africa is a leading example of democracy in Africa albeit many argue that it has lost meaningful direction in aspects which range from its practice of majority rule, social cohesion, and neo-liberalization of its political economy and international diplomacy. South Africa could fairly well be viewed as an emerging middle power but many of its actions have belied this thus allowing certain analysts to consider it as inconsistent, confusing, and even sinister. Some of the core problematic areas of South African democracy include poverty, unemployment, inequality, high level of HIV/AIDS, corruption, fast decaying educational system, electricity (load) shedding, fast loss of rand value in the international market and rampant strike actions, especially in the mining industry. However, this paper depends on the documentary method of research to examine the drama surrounding the security upgrade of the President's home at Nkandla. The findings show that in a democratic society like South Africa, majority rule may sometimes be a limitation of democratic practices. In order to avert the challenges which majority rule may pose to the other principles of democracy, the principles of values, such as separation of power among the three levels of government and rule of law, must be respected.

**Keywords:** accountability; democracy; leadership; governance; public protector

### 1. Introduction

Despite differing views that South Africa has lost direction with respect to the practice of majority rule, social cohesion, international diplomacy and neo-liberalization of its political-economy, it is still considered by many as a leading example of democracy in Africa. While South Africa is associated with prestigious emerging market accolades, some of its actions have been continentally and globally viewed by some analysts as inconsistent, confusing, and even sinister (Fourie, 2013).

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Many of these analysts have argued that South Africa transformed its horrific history of discrimination, racism and ‘legal’ apartheid rule to a beacon of human rights at global level albeit not without limitations<sup>1</sup>. For example, its immigration policy configuration for African immigrants has been a subject of critical scrutiny especially in the wake of large scale outbreak of xenophobic attacks in 2008 and 2014 respectively<sup>2</sup>. In a more general context, South African democratic governance has passed through several trials: poverty, rising unemployment, inequality, HIV/AIDS, corruption, decaying educational system, electricity shedding, fast loss of rand value in the international market and rampant strike especially in the mining industry<sup>3</sup>. However, our contention in this study is the complex situation that developed in the political system of the country following the investigation and report on the security upgrade of President Jacob Zuma’s Nkandla residence by the generally perceived competent Public Protector, Thuli Madonsela. The investigation and report have exposed several weaknesses in South African democracy ranging from the dangers of one dominant political party exemplified in African National Congress (ANC) to the loophole and strength of majority rule as both a major shortfall and advantage of democracy in any context.

Beside the concerns raised in the private and public sector about the implications of the crises of the ‘security upgrade at Nkandla’ - homestead of President Zuma - there has not been comprehensive literature that attempts to analyze the impact of the crises on South Africa’s nascent democracy. This paper seeks to fill the identified gap in literature, drawing on available document on South African democracy covering the period 1994 to 2016. The research questions to be answered in this study include: How do democracy and majority rule affect justice? What are the challenges in deploying majority rule in a democracy? What are the implications of the first and second research questions on South African democracy? In order to answer these research questions, we explore the crises that arose from the security upgrade of President Zuma’s Nkandla homestead to expose how the rule of law and in fact, government institutions malign the interests of those whom the majority have put in power. This paper therefore uses the documentary analysis method of research to argue that the handling of the crises of the Nkandla security upgrade in South Africa is a major negation of the hopes of people who expect government to uphold the constitution and or the rule of law. The paper consists of nine sections: the

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<sup>1</sup> See (Sidiropoulos & Hughes, 2004; Fourie, 2013).

<sup>2</sup> See (Umezurike & Isike, 2013; Umezurike 2015)

<sup>3</sup> See (Andreasson, 2010; Ncube, Shimeles, & Chouchane, 2012)

introduction, and objective of the study and to inform the reader about the focus of the study and the methodology used to conduct the research. Next is **literature review** which centers on understanding democracy and majority rule - a conceptualization of democracy and majority rule in the South African context; an expose on the Nkandla security upgrade, which presents a focused discussion and analysis of the investigation of President Zuma's home security upgrade. The other sections include **cabinet and the public protector's investigation and report**, which looks at the President and his cabinet's attempt to undermine the report; **parliament and the public protector's investigation and report** details Parliament's attempt to undermine the report and the Public Protector's independence of office; the constitutional court judgment provides a thorough interpretation of the implication of the apex court's (Constitutional Court) ruling on the Nkandla security upgrade and its effect on the South African democracy and finally we draw conclusions based on the analysis of the entire discussion.

