



**REPORT OF THE EXPERT PANEL INTO THE JULY 2021 CIVIL UNREST**

**29 NOVEMBER 2021**

## PREFACE

**To: Mr Matamela Cyril Ramaphosa, President of the Republic of South Africa:**

We have the honour to submit to you, a report following our probe into the widespread and violent civil unrest that engulfed parts of KwaZulu-Natal and Gauteng in July 2021.

In your address to the nation on 5 August 2021, you said:

*“Three weeks have passed since the country experienced an orchestrated campaign of public violence, destruction and sabotage. While calm has been restored to the affected areas and our law enforcement agencies are working hard to bring those responsible to justice, we have acknowledged that our security services were found wanting in several respects. As part of the critical measures we are undertaking to strengthen our security services and to prevent a recurrence of such events, I am appointing an Expert Panel to lead a thorough and critical review of our preparedness and the shortcomings in our response.”*

Our analysis suggests that a combination of complex, multi-dimensional, and obscure factors formed the background and led to the outbreak of violence never before seen in our post-apartheid democracy, leading to contestations in the public space, including between senior members of government, over how to characterise it. We try to present in our report as much context as possible about the conditions in the country at the time of the outbreak of the violence. This will be important if the government is to lead an effective response to future crises of a similar scale, should they arise.

The looting, destruction and violence have come and gone, but we found that little has changed in the conditions that led to the unrest, leaving the public worried that there

might be similar eruptions of large-scale unrest in future. The question, many argue, is not *if and whether* more unrest and violence will occur, but *when* it will occur. The fear of many is that not only will a repeat of such violence find ground in the all-too-familiar contexts of negative political contestation, where certain interests take advantage of the levels of poverty, inequality, lack of service delivery and social tensions to advance their cause. There also is a worry that the violence has left behind a sense of uncertainty and vulnerability because of the ineffective response of the security services and an appetite for lawlessness by those who might feel emboldened by the apparent lack of state capacity. This bleak prospect can be avoided if there is a clear understanding of what happened, and better planning and coordination leading to a coherent approach in dealing with the mounting social and political challenges that our society is facing.

Perhaps the most significant input made, which we heard several times, was that what appears to be factional battles in the African National Congress, have become a serious source of instability in the country. This is a matter of great concern, and the reasons for this need to be identified sooner rather than later. For their part, the security services are uncertain about how to effectively address this convergence of violent criminal conduct with mainstream politics, given the correct posture taken by the country to ensure that political activity stays free of state security interference.

Given the limited time we were given to conduct the review, we were not able to meet with all the parties we wanted to, in particular the Ministers who served on the National Security Council, outside of the Ministers of Police, Defence and State Security, who gave generously of their time. We hope that our assessment of the events of July 2021, together with our findings and recommendations, will contribute to processes aimed at

holding those responsible for the violence accountable, and strengthening the capabilities of the security services. It must be said however, that our review highlighted yet again the urgent need to build an equal, inclusive and just society, if there is to be lasting peace and stability.

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Professor Sandy Africa

CHAIRPERSON

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Mr Silumko Sokupa

MEMBER

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Advocate Mojankunyane Gumbi

MEMBER

## Table of Contents

<b>PREFACE</b> .....	<b>3</b>
<b>LIST OF ABBREVIATIONS</b> .....	<b>9</b>
<b>SECTION 1: INTRODUCTION</b> .....	<b>12</b>
<b>APPOINTMENT OF THE EXPERT PANEL</b> .....	<b>12</b>
<b>THE PANEL’S TERMS OF REFERENCE</b> .....	<b>13</b>
<b>METHODOLOGY AND PROCESS</b> .....	<b>16</b>
<b>LIMITATIONS OF OUR REPORT</b> .....	<b>20</b>
<b>THE NATIONAL SECURITY SYSTEMS AT THE TIME OF THE JULY 2021 UNREST</b> .....	<b>20</b>
<i>Intelligence systems</i> .....	<i>20</i>
<b>OPERATIONAL RESPONSE SYSTEMS</b> .....	<b>25</b>
<i>The role of the SAPS</i> .....	<i>25</i>
<i>The role of the South African National Defence Force</i> .....	<i>28</i>
<b>SECTION 2: EXECUTIVE SUMMARY</b> .....	<b>35</b>
<b>WHAT HAPPENED</b> .....	<b>35</b>
<b>WAS THE GOVERNMENT’S RESPONSE EFFECTIVE, APPROPRIATE AND TIMELY?</b> .....	<b>40</b>
<b>NATIONAL SECURITY COUNCIL</b> .....	<b>40</b>
<b>THE POLICE</b> .....	<b>41</b>
<b>SOUTH AFRICAN NATIONAL DEFENCE FORCE</b> .....	<b>46</b>
<b>INTELLIGENCE</b> .....	<b>47</b>
<b>FINDINGS</b> .....	<b>48</b>
<b>GENERAL RECOMMENDATIONS</b> .....	<b>49</b>
<b>SECTION 3: WHAT THE GOVERNMENT KNEW AND WHAT IT DID WITH THE INFORMATION</b> .....	<b>51</b>
<b>BACKGROUND</b> .....	<b>51</b>
<b>WHAT WAS THE GOVERNMENT’S UNDERSTANDING OF THE VIOLENT UNREST?</b> .....	<b>51</b>
<b>WHICH GOVERNMENT STRUCTURES LED THE NATIONAL RESPONSE TO THE JULY VIOLENCE?</b> .....	<b>54</b>

WAS THERE ANY EARLY WARNING TO GOVERNMENT FROM THE INTELLIGENCE STRUCTURES ABOUT THE PLANNED UNREST?.....	55
WHAT WAS THE OPERATIONAL RESPONSE OF THE SAPS DURING THE VIOLENCE ? .....	60
WHAT WAS THE RESPONSE OF THE PROVINCIAL GOVERNMENT LEADERS DURING THE UNREST? .....	63
WHAT CAN BE LEARNED FROM THE TIMING, MANNER AND IMPACT OF THE DEPLOYMENT OF THE SANDF? .....	64
DID RESOURCE CONSTRAINTS PREVENT THE SECURITY SERVICES FROM RESPONDING EFFECTIVELY TO THE VIOLENCE? .....	66
CONCLUSIONS.....	68
SECTION 4: OTHER ACTORS .....	70
PRIVATE SECURITY SERVICE PROVIDERS .....	70
ORGANISED BUSINESS.....	73
CRITICAL INFRASTRUCTURE .....	79
CIVIL SOCIETY ORGANISATIONS.....	82
THINK TANKS .....	86
FAITH-BASED ORGANISATIONS .....	88
VETERANS OF THE SECURITY SERVICES .....	89
SECTION 5: LEGISLATIVE FRAMEWORK.....	93
THE CONSTITUTION.....	93
SOUTH AFRICAN POLICE SERVICE ACT.....	96
THE DEFENCE ACT.....	103
PROCLAMATION ON THE NATIONAL SECURITY COUNCIL .....	106
CRITIQUE OF THE LEGISLATIVE TERRAIN .....	108
SECTION 6: CONTEXT FOR ASSESSING THE RESPONSE TO THE VIOLENCE .....	110
INTRODUCTION .....	110
THE COVID 19 PANDEMIC.....	111
SOUTH AFRICA’S REGIONAL SECURITY CHALLENGES .....	113
SOUTH AFRICA’S DOMESTIC SECURITY CHALLENGES .....	114

THE USE AND ROLE OF SOCIAL MEDIA .....	116
LESSONS FROM POLICING VIOLENCE AND PUBLIC DISORDER IN OTHER COUNTRIES.....	122
PROSPECTS FOR PEACE AND NON-VIOLENCE IN SOUTH AFRICA.....	125
CONCLUSIONS .....	126
SECTION 7: FINDINGS AND RECOMMENDATIONS OF THE EXPERT PANEL .....	127
WAS THERE A GOVERNANCE FAILURE IN ANTICIPATING, PREVENTING AND RESPONDING TO THE FAILURE?.....	127
OUR RECOMMENDATIONS .....	128
WAS THERE AN INTELLIGENCE FAILURE? .....	129
OUR RECOMMENDATIONS .....	131
WHY DID THE POLICE FAIL TO PREVENT THE VIOLENCE? .....	133
OUR RECOMMENDATIONS .....	135
IS THE PERCEPTION THAT THE SANDF WAS SLOW TO REACT, JUSTIFIED?.....	136
OUR RECOMMENDATIONS .....	138
OTHER FINDINGS.....	138
OTHER RECOMMENDATIONS .....	139
SECTION 8: CONCLUSION.....	141
ANNEXURE A.....	146
ANNEXURE B .....	151

## **List of Abbreviations**

African Center for the Constructive Resolution of Disputes (ACCORD)

African Continental Free Trade Area (ACFTA)

African National Congress (ANC)

All Truck Drivers Forum (ATDF)

All Truck Drivers Foundation Allied South African (ATDF ASA)

African Union (AU)

Chief Executive Officer (CEO)

Civil Society Organisation (CSO)

Crime Intelligence (CI)

Crime Intelligence Division (CID)

Congress of South African Trade Unions COSATU)

Durban Chamber of Commerce (DCC)

Defence Intelligence (DI)

Director General (DG)

Directorate for Priority Crime Investigation (DPCI)

Democratic Republic of Congo (DRC)

Forum of South African's Directors-General (FOSAD)

General Intelligence Laws Amendment (GILA)

High Level Review Panel (HLRP)

Intelligence Coordinating Committee (ICC)

Information and Communications Technology (ICT)

Inkatha Freedom Party (IFP)

Intelligence Services Act (ISA)

Institute for Security Studies (ISS)

Judicial Commission of Inquiry (JCI)

Justice, Crime Prevention and Security Cluster (JCPS)

Joint Operational Centre (JOC)

Joint Operational and Intelligence Structure (JOINTS)

Joint Standing Committee on Intelligence (JSCI)

KwaZulu-Natal (KZN)

Member of the Executive Council (MEC)

uMkhonto we Sizwe Military Veterans Association (MKVA)

Medium Term Strategic Framework MTSF)

National Joint Operational Committee (NATJOCOM)

National Joint Operational and Intelligence Structure (NATJOINTS)

National Commissioner (NC)

National Coronavirus Command Council (NCCC)

National Development Plan (NDP)

National Economic Development and Labour Advisory Council (NEDLAC)

Non-Governmental Organisation (NGO)

National Intelligence Agency (NIA)

National Intelligence Coordination Committee (NICOC)

National Intelligence Estimate (NIE)

National Intelligence Priorities (NIPS)

National Intervention, Special Task Force (NISTF)

National Key Point (NKP)

National Security Council (NSC)

National Security Strategy (NSS)

Operational Command Centers (OCC)

Public Order Police (POP)

Provincial Joint Operational Committee (PROVJOCOM)

Provincial Joint Operational and Intelligence Structure (PROVJOINTS)

Private Security Industry Regulatory Authority (PSIRA)

Radical Economic Transformation (RET)

Republic of South Africa (RSA)

Southern African Development Community (SADC)

South African National Academy of Intelligence (SANAI)

South African National Defence Force (SANDF)

South African Police Service (SAPS)

South African Special Risk Insurance Association (SASRIA)

South African Secret Service (SASS)

Security Managers Forum (SMF)

State Security Agency (SSA, "Agency")

Security Service Provider (SSP)

United Nations (UN)

United Nations Human Rights Commission (UNHRC)

## SECTION 1: INTRODUCTION

### Appointment of the Expert Panel

- 1.1. South Africa experienced violent civil unrest, mainly in parts of the provinces of KwaZulu-Natal and Gauteng, from 8 July 2021 until it was brought under control around 17 July 2021. The unrest was characterised by social media mobilisation leading to looting, destruction of property and the disruption of economic activity. At the end of that orgy of violence thousands of people were injured, an estimated 354 dead and over R50 billion lost to the economy.
- 1.2. On 5 August 2021, with the country still reeling from the violence, the President of the Republic, Mr Cyril Ramaphosa, announced changes to his Executive. He also announced the appointment of an Expert Panel (“the **Panel**”) to review South Africa’s response to the unrest. More directly, the Panel was required to review South Africa’s preparedness and shortcomings in responding to the unrest. The Panel was chaired by Professor Sandy Africa, with Advocate Mojankunyane Gumbi and Mr Silumko Sokupa as its other members.<sup>1</sup> Mr. Michael Sarjoo was appointed as the Secretary to the Panel and accompanied it throughout the process. The Presidency provided administrative and logistical support without which the Panel would have been unable to do its work.

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<sup>1</sup> The Panel was assisted in part by Dr Nyoko Muvangua (Advocate of the High Court of South Africa) in the preparation of this report.

## **The Panel's Terms of Reference**

- 1.3. In undertaking its work, the Panel was required to inquire into and make findings on whether the government's response to the July 2021 unrest and associated security threat was appropriate, timely and coordinated. To this end, the Panel had to consider and evaluate the appropriateness of:
  - 1.3.1. the systems that are in place to forewarn the government of the possibility of like occurrences and how to respond to them;
  - 1.3.2. the legal framework in place for the coordination of the government's response to such occurrences.
- 1.4. The Panel was also required to:
  - 1.4.1. review the Executive's decision-making processes:
    - (a) in the period leading up to the unrest;
    - (b) during the period that the affected communities experienced the violence and looting until it was brought under control; and
    - (c) in the period immediately after the unrest; and
  - 1.4.2. review the adequacy of security and law enforcement coordination and decision-making structures and processes (including at the levels of NATJOINTS and the NSC), to the extent that the Panel is able to determine, within the applicable timeframe.
- 1.5. The Panel was also required to review the information that was made available to government structures (including law enforcement agencies and other structures), that pertained to the unrest, violence and looting, especially in KwaZulu-Natal ("KZN") and Gauteng. In respect of such

information, the Panel was required to establish its source(s) and the government structure(s) that received it. Ancillary to this, the Panel was also required to inquire into and make findings on:

1.5.1 how information relevant to the violence and looting was managed, processed and coordinated within government, and

1.5.2 what action should have been taken on the basis of such information, by whom, if action was required, and within what time frames.

