



Institute for Accountability in Southern Africa

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Mr Gwede Mantashe
Secretary General
African National Congress
Luthuli House
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Johannesburg 2001

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Dear Secretary General

RE: Whether the Honourable President Jacob Zuma is a lawful and appropriate candidate for the Presidency in 2014

1. The Institute for Accountability in Southern Africa has taken note of the responsible and cautious reaction to the “Secure in Comfort” report of the Public Protector which you and your colleagues in the African National Congress gave on 20 March 2014 during the press conference you held at Luthuli House.
2. While we welcome your stance against runaway costs of public projects such as that at Nkandla and your reaffirmation of the anticorruption position of the ANC, we wish to suggest to you that it is insufficient to “talk the talk” of being a political party that is against corruption; it is also necessary to “walk the walk” of actually doing the necessary to keep the country on the path of multi-party constitutional democracy under the rule of law.
3. The commitment you displayed to upholding the rule of law and the Constitution in the response of the ANC to that report is commendable. Those involved in corruption and theft and fraud, or indeed any other malfeasance, need to be brought to book by our criminal justice administration without delay. Corruption, which is often really just theft from the poor, is a human rights issue that threatens all we hold dear in the new South Africa. We appreciate your expressed support of accountability, our watchword.

*Patron: Archbishop Emeritus Desmond Tutu
Trustees: S Christie; B King; G Williams; T Dunne
Directors: P. Hoffman, SC.; Adv G Lloyd-Roberts; Adv C Shone, B Malherbe*

4. The difficulty is that the entire Nkandla project has the supposedly reasonable security arrangements of one man at its heart. That man is Jacob Zuma, (JZ for convenience and without disrespect), our current president and the president of the ANC for the next four years. JZ is also the presidential candidate of the ANC in the general elections due on 7 May.

There is also sufficient overlap between the findings of the Ministerial Task Team and the Public Protector to give any reasonable, responsible and responsive decision maker cause for pause regarding the latter candidacy.

5. We would urge you and your colleagues on the National Executive Committee of the ANC to reconsider the implications of persisting with JZ as your presidential candidate in the forthcoming elections and to give serious attention to recalling him as presidential candidate if he does not opt to voluntarily resign. This would be the best way to show the world and the large numbers of undecided voters that the commitment of the ANC to the rule of law and the Constitution is a genuine one. We note the concerns expressed publicly by ANC elders and feel sure you have done so too.
6. You are naturally aware from section 1(c) of the Constitution that the rule of law is supreme in the new South Africa. It is supreme in the decision making of the ANC National Assembly caucus too; this is what your organisation's commitment entails.
7. The rule of law is all about accountability and fairness. It requires that decision making be conducted in a manner which is rational. The case in which the appointment of Menzi Simelane, as NDPP by JZ, was annulled on the basis of the irrationality of his appointment will be fresh in the ANC's collective institutional memory. It is legally comparable to the situation in which JZ now finds himself. In short, just as the courts have found that it was irrational to appoint Simelane, nominating JZ in the current circumstances is indistinguishably irrational too and accordingly invalid. Section 2 of the Constitution prescribes that conduct (which includes decision making in the presidential electoral college, which is an organ of state) that is inconsistent with the Constitution is invalid.
8. We have to draw it to your attention that it would be contrary to the doctrine of rationality in decision making for the ANC's caucus in that college to persist with JZ as its presidential candidate in the light of the content of the Public Protector's report and in the light of the laying of criminal charges against him by us last December and by the Democratic Alliance and the Economic Freedom Fighters on Thursday 20 March 2014. Any persistence in his candidacy is inconsistent with the rule of law and falls foul of the requirement that all conduct should be consistent with the Constitution which the ANC itself has put in place as our supreme law.
9. If you add to the considerations mentioned in the previous paragraph the track record of JZ as president, you will find much that confirms the proposition that it is irrational to have him as your party's presidential candidate. According to the NPA there is a prima facie case of corruption, fraud, money laundering and racketeering against JZ, "a good case on the merits", to quote then acting NDPP Advocate M. Mpshe. These charges arise out of JZ's relationship with his former financial adviser, Schabir Shaik, who was sentenced to 15 years for corrupting JZ. The 783 charges brought against JZ by the NPA have been withdrawn on a highly questionable basis and the DA's review in respect of that decision is likely to be finally determined by the courts during the next five years. That could well lead to the reinstatement of the charges.