### **Objective of the Study**

The objective of the study is to use documentary analysis method of research to examine the implications of application of majority rule to democracy and good governance in South Africa exploring the crises of the 'security upgrade at Nkandla' - homestead of President Zuma as a case study.

## **2. Methodology**

As stated earlier, this paper relied on documentary analysis method of research. This method allows researchers to select documents that are relevant to the study for the purpose of analysis (Payne & Payne, 2004; Mogalakwe, 2006). This method of research enables researchers to determine the documents that are relevant to the study based on their significance to the subject under investigation. Dey (2005, p.105) suggests that in documentary analysis method of research, the basis for choosing documents is dependent on necessary extracts which have to be relevant to the subjects being investigated by the researcher.

### 3. Literature Review

#### 3.1. Understanding Democracy and Majority Rule

Democracy means different things to different people, but the common thread is still human involvement in the decision-making and governance processes. Therefore, it is commonplace to use democracy to design different forms of government, especially where the citizens of the country are involved in the decision-making process - be it in ancient or modern times. For Fox and Meyer (1995, p. 35), democracy is a political system whereby the decision-making power and process are shared among the citizens of a country. Malan (2014, p. 55) asserts that the complex nature of modern society makes it impossible for citizens to make direct decisions owing to the use of elected representatives who make decisions on their behalf. Therefore, democracy could be direct or indirect, depending on the level of people's involvement. The common view of analysts is that direct democracy is where there is absolute direct involvement of the citizenry in the decision-making process, while indirect democracy gives people the opportunity to periodically elect into power those who represent them in the decision-making process. In a direct democratic setting, it is common for the citizens to sit together and enact new laws or change the already existing laws, if necessary. In a representative democracy - such as South African since 1994 - the citizens usually elect their leaders periodically to take decisions concerning the laws.<sup>1</sup>

However, any democracy is dependent upon certain basic principles including majority rule. Khalo (2008, p. 67) is of the view that democracy is a form of government where the state is governed by the majority of its population: this suggests that in a democracy, as the saying goes, 'majority carries the vote'. This is common among democracies in the world because decisions are made based on numbers. However, some measures are usually established to protect minority view. For example, in any democracy the hope of the minority is usually to follow the legitimate means provided by the constitution to contest issues. More often than not, the constitution provides for separation of powers thus the executive arm, the parliament and the judiciary form the three arms of government but each operates as distinctive government institutions while interrelating in operations. The hope of the minority view is usually anchored in the judiciary: in any modern democracy, the judiciary is charged with the responsibility of interpretation of law or law

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<sup>1</sup> See (Cloete, 2012, p. 19).

adjudication. In order to come out clearer in understanding the basic tenets of democracy, we share the views of Theletsane, (2014) that, contrary to the views expressed by some academics, democracy cannot have more than one meaning. Theletsane, (2014) further argues, in line with Fringpong (1999), that even if there are different interpretations of democracy, there are certain underlying factors that must be consistent within any such interpretation. Among such underlying factors, and drawing from the works of Fringpong (1999), Gildenhuis and Knip, (2012, pp. 111-112), Theletsane, (2014), Madue, Tsolo & Ramoabi (2014), are the following:

- The rule of law and constitutionalism must be practiced;
- The will of the people/majority are respected;
- Citizen's participation is essential and encouraged;
- Citizen's participation is exercised periodically in free and fair elections through which elected representatives assume leadership positions;
- The government is established in power only for the purpose of serving the citizens;
- The government is subject to the will of the people who are empowered by the constitution to effect a change in government;
- Separation of the powers, based on checks and balances, should be contained in the constitution and respected;
- Respect for human rights and fundamental freedoms as enshrined in the constitution.

The fact is that democracy as a concept is a slippery slope as well as an idea that may not be attainable as an end-goal in a society. However, its practice requires that the central principles highlighted as tenets of democracy apply to the lives of the majority in the country (see Theletsane, 2014). In a democratic setting, majority is a crucial factor in decision-making and could be seen as one of the attributes of democracy that guarantees stability in a country. It is so largely because application of the majority rule principle may easily suppress the opinion of the minority, who may rightfully, view such suppression as a compromise or defeat. In the next section, we turn to the long investigation of the security upgrade of President Zuma's homestead at Nkandla.