1.6 The Panel was also required to assess what relevant information (from the time that the unrest commenced until it was brought under control) was available and to which spheres and structures of government. It was further required to inquire into and make findings on:

1.6.1 the government structure(s) that provided such information;

1.6.2 the government structure(s) that received such information and when;

1.6.3 how such information was managed/processed through government; and

1.6.4 who acted or should have acted on such information, and when.

1.7 The Panel was also required to inquire into community-based reaction and private sector initiatives, both in the period leading up to the onset of the unrest, and in the period from the time the violence started until was brought under control. More directly, the Panel was to focus on:

1.7.1 the role played by the private security providers;

- 1.7.2 whether and where security providers coordinated their response with government, at which level or with which structures, and how effective/useful this was;
- 1.7.3 whether community policing forums, or any community-based initiatives played a role in responding to the violence and how effective these responses were; and
- 1.7.4 whether organised business and labour structures contributed to the response to the violence and, if so, in what way.

1.8 The Panel was further required to:

- 1.8.1 inquire into and make findings on allegations of the non-effectiveness, partiality, or disinterest on the part of the security services, including an analysis of resources available to the services (human, material) and their deployment and use;
- 1.8.2 assess whether the deployment of security services and law enforcement was unduly delayed, and, if so, to establish the reasons why; and
- 1.8.3 inquire into the adequacy and coherence of the government's public communications on the security situation.

1.9 The purpose of the review is for the Panel to make recommendations to the President, in particular on:

- 1.9.1 measures and systems that need to be put in place by the government to respond to such occurrences, should they arise in future;

1.9.2 how the implementation of the recommendations of recent relevant reports and reviews, including the High-Level Review Panel Report on the State Security Agency of December 2018, can be expedited; and

1.9.3 ensuring that the entirety of society, through its institutions such as parliament, as well as other structures and civil society organisations, appreciates its role in ensuring the security of the country for the benefit of all its citizens. The full terms of reference are attached as annexure **"A"**.

1.10 We determined that for us to assess whether the response of the security services was appropriate, timely and sufficient, we had to understand what the nature of the risk or threat that had arisen, had been.

## **Methodology and process**

We relied on various methods to gather information for purposes of our task.

### **1.11 Reviewed official documents**

We were required to ascertain what information the various state structures had, how this information flowed through various bodies and the extent to which it informed decision making. For this reason, we studied the records of several decision-making bodies, including at the Executive and operational levels.

### 1.12 Interviews

We invited for interviews individuals that we deemed integral to our investigations (as contemplated in the terms of reference), and requested written submissions to particularised sets of questions before the respective interviews. Not all organisations provided us with written submissions. A list of the individuals and organisations we met is attached as annexure “B”;

### 1.13 Inspections in loco

We visited sample areas in KZN and Gauteng that were affected by the unrest (and its ensuing violence);

We visited the sites of the July looting and destruction in order to assess for ourselves and have a better sense of:

(a) the magnitude of the destruction that was caused by the unrest;

(b) the proximity of the looted premises to human settlements (hostels, informal settlements, townships etc.), a factor which was mentioned as relevant in various reports that we considered;

(c) the accessibility to the looted areas by road, or public transport; and

(d) the location of Police Stations relative to the looted and destroyed sites. During the drive covering the looted areas, we were able to seek explanations and get on the ground illustration from the SAPS station commanders on how SAPS members had attempted to respond to the violence whilst it was underway. In

some areas we also spoke to members of Community Policing Forums on how the communities were affected by the violence.

#### 1.14 Other research

We also had access to the research undertaken by other organizations. The research was aimed at dissecting the causes of the unrest. It provided us with useful data as we conducted our work.

#### 1.15 Media reports about the violence.

The July unrest was covered extensively by the print and broadcast media. We were able to use these reports, as well as the many expert opinions, analyses, and editorial comments to complement our own independent review.

#### 1.16 We also surveyed what we considered to be the relevant legal and regulatory framework.

#### **Our report is structured as follows:**

#### 1.17 Section 1 sets out our appointment and Terms of Reference, and describes the methodology we used in conducting our work. It also describes what national security systems were in place in the country at the time that the violence took place.

#### 1.18 Section 2 is an executive summary that provides a broad overview and analysis of the violent unrest, particularly the underlying causes and the limitations in the State's response. It also sets out some of our key recommendations.

1.19 Section 3 describes what we learnt about what the government knew before the violence started and as it was unfolding, and what it did with this information. In this section we relied largely on information from the various Ministers and security service officials because we needed to assess who provided leadership at different stages during the crisis.

1.20 In Section 4 of the report we examine the role of other actors – those outside of the government and the security services - who had been directly and adversely impacted by the violence, or who responded in various ways.

1.21 In Section 5 we discuss the constitutional and legal framework governing the security services that were responsible to forewarn about the impending violence and those responsible for responding to it.

1.22 Section 6 spells out the context that the country found itself in at the time of the violence.

1.23 Section 7 of the report sets out the key findings and recommendations of the Panel, including some urgent measures that should be taken to avoid a recurrence of the events of July 2021.

1.24 Finally, Section 8 concludes with some indicators for policy change, in particular to move the country towards adopting an agreed national security strategy, which process we urge government to initiate, working in together with relevant stakeholders.

## **Limitations of our report**

1.25 Ours was a fact-finding review, and not an inquisitorial process. We did not have any special powers, such as the powers to subpoena witnesses or seize documents. We relied on the cooperation of those whom we approached for information. We record that whilst the security services informed us about the intelligence reports they had produced and submitted to various clients, we did not have sight of these classified documents, and could therefore not make a determination of the quality of intelligence provided. Nevertheless, based on the totality of our investigation, which included face-to-face interviews with relevant security service and intelligence officials, we are confident that the findings we make in our report are valid.

## **The national security systems at the time of the July 2021 unrest**

1.26 It may be helpful to set out what systems were in place, on paper at least, that would be relevant to dealing with violence and unrest of the scale that took place in July 2021.

## **Intelligence systems**

1.27 Much criticism was levelled against the intelligence services for failing to forewarn the police and government of the impending violence. The laws relating to the functioning of the intelligence community in South Africa were amended by the General Intelligence Laws Amendment Act, 2013 (GILA Act) (Act No 11 of 2013), following an earlier Proclamation that

amalgamated the National Intelligence Agency and the South African Secret Service into one agency, the State Security Agency (SSA).

1.28 The GILA Act spells out the mandates of the different intelligence services and structures in the country. This includes the function of crime intelligence, which is the responsibility of the South African Police Service.

1.29 The National Intelligence Coordinating Committee, chaired by an Intelligence Coordinator, brings together the heads of the different services and reports to the Cabinet or President. NICOC consists of:

- The Co-ordinator for Intelligence.
  - The Director-General of the State Security Agency.
  - The Director or Head of the domestic intelligence division known previously as the National Intelligence Agency.
  - The Director or Head of the foreign intelligence division known previously as the South African Secret Service.
  - The Head of the Crime Intelligence Division of the South African Police Service.
  - The Head of the South African National Defence Force Intelligence Division.
  - The Director of the [(Financial Intelligence Centre)].

1.30 NICOC co-ordinates the intelligence supplied by the members of the National Intelligence Structures to it and interprets national strategic intelligence for use by the State and the Cabinet. NICOC also co-ordinates and prioritises intelligence activities within the National Intelligence

Structures, and advises the Cabinet on the intelligence policy and functions within the National Intelligence Structures. The Committee prepares and interprets a national intelligence estimate for consideration by the Cabinet, and produces and disseminates current intelligence which may have an influence on state policy.

1.31 NICOC is also responsible for formulating, for approval by the Cabinet, a policy relating to national strategic intelligence and, after consultation with the departments of State entrusted with the maintenance of the security of the Republic, to co-ordinate the flow of national security intelligence between such departments; and to make recommendations to the Cabinet on intelligence priorities.

1.32 NICOC is a coordinating structure and does not have the power to enforce its recommendations. Neither does it (or the Coordinator for Intelligence) have the power to compel government departments to align the strategic and business plans with the national intelligence priorities (the 'NIPs') that it puts out on an annual basis, a fact that the Coordinator bemoaned when meeting with us. The NIPs are derived through the National Intelligence Estimate and are, aimed at providing an overall picture of the national security situation in the country, and to inform public policy and the allocation of resources.

1.33 The coordinated intelligence provided by NICOC in 2020 included the following:

- *National Intelligence Estimate 2021* - presented to the National Security Council (1/12/2020)
- *Quarterly Cabinet Brief and JCPS Ministerial brief on Violent Protests and Authority of the State* (15/11/2020)
- *Impact of violent protests on authority of the state* – presented to the Joint Standing Committee on Intelligence 2020

1.34 As is well known, what makes intelligence somewhat controversial is its use of intrusive and secret methods, particularly in a democracy upholding fundamental rights such as SA. The SSA has not been without controversy, and this was highlighted in the 2018 Report of the High-Level Review Panel on the State Security Agency. That Panel was established by President Ramaphosa as well. It found that the SSA had been compromised by factionalism, mismanagement and inefficiency. It made several recommendations to improve the SSA's governance. At the time of the July 2021 unrest there was slight progress in the implementation of its recommendations, a matter of concern. We observed that there were vacancies in key management positions still at the time of the unrest, and that the Provincial offices were understaffed.

1.35 Apart from providing intelligence to NICOC, the SSA has its own suite of 'products' that it has developed over time to package and disseminate its advice. Over the course of 2021 these included the following:

- COVID Daily intelligence reports on the stability situation around the country
- Orange alerts - typically provided to enable preemptive action aimed at mitigating against social instability
- Red alerts – typically provided to enable preemptive action aimed at preventing loss of life.
- Threat assessments
- Situational stability reports
- Ministerial briefs

1.36 The frequency of the reports is determined by how fast moving a situation is. For example, in July the SSA provided daily Situational Stability reports. The SSA provides advice and does not have executive powers. Once it has provided or shared intelligence with another structure, it does not have the powers to ensure the advice it has given is heeded. Neither is it part of the criminal procedure system and, where there is a crime to be investigated pursuant to its own intelligence efforts, it must hand over the matter to the police for investigation. In order to execute its mandate effectively, the SSA needs to use some of its intrusive powers. While the procedures for obtaining the authority to do that are well known, recent decisions of the courts have introduced some hesitation on the part of the SSA to use these powers effectively, in the interest of the State.

1.37 The SAPS gathers crime intelligence in support of the Police's constitutionally mandated role of combatting crime. As such, it also uses secret collection. As pointed out by the SAPS, in order to protect the

national security interests of the Republic of South Africa in the contemporary global environment against ever increasing complex organized criminal activities, the SAPS is compelled to employ both conventional and undercover crime investigative techniques to address crime in general, serious and organized crime and crimes against the state interests. When investigative techniques are applied to generate crime intelligence these activities are mostly invasive of the privacy of persons and, again while there are guidelines on how to exercise these powers, policy needs to be clear on the lawful execution of the crime intelligence function of the SAPS, in particular as it relates to crimes which are cloaked with political activity.

## **Operational Response Systems**

### The role of the South African Police Service (SAPS)

1.38 As much as there is a system for intelligence collection and coordination there is also a system for coordinating the operational response during times of public disorder. The rights to assembly and of peaceful protest are guaranteed in the South African Constitution and, expanded upon by the provisions of The Regulation of Gatherings Act, 1993 (Act No. 205 Of 1993). Following a Constitutional court ruling, the Act shifts the requirement for holding public gatherings from obtaining permission to hold such, to merely giving notice of an intended gathering. The Division Operational Response Services of the SAPS issued National *Instruction 4 of 2014: Public Order*

*Police: Crowd Management during Public Gatherings and Demonstrations* to guide policing responsibilities during public gatherings. The instruction sets out the levels of authority and tasks of different structures in the SAPS in detail. The functions of the Public Order Policing (POP) units are:

- The policing of public gatherings
- Combating serious and violent crimes incidents
- Rendering of specialised operational support.

1.39 Station commanders are required to play a proactive role in identifying indicators of potential violent disorders in their areas, which must be analysed by intelligence and information structures and reported to the relevant Provincial Commissioner to determine the threat level involved.

1.40 If crowd management or public order situations escalate to the extent that public violence erupts and the necessity to restore public order is required, POP are supposed to take full operational command and stabilize the situation.

1.41 The Instruction also carefully details the procedures to be followed in the following cases:

- Execution of peaceful crowd management operations; and
- Execution of public order restoration operations.

The latter is applicable to the case of the July 2021 unrest, and it would be necessary to assess whether the standards were applied in relation to who can take part in such restorative exercises. The instruction says:

*“The use of force and dispersal of crowds must only be conducted by those members of POP trained in crowd management and equipped with the relevant crowd management equipment. The situation must be contained by members of Visible Policing at station level and Metro Police until POP members can take over the situation. If it is not possible to contain the situation or wait for POP to arrive, only members of Visible Policing at station level and Metro Police members trained in crowd management with the relevant equipment, may use the necessary force.”*

1.42 The Instruction points out also that the use of force must be proportionate to the threat, can only be deployed in a coordinated way and upon a command, and must be discontinued if the objective has been achieved.

1.43 There are strict guidelines around what deterrents can be used to restore order. For example,

- The use of firearms and sharp ammunition is prohibited,
- teargas, water cannons and other measures may only be used by POP members on command of the operational commander in situations that allow for their use,
- rubber bullets may only be used as an offensive measure to disperse a crowd in extreme circumstances, and
- force may only be used upon the command of the Operational Commander, except if the member acts in private defence.

1.44 It is important to take note of these procedures, as the police came under heavy criticism for appearing to be reluctant to respond. It needs to be

assessed what the reasons were: whether they were applying the rules strictly, or whether the deployment of POPs broke down completely, or if, as some claimed, there was complicity in the violence on the part of the police.

1.45 It is also worth taking into account that the strength of the South African Police Service is a mere 180 000 for a population of some 60 million people. The gap in SAPS capacity has fuelled a demand for privatised security services. The private security industry employs almost three times the number of personnel of the SAPS. The industry is subject to national regulation in terms of the Private Security Industry Regulation Act, 2001. It is well resourced, (some argued over-resourced) but under-regulated and therefore there is inadequate oversight of how its members conduct their business.