10. It is clear from the strategy and tactics adopted by JZ in the review proceedings that he anticipates such an outcome and is doing his utmost to both delay and resist it. That is the right of a litigant, but it is not the role of a president. Indeed, this compromised legal and moral position is not the situation in which a leader of a successful and functioning constitutional democracy under the rule of law should be placed by his party caucus persisting in a decision to make him presidential candidate in the parliamentary elections to be held on 7 May 2014.

This unwarranted loyalty to JZ will deleteriously affect foreign investment and overall confidence in our economy thereby limiting job-creation opportunities and further exacerbating poverty and unemployment. These are all in conflict with the stated priorities of the ANC. Retaining JZ would also serve as a major distraction from the task of governing the country properly.

11. There is also the question of the less than successful record of the President in making appointments and other decisions in his capacity as head of state. We have already mentioned the ill-fated appointment of Menzi Simelane, who is now facing disciplinary proceedings; Bheki Cele was removed as chief of police following the recommendations of the Moloi inquiry, the careers of several cabinet ministers appointed by JZ have come to an unfortunate end and some have been the subject of adverse findings of the Public Protector in earlier reports.
12. The problem is that JZ is so compromised and in such an unmanageable conflict of interest position that he is effectively incapable of properly fulfilling his obligations, duties and functions as president of the country. For example, this explains his choice of Simelane, too junior and unsuitable, as NDPP. JZ has shown this lack of proper capacity already and it can only get worse in the light of the developments since the release of the final report of the Public Protector on 19 March 2014 and that report's own contents. JZ can certainly not function optimally as president while the criminal charges recently laid are under investigation, while the review of the 783 old charges is pending and while the recommendations of the Public Protector in "Secure in Comfort" are in the process of being implemented, and/or resisted, and/or litigated by him or others implicated by it.
13. In these circumstances the "rationality in decision making" component of the rule of law requires that JZ stand down or be removed as the ANC's candidate for president.
14. There are various ways in which this end can be achieved. JZ can resign. Many commentators have recommended this course. For example, Professor Xolela Mangcu of UCT does so in trenchant terms in the Sunday Times of 23 March (section 3 page 3). Secondly, the ANC can itself recall JZ in the same way as it did so when former president Mbeki met a similar fate in September 2008 following the handing down of a judgment (later reversed on appeal) by Judge Nicholson.
15. It is not in the interests of our nascent constitutional democracy to put off the tough decision making required of JZ, the ANC and its caucus in the National Assembly until after the general election is held; last minute objections to the candidacy of JZ, made by opposition parties in the National Assembly, are wholly predictable as was the DA motion for his removal from office so shortly before the expiry of its first term, which you called a "premeditated move" last Thursday.
16. The Chief Justice ought not to be called upon to make a ruling on their objections to a JZ candidacy at the last minute. His function in presiding over the election of the president is to ensure that the election goes off in accordance with the rule of law. This compliance, as we hope we have shown to your satisfaction, cannot happen if the ANC chooses to persist with the candidacy of JZ for president.

As is pointed out by Prof P. de Vos of UCT in the Sunday Times of 23 March (section 3 page 2), the Constitution tacitly assumes that the president of South Africa “would never wilfully evade accountability and openness and always attempt to act in good faith and in the best interests of South Africa”. The president’s oath of office is to “uphold and maintain the Constitution and all other law.” This obviously includes the rationality and legality components of the rule of law.

17. Kindly let us know as soon as possible after its next meeting whether the ANC NEC is prepared to uphold the rationality principle of the rule of law by recalling JZ, assuming he does not resign or stand down until all of his legal trials and tribulations have been finally determined. Should JZ emerge victorious from them, it would be open to the ANC to redeploy him. We trust you to draw this open letter to the attention of the ANC’s NEC and JZ.

Yours in accountability,



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