### **3.2 The Investigation of the Security Upgrade of President Zuma's Homestead at Nkandla**

President Jacob Zuma's Nkandla homestead has been surrounded by controversy, owing to the alleged dubious escalations of the cost of the security upgrade. However, the drama of Nkandlagate actually started to unfold after it was reported that the upgrade included several outlandish and non-security additions to the private property. Some of these unrelated additions include a helipad, amphitheater, underground bunkers, a swimming pool, a chicken run, visitors' center and a military hospital (Madonsela, 2014). The saga shows that the Department of Public Works ignored the provision in the ministerial hand book that it may expend not more than R100, 000 on security improvements at the private houses of public officials<sup>1</sup>. According to the ministerial hand book any improvements exceeding that amount shall be at the expense of such public official but in this case over R246 million was allocated for the homestead renovation (South African history online, 2014).

According to the Minister of Public Works (2013), upgrades to the Nkandla homestead only began on the 29th of August, 2009. Apparently on 13 December 2011 and 12 December 2012 respectively, formal complaints were lodged at the office of Public Protector both from private citizens and opposition parties, in particular the Democratic Alliance (DA). More importantly, the investigation was conducted partly in terms of the provisions of Section 182 of the constitution of the Republic of South Africa (see 1996, South African Constitution). Public Protector, Thuli Madonsela's final report on security upgrades to the compound was titled 'Secure in comfort' and it was officially published on 19 March 2014 (Wilson, 2014).

### **3.3 Cabinet and the Public Protector's Investigation and Report**

The first attempt by the ANC to undermine the probe at the executive level appeared to be the calculated move by the Department of Public Works to deny the existence of any such project at Nkandla. The department later admitted that the security upgrade was indeed ongoing but that it was duly declared a National Key Point in line with Act 102 of 1980 (National Key Points Act 102 of 1980).<sup>2</sup> Another

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<sup>1</sup> See (Ministerial Hand Book, 2007).

<sup>2</sup> If it appears to the Minister at any time that any place or area is so important that its loss, damage, disruption or immobilization may prejudice the Republic, or whenever he considers it necessary or expedient for the safety of the Republic or in the public interest, he may declare that place or area a National Key Point. The owner of any place or area so declared a National key Point shall forthwith be

indication that the ruling party and its leadership wanted to undermine the investigation of the Public Protector appeared on 13 January 2013, when the Public Protector informed the President of her being unable to conclude the investigation in 30 days as stipulated in Section 3(2) of the Executive Members' Ethics Act (Executive Members' Ethics Act 82 of 1998).

This provision of the section stipulates that the Public Protector's report is due at the end of the 30 days; if not completed within 30 days, the Public Protector must submit a report when the investigation is completed. The President and his legal team pounced on the opportunity to question the validity of any report prepared by the Public Protector not concluded within the 30 days (Executive Members' Ethics Act 82 of 1998). The President, along with his legal team, indicated to the Public Protector that she should provide evidence whether the President has power to condone any Public Protector's non-compliance of section 3(2) of the Executive Members' Ethics Act (Executive Members' Ethics Act 82 of 1998). This appeared to be an attempt to undermine chapter 9 of the South African constitution that provides for the democratic institutions in South Africa which the Public Protector represents (see 1996 South African Constitution).

The government's security cluster ministers (ministers of defence, police, home affairs and international relations) raised security questions based on the conclusion of the investigation. The Public Protector was eventually taken to court on 8 November 2013, on the grounds that the security cluster ministers were not given enough time and opportunity to study the initial report before the final report was released; the cluster ministers later withdrew the case (SABC Online News, 2013). In the view of many, this was interpreted as an attempt to frustrate the Public Protector because it may be questionable why it is necessary for the cluster ministers to study the preliminary report before its final publication. This could possibly raise questions over impartiality or credibility of the report while at the same time compromising the independence of the office of the Public Protector. In another move to justify the renovations, the Public Works Minister Thulas Nxesi, on 19 December 2013, presented an inter-ministerial task team report as evidence that South African public expenditure cleared the President of any wrong doing for the security upgrade in his homestead. The question arises: should such clearance supersede the investigation of the Public Protector's remedial action and findings?

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notified by written notice of such declaration. The minister of police is responsible for implementing National Key Points ACT 102 of 1980.

This would have cleared the way for the executive to have its way on any issue in the political system of South Africa and unlimited power for the President responsible for the appointment of the cabinet members.

The need for the provision of democratic institutions in Chapter 9 of the South African Constitution cannot be over-emphasized, especially because of the need to keep the President in check from exerting absolute and arbitrary power in government. On the 11th of August 2014, the Special Investigating Unit (SIU) was mandated by President Zuma to investigate the security improvement of his home and the Public Protector's report (SABC Online News, 2014). At a certain point, it emerged that SIU was suing the architect (Mr. M. Makhanya) in charge of the security improvement of Nkandla for R155.3 million in the KwaZulu-Natal High Court (SABC Online News, 2014); it was a successful diversion from all the institutions, persons and public involved in the matter. Suing an independent businessman who has no access to public fund expenditure would have little effect on the causal matter. Even if the over-spending was as a result of his quotation, it also provided evidence that South African procurement procedures were not followed in the security upgrade. SIU's report on the matter was brought before Parliament on 12 September, 2014 (Nhleko, 2015) which noted that Zuma's family did not unduly benefit from the upgrades, thus contradicting the report of the Public Protector which asserted that the President and his family unduly benefited from the security upgrade (Mahomed, 2015).