#### The role of the South African National Defence Force

1.40. Ordinarily the SANDF would not be involved in domestic security matters. The Constitution of the Republic of South Africa stipulates that the primary objective of the Defence Force is to defend and protect the Republic, its territorial integrity and people, in accordance with the Constitution and the principles of international law regulating the use of force.

1.41. However, the Constitution provides also that the President, as head of the national executive, may authorise the employment of the defence force in cooperation with the police service. Section 19 of the Defence Act of 2002 (Act No. 42 of 2002) regulates such

employment, requiring a written request from the Ministers of Police and of Defence to initiate the consideration of employment. The employment of the defence force by the President must follow due procedure, including the President promptly and with the required detail informing Parliament of the decision. The President employed the SANDF from 12 July to 12 October 2021.

1.42. It is worth noting that the Defence Act stipulates that when employed in the above manner, a member of the SANDF has the same powers and duties as those ordinarily exercised by a member of the SAPS, with the exception of investigating crimes. The Act stipulates that members of the defence force must receive appropriate training prior to being employed in cooperation with the police, and must be appropriately equipped.

1.43. The Code of Conduct published in the Government Gazette for the employment of the SANDF in cooperation with the SAPS from 12 July to 12 October 2021, mandated the SANDF to engage in the following activities in declared hotspots:

- Roadblocks and Vehicle control points
- Patrols
- Preserving life and public property
- Protection of national key points
- Ensure freedom of movement of own Forces
- Cordon and searches
- Fire-fighting
- Airborne command and control
- Trooping

- Road clearance
- Escort duties
- Air transportation of SAPS and
- Casualty evacuations.

### **Inter-ministerial and inter-departmental coordinating systems**

1.44. In addition to the above systems, there are a number of coordinating systems established to facilitate policy and operational decision-making around security matters in South Africa. At the very highest level of government, there is a National Security Council (NSC), chaired by the President. Since 2000, the NSC has played a vital advisory role, and helped to shape national security policy. One criticism that could perhaps be levelled against it, is that as a Cabinet structure, subject to Cabinet privilege, not much was known about its role, functions and structure. Under President Ramaphosa, this structure has been given a formal status through a Proclamation.

1.45. The NSC consists of the following members of the National Executive:

- The President (Chairperson);
- The Deputy President;
- Minister of Defence and Military Veterans;
- Minister of State Security;
- Minister of Police;
- Minister of International Relations and Cooperation;
- Minister of Home Affairs;

- Minister of Finance;
- Minister of Justice and Correctional Services; and
- Minister of Cooperative Governance and Traditional Affairs.

1.46. The NSC is supported by the South African National Security Secretariat (SANSS) that has both coordinating and administrative support functions. The SANSS is comprised of the following members:

- DG: The Presidency (Secretary of the NSC and Head of the SANSS)
- Security Advisor to the President ( ex officio)
- Coordinator for Intelligence (NICOC)
- DG: SSA (in future, Heads of the Domestic and Foreign Branches)
- DG: DIRCO
- DG: Home Affairs
- DG: Justice and Constitutional Development
- DG: Cooperative Governance
- DG: National Treasury
- Chief: SANDF
- Secretary for Defence

1.47. The NSC is responsible for the approval of the National Security Strategy, the National Intelligence Estimate and National Intelligence Priorities; the coordination of the work of the security services, law enforcement agencies and other relevant

organs of state to ensure national security; and receives coordinated, integrated intelligence assessments from the national security structures.

1.48. There is also a mature level of Cabinet-level coordination which dates back to 1999 when an inter-ministerial and inter-departmental system of coordination (the cluster system) was formalised.

The Justice, Crime Prevention and Security (JCPS) Cluster of Ministers comprises of the following Cabinet Ministers:

- Defence and Military Veterans;
- Police;
- Justice and Correctional Services;
- Home Affairs;
- State Security and
- Finance

1.49. Reporting to the Ministers of the JCPS Cluster is a Director-Generals' JCPS Cluster consisting of the Directors-General of the above Departments. They are responsible for ensuring that Cabinet-level priorities are implemented.

1.50. One of the structures reporting to the Director-Generals' Cluster of the JCPS, and which featured relatively prominently in reports about the security response to the July 2021 violence, is the National Joint Operational & Intelligence Structure (NATJOINTS). The establishment of the NATJOINTS was approved by Cabinet in 2000 as a sub-committee of the JCPS DGs Cluster, and serves as its operational arm, facilitating coordinated responses to Cluster priorities. For 2019 to 2024, the JCPS priorities include promoting social cohesion and safer

communities. This includes providing a safe and secure environment at major national public events, such as elections or coordinating responses to emergencies which have security implications. Depending on the priority, other departments may be co-opted into NATJOINTS' operations.

1.51. NATJOINTS is chaired by the SAPS Deputy National Commissioner: Policing, with the SSA and SANDF as co-chairs. As it is an operational structure, the representatives, who are senior officials (usually at Deputy Director-General level), are the persons responsible for operational matters in their departments.

1.52. NATJOINTS meets monthly, or more regularly during a crisis, or if there is a specific operational requirement. In times of crisis, it may even meet on a daily basis to ensure smooth cooperation and implementation of its priorities, and reports to the JCPS DGs and Ministers Clusters.

1.53. The NATJOINTS system cascades to the nine provinces of the country where provincial coordinating structures (called PROVJOINTS) play a similar coordinating function. NATJOINTS guides, monitors and evaluates the performance of these structures at provincial level. The 'JOINTS', as the national and provincial structures are popularly known, are supported by a further set of coordinating committees, including the National Joint Operational Committee (NATJOCOM) and the Provincial Joint Operational Committees (PROVJOCOMs), as well as Intelligence Coordinating Committees (ICCs) at both national and provincial levels.

1.54. The composition and role of the National Intelligence Coordinating Committee (NICOC) have already been discussed under Intelligence systems so will not be

repeated save to say it is a critical structure in providing strategic intelligence as well as early warning to government.

1.55. The question that must surely arise, is why, with all the security capacity available to the State, and all the systems in place for coordination at the national and provincial levels, the government and the security structures were not able to anticipate and prevent the widespread violence. Some of the officials we spoke to expressed concern about the overlapping roles, of the plethora of structures and said that there seemed to be duplication of reporting lines.

1.56. Another question that arises is whether the concentration of capacity at the national and provincial levels is equally matched by support for structures at the local level. We received mixed feedback from the officials we spoke to. Some believed that the security services are understaffed and under-resourced and are therefore thinly spread on the ground. Several experts and think tanks argued that there are inefficiencies within the security services that if addressed could certainly go a long way in overcoming the resource constraints, as would smart partnerships with the private sector, and more effective community engagement. We recommend that the question of streamlining the systems be looked into, as well as making sure that there is full support for the structures.

## SECTION 2: EXECUTIVE SUMMARY

### What happened

#### *'The causes were manifesting'*

- 2.1. The period between 8 and 17 July 2021 saw parts of the provinces of KwaZulu-Natal (KZN) and Gauteng explode in violence never before seen in democratic South Africa. At the end of the orgy of destruction and looting, over 354 people were dead, some whose remains remained trapped in the factories in KZN at the time of compiling this report. Thousands were injured; communities that used to live side by side in harmony were divided; citizens felt abandoned by the State; there was confusion as looters and the victims of their looting continued to live together in the same communities, not knowing how to continue to co-exist, how to deal with their sense of profound disappointment and hurt that members of their own community failed to be their protectors. The glue that held communities together was shaken, a matter that should not be ignored if we are to ensure that those communities become an important contributor to stability in future.
- 2.2. In most of the affected shopping malls we visited the managers of the malls informed us of how they watched their regular customers, who used to be frequent, friendly visitors to the management offices become part of the ravaging mobs. They sat down with them after the violence subsided to try and make sense of it. They could not get clear answers from them on why this happened.

- 2.3. There was also a sense of deep bewilderment at the absence of the police at a time when communities needed them most. In most areas the police became spectators as one mall after another was destroyed; as one truck after another was torched; as people came back day after day to finish looting whatever was left from the previous day.
- 2.4. At the end of that week, approximately R50 billion was wiped off the South African economy. The image of South Africa as a stable country was marred. Doubt set in about the sustainability of our nation building project. The President, and the nation, correctly want to know what happened. The President appointed our Panel precisely to seek to answer that question.
- 2.5. There are a number of key questions that we kept returning to;
- What were the causes behind this violence, and who was behind it?
  - What conditions made parts of the country so susceptible to the rapid and uncontrolled spread of violence?
  - Was there sufficient information available to the security services effectively to detect, understand and respond to the threat of and the actual outbreak of the violence? If not, why not?
  - What resources were available to the security services to carry out their mandates and did they do all in their power to detect, prevent and curb the violence?
  - Were there effective and functioning structures for coordination and planning the response? and
  - What can be done to avoid the possibility of such events happening again.

2.6. The violence that broke out in July 2021 can be viewed in the context of multiple crises and challenges facing South Africa, key among them being:

- The weakness of State institutions generally, a phenomenon that has been referred to as the hollowing out of State institutions
- high unemployment, with youth unemployment above 70% and no consistent, continuous plan to address this challenge;
- inherited high levels of poverty and deep inequality;
- poor spatial planning, leading to overcrowded and unsuitable living conditions for many, with informal settlements emerging in crowded urban spaces as people move to the cities in search of opportunities;
- rampant corruption at various levels of government;
- the phenomenon of sponsored State Capture, as understood in the South African context.
- the frustrations caused by the Covid-19 restrictions, adding to the feelings of despair among the population

2.7. A combination of the above-mentioned challenges would be a recipe for constant instability under ordinary circumstances, as pointed out by NICOC in its 2021 forecasts. NICOC constantly warned about the dangers posed to the security of the State by not attending to these challenges. Add to that the dangers posed by neglecting human security. However, it appeared that not many members of the Executive, at all levels of government, appreciated the meaning of the warnings raised in the different NICOC reports, and accordingly largely ignored them. The need to stop corruption in government

and start addressing the needs of the people kept being kicked down the road, like the proverbial can.

2.8. Based on the submissions we received as well as testimonies from many interlocutors we interviewed, including members of the executive and senior officials in the security services, the rejection of the decisions of the Judicial Commission of Inquiry into Allegations of State Capture (Zondo Commission) by former President Jacob Zuma was a major factor in the build-up to, and the actual violence and looting experienced in July 2021. The back and forth between the former President and the Zondo Commission played out over a period of at least eight months, from November 2020 to June 2021, when the former President was sentenced to a period of 15 months' imprisonment for failing to appear before the Commission.

2.9. As the deadline approached for the former President to hand himself over to the authorities or face arrest, his supporters, who mobilised largely on social media, called upon people to, among others, make the country ungovernable; physically prevent his detention; and remove President Ramaphosa from office. According to many of the submissions we received, the incarceration of the former President at a correctional facility in Estcourt, was the spark that ignited the orgy of violence that followed. On the very next day after his incarceration, the night of July 9, a number of trucks and cars were torched on the National Route 3 (N3) at Mooi River Plaza. This action resulted in the closure of the N3, a major route which links the provinces of KZN and Gauteng. This route also serves as a key economic

artery from the largest South African port to major inland cities, including those outside South African borders. Twenty-four hours later, the violence had spread to shopping centres and malls in various parts of KwaZulu-Natal (KZN).

2.10. Hardly a day after the violence first broke out in KZN, parts of Gauteng were also engulfed in violence. The submissions we received point to elements of organisation behind the looting of the malls, combined with opportunistic looting. We also received submissions that some of the attacks were planned in hostels. It is clear that the planners wanted the looting to look like they were spontaneous; a phenomenon that we have coined 'organised spontaneity'. Community members informed church leaders of impending attacks. Some in the media fraternity received tip-offs. Instigators were seen on security cameras moving around from mall to mall in vehicles. There were instances where high value goods such as solar panels were targeted. It took some skill to remove these because they were attached to buildings. In such cases criminal elements were involved. Some criminal element was also involved in Phoenix, we were told.

2.11. The police leadership argue that only those with the knowledge of police capacity would have known how to stretch them beyond their capacity. The police ran out of supplies they needed, such as rubber bullets and teargas canisters. On the other hand, accounts from people who witnessed the violence suggest that the people who initiated the violence knew that they would be met with little resistance, if any.

## **Was the government's response effective, appropriate and timely?**

### **National security council**

- 2.12. The National Security Council sits at the apex of government structures in matters of national security. Chaired by the President, the National Security Council is responsible, among other matters, for the approval of the National Security Strategy, the National Intelligence Estimate and the National Intelligence Priorities; the coordination of the work of the security services, law enforcement agencies and relevant organs of state to ensure national security; receiving coordinated, integrated intelligence assessments from the national security structures of the Republic; and mandating the national security structures to attend to matters of national security as required.
- 2.13. The National Security Council had not been sitting regularly before July 2021, despite the warnings given by NICOC that 2021 was going to be a particularly volatile year. This is concerning, given that it was clear that there was heightened mobilisation for protests, as well as periodic outbreaks of violent protests throughout the first half of the year. As the tug-of-war around the Constitutional Court case of former President Zuma unfolded, tensions kept rising, especially on the political front.
- 2.14. The failure of the National Security Council to meet regularly is only partly mitigated by the fact that the security structures played a supportive role to the National Coronavirus Command Council (NCCC). The Command Council was established as a Committee of Cabinet by the Cabinet in its meeting of

15 March 2020. The security sector provides regular briefings to the NCCC on security concerns that can negatively impact on the ability of the country to respond to the COVID 19 pandemic.

2.15. The question that remains is whether the National Security Council has, subsequent to the riots, sat down to conduct a deep analysis of what happened, why it happened, who was behind it, what their ultimate goal was, or is, why the country faces constant instability, and related questions. We could not answer these questions because we failed to meet with Ministers serving in the NSC collectively, though we asked. We met individually with the Ministers of Police, Defence and State Security. We had no access to intelligence products, again after asking for such. What we can conclude is that the National Security Council, as a structure, does not seem to have received any clear, direct intelligence about the impending violence prior to it happening. Once the NSC met and received full briefings from NATJOINTS, it acted appropriately, but this was much later than would have been expected.

