

Democratic Alliance Press Statement by  
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# **Nkandla: DA moves to impeach Zuma following Constitutional Court ruling**

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Following today's judgement by the Constitutional Court in the much anticipated Nkandla matter, the Democratic Alliance (DA) has officially begun the process to impeach President Jacob Zuma, in terms of Section 89(1) of the Constitution.

The Constitutional Court – the highest court in the land – found that President Zuma failed to uphold, defend and respect the Constitution as the supreme law of the land by disregarding the Public Protector's report. This pivotal judgment confirms the DA's long held contention that President Zuma seriously violated the Constitution when he sought to undermine the Public Protector's remedial actions by instituting parallel investigative processes, and his subsequent failure to implement her remedial action.

Section 89(1) of the Constitution states that *"The National Assembly, by a resolution adopted with a supporting vote of at least two thirds of its members, may remove the President from office only on the grounds of -*

- (a) a serious violation of the Constitution or the law;*
- (b) serious misconduct; or*
- (c) inability to perform the functions of office."*

Today's ruling is clear in this regard: President Jacob Zuma's action amounts to a serious violation of the Constitution, and constitutes grounds for impeachment.

Up until recently, the President has argued that he was not obliged to heed this remedial action, and that such remedial action was simply advice which he could take or ignore. In his letter to the Public Protector dated 11 September 2014, he argued that her role was akin to that of an Ombud and she could not issue *"judgements to be followed under pain of a contempt order."* Instead he described her reports as *"useful tools in assisting democracy in a cooperative manner, sometimes rather forcefully"*. He specifically denied that they were binding on him.

On the 09 February 2016 counsel for President Zuma, The Speaker of the National Assembly, Baleka Mbete and The Minister of Police, Nathi Nhleko, all eventually conceded that indeed the powers of the Public Protector have legal consequences and can only be challenged by way of judicial review. This is bizarre given that the DA had been arguing this from the very beginning.

Indeed it has been our assertion that Parliament failed to satisfy its constitutional mandate to hold the Executive to account in terms of section 55(2) of the Constitution by adopting the Police Minister's report which we contend is- in and of itself- born from fatal errors in law because this amounts to the establishment of a parallel process as expressly prohibited

by the Supreme Court of Appeal (SCA). This was done- no doubt- to circumvent the remedial actions as ordered by the Public Protector and to thwart the discharge of her mandate. They have effectively aided and abetted the President in his vexatious attempts to unravel our hard won constitutional order.

Our Constitution is binding on all organs of state, including the President. To have ignored a constitutional organ, in the form of the Public Protector, for over two years, and to have employed a series of stratagems, including the Police Minister's Report and the three ad hoc parliamentary committees, to "second guess" and "ignore" the Public Protector required judicial action.

Having succeeded in obtaining the Constitutional Court's determination; I have therefore written to the Speaker of the National Assembly, Baleka Mbete, notifying her of such, and have tabled a notice of motion resolving to remove President Zuma from office in terms of section 89(1)(a) of the Constitution. Included therein are the President's past and present failings to act in manner commensurate with the Constitution as evidenced by court judgements finding adversely against his conduct in the al-Bashir and Simelane debacles and the attempt to extend the term of office of the Chief Justice. In all these cases the Courts found that his actions were inconsistent with that of the Constitution.

Moreover, the Office of the Public Protector remains an integral part of a functioning democracy, and today's judgment provides legal certainty and clarity as to the Public Protector's powers.

Today's finding by the Constitutional Court is a victory for our Constitution, a victory for the Rule of Law, and a victory for the South African people.

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