The unit shifted the blame of overspending to the architect who worked on the project and the public works officials. The report also reiterated that the security upgrade in the President's homestead was still inadequate despite the overspending, a further indication of the recklessness of the Department of Public Works in the handling of the project. In President Zuma's letter to the Public Protector, dated 11 September 2014, he proclaimed his disagreement with the Public Protector's assertion that, by law, her report is not subject to any review or second-guessing by any minister or cabinet member (Zuma, 2014); his view was that the findings or remedial actions by the Public Protector are not final by law. The Public Protector made it clear earlier that it was only the court that could review remedial actions she recommends; this was later upheld by the Constitutional Court of South Africa.

The Minister of Police, Nkosinathi Nhleko, on 28 May 2015, released a report on the security upgrade of the homestead, reiterating that the swimming pool, the cattle kraal, the chicken run, visitor's centre and amphitheatre were necessary security



requirements for the President. The Minister of Police drew the conclusion that President Zuma was not obliged to refund South Africans any money because of those features, formally concluding thus:

*As the Minister assigned to make a determination on the security upgrades of the president's homestead at Nkandla and having paid due consideration to the facts given, provided evidence that points to the questionable features, namely the animal enclosure (cattle kraal and/or goat kraal with culvert and chicken run), fire pool (swimming pool), soil retention wall, amphitheater and visitors' centre as security features that are in accordance with the physical security requirements and/or interest (Nhleko, 2015).*

We argue that from the inception of the security upgrade in President Zuma's homestead, through the investigation of the matter by the Public Protector and all the debate over her report, the leadership of the ANC knew that many anomalies existed and chose to capitalize on its majority in Parliament. Thus, the party's leadership tossed around with executive powers and its majority rule in Parliament to protect the President. For example, with the majority of ANC in Parliament it was certain that the opposition may not be able to impeach the President and the Speaker of Parliament. ANC members adamantly rebuffed the attacks on the President, including the signal jamming of all devices during the debates in Parliament. Our view is that, with ANC holding a little above 62% of the seats in the current SA National Assembly, it is certain that the opposition working together may never be able to secure the 2/3 majority required for the impeachment of the President or Speaker of the Parliament. The ANC trusts its internal cohesion that its members will stay together in defense of President Zuma while confident in the certainty that the opposition in national assembly cannot garner up to the 50% vote of parliamentary members required to pass a vote of no confidence on the President.

The next section examines the role of Parliament in the protection of the now infamously scandalous security upgrade at Nkandla.

### **3.4 Parliament and the Public Protectors Investigation and Report**

On 28 April 2014, a parliamentary ad hoc committee set up to consider Zuma's response to the Public Protector's report was referred to the incoming Parliament that was to be in place after the 2014 South African general elections; 7 May, 2014 was set for the general elections (Parliament, 2014). A second parliamentary ad hoc committee was established in August, 2014 to consider the report of the following: the inter-ministerial task team released in December 2013, the Public Protector's

final report released in March 2014 and the SIU's report published in September 2014 along with Zuma's responses to each of them (Azzakani, 2014). The second ad hoc committee challenged the findings of the Public Protector and referred the matter to security experts, including the Minister of Police, in November 2014.

Our view is that the ANC uses its majority in parliament to protect the chief executive and the cabinet members. For example, why would it be necessary for the ad hoc committee to consider other views and reports that had been used by the executive to attempt to circumvent/manipulate the findings and remedial actions outlined by the Public Protector? It is also clear in chapter 9 section 182 (1) that the Public Protector has the power to make or enforce remedial action (1996 South African Constitution). In the Public Protector's letter to the president she stressed that by law it is only the judiciary that has the power to set aside her findings and remedial action. Again, in our view, it would have been more logical for the ANC to approach the Constitutional Court to interpret the findings and remedial course recommended by the Public Protector and subsequently determine whether the findings and remedial course of the Public Protector were final. Rather than to go through the judiciary, the ANC chose to invoke 'majority rule' in parliament.