### **The Police**

2.16. The police were aware of some planned protests, both as a result of information provided by crime intelligence and from open sources. Groups such as an organization referring to itself as MKMVA had expressed unhappiness with the conviction and sentencing of former President Jacob Zuma. A major part of the mobilisation was done through social media. Relying on past experience, the police anticipated that the protests would

manifest in one or more the following ways: blockages of roads; attacks on foreign truck drivers; and marches to places such as the city hall or ANC headquarters.

- 2.17. The police developed operational plans based on the information available to them and in accordance with past experience. Roadblocks were set up on major routes and deployments were made to key areas that have been the subject of regular protests in the past. What they did not anticipate was the speed, scale and manner in which the protests would manifest.
- 2.18. The violence started in KwaZulu-Natal, with the torching of trucks at the Mooi River Toll Plaza on the night of July 8, 2021. Mooi River Toll Plaza had been correctly identified as a possible locus of trouble and police had deployed there. Unfortunately, due to limited resources the same police had to leave to attend to an incident where a truck was burning in Pietermaritzburg. It was while they were away that the trucks at Mooi River were torched. The police informed us that they have found no evidence that the two incidents are linked.
- 2.19. On the morning of July 9, 2021, the highway in Empangeni was blocked. The police managed to unblock it and arrest some perpetrators. Shortly thereafter the floodgates opened. There was looting and rioting that happened in many areas across the province. This they did not anticipate at all. They had no information that it would happen.
- 2.20. The violence in Gauteng started around the George Gogh hostel in Johannesburg. We were informed that hostels have become no-man's land,

with gangs for hire living there. A group made up largely of hostel dwellers blocked the M2 Highway and later moved to Jules street, where massive looting took place. Thereafter violence erupted at several malls in the province.

- 2.21. The understanding of the Gauteng political and security leadership is that the agitation for the violence in Gauteng originated from KZN. Social media posts were circulating asking “Gauteng, where are you?”. In some instances, agitators travelled in mini-buses from KZN to Gauteng and those mini-buses were seen going from mall to mall. We were informed that some journalists and church leaders were forewarned about the plans to cause this major disruption. The malls that were looted were mostly those located next to informal settlements, where the residents just poured out into the streets when they saw what was happening.
- 2.22. The police admitted that the large numbers were overwhelming. In some instances, the crowds were violent and some police officers were injured. The wide media coverage of the looting meant that crowds could plan where next to go. The arrival of members of the SANDF, albeit a little late, assisted to stabilise the situation.
- 2.23. There is no doubt that the police had insufficient capacity to stop the violence. The riots happened simultaneously in areas that are distant from each other. They took a form generally unfamiliar to the police, where large crowds descended on shopping malls and warehouses, to loot.

- 2.24. The size of the crowds made it impossible for the police deployed to prevent the looting. Moreover, there were members from across social groups involved: young and old, mothers with babies, and the police were in a dilemma about the degree of force they should use. In one instance the crowd used a hijacked Pick-It-Up waste management truck to ram down a gate that the police had secured. Once the gate had crashed the crowd climbed on the truck and started pelting the police with all sorts of objects while advancing towards them. The police had no option but to withdraw.
- 2.25. The response of the police must be understood within the following context. The Public Order Police (POP) division of SAPS has never reached its full staff complement. In addition to that, the units are centralized and are not distributed across police stations. As a result, there is invariably a time lapse between their call-up and their arrival when called upon by station commanders to assist. Budget constraints have also resulted in the POP not having sufficient tools of trade, such as rubber bullets and teargas canisters. We were informed that there is only one water cannon per province available to the POP. A water cannon from another province had to be brought in to support operations in KZN. This state of affairs is clearly unsustainable in a country with such an active protest history. Whether the police are managing their budget efficiently or not was contested.
- 2.26. To summarise, the police's response was not effective and appropriate under the circumstances. It may be understandable that they did not have intelligence upon which they could have planned their operations in the

initial stages of the looting, but once it went into subsequent days they should have changed their plans. The National Police Commissioner informed us that the reason he was not on the ground with the Minister of Police was precisely to direct operations from a central operations vantage point. It is unclear why he did not realise that the modus operandus of the looters was not what the police had initially expected. It is more worrisome that the looters continued to use the same modus operandi for the next 7 days or so, without the police substantially changing their plans. In his interaction with us, the National Commissioner said that initial intelligence suggested that routes would be blocked, but there clearly was a two-fold modus operandi. He stated that the instigators of the violence knew the police situation well. He said they must have known the police set-up and limited resource capacity. It is to the credit of the police that there were not many accounts of them having used excessive force, but this should not serve as an excuse. The failure of the police must be seen also against the background of the Minister of Police stating clearly in his submission that the suspension of six crime intelligence officers by the National Commissioner weakened that division. For example, The Minister received information directly from a source that he named to us, that a few hundred people had moved to Nkandla with firearms in the days leading up to the rioting.

2.27. The Minister presented us with the SAPS organizational system and architecture and argued that, based on that, SAPS had the operational and

infrastructural systems and architecture to have adequately responded to the violence.

### **South African National Defence Force**

- 2.28. The SANDF was deployed by the President to assist the police, who appeared to be overwhelmed by the surging crowds of looters. During the night of Sunday, 11 July, 2021, the operational command of the SANDF received an instruction to deploy by Monday morning. Initially, the government proposed that 2500 members be deployed. In the end that number increased to 25000. Some elements of the SANDF were on the ground by midday on Monday, 12 July, 2021.
- 2.29. The SANDF brought our attention to the difficulties they had in rapidly procuring supplies for the deployed members, as a result of supply chain requirements. This is a matter that the government must look into; to find ways of speedy procurement approvals in cases where the security of the State is under threat.
- 2.30. Although the police, and indeed some members of the public felt that the SANDF members arrived on the scene a little late, the SANDF believes that theirs was the fastest turnaround time for a military operation. The SANDF keeps a Company in every province but, for reasons of preservation and care, they keep most of their larger hardware in Lohatla, Northern Cape.
- 2.31. The arrival and continued presence of the SANDF members went a long way in assisting to calm down the situation. The SANDF members were deployed

initially to National Key Points, which freed SAPS officers to try and contain the riots. Looked at from this perspective, the SANDF response was timely and effective.

## **Intelligence**

2.32. The evidence we received on the effectiveness of the intelligence services is contested. The national and provincial governments and most elements of civil society believe that there was a major failure of intelligence with regard to the July incidents. The intelligence community, on the other hand, believes it had given sufficient warning, at least of the levels of dissatisfaction among the population, and the dangers and possible consequences thereof. We should record that we were informed that there were products that were shared directly with the President, as it should be, and others that the erstwhile Minister of State Security said she wanted to share directly with the President, but did not get an opportunity to do so. We did not have sight of those products.

2.33. What both sides can agree on is that neither the politicians nor the security services anticipated that the violence would take the form that it did, that is looting and destruction of malls, warehouses and other suppliers in the food value chain. This may be because this was a partly organized but partly spontaneous occurrence. However, the failure of reliable intelligence on this points to the urgent need to implement the recommendations of the High Level Review Panel on the SSA. The possibility that the faceless people behind this attack on the State were aware of the weaknesses of the security

services makes the task of rebuilding a credible and professional intelligence service even more urgent. The intelligence services failed to predict the nature, scale and modus operandi of the July violence.

## Findings

2.34. The police failed to stop the rioting and looting in July 2021. The reasons for this failure are complex and sometimes not of their making. In some instances, they did not get any intelligence upon which to plan operations. It is not clear why this was so, but one of the reasons may be that at least six members of the senior leadership of CI were suspended in the period leading up to the outbreak of the violence. It would be difficult for an organisation that had been hollowed out in that manner to rise to the occasion in times of crisis. As we have stated, time and the limitations of our powers did not permit us the opportunity to further investigate this failure of intelligence. Fortunately, the President has the benefit of another report relevant to this matter. That report should assist in the work to rebuild the intelligence services. Overall, we have come to the conclusion that there was a failure by the intelligence structures to anticipate and respond adequately to the violence. Our findings are based on the following observations:

- Failure of the relevant State institutions to conduct timely risk assessments, despite the constant attacks on the authority of the state by some individuals and organisations;

- Input that we received from a forensic expert that the riots bore the hallmarks of a group of people being behind the organisation thereof, using technology as the primary mode of organisation;
- The methods employed took the police by surprise and they were unable to adapt their tactics to the situation facing them;
- The police were inadequately equipped and they ran out of crowd control equipment;
- The Police were overwhelmed by the number of looters. There may be incidents in future where numbers are big. There must be a way for the POP to control large crowds.

### **General recommendations**

Our recommendations are set out in full in section 7 of this report but we wish to highlight the key ones here.

- 2.35. It goes without saying that the capacity of the security services needs to be strengthened to respond effectively to all situations. The security services must use all the lawful levers available to them, in particular the need to intercept communications, in a lawful manner, where the security of the State is at stake. They need to strengthen their technological capacity as well. The executive also needs to be better coordinated and aligned, and the National Security Council, must take the lead in security policy coordination. NICOC's role in strategic intelligence coordination needs to be affirmed.

- 2.36. Most important of all, government, at all levels, must seriously attend to the socio-economic challenges facing the country. We will be failing in our duty if we fail to express the profound frustration from, in particular the civil society, business and security sector delegations we met, that the government is not paying sufficient attention to this matter.
- 2.37. The internal contradictions within the ANC are impacting negatively on governance matters and need to be resolved.

## **SECTION 3: WHAT THE GOVERNMENT KNEW AND WHAT IT DID WITH THE INFORMATION**

### **Background**

3.1. We invited key government officials to tell us about the roles that they played prior to, during and in the aftermath of the unrest and violence in KwaZulu-Natal and Gauteng. These stakeholders included security cluster ministers, premiers of the two most affected provinces, and officials in the leadership of the security services.

3.2. We asked them to explain to us how they characterised the violent unrest and whether it should or could have been anticipated; and whether they had received information about the plans for the violence. We asked them to comment on lessons they had learned from the experience, and to make recommendations for the future. It is not possible to indicate here what each of these important stakeholders told us. In this section of our report we have tried to distil what we think is relevant for us to make findings that address our terms of reference.

### **What was the government's understanding of the violent unrest?**

3.3. It is very clear that different government leaders had different interpretations of what was unfolding, and that this resulted in a poorly coordinated response, at various levels. Ministers differed with each other, and as we learnt from the submissions, there were differences between some Ministers and the officials reporting to them. Some of this played out publicly and was reported in the media.

3.4. In our discussions with Ministers and senior officials, there was almost unanimous agreement that the incident that triggered the eruption of violence was

the imprisonment of former President Jacob Zuma, following the tense stand-off with the police.

3.5. The Minister of State Security<sup>2</sup> saw the violence as a complex matter, in part a response to the conditions of poverty and want of the people, but also a result of social media mobilisation in support of the former President that the SSA had spent much of the preceding months reporting on. She was concerned about the lethargic response of government to the warnings that the SSA had sounded.

3.6. According to the Minister of Police<sup>3</sup>, the planned violence was intended to make the entire country ungovernable, but it had gained the most traction in the KwaZulu-Natal and Gauteng provinces, which had significant numbers of outspoken individuals and groups opposing the sentencing and incarceration of former President Zuma.

3.7. The Minister of Defence<sup>4</sup> initially described the violence as the work of a criminal element, exploiting the desperation of poverty stricken people, with an element of counter-revolution. Thus her assessment was that there was no need to deploy soldiers, as the country was not at war with its citizens. However, as the situation became more dire, the Minister worked closely with the other security cluster

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<sup>2</sup> Minister A Dlodlo, the Minister of State Security in July 2021

<sup>3</sup> Minister B Cele, the Minister of Police in July 2021

<sup>4</sup> Minister N Mapisa-Nqakula, the Minister of Defence in July 2021

Ministers and even relocated to KwaZulu-Natal to manage and coordinate the situation with other Ministers.

3.8. The KwaZulu-Natal Premier<sup>5</sup> painted a picture of a Province that has faced security challenges over years, ranging from the torching of trucks by South African truck drivers disgruntled about the logistics industry's alleged hiring of foreign truck drivers over South Africans, a matter that he felt the National Government is not paying consistent attention to. Other problems that were contributing to instability were political killings, these often being linked to competition over resources and economic opportunities.

3.9. The Premier of Gauteng<sup>6</sup> explained that in the same vein as KwaZulu-Natal, the Province of Gauteng experiences what are popularly termed service delivery protests from time to time, mainly in winter, related to electricity cuts. When the Premier observed growing mobilization in KwaZulu-Natal, he held preemptive discussions with the Gauteng Provincial Police Commissioner and State Security Agency. He received information about meetings taking place to discuss 'resistance' should former President Zuma be incarcerated. There was an arrangement for sharing whatever information each of the government structures received. He shared whatever information he received with the Gauteng SSA.

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<sup>5</sup> Premier of KwaZulu Natal Province in July 2021, Mr S Zikalala,

<sup>6</sup> Premier of Gauteng Province in July 2021, Mr D Makhura

3.10. The President, in his address to the nation, described the events as an attempted insurrection, and in that context convened the National Security Council. By that time, he had already taken the decision to deploy the South African National Defence Force in support of the Police, an instruction he issued on 11 July 2021 as it became clear that the situation was spiraling out of control.

**Which government structures led the national response to the July violence?**

3.11. The violence broke out in the shadow of the Covid-19 pandemic, and Cabinet meetings in the period before and after the July unrest were dominated by the Executive's handling of this health crisis.

3.12. The National Security Council had not been meeting regularly at the time the violence broke out, despite a number of red flags that were raised by the intelligence structures, in particular NICOC.

3.13. The Justice Crime Prevention and Security cluster of Ministers convened urgently on 11 July 2021 to address the crisis. Accordingly, some coordination was already in place. This was followed by a meeting of the NSC, on 14 July 2021. By then the public discourse was to the effect that the State had failed to protect its citizens.

3.14. The NSC took a number of decisions at its meeting of 14 July 2021. Key among these was to ensure the further deployment of SANDF members to affected areas. In addition, NATJOINTS was mandated to write a more comprehensive report on the violent unrest, which report should characterize the nature of the phenomenon the country was facing. A decision was taken also to round up, arrest, charge and prosecute instigators of the violence.

3.15. The next meeting of the NSC was on 16 July 2021, where the NATJOINTS report was presented. It was found to be very helpful and comprehensive. The classification of the violence as an attack on South Africa's constitutional order was accepted.