On 18 August 2015, the National Assembly adopted the report of a third parliamentary ad hoc committee which accepted the findings of Nxesi and Nhleko and cleared Zuma of any wrong doing (ENCA Online News, 2015). This move was meant to conclude the case, irrespective of the views of the opposition parties in parliament. To set aside the findings of the Public Protector on such a scandalous case involving the homestead of the chief executive was viewed as an attempt to set a poor precedent in the South African democracy. The second-guessing of ANC majority was evident in the controlling executive arm of government and parliament. It was separation of powers that prevailed over majority, though the success was limited since the Constitutional Court claimed that it has no powers to remove Zuma or order an impeachment, largely because of the principles of separation of powers among the three branches of government.

The two main opposition parties in parliament, the Democratic Alliance and the Economic Freedom Fighters (EFF) held the view that both the president and the Speaker of Parliament must respect and act in favour of the Public Protector's report. In fact, from the second quarter of 2014, EFF's approach was even more raucous as it demanded that the President pay the money spent on his Nkandla residence (South African History Online, 2015). In August of 2014, the EFF adopted a popular slogan,

‘pay back the money’ in response to President Zuma’s unwillingness to speak on the Nkandla scandal (South African History Online, 2015). The State of the Nation Address of President Zuma on 12 February 2015 will be remembered as one of the most controversial breaches of parliamentary rules in South African history. Before the State of the Nation Address, the EFF members of parliament warned that they will raise the issue of Nkandla and would request that the president indicates when he would ‘pay back the money’. EFF members were eventually removed from parliament during the address on the instruction issued by the speaker who considered their continuous chanting of the slogan ‘pay back the money’ as disruptive (Mail & Guardian, 2015). Following the allegation that the ‘security officials’ who forcefully removed EFF members were in fact undercover policemen who broke parliamentary rules, the DA’s members walked out in protest (South African History Online, 2015). COPE members of parliament had earlier walked away from the sitting in protest that they will not listen to a president who had confessed to breaching the constitution which he swore to protect.

### **3.5 The Constitutional Court Decision – The Final Hit**

The opposition parties in Parliament were frustrated at the ruling party’s (ANC) choice of settling the matter within cabinet and Parliament where it has executive and majority advantage respectively over all the other political parties joined together. The most aggressive among the opposition parties, the EFF, went to the Constitutional Court to challenge the Speaker of the National Assembly, President of the Republic of South Africa and others for their roles in negating the implementation of the Public Protector’s report on the security upgrade of Zuma’s homestead (see Notice of Motion, 2015). The Public Protector and DA later joined hands with the EFF. The hearing date of the case was 09 February 2016, while the date of judgment delivery was 31 March 2016, (News 24, 2016). The most important aspect of the Constitutional Court judgment was on whether the Public Protector has powers to ‘take appropriate remedial action’ or whether her findings constituted merely a recommendation that could be set aside by the President, cabinet members or Parliament using executive power or parliamentary majority. For example, whether her remedial action requiring President Zuma to pay back a reasonable portion of the money spent installing non-security upgrades at his private homestead at Nkandla in his personal capacity was binding on the President.

The view of opposition parties in Parliament had been in agreement with the Public Protector’s report and supported the remedial action ordering the president, with the

assistance of the South African Police Service and National Treasury, to determine the reasonable costs of those features and repay a reasonable portion thereof to the State (Public Protector's report, 2014).

The Speaker of the National Assembly, Minister of Police and President had argued that the Public Protector's power to take remedial action merely amounted to recommendations and therefore was not binding on the President - or anyone - until another appropriate authority has acted on the report (Zuma, 2014). As a matter of fact before the hearing, the President had argued that the steps he took were in compliance with the Public Protector's remedial action. The steps taken by the president included referring the investigation and report of the Public Protector to the Minister of Police, SIU and National Assembly via ad hoc committees who all shared the same view. The opposition parties and Public Protector have maintained that the investigation, report and all other processes followed by President Zuma in the matter were unlawful, for example, Congress of People's (COPE) withdrawal from the activities of the ad hoc committee on the grounds of its illegality is another clear point against ANC's attempt to use its majority in Parliament to protect the chief executive and cabinet members for their wrong doing on the security upgrade of President Zuma's homestead. At the meeting of 25 September 2014, the members representing the Congress of the People (COPE), although not members of the committee, highlighted the party's objections to the constitutionality of the committee. All other parties disagreed with the interpretation of COPE members of Parliament and agreed that the committee was indeed constitutional. The representatives of COPE then left the meeting stating that the party would follow the proceedings of the committee, but would not participate in its work (see Parliament, 2014).