3.16. A further meeting of the NSC was held on 19 July 2021. This meeting noted the reduction in acts of violence. It was decided that communication from government needs to continue to be streamlined.

3.17. A fourth meeting of the NSC during this period was held on 21 July 2021. Decisions were taken to use all available legal prescripts to prosecute those who broke the law during the unrest. The Minister of Transport was to be invited to the next meeting to present a report on the ongoing taxi violence in the Western Cape.

3.18. From the information shared with us, the NATJOINTS gave direction to the PROVJOINTS structures. However, senior officials indicated a concern about overlapping reporting lines and expressed the view that the coordinating structures ought to be streamlined. Since the NSC has been formalised we urge that Cabinet urgently revisit and rationalise the coordinating mechanisms at national level to avoid unnecessary duplication.

**Was there any early warning to government from the intelligence structures about the planned unrest?**

3.19. Following the Constitutional court judgement that the former President should be imprisoned, the Minister of State Security directed the SSA's top management to pay attention to the rising tensions that this had caused.

3.20. According to the SSA, it provided threat assessments and intelligence products prior to, during and after the crisis. In the months prior to the Constitutional court decision, the threat assessments emphasised the mobilisation by various groups who were in support of former President Zuma and possible imminent violence that could arise. Individuals and groups of instigators were initially and repeatedly identified, as well as their plans to create instability. The primary clients receiving the SSA intelligence reports were: (a) the Minister of State Security, (b) the Deputy Minister of State Security; (c) NATJOINTS; and (d) the NICOC.

3.21. After the Constitutional Court decision of 29 June, the SSA gathered and provided more intelligence. They cited examples of such intelligence and how it was used. Examples given included the following:

- On 30 June 2021, an orange alert was issued to the Ministry of State Security, NATJOINTS and internally, regarding KwaZulu-Natal, drawing attention to the social media messages and mobilisation following the Constitutional Court judgment and sentencing of former President Jacob Zuma.
- On 1 July 2021, an intelligence assessment related to the COVID-19 pandemic was provided to the NICOC. The report was about the Covid pandemic. However, it contained a section within it that was titled “interest group and community protests”, flagging the sentiments over the Constitutional Court judgment pertaining to the arrest of former President Zuma. The report was sent to NATJOINTS and indicated that the SAPS had been asked to be vigilant.
- On 2 July 2021, an intelligence brief was provided to the Ministry, NATJOINTS and internally, regarding instability arising from the judgment of the Constitutional Court.

- On 3 July 2021, there was a NATJOCOM meeting to discuss the threat assessment on the mobilisation.
- On 3 July 2021, a situational report was issued to the Ministry, NATJOINTS and internally, on the possibility of instability related to the judgment.
- On 4 July 2021, there was a NATJOCOM meeting about the mobilisation.

Over the period of 5 to 8 July 2021, regular updates were sent to the above-mentioned clients of the SSA and from 9 to 18 July 2021, there were also ongoing reports provided concerning the security situation.

3.22. Within the SAPS chain of command, there appears to have been no direct line of submitting intelligence reports to the Minister of Police. The Minister said he had not received any intelligence report/briefing from either the National Commissioner of the SAPS, or the Divisional Commissioner: Crime Intelligence, from at least December 2020.

3.23. However, according to the National Commissioner, following the Constitutional Court ruling that Mr Zuma should be sent to prison, all Crime Intelligence (“CI”) provincial structures were tasked by Head Office to determine whether any threats could be identified. CI was requested to ensure that existing source-networks were focused on gathering information to identify any threats associated with mobilisation in support of former President Zuma. As new threats were identified, the collection environment was tasked accordingly. Based on the feedback from the provinces as well as other sources, the Crime Intelligence Division had compiled a threat assessment on 1 July 2021 highlighting risks associated with the Constitutional Court’s ruling. Thereafter Crime Intelligence was actively engaged,

and the intelligence received from provincial CI structures informed the contributions SAPS made to the daily Intelligence Co-ordinating Committee (“ICC”) presentations that were compiled and received by the operational coordinating structures during that period.

3.24. Be that as it may, the Minister expected the National Commissioner to provide him with an initial threat and risk assessment or early warning report ahead of the unrest, and thereafter, through feedback, updates, and briefings, with the aim of providing insight and understanding so that the Minister could make a contribution to broad strategies, policies and resources. This, however did not happen.

3.25. The Minister of Police was not the only executive member who expressed unhappiness about not receiving timely intelligence. The Premier of KwaZulu-Natal indicated that he received no prior intelligence about the possibility of the rampant violence that engulfed the Province. In fact, he decried the fact that since becoming Premier, he had not received regular intelligence briefings about the security situation in the Province. He was aware that tensions had been building up from 29 June 2021, when former President Zuma was sentenced to 15 months’ imprisonment. He told us that in the days leading up to the former President’s incarceration, there had been major mobilisation on social media, much of it being inflammatory.

3.26. On 8 July 2021, the office of the Coordinator for Intelligence received a document from SSA titled “*Intelligence Review Covid-19 Pandemic*” with a heading titled “Interest group and community protests”. This document, drafted on the eve of the unrest categorically stated that no information had been identified suggesting

that supporters of former President Zuma would gather and protest in a specific area in the province, after the former President handed himself over to authorities in compliance with the warrant of his arrest as issued by the Constitutional Court on 29 June 2021.

3.27. It is unclear what the basis of this information was, and who the sender thereof was. It is also unclear whether this information was relied upon at national level, but what it points to is a contradiction of intelligence at a crucial stage of events. We were informed that this matter is the subject of ongoing investigation.

**What proactive steps to prevent the violence were taken by the security services prior to the unrest?**

3.28. The SAPS informed us that they took steps to plan for the prevention of the violence based on the information they had and on previous experience. It would appear that no actual action was taken to avert the kind of unrest and the ensuing loss of life and damage to the economy that unfolded. The police mentioned that there was inadequate intelligence gathering, that, following due process, targeted persons promoting violence, if they happened to be associated with certain political parties.

3.29. According to the National Commissioner, NATJOINTS and PROVJOINTS were activated to monitor stability related incidents, including operational deployments. The Intelligence Coordination Committee was activated to provide threat assessments to guide operational deployments. Operational deployment and high visibility was present at hotspots affected by stability related incidents. However,

the form of the violence seems to have taken the security services completely by surprise.

### **What was the operational response of the SAPS during the violence?**

3.30. According to the police, the *modus operandi* included extensive use of social media platforms; the blocking of roads with burning tyres; targeting of trucks to block national roads, specifically on the N3 and N2; the simultaneous targeting of malls and shopping centres, with large-scale looting and destruction; targeting of warehouses and distribution centres; ongoing threats to critical infrastructure; and returning to looted sites to take what was left.

3.31. In the National Commissioner's assessment, the *modus operandi* of the unrest were meant to deliberately overstretch the limited resources that the SAPS had at its disposal to counter the civil unrest and widespread looting. The level at which the unrest happened required direct intervention by SAPS' Public Order Policing ("POP") and the SAPS was not prepared for this.

3.32. Police capacity was overstretched due to spontaneous, multiple, and simultaneous incidents of unrest, violence and looting. Poor environmental designs of the affected areas such as poor lighting, a lack of proper road infrastructure, overpopulated human settlements, resulting in high population to police ratios, insufficient availability of Nyala and water cannon capacity to respond to unrest and looting, were a major factor inhibiting proper policing.

3.33. There were also threats made on social media targeting SAPS members and SAPS infrastructure, which impacted negatively on the morale of SAPS members who

were deployed at the frontline of the unrest and looting. Some police officers could not get to work and those that did, were exhausted as the violence went on and on. To maximise the deployment of the police, a two-shift system was introduced, detectives and support staff were pulled into crowd control work. At the same time SAPS had to ensure that its police stations were protected from attack.

3.34. As a result of the multiplicity of the incidents and the need to keep some capability in some of the other restless provinces such as Mpumalanga, there was insufficient POP capacity and capability in the affected provinces. In July 2021, the national total POP numbers were 5 502, whereas the ideal operational strength is estimated at 12 779. The lack of effectiveness of the POP units was exacerbated by a lack of quality intelligence products to guide operational deployments, and insufficient aircraft capacity and capability.

3.35. The measures implemented after the unrest had commenced included: (a) deployment of POP members from other provinces to hotspots in KwaZulu-Natal and Gauteng; (b) national call up and deployment of SAPS reservists as a force multiplier; (c) national call up and deployment of National and Provincial operational support members to hotspots in KwaZulu-Natal and Gauteng; (d) activation of process for deployment of SANDF members to hotspots and national key points in KwaZulu-Natal and Gauteng; (e) activation of daily NATJOCOM and PROVJOCOM meetings to monitor and guide operational deployments.

3.36. It must be said that the Minister of Police was scathing in his criticism of the SAPS. In his opinion, taking into account the SAPS organizational system and architecture, SAPS had the operational and infrastructural systems and architecture

to have adequately responded to and risen to the challenge posed by these attacks. These include the National Intervention, Special Task Force, Public Order Policing, and Mobile Operations units (tactical teams) which respond to and stabilise medium to high-risk incidents to ensure that normal policing continues. In his opinion, the tactical teams could have assisted police stations as part of the operational plan on the instructions of the National Commissioner.

3.37. In addition, the Minister believes that the lack of a proactive intelligence gathering system, proper planning, coordination and communication by SAPS Top Management and its Command Structures prevented SAPS from being as prepared as necessary for the violence when it broke out, and adapting its plans to meet the changing tactics of the planners.

3.38. The Minister was also critical of the National Commissioner not visiting the affected areas, especially KwaZulu-Natal during the unrest. The National Commissioner believed however, that he was best placed to coordinate all responses from a national operations centre.

3.39. In a nutshell, the Minister and the National Commissioner are poles apart in their interpretation of how the events of July could have been managed, if at all. This is a matter of concern, as it narrows the grounds for consensus within the senior leadership of the police on what needs to be corrected going forward, and of who is to be held accountable for the failure to prevent the loss of life and the destruction of property that occurred.

## **What was the response of the provincial government leaders during the unrest?**

3.40. In KwaZulu-Natal, the Premier was extremely frustrated by the unfolding situation and the inability of the police to contain the violence. This led to him calling the President and urging him to deploy the SANDF. The Premier and the MEC for Safety and Security also engaged with the provincial police commissioner of the SAPS. It was only after several days that the Premier received a briefing from the SSA and the Provincial head of Crime Intelligence.

3.41. Premier Zikalala also engaged actively with the public, including issuing a statement calling for calm. Stakeholders he engaged with included political parties, civil society organisations, traditional leaders, chambers of commerce, the taxi industry, and the diplomatic corps, among others.

3.42. When Premier Makhura of Gauteng realized that the hostels were being used to mobilise people to take part in the disruption, he engaged the *izinduna* (traditional leaders). During the looting and destruction, he also engaged the taxi associations, political parties, trade unions and other stakeholders and urged them to stand up against the violence that was taking place across the country.

3.43. The Premier of Gauteng was also concerned about what appeared to be a lack of intelligence from the state security structures, and indicated that leaders in the Province had to rely extensively on the private security sector for information. They shared much of their information with the Premier.

3.44. Both Premiers indicated that the priorities for government to ensure stability included reducing levels of poverty and unemployment; addressing challenges

relating to the Covid-19 lockdown effects; addressing high levels of crime; addressing the lingering causes of instability and social tension, such as the truckers issue. Subsequent to the violence they have renewed calls for improvements in the capacity of the security cluster and stated that the devastating experience of the violence had highlighted the need for improved coordination between the national and provincial spheres of government.

3.45. Other suggestions they made to avoid a possible repetition of what happened in July 2021, include more police recruitment to fill vacancies, community mobilisation for crime prevention and defending our democracy; and strengthening the state's intelligence capacity, whilst finding a balance to ensure that intelligence is not abused. Like many others, the Premiers have called for the speedy prosecution of those behind the unrest.

### **What can be learned from the timing, manner and impact of the deployment of the SANDF?**

3.46. The President is constitutionally empowered to authorise the employment of the SANDF, if the Minister of Safety and Security has approached him with such a request. On Saturday, 10 July 2021, there was a discussion between the Minister of Defence and the President and it was agreed that it was not yet necessary to employ the SANDF in cooperation with SAPS.

3.47. On Sunday, 11 July 2021, after a clear assessment and repeated requests from the public, the Premiers of the affected provinces, the business community, the

President determined that the employment of the SANDF to support SAPS was necessary. The Defence Act regulates how such employment is to be activated.

3.48. Based on the President's determination, the Minister of Defence immediately called the Chief of the SANDF to request that he initiate the plans for employment. The employment was with effect from Monday, 12 July 2021. The Ministers of Police and of Defence sent the written request to the President for approval. The senior leadership of the SANDF initially advised that a total of 2 500 members be deployed, with the initial period of service being set at 3 months. A gazette was issued on 12 July 2021, to this effect.

3.49. On Tuesday, 13 July 2021, the President requested that the number be increased to 10 000.

3.50. On 14 July 2021, the President and some Ministers met with leaders of political parties and were urged to increase the number of employed members. It was agreed, following this meeting, that a total of 25 000 SANDF members would be employed.

3.51. On 14 July 2021, the former Minister of Defence interacted with the Chief of the SANDF and met with the leadership of the Joint Operations Division to express concern as she felt that the employment of members of the SANDF was moving at a slow pace.

3.52. Defence Intelligence, according to the former Minister of Defence, does not have a mandate to gather information inside the country. It only gathers intelligence when the SANDF is employed internally in support of the SAPS. This is generally correct, in terms of the legal position surveyed.

3.53. On the ground in KwaZulu-Natal though, the SAPS initially excluded the SANDF from intelligence briefings (in particular, the SANDF Colonel was excluded from meetings, ostensibly due to his lower rank in comparison to his police counterparts). As a result, the SANDF was not clear as to where to deploy members. There was no flow of information initially, and as a result, the Minister deployed a general to engage with SAPS.

3.54. From the perspective of the Minister of Defence, there was a lack of cooperation by the KwaZulu-Natal Provincial Commissioner of SAPS, but the Provincial Commissioner refutes this allegation.

3.55. The SANDF is concerned that it should not be used as a force of first resort in cases of confrontation with the civilian population, as its resources are limited and it has external commitments that it must fulfil, as was the case at the time of the unrest. Nevertheless, the experience of July has led to internal reflection in the leadership on how they can be better poised to respond to similar crises.

**Did resource constraints prevent the security services from responding effectively to the violence?**

3.56. Insufficient budgets, unfilled vacancies and the absence of people appointed in key management positions may have contributed to the lacklustre performance of the security services. The view of the Minister of Police was that budgets were not a problem. He said the real problem was that the police wanted him to authorise the use of secret funds. Other than the fact that the procedure for the approval to use the funds involves other Ministers, the police have abused these funds in the past.

The Minister insisted that the police could have used the regular funds in this case. We also observed that the ongoing unhappiness about the matter of the alleged illegal acquisition of grabbers further clouds the relationship between the Minister and the Commissioner. Accordingly, they fail to communicate effectively on other important matters.

3.57. Budgetary issues were repeatedly raised with us by the security structures. Our mandate however did not allow us to delve deeper into these issues. As the Panel we felt that these were issues to be addressed by government in an integrated manner particularly because of the financial situation the country is in and the intricate balancing that budget processes require. We also felt that more could have been done had the security services worked smarter with what was available at the time of the unrest.

3.58. In the case of the SSA, we would like to draw the attention of the President to the various budgetary issues raised in the HLRP report which included the utilization of the Secret Service Account of 1978, and the need for an overhaul of this legislation. The HLRP report characterised the Agency as a “cash cow” that allowed the milking of millions of rands from its coffers. As indicated above, the implementation of the recommendations of the HLRP will go a long way in addressing the systemic challenges (operational, analytical, financial, managerial) currently facing the Agency.

3.59. We were also informed that because of delays in approving certain operational programmes and the resultant non-payment of the sources, the latter were reluctant to provide information at a very crucial moment.

3.60. A lack of adequate technological innovation and under-capacitation of the security services were cited as systemic issues that hampered their efficient operations. Much of the mobilisation took place on cyber platforms and the services had not been agile and aggressive enough in their modernisation to keep up with this.

3.61. There was a lack of an inclusive communication strategy during the crisis. Ministers were contradicting each other. Initially, the Minister of Defence appeared to contradict the President over how to characterise the unfolding violence. There was no effective community outreach to demystify the role of intelligence and to use communication as a force multiplier.

## **Conclusions**

3.62. Whilst the National Intelligence Estimate had predicted that 2021 would be a period of heightened instability, this did not seem to have featured in the strategic planning of key government departments. It is possible that this was the case because the preoccupation of government was in responding to the Covid-19 pandemic. It seemed to us that whilst considerable amounts of early warning intelligence were generated, these reports did not always come to the attention of the decision-makers who should have been kept abreast of them.

3.63. It must be said equally, that the security services, and this is by their own admission, were unable to predict the form that the potential violence would take. They were, in short, outwitted by the planners, and were just unable to keep up. This

suggests that they need to go back to the drawing board and recalibrate their intelligence collection capacities.

3.64. The next issue that requires attention is how the coordinating structures at the level of the executive, such as the JCPS and the NSC, function in a more proactive way. Whilst the President was proactively managing the crisis as it unfolded, the fact that the NSC did not meet until the height of the violence, would have meant that opportunities for optimal coordination, including about how to characterize and respond to it, were missed.

## **SECTION 4: OTHER ACTORS**

### **Private security service providers**

4.1. Outside of the state's security services, the private security industry played an important role in protecting the targeted economic infrastructure of the two Provinces. We therefore sought input from the Private Security Industry Regulatory Authority (PSIRA), the governmental body that regulates the industry.

4.2. To put their role in context, we can briefly explain that the primary objective of the PSIRA is to regulate the private security industry and to exercise effective control over the practice of the occupation of security service provider in the public and national interest and in the interest of the private security industry itself. By law all private security service providers (SSPs) are supposed to register with PSIRA.<sup>7</sup>

4.3. The law restricts SSPs to performing the duties set out in the contracts between themselves and their clients i.e., they are not allowed to assume the powers of the police and perform the role of protecting the public at large. PSIRA informed us that from the onset of the unrest, they received countless calls from SSPs asking them to contact police management and Ministers to request them to allow the SSP's to assist in defending infrastructure under attack. They were prepared to play a bigger role beyond just fulfilling the mandates of their direct client.

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<sup>7</sup> see Private Security Industry Regulation Act (no. 56 of 2001)

4.4. PSIRA argued that had there been better coordination between the SAPS and the SSPs they would have mitigated the extent of the unrest and violence. Notwithstanding the poor response by the law enforcement authorities to the offers of assistance, the SSPs played their role, mostly in the protection of their immediate client's properties. But since the risk analyses that had informed the contracts entered into with clients generally had not anticipated attacks on the properties of the scale experienced, often they were also overwhelmed by the force and numbers of looters.

4.5. PSIRA also addressed the accusations of the abuse of power of the SSPs registered under them. They noted that members of the SSP's are not allowed to search or arrest members of the public. Within the property owned by a business client, only the client can delegate to a SSP the authority to search people on their premises. Security officers affiliated to SSPs are also not allowed to set up roadblocks on public roads nor are they permitted to investigate members of the public (unless mandated to do so). In addition, it is very likely that most of these officers do not have the competencies for manning and managing roadblocks. Nor do they have the necessary training to do investigations of any sort.

4.6. In keeping with the regulations of the PSIRA, any SSP guilty of unlawfully setting up a roadblock, arresting or assaulting members of the public must be held to account by the PSIRA and the SAPS. They are clear that they would not try to prevent the arrest of any member if she/he was involved in criminal acts. The Authority emphasised that the SSPs are licensed to bear arms and that this is managed by regulations drawn by PSIRA. But they also admit that they manage an industry

replete with dangerous firearms of various calibres. They believe that they can install tracking devices in all firearms issued under their authority to all SSPs. This would ensure that good records would be kept on the usage of those weapons.

#### **Steps taken to investigate alleged breaches**

4.7. PSIRA told us about the steps they have taken to investigate alleged breaches by SSPs or members thereof, and to tighten controls in their regulatory system. They took immediate steps to investigate what was happening in KwaZulu-Natal, after reports emerged that SSPs had been involved in killings, including the high-profile Phoenix murders. They indicated that they have suspended certain affiliates and that some are still under investigation or review. The Authority pointed out that most of the accusations of registered SSPs' complicity in acts of criminality could not be proven. Neither the victims, nor the police were able to provide irrefutable evidence of criminality. PSIRA indicates that in some instances that they investigated, the transgressions turned out to be administrative and not criminal.

4.8. They did not address the conduct of those SSPs not registered with them, and in the process of their investigations found that there were indeed entities providing services that were not registered, or security officers on their databases working for unregistered entities. The existence of such unregistered entities is a serious issue that should not go unchecked, especially by the state security structures.

#### **PSIRA's Recommendations**

4.9. We asked PSIRA what recommendations they have for a more effective response to future events of the kind experienced in July 2021, should they occur.

4.10. The most salient of these were the following:

- There should be more sharing of information (in fact this should be institutionalized) between the state's security services and PSIRA.
- A crime prevention strategy between the SAPS and PSIRA needs to be developed and PSIRA; this could include SSPs being afforded minimum police-related powers in times of crisis and equipped with legal knowledge about the extent of their role, to be more effective.
- To maintain professionalism SSPs would have to be given the necessary training if they are to play a greater role in the maintenance of public order in times of crisis.
- There is a need for advocacy and training in Human Rights for all their affiliates.

4.11. Whilst the official figures put the number of private security officers at well over half a million, we learned from PSIRA that the real figures are much higher than that. Unchecked, this could be seen as a potential risk to stability. However, PSIRA thinks that this could be turned into an opportunity, if these trained officers could be harnessed to assist the SAPS to uphold the rule of law. Much more thinking would need to be done about the viability of the idea. What is undeniable is that such an initiative would have to be subject to strict state supervision, probably by the formal security structures.

### **Organised business**

4.12. We held several meetings with business delegations to understand how they had experienced the violence. They shared their interpretations, experiences and

concerns about the July violence, which had had a devastating impact on business confidence, and the lives of workers. In their view, the events were not sporadic but well-planned, based on the following observations:

- The attacks on trucks on the N3 in the lead up to the 5 days of looting and destruction were well planned
- The violence was a targeted attack on the country's food and critical goods supply chain
- The attack on retail centres was an attack on the last mile of food and goods supply chain distribution
- The attack on warehouses was an attack on primary bulk infrastructure and cargo for national distribution
- The threatened attack on major Transnet infrastructure essentially closed the supply chain
- The attacks on trucks included micro-chips that track electronic systems in trucks being destroyed, thus making it impossible to repair them
- The modus operandi demonstrated planning, with advance groups destroying CCTV cameras and sophisticated fire-fighting equipment, turning some warehouses that stored chemicals into virtual fire-bombs
- Roads to warehouses were blocked-off to block entry by the military
- Organised crime syndicates had been identified lining up trucks to load goods

4.13. In the face of such organised violence, business believed the response of the State had been woefully inadequate. From what they had seen:

- Security personnel were reactive and slow, and not trained for crowd control
- The state had demonstrated vulnerability and indecisiveness
- The lack of capacity in the state to distribute emergency aid, resulted in aid to SMME's and some employees not being distributed to date
- The riots seriously impacted investor confidence and the lack of cohesive government response, even 3 months later, made it difficult to explain what happened to shareholders and investors.
- Government's unwillingness to take responsibility and be held accountable was further eroding confidence

4.14. The business delegations we spoke to were concerned that similar patterns of violence would erupt again. In KwaZulu-Natal, a chamber of commerce informed us that the rapid escalation of violence had alarmed them so much that by Sunday 11 July 2021, they were calling for the declaration of a State of Emergency. Their efforts to reach the SAPS had been fruitless. They were also concerned about the lack of visibility and leadership by the city and provincial governments.

#### **Action taken by business**

4.15. Businesses had to rely on private security providers to secure their properties, but the damage still was extensive. In many instances, members of communities had come forward to protect businesses against the violence and looting and to assist with clean-up operations.

4.16. In eThekweni, organised business took the initiative to coordinate a response to the violence and set up a social media platform to do this. That enabled quick communication and sharing of information about the spread of the violence. It was clear to them that to deal with violence on the scale witnessed what was needed was more and better trained police and more effective equipment. In some cases, the private Security Service Providers (SSP's) were able to repel the looters. It seemed some of the looters were bent on destruction, and their paths included malls, factories, warehouses and distribution centres, even farms. We were told there were attempts to burn down sugar-cane fields, and that thirteen attempts were made to breach a major distribution centre, but were repelled by the centre's private security service provider.

4.17. Businesses told us that they had willingly shared with the security services information they had obtained about where violence was planned. In some instances, they were able to pool their resources, such as drones and helicopters used by the private SSP's, in an effort to bring situations under control. Business had also undertaken to provide sectoral contingency plans to SAPS and NATJOINTS by the end of November, as they feared that the violence will recur.

4.18. If the violence has exposed anything, the business leaders indicated, it was the underbelly of poverty and inequality that is the root cause of the desperation of the people of South Africa. We were informed by business that they are alive to this reality, and want to work urgently in partnership with government to address the challenges. Apart from partnerships to promote safety and security, they believe that they can contribute to catalytic projects, if the infrastructure is in place. This

combination could assist in re-building investment confidence and getting much needed employment opportunities going again. This is vital following the loss of tens of thousands of jobs as a result of the violence.

4.19. The state-owned company, SASRIA SOC Ltd (the South African Special Risk Insurance Association) is a Section 21 company, established under the Companies Act (No.61 of 1973), and is the only non-life insurer that provides affordable voluntary cover against unique risks such as civil commotion, public disorder, strikes, riots, and terrorism to any individual, business, government or corporate entity which has assets in South Africa.

4.20. Due to the extent of claims arising from the July 2021 riots, they had to request funds from the National Treasury to stay afloat. The quantity of claims, over 14000, was staggering.

4.21. SASRIA admits that they were not prepared for the events of July 2021. They are not sure why they missed the warning signs of the unrest as they do have a risk analysis programme. The risk analysis was done on several predictable social and political fallout scenarios. Their risk analysis put emphasis on probable scenarios such as a national shutdown strike, manifesting in several cities; a cyber-attack on the country's infrastructure; a terror attack; a severe breakdown in energy provision; and the effects of climate change, such as water shortages. Even with these grim risk scenarios SASRIA did not predict the deluge of violence, looting and killing that befell part of the two provinces. Their research into the unrest shows that for the first five days, Thursday 08/10 to Monday 12/10 there was less looting than on Tuesday 13/10 and Wednesday 14/10.

4.22. The attack on the economic infrastructure of the country resulted in the “most expensive riots in our history”, according to SASRIA. The 30 billion USD claims were divided between KZN (80%) and Gauteng (20%), and the task that befalls SASRIA is to convince the reinsurers, many of whom are foreign based companies to continue underwriting the risks covered by SASRIA.

The political environment which prevails, especially within the ranks of the ruling party, has become a source of instability and should be remedied.

#### **Recommendations made by business**

4.23. Leaders of the business organisations we spoke to recommended a strong and effective partnership between business and government to engage on how to provide a safe space in which business can function, and to plan and manage the response if such insurrectionary activity recurs, which they believe is likely.

4.24. A more structured process should be developed, with effective risk assessment at its centre, to assist the police to react timeously to unrest; in that regard business is willing to work closely with the police and other security services.

4.25. They indicated that businesses were already developing precinct security arrangements, and fostering greater collaboration between businesses. But they were also asking government to be more transparent and to provide a clearly articulated analysis of why the insurrection took place.

4.26. Business feels that they should be briefed urgently on what action is being taken to identify perpetrators of the July 2021 violence and bring them to book.

4.27. Business believes that strategic distribution centres must be allocated “national key point” status. These include fuel pipelines, water treatment plants, specific

chemical facilities and others. Clear criteria and prioritisation lists must be established for the deployment of forces to specific national key points.

4.28. Lastly, the business leaders urged the President, given the negative impact on investor confidence, to assure investors that government is acting urgently to address the security, law and order and intelligence weaknesses identified, and to create a conducive situation for economic activity.