The Public Protector's submission is that her power to take appropriate remedial action is final and binding and implementable except if overruled by the judiciary, of which President Zuma and the Speaker of House of Assembly vehemently opposed (see Madonsela, 2014). However during the hearing, President Zuma agreed that the Public Protector's report was binding. He thereafter offered that he would refund a reasonable portion of the upgrade's expenditure at his homestead (Pretorius, 2016). The Speaker of the National Assembly and the ANC still hold the view that setting up ad hoc committees and considering several reports, side by side with the Public Protector's report remains her lawful responsibility to put the actions of the executive to check (Gqirana, 2016). To date, the speaker refuses to apologize to South Africans, even though the Constitutional Court ruled that her approach and

failure to accept remedial action of the Public Protector was inconsistent with the constitutional provisions. Our view is that the Speaker's choice was to adhere to the majority rule that her party has and to use it best in Parliament, that way complying with her job and the President could not be impeached under her leadership. The game of numbers has always been in her favour since she took office as Speaker of Parliament. Apparently, in a unanimous decision of the Constitutional Court presided over by Chief Justice, the court held that the Public Protector had the constitutional power to take appropriate remedial action which has a binding legal effect (News24, 2016). The decision of the President or the National Assembly speaker to respond to the binding remedial action taken by the Public Protector was unconstitutional since the remedial action can only be set aside through a proper judicial process. The court's decision was in line with the position of the Public Protector's report and stand throughout the saga.

The court thus held that the National Assembly's resolution, based on the Minister's findings exonerating the President from liability, was unlawful and not consistent with the constitution. The court also held that, by failing to comply with the Public Protector's order, the President failed to 'uphold, defend and respect' the constitution because a duty to repay the money was specifically imposed on him through the Public Protector's constitutional power. The court further declared the conduct of the President and the National Assembly inconsistent with their constitutional obligations. Accordingly, the EFF and DA's claims fell within the exclusive jurisdiction of the court. The court ordered the National Treasury to determine the reasonable portion that the President must pay for the five non-security items listed above and report back to the court within 60 days. The court ordered the President to make payment within 45 days thereafter. The President was also ordered to reprimand the Ministers involved in the expenditure at Nkandla. Finally, the court declared that the remedial action taken by the Public Protector is binding. The President, Minister, and Speaker were ordered to pay the applicants' costs, including those of two counsels (News24, 2016).

President Zuma apologized to South Africa for using public money to fund his private residence renovation, but for many his apology fell on deaf ears. The court's ruling and President Zuma's apology led to many prominent South Africans and groups, including the opposition parties, to call for the resignation of the President for failing to uphold the constitution he swore to protect (Legalbrief, 2016).

Our view is that the core principles of democracy as Theletsane, (2014); Fringpong, (1999) outlined should be allowed to form the basis of any democracy if it is to thrive in a society. The principles of the rule of law and constitutionalism settled the case of security upgrade at Nkandla after several attempts by the ruling party (ANC) to use its majority to block the remedial action of the Public Protector on the matter. The will of the people/majority must be respected in a democracy and citizen participation should be encouraged. All that played out in the Nkandlagate was largely fuelled by people's desire to satisfy their curiosity through their participation in the things that their elected representatives do or are meant to do. Citizen's participation should be exercised periodically in free and fair elections through which elected representatives should assume leadership positions in society.

In the first place, ANC has to obey the Constitutional Court ruling largely because it knows that it cannot afford to explain another major breaking of the law to the voters during election if it fails to obey the court order. The government should be established in power only for the purpose of serving its citizens; this core tenet of democracy is important and should guide elected leaders' actions while discharging their responsibilities. The government should be subject to the power of the people who should be able to remove the government in terms of constitutional provision, for example through referendum or periodic elections, thus the citizens should exercise its voting power to choose those who will lead them. Separation of powers based on checks and balances especially among the three arms of government; the executive, legislature and judiciary, should be contained in the constitution and respected for example, in the case of Nkandlagate where the Speaker capitalized on majority and failed to check the executive actions, the judiciary was called upon by the minority to save the South African nascent democracy. Respect for human rights and fundamental freedom, as contained in the constitution, definitely enhances the democracy of any society. For instance, the right to information made it possible for people to enquire on the Nkandlagate while the right to life guaranteed protection from the state to all those who fought for the truth on Nkandlagate.