4.29. The business delegations did not mince their words in asking us to communicate their frustration that the inner conflict of a political party has now become a threat to the stability of the State. They asked that those that bear the responsibility to address this matter should do so without delay.

### **Critical infrastructure**

4.30. The country's critical infrastructure came under attack during the riots, to varying degrees. The importance of arterial road networks, such as the N3 national highway between Gauteng and KwaZulu-Natal, which became practically impassable, was highlighted by the violence that took place on these routes. Several railway lines were stripped of metal, exacerbating a trend that is already a problem. Banks were robbed of cash, with whole ATMs being carried away.

4.31. We interviewed the Transnet management to hear how the company had been affected by the violence, particularly as some of its major assets and operations straddle the two provinces most affected by the violence. Two major ports, Richards Bay and the Port of Durban are important logistics hubs for the country, and the country's multipurpose oil pipeline originates in eThekweni.

4.32. We learnt that much of the Transnet infrastructure has not been classified as national key points, even though it is critical to the economy. Of the multipurpose pipeline, only the valves, and the fuel depots are regarded as national key points and subjected to the rigorous standards of protecting them. As a result, the illegal occupation of land under which the oil pipelines run happens frequently, enabling the theft which happens from this infrastructure.

4.33. Ports are not classified as national key points, a decision having been taken to declassify them in the 1990s. As a result, not all ports are under the protection of naval bases, leaving this infrastructure vulnerable. None of the railway lines are designated as national key points. In this context Transnet relies heavily on private security service providers, meaning that much information about this critical infrastructure is in the hands of private interests. It was therefore fortunate that Transnet did not experience any major incidents during the unrest. A cyber-attack that it experienced during the same period seems to be unrelated to the violence itself.

4.34. Nevertheless, Transnet was on high alert throughout the riots, to ensure that it was not negatively impacted. It activated its nerve centre to coordinate its response to what was going on. We were informed that they did not receive information from the intelligence services, and relied on open sources and social media to pick up information. Transnet laid a case over incitement to attack the pipeline. To effect coordination with the security sector, they took the initiative in reaching out to the PROVJOCOM, and also used their own initiative to reach out to the SANDF to liaise with them about the areas they believed required protection.

4.35. Transnet is reliant on its staff to ensure its operations run smoothly and was concerned about their safety and wellbeing during the unrest. When food supplies ran out in KwaZulu-Natal, it knew it had to make a plan for its staff and was able to mobilise assistance from the Coega Development Corporation in the Eastern Cape for its 16000 staff. The trade unions and daily staff meetings were an invaluable source of information on how the violence was spreading, or being contained. Interaction with the private sector was also an invaluable source of information. Because Transnet was able to maintain open lines and secure its premises, the ports were open and operating for those who wished to operate. However, given the unstable climate many operators chose not to. The ports became a 'safe haven' for drivers who had been impacted by the violence and were unable to travel.

#### **Recommendations for critical infrastructure**

4.36. Even before the July riots, Transnet had been seized with challenges on how to optimize security for its infrastructure and operations. They informed us that the experience of July had underlined the need to speed up implementation of initiatives under way.

4.37. They want to pursue the designation of certain infrastructure as critical infrastructure or national key points in terms of the Critical Infrastructure Protection Act.

4.38. They would like to see the Coordinating Council provided for in the Act, established as soon as possible and the parliamentary process to finalise the regulations for the operation of this body, concluded.

4.39. They would like to see better coordination and information sharing between the security services, particularly intelligence, and the bodies providing critical infrastructure such as Transnet, PRASA, ESKOM, and the telecommunications services. The revitalisation of the government's Security Managers' Forum is an important step in this regard.

4.40. Recognising that the State may have difficulty in financing the costs of securing the ports, they suggest that the port-using community should be drawn into a discussion on how they can contribute to covering the costs.

### **Civil society organisations**

4.41. We interviewed several civil society organisations based both in KwaZulu-Natal and Gauteng. Most of the respondents said that they were shocked by the intensity and scope of the violence and looting, and were left feeling vulnerable by the state's inability to mount an effective response. In the absence of leadership by the authorities, civil society felt they had no choice but to fill the gaps.

4.42. A social movement, which advocates for the rights of people living in informal settlements, believed there was a vacuum at the level of the political leadership in KZN and the absence of police throughout the unrest was felt. All attempts to contact local leaders and even the Premier of KZN went unanswered, when they tried to reach them to share information that they had picked up about the violence.

4.43. The social movement believes that there is no social net that effectively supports people living in informal settlement, who are most often people living in extreme poverty. It is in response to this gap that civil society organizations like their

own, though overstretched and under-resourced, have tried to play a role in preventing people from dying of hunger and violence in the informal settlements.

4.44. We were informed by civil society organizations about the extensive use of social media and fake news by those instigating and fueling the violence. The violence had, in their submissions, been triggered by the arrest of former President Jacob Zuma, but the conditions of desperation led to many poverty-stricken people being caught up in the events.

4.45. The failure of the police to demonstrate the capacity to respond effectively to the riots led to fear and panic in communities who perceived themselves to be under attack. In the absence of visible policing (in fact, some police were seen participating or encouraging the looting, or told communities that they, the police, were not paid enough) communities that perceived themselves and their businesses to be under threat vowed to 'defend themselves'.

4.46. Some of the observations and recommendations made by the representatives of civil society organisations included the following:

- The culture of violence and criminality within the ruling party was having a negative impact on communities and had to be brought under control;
- To avert the indignity that had led to people resorting to looting, no-one in society should be without an income and the introduction of a basic income grant could provide a platform for people to seek opportunities for employment;

- Government should create the conditions for employment in communities, including the establishment of urban farming cooperatives, and the rapid release of land;
- The food insecurity experienced by society must also be addressed;
- There is need for dialogue between the residents of informal settlements and adjacent communities, and the idea of forming solidarity councils in each area could be explored.

4.47. As is well known, vigilantism was one of the features of the chaos. The situation in Phoenix, Durban took a terrible turn when self-styled community patrols harassed, victimized, and in 36 known cases, took the law into their own hands and killed innocent African people from neighbouring townships, apparently in retaliation for the looting. At the time of completion of the report, charges had been laid against some of the alleged killers.

4.48. Community based organisations from Phoenix told us of efforts made to reach out and rebuild trust between the residents of Phoenix and the neighbouring, affected township of Bhambayi. Several government departments have visited the area and pledged their support. However, there is concern that this might just be a short term intervention, soon forgotten. The community organisations argue that they are there for the long haul and have vowed to continue with their efforts to heal the rifts between the communities that were divided by the violence.

4.49. We also learnt that there have been community-based efforts to provide support to residents of Bhambayi who had been attacked during the violence. Some of the people affected are still recovering from serious physical injuries and psychological

trauma. Some had lost their jobs and livelihoods because they were now unable to work. Apart from wanting to see justice done, the plea that these victims were making to the State, we heard, was to support them with basics such as hospital care, walking sticks, and other equipment.

4.50. We also interviewed an organisation engaged in humanitarian work. Having recently returned from KwaZulu-Natal they referred to the palpable fear that they found that was still present in the affected communities, business sector and the public in general, even though several months had passed since July 2021. They feared that the narrative of a lawless country with a government that is not in charge of its police and other security structures would harm the country locally and abroad. They were concerned about the fractures that they saw in some communities, where neighbour had turned against neighbour because some had been victims of looting, affecting the livelihoods of others. They urged that the work of accountability must go hand in hand with resolving the tensions that had arisen as a result.

4.51. The organisation had taken great care to ensure that the financial contributions that they had to disburse, were distributed with speed and without corruption. The reason that they had to step in was a result of the weakness of government structures. Fortunately, they were able to partner with the private sector and thereby develop appropriate plans for the distribution of aid to affected communities. For humanitarian assistance to succeed in times of need, government agencies need to work towards building the necessary linkages to ensure a sustainable model of humanitarian assistance.

## Think tanks

4.52. Representatives of think tanks we spoke to told us that they believe that the violence was an insurrection or semi-insurrection against the State and a popular uprising (revolt) of destitute people. It had clearly been organized, and the main culprits were not the dwellers from informal settlements, or ordinary residents in communities but rather politically-motivated criminal and opportunistic groups directing people to easy targets such as malls and warehouses.

4.53. Some of the researchers were disturbed by the paralysis of the security apparatus, and believed that the police should have been better prepared to deal with the unrest as it unfolded. This is particularly so because over the past few years, the police in KZN and Gauteng have been dealing with violent protests for 'service delivery', attacks against foreign nationals, political killings and countless taxi wars. As a result of these experiences, they should have been better prepared. Aside from the poorly-trained police station based SAPS members, too few members of the Public Order Police (POP), if any, were deployed at the onset of the violence. This raises the question in society about whether the police were factionalized, and therefore chose or refused to act.

4.54. One of the think-tanks we spoke to challenged the argument made by the SAPS and other security agencies that they were overwhelmed by the scale and unique character of the violence. Instead, they argue, the failures in the police response can be linked to other factors such as:

- Weaknesses in the systems of governance of the Police (here understood to include, in particular, the office of the Minister of Police, the Civilian

Secretariat for Police, Parliament, and senior police leadership), which provide little guidance and scope for the police to proactively develop strategies for their challenges.

- weaknesses in the capacity to analyse and interpret information (including crime statistics and other information on crime, information on protest, and information gathered through intelligence gathering activities), which impacts both on the capacity for long term planning as well as for short term risk analysis for situations such as those that unfolded in July 2021.

4.55. They were also critical of the SAPS's continued failure to address weaknesses in its approach to public order policing which relies on a 'formulaic/set-piece approach to the management of crowds (and where this proves inadequate relies largely on the use of force)'. They point out that several initiatives have already provided detailed analysis of and recommendations to resolve the problems dogging public order policing.

4.56. Following the Marikana Commission of Inquiry, an expert panel had been set up to review and make recommendations on more effective crowd control and policing methods. That Panel, which included senior police officers, had sat over many months and made extensive recommendations. More needs to be done to ensure that the SAPS addresses its shortcomings by implementing the recommendations<sup>8</sup>.

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<sup>8</sup> *Panel of Experts Report on Policing and Crowd Management* established by the Minister of Police in terms of the Recommendations of the Marikana Commission of Inquiry. Final Report 27 May 2018. ([www.saps.gov.za/resource\\_centre/publications/panel\\_of\\_experts\\_2021.pdf](http://www.saps.gov.za/resource_centre/publications/panel_of_experts_2021.pdf))

## **Faith-based organisations**

4.57. We held a round table discussion with faith-based organisations to learn more about how their faith communities had experienced the violence, and what role faith leaders had played during the period of the unrest. The unequivocal feedback was that the impact of the violence has been devastating. Many people have been left destitute as a result of the violence, having lost jobs and livelihoods. Business owners have had to close businesses. Coming on top of the pandemic, this has instilled a sense of hopelessness. The unanimous view among the faith leaders we spoke to is that it is important for all of society to pull together to ensure that South Africa uses the events of July to build a more inclusive and just society. Only then will there be peace.

4.58. Sharing their personal experiences of the violence, some of the faith leaders we spoke to said that they never thought they would see the day when they would be manning barricades to protect their communities and families. They also experienced the palpable fear that the communities experienced and were angered that they were forced into a situation where they had to become physical protectors of communities, because the State had chosen to absent itself.

4.59. The faith leaders on the other hand also had stories of hope: of how communities had rallied together and shared what they have. Some indicated that they had been able to mobilise food parcels from provinces where there were supplies and dispatch these to communities where food had run out.

**4.60.** One faith leader suggested that the people of South Africa, who had stood firm against the violent unrest and defended their communities, should collectively be considered for receiving national honours. Moreover, more needs to be done to remember the unnamed dead, whose lives were so tragically cut short.

### **Veterans of the security services**

4.61. We held a round table discussion with veterans of the security services, and government service and security experts. These were ‘elders’ and experts who had been involved in the design and implementation of the post-apartheid security services and governmental structures, had been part of several policy reviews, and had served as senior officials or advisors to government. The veterans’ views were that the violent events of July 2021 were indicative of a spectacular governance failure, at a variety of levels. If the security structures had enjoyed the confidence of the people, they would have known what was coming. The initial silence from government, followed by different messages from Ministers, had left the people feeling uncertain about whether there was cohesion in government.

4.62. In addition, when the security services failed to act decisively, the question many were left with was whether the State had collapsed, and the people left to fend for themselves. What was of concern, was that the final outbreak of violence did not take place suddenly, it had had a slow build-up. It was obvious that the violence had been orchestrated, as the strategic targeting and the deliberate and coordinated actions showed that these were not the actions of ordinary people. The veterans were concerned that all the security services were found wanting in some way or

the other, which was the strongest signal that the structures of the State had been hollowed out.

4.63. Moreover, the fact that ordinary people were aware of the plans for and mobilised towards the violence in the days leading up to the riots, was proof that the information about the violent plans was circulating in the community. What this suggested is that the security services were so alienated from the people, and in some cases, distrusted by them, that they were cut off from any information that would have constituted early warning.

4.64. The veterans and security experts pointed to the crisis in leadership in the security sector, and urged that from the executive authorities down, clear leadership must be given so that the policies and instructions are clearly socialized at all levels of the security services. It does not help for government to be ambivalent in its messaging to the intelligence and police officers, and soldiers on the ground.

4.65. The veterans and experts urged that on the one hand the preparedness of the State to deal with such strategic surprises needed to be ramped up. On the other hand, the hard-won gains of the Constitution should not be forgotten. There had been worrying reports of retributive and heavy-handed policing in the recovery of goods after the looting, the poor being the victims thereof. Families and particularly children had been traumatized, and intervention to facilitate healing needed to be scaled up. The experts and veterans stressed that there must be accountability for what happened in July and that the ringleaders who had orchestrated the violence, leading to the deaths of hundreds of people, as well as the destruction of the economy and infrastructure, should be brought to book.