#### **4. Conclusion**

There is absolutely no doubt that South Africa is a formidable example of democracy in its continent, despite its challenges in the application of majority rule, attempts at social cohesion, neo-liberalisation of its political economy, global politics and immigration (Umezurike, 2015). South African democracy is passing through some

difficulties including especially poverty, unemployment, inequality, high level of HIV/AIDS, corruption, plummeting educational standards, electricity shedding, loss of rand value in the global market and rampant strikes especially in the mining industry.<sup>1</sup>

A cause for concern is this latest Nkandlagate that besmirched the country over the past few years. The investigation culminating in a report by the Public Protector was highly contested in the public arena and at executive, parliamentary and judiciary levels. The constitutional powers of the Public Protector were challenged by both the President and Speaker of the National Assembly, while the Public Protector and the opposition parties held the view that the findings and remedial action of the Public Protector could not be set aside or reviewed by any other body except the judiciary; the President and Speaker of National Assembly's view was that they were merely recommendations that could be rejected using other bodies. The Constitutional Court decision supported the view of the Public Protector and confirmed that the President and Speaker's second guessing of the remedial action was a breach of the constitution.

The practice of majority rule in a democracy does not guarantee best practice in a society, especially if other principles of democracy are neglected. Other principles of democracy that must be adhered to include the following: rule of law, constitutionalism, citizen's participation in management of their affairs, periodic free and fair elections; government existence to serve the citizens and the citizens in turn making decisions as to who should serve them, separation of powers, checks and balances among the three arms of government and respect for human rights and fundamental freedom as outlined in the constitution.

## 5. References

Andreasson, S. (2010). South Africa and the political economy of postcolonial Africa: emerging markets or increased marginalisation? *Draft Paper unpublished*, pp. 1-22.

Andreasson, S. (2011). Africa's prospects and South Africa's leadership potential in the emerging markets century. *Third World Quarterly*, Vol. 32, No. 6, pp. 1165–1181.

Azzakani, R. (2014). Ad hoc committee to consider all Nkandla reports. 19 September 2014. [http://www.parliament.gov.za/live/content.php?Item\\_ID=6512](http://www.parliament.gov.za/live/content.php?Item_ID=6512).

Cloete, J.J.N. (2012). *Personnel administration and management*. Van Schaik Publishers, 1064 Arcadia

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<sup>1</sup> See (Andreasson, 2011).

Street, Hatfield, Pretoria. p. 19.

\*\*\*(1996). *Constitution of Republic of South Africa*. Cape Town: South African Government.

Dey, I. (2005). *Qualitative data analysis*. London: Routledge, Taylor and Francis Group.

ENCA Online News. (2015). *EFF tries to block Nkandla report debate South Africa Tuesday*. 18 August 2015. 3:42pm <https://www.enca.com/south-africa/eff-tries-block-nkandla-report-debate>. Accessed on 30th August, 2016.

\*\*\*(1998). *Executive Members' Ethics Act 82 of 1998*. Assented to 20 October 1998. Date of commencement: 28th October.

Fourie, P. (2013). Turning dread into capital: South Africa's AIDS diplomacy. *Globalization and Health*. 9, 8, pp. 1-13.

Fox, W. & Meyer, I.H. (1995). *Public administration dictionary*. Cape Town: Juta.

Fringpong, K. (1999). *Corruption, democracy and good governance in Africa*. Gaborone: Lentswe la Lesedi.

Gildenhuis, J.S.H & Knipe, A. (2012). *The organization of government. An introduction*. Van Schaik Publishers, 1064 Arcadia Street, Hatfield. Pretoria, pp. 111-112.

Gqirana, T. (2016). *ENCA Online News*, 2016. WATCH: ANC MPs again refuse to Apologize to Madonsela Thursday 7 April 2016 - 6:34pm. <https://www.enca.com/south-africa/anc-mps-again-refuse-apologise-madonsela>. Accessed on 30th August, 2016.

Khalo, T. (2008). *Public finance fundamentals in Kabelo*. M. JUTA, Mercury Crescent, Wetton, 7780. Cape Town, South Africa, p. 67.

Legalbrief (2016). Call for Zuma to quit over Nkandla millions. *Your Legal News Hub* Sunday, 21 August 2016.

Madonsela, T.N. (2014). *Report of public protector of Republic of South Africa. Secure in Comfort*. A Report of the March 2014 on Security Upgrade of President Zuma's Homestead at Nkandla.

Madue, S.M.; Tsolo, M.A. & Ramoabi, T.C. (2014). Institutions supporting democracy: noise makers without teeth? *Journal of Public Administration*, Vol. 49, No. 3, pp. 876-890.

Mail & Guardian (2015). *EFF thrown out for disrupting Sona*. DA walks out Sapa 12 Feb 2015 19:46. <http://mg.co.za/article/2015-02-12-malema-shivambu-thrown-out-for-disrupting-sona>. Accessed on 30th August, 2016.