## **The media**

4.66. We interviewed representatives of the media, important because journalists had been at the forefront of bringing the stories of the July unrest to the public. As journalists had gone about their work, they had found themselves caught up in the indiscriminate violence and sometimes at personal risk of harm. Some examples they informed us of were the following:

- Television crews of the SABC were robbed in Alexandra, north of Johannesburg.
- A camera and vehicle belonging to Newzroom Afrika was badly damaged in Hillbrow, near the city's CBD.
- In KZN demonstrators threw rocks at an SABC vehicle. The journalists escaped injury as they were supplied with bulletproof vests and helmets.
- As the looting, violence and unrest continued there were attacks on at least four (4) community-based radio stations:
  - Alex FM, in Alexandra, north of Johannesburg
  - Mams Radio, in Mamelodi, northeast of Pretoria
  - West Side FM, in Kagiso, west of Johannesburg
  - Intokozo FM, in Durban

4.67. Journalists reporting on developments in the Phoenix hotspot, were threatened, based on how they told this emotionally charged story about racial profiling and racial tensions that had resulted in the deaths, injuries and trauma of scores of people. In spite of these efforts to silence journalists, they persisted and brought the news and images of what was unfolding to the attention of the public. In the

absence of government control of the situation, the public dependence on the media was evident, not just in KZN but in Gauteng and the rest of the country.

**4.68.** Given the hostility faced by journalists at times, media representatives felt it was important to highlight the obligations of the State, as spelt out in various legal frameworks of SA, African Union (AU) and the United Nations (UN) that govern the safety of journalists (these include the UN HRC Article 19) . The duties of the state include:

- States are required to create and maintain an enabling environment for journalists.
- States are required to publicly, unequivocally, and systematically condemn violence and attacks on journalists.
- States are required to adopt strategies to combat impunity; investigate; prosecute.
- The United Nations plan of action on the safety of journalists warned that every attack on a journalist distorts reality by creating a climate of fear and self-censorship.

South Africa is a signatory to this specific UN Declaration.

## SECTION 5: LEGISLATIVE FRAMEWORK

We set out the relevant legislative framework in this section for purposes of completeness. We have addressed the laws and policies relating to the intelligence structures in Part 1 of our report and will accordingly refer only to their Constitutional provisions here.

### The Constitution

5.1. Chapter 11 of the Constitution of the Republic of South Africa provides for the country's security services, with section 198 setting out the principles that govern national security in the Republic. These principles:

- require national security to reflect the resolve of South Africans, as individuals and as a nation, to live as equals, to live in peace and harmony, to be free from fear and want and to seek a better life;<sup>9</sup>
- preclude South African citizens from participating in armed conflict, nationally or internationally, except as provided for in terms of the Constitution or national legislation;<sup>10</sup>
- place emphasis on the rule of law, directing that national security must be pursued in compliance with the law, including international law.<sup>11</sup> This must be read together

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<sup>9</sup> Section 198(a) of the Constitution.

<sup>10</sup> Section 198(b) of the Constitution.

<sup>11</sup> Section 198(c) of the Constitution.

with provisions in section 199 which state that services must act, and must teach and require their members to act in accordance with the Constitution and the law.<sup>12</sup>

-assert the principle of civil supremacy, stating that national security is subject to the authority of Parliament and the national executive.<sup>13</sup> This must be seen alongside the principles of transparency and accountability in section 199(8), which requires parliamentary committees to have oversight over all security services in a manner determined by national legislation or the rules and orders of Parliament.

5.2. The Constitution requires the security services and their members, in the performance of their functions, to be non-partisan. More directly, the Constitution requires the security services to not *“prejudice a political party interest that is legitimate in terms of the Constitution or further, in a partisan manner, any interest of a political party”*.<sup>14</sup>

5.3. Section 199(8) requires multi-party parliamentary committees to have oversight of all security services. This is to ensure transparency and accountability.

5.4. South Africa’s security services are comprised of three institutions:<sup>15</sup>

the defence force;

the police service; and

any intelligence services established in terms of the Constitution.

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<sup>12</sup> Section 199 of the Constitution.

<sup>13</sup> Section 198(d) of the Constitution.

<sup>14</sup> Section 199(7) of the Constitution.

<sup>15</sup> Section 199(1) of the Constitution.

5.5. Section 201(2)(a) of the Constitution deals with the employment of the SANDF in co-operation with the SAPS. In terms of the section, only the President as the head of the executive may authorise the employment of the SANDF in co-operation with the SAPS.

5.6. This co-operation is regulated by sections 19 and 20 of the Defence Act. Section 19(1) states that the SANDF may be employed in co-operation with the SAPS to prevent and combat crime and to maintain and preserve law and order within the Republic. If employment has been authorised, the Minister of Defence must give notice in the Government Gazette within 24 hours of commencement of employment.<sup>16</sup>

5.7. In terms of section 19(3)(a) of the Defence Act, service in cooperation with SAPS may only be performed in such area or at such place as the President may order at the request of the Minister of Defence and the Minister of Safety and Security.

5.8. Section 19(3)(c) requires the SANDF's employment to be in accordance with:

- Code of Conduct and Operational Procedures approved by the Minister, and guidelines regarding co-operation between the SANDF and the SAPS; and
- co-ordination of command over and control of members of the SANDF and the SAPS,

as the Chief of the Defence Force and the National Commissioner of the South African Police Service may determine.

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<sup>16</sup> Section 19(2) of the Defence Act.

5.9. The role of SAPS, especially the National Commissioner is clearly stated in regards to co-ordination and command.

5.10. Section 19 provides for the discontinuation of the employment of the SANDF; it is discontinued at the request of the Minister of Police, alternatively, when the President deems it expedient for any other reason.<sup>17</sup>

5.11. Section 209(2) of the Constitution empowers the President as follows:  
*“The President as head of the national executive must appoint a woman or a man as head of each intelligence service established in terms of subsection (1), and must either assume political responsibility for the control and direction of any of those services, or designate a member of the Cabinet to assume that responsibility.”* The Director General exercises command and control of the Agency. S/he does so subject to the directions of the Minister and the ISA, as amended.<sup>18</sup>

### **South African Police Service Act**

5.12. Section 205 of the Constitution deals with the SAPS. It requires the SAPS to function in the national, provincial, and where appropriate, local spheres of government.

5.13. In terms of section 205(3) of the Constitution: -

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<sup>17</sup> Section 19(3)(b) of the Defence Act.

<sup>18</sup> Section 10 of the ISA.

*“[t]he objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.”*

5.14. At a national level, there is a designated member of Cabinet responsible for policing and for national policy making. The Minister works collaboratively with provincial executives and provincial governments.<sup>19</sup>

5.15. At the national level, the actual control and management of the SAPS vests in the National Commissioner of Police. The National Commissioner is appointed by the President and must exercise control over and manage the entire service in accordance with the national policing policy and the directions of the Cabinet member responsible for policing.<sup>20</sup> It does not seem altogether clear what the relationship (in law) is between the National Commissioner of Police and the Minister of Police. The opaqueness of this relationship may, in our assessment, have led to the seeming breakdown of communication between the two offices before and during the July unrest. The evidence as summarised in this report bear this out.

5.16. While recognising the essential role of the Minister and the National Commissioner, the Constitution envisages a decentralised system of policing. To

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<sup>19</sup> Section 206 of the Constitution.

<sup>20</sup> Section 207(1) and (2) of the Constitution.

this end, a provincial executive responsible for various functions in their particular province, is established in terms of section 206(4) of the Constitution.<sup>21</sup>

5.17. The provincial commissioners are appointed by the National Commissioner and the provincial executive, and are responsible for policing in the respective provinces. They do so in accordance with prescribed national legislation, and subject to the power of the National Commissioner to control and manage the police service.<sup>22</sup>

5.18. In terms of section 205(2) of the Constitution, national legislation must establish the powers and functions of the police service and must enable the police service to discharge its responsibilities effectively, taking into account the requirements of the provinces. That legislation includes:

- the South African Police Service Act 68 of 1995 (“**SAPS Act**”);
- the National Strategic Intelligence Act 39 of 1994 (“**NSI Act**”);
- the Intelligence Service Act 65 of 2002 (“**IS Act**”).

**5.19.** Provincial Commissioners have command of and control over the service under their respective jurisdictions (in their provinces).<sup>23</sup> They determine the distribution and the strength of the service under their jurisdiction in the province among the different areas, station areas, offices and units.<sup>24</sup>

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<sup>21</sup> Section 207(3) and (4) of the Constitution.

<sup>22</sup> Section 207(3) and (4) of the Constitution.

<sup>23</sup> Section 12(1) of the SAPS Act.

<sup>24</sup> Section 13(3) of the SAPS Act.

**5.20.** In commanding and controlling service in their jurisdiction, the Provincial Commissioners may request the deployment of the national public order policing unit.<sup>25</sup> The national public order policing unit assists in maintaining and/or restoring public order. The deployment can happen in two ways:

5.21. First, on request by the Provincial Commissioner to the National Commissioner.<sup>26</sup> Where the national public order policing unit or any part thereof is deployed upon their request, the unit shall perform its functions subject to the directions of the Provincial Commissioner concerned.<sup>27</sup>

5.22. Second, the President may, in consultation with the Cabinet, direct the National Commissioner to deploy the national public order policing unit in circumstances where a Provincial Commissioner is unable to maintain public order and the deployment of the unit is necessary to restore public order.<sup>28</sup>

5.23. Provincial Commissioners must also promote co-operation with communities. In this regard, and in order to improve delivery of services and to promote co-operation between the service and the community in fulfilling the needs of the community regarding policing, the Provincial Commissioner must establish community police forums at police stations in the province.<sup>29</sup>

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<sup>25</sup> Section 17(2) of the SAPS Act.

<sup>26</sup> Section 17(2) of the SAPS Act.

<sup>27</sup> Section 17(3) of the SAPS Act.

<sup>28</sup> Section 17(5) of the SAPS Act.

<sup>29</sup> Section 18 and 19 of the SAPS Act.

5.24. The powers and functions of the National Commissioner are set out in section 11 of the SAPS Act. Section 11(1) reaffirms that the National Commissioner must exercise control over and manage the police service in accordance with section 207 (2) of the Constitution. Section 11(2) goes on to list some of the National Commissioner’s functions in exercising control and managing the police service.

5.25. One of these functions is to organise or reorganise the Service at the national level into various components, units or groups.<sup>30</sup> The Crime Intelligence Division is a special investigative division created in terms of these powers.

5.26. Section 2 of the NSI Act sets out several functions relating to intelligence. In relation to the SAPS, section 2(3) of that Act provides that SAPS shall, subject to section 3: -

*“gather, correlate, evaluate, co-ordinate and use crime intelligence in support of the objects of the SAPS as contemplated in section 205 (3) of the Constitution; institute counter-intelligence measures within the South African Police Service; and supply crime intelligence relating to national strategic intelligence to NICOC”.*

5.27. Section 2(3) of the NSI Act thus establishes the SAPS’ function as it relates to intelligence; it empowers the Crime Intelligence division of the SAPS to, subject

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<sup>30</sup> Section 11(2)(d) of the SAPS Act.

to section 3,<sup>31</sup> gather, correlate, evaluate, co-ordinate and use crime intelligence in support of the objects of the South African Police Service as contemplated in section 205 (3) of the Constitution. Stated otherwise, the SAPS may gather and use crime intelligence in order to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.

5.28. Section 2(3) of the NSI Act also empowers SAPS to institute counter-intelligence measures within the SAPS. In terms of section 1 of the NSI Act, counterintelligence includes measures and activities to counter any threat or potential threat to national security. National security includes the protection of the people of the Republic and the territorial integrity of the Republic against sabotage and serious violence directed at overthrowing the constitutional order of the Republic.<sup>32</sup>

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<sup>31</sup> Section 3 of the NSI prohibits covert gathering of intelligence by some government departments in and outside the Republic.

<sup>32</sup> Section 1 of the NSI Act.

5.29. The SAPS also has a duty to supply crime intelligence relating to national strategic intelligence<sup>33</sup> to the National Intelligence Co-ordinating Committee (“NICOC”).<sup>34</sup>

5.30. The SAPS (Crime Intelligence division) thus has three very important functions in relation to intelligence, one of which is to augment the functions of the State Security Agency in protecting against threats to national security.

5.31. Section 16 of the SAPS Act deals with:

- organised crime;
- crime which requires national prevention or investigation; or
- crime which requires specialised skills in the prevention and investigation thereof.

5.32. The Provincial Commissioner is responsible for the prevention and investigation of all crimes or alleged crimes committed in their province.<sup>35</sup> And where it is, amongst others, crimes of such a nature that the prevention or investigation thereof at national level would be in the national interest, then the Provincial Commissioner must report the matter to the National Head of the

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<sup>33</sup> In terms of section 1 of the NSI Act, 'national strategic intelligence' means comprehensive, integrated and estimative intelligence on all the current and long-term aspects of national security which are of special concern to strategic decision-making and the formulation and implementation of policy and strategy at national level.

<sup>34</sup> Section 2(3) of the NSI Act.

<sup>35</sup> Section 16(4)(a) of the SAPS Act.

Directorate for Priority Crime Investigation (“**DPCI**” or “**Directorate**”) as soon as possible.<sup>36</sup>

5.33. In so far as intelligence is concerned, section 17F (6) of the SAPS Act mandates the Crime Intelligence Division of the Service to provide support to the Directorate. The support so contemplated relates to the gathering, correlation, evaluation, co-ordination and the use of crime intelligence in the performance of its functions. Section 17F(6A) further requires the Head of the Crime Intelligence Division of the Service, upon a request of the National Head of the Directorate, to make available crime intelligence capacity to assist the Directorate in a specific investigation.

### **The Defence Act**

5.34. Section 200 of the Constitution deals with the South African Defence Force (“**SANDF**”). In terms of section 200(2), the primary object of the defence force is to defend and protect the Republic, its territorial integrity and its people in accordance with the Constitution and the principles of international law regulating the use of force.

5.35. The defence force has to be structured and managed as a disciplined military force.<sup>37</sup> A member of the Cabinet must be responsible for defence. However, only the President,<sup>38</sup> as the head of the national executive, may authorise the

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<sup>36</sup> Section 16(4)(b) of the SAPS Act.

<sup>37</sup> Section 200(1) of the Constitution.

<sup>38</sup> Section 201(1) of the Constitution.

employment of the defence force in co-operation with the police service or in defence of the Republic.<sup>39</sup>

5.36. Section 