Malan, L. (2014). *Public administration & management in South Africa, a developmental perspective*. C. Thornhill, G. van Dijk, I. Ile (eds). Cape Town: Oxford University Press, p. 55.

Minister of Public Works (2013). *Press Statement on the Security Upgrade in Nkandla*. Dated 27th January, 2013.

Ministerial Hand Book (2007). *Ministerial Hand Book for members of the Executive and Presiding Officers*. <http://cdn.mg.co.za/content/documents/2011/04/13/Ministerial-Handbook-2007.pdf> accessed on 30th August, 2016.



Mogalakwe, M. (2006). Research Report. The Use of Documentary Research Methods in Social Research. *African Sociological Review*. Vol. 10, No. 1, pp. 221-230.

National Key Points Act 102 of 1980. Gazette, No. 7134, Notice No. 1515 dated 25 July 1980. Commencement date: 25 July 1980. [http://www.saflii.org/za/legis/consol\\_act/nkpa1980224.pdf](http://www.saflii.org/za/legis/consol_act/nkpa1980224.pdf). Accessed on 30th August, 2016.

Ncube, M.; Shimeles, A. & Verdier-Chouchane, A. (2012). South Africa's Quest for Inclusive Development. *Working Paper Series*, N° 150 African Development Bank, Tunis, Tunisia, pp 1-28.

News24 (2016). *Full Judgment: Constitutional Court Rules on Nkandla*. Dated 20th March, 2016. Time: 11, p. 47.

Nhleko, N. (2015). *Report by the Minister of Police to Parliament on security upgrades at the Nkandla private residence of the President*. Report is submitted to and tabled for consideration by Parliament, Dated 28TH May, 2015. Found on South African Government, [www.gov.za](http://www.gov.za). Accessed on 20th August, 2015.

Notice of Motion (2015). In the Constitutional Court of South in the Matter between EFF as applicant. *Speaker of National Assembly as First Respondent and President Jacob Zuma as Second Respondent*. Dated August, 2015.

Parliament (2014). *First Session, Fifth Parliament of the Republic of South Africa Announcements. Tablings and committee reports*. Dated Tuesday, 11 November 2014.

Payne, G. & Payne, J. (2004). *Key Concepts in Social Research*. London: Sage Publications.

Pretorius, W. (2016). *Zuma Proposes Solution' to Nkandla - Agrees to pay back the money*. Feb 03, 2016. <http://www.sowetanlive.co.za/news/2016/02/03/zuma-proposes-solution-to-nkandla---agrees-to-pay-back-the-money>. Accessed on 30th August, 2016.

SABC Online News (2013). *Security Cluster Ministers will pay Nkandla Legal Costs*. Friday 15 November 2013. 11:09.

SABC Online News (2014). *Zuma's architect to defend claims against him Monday*, 18 August. 2014 18:36.

Sidiropoulos, E. & Hughes, T. (2004). *Between Democratic Governance and Sovereignty: Challenge of South Africa's Africa Policy*. South Africa's Foreign Policy 1994-2004, Apartheid Past, Renaissance Future in Sidiropoulos: The South African Institute of International Affairs Johannesburg, pp. 61-84.

South African History Online (2015). *Biography of Jacob Zuma*.

Theletsane, K.I. (2014). Drawbacks in South Africa's Pursuit of Democratic Rule and Good Governance. *Journal of Public Administration*. Vol. 49, No. 3, pp. 836-846.

Umezurike, S.A. (2015). South Africa's Economic Policy towards Africa: Renaissance or Neo-imperialism? *Unpublished Thesis*. University of Zululand, KwaDlangezwa, South Africa.

Wilson, S. (2014). *Press Statement, 20 March 2014, Nkandla report's story: taking from the poor to give to the rich*. Socio-economic Rights Institute of South Africa.

Yakoob, A.S. (2015). *Ismail Mahomed Law Reform Essay Competition Essay Title: Ambiguity*

## *ADMINISTRATIO*

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*Surrounding the Powers of the Public Protector – a threat to the rule of law.* Pretoria: University of Pretoria.

Zuma, J. (2014). *A Letter from President of Republic of South Africa to the Speaker National Assembly on the Report Regarding the Security Upgrade at the Nkandla.* Dated 14<sup>th</sup> August, 2014.

Zuma, J. (2014). *A Letter from President of Republic of South Africa to the Public Protector, on the Report Regarding the Security Upgrade at the Nkandla.* Dated 11<sup>th</sup> September, 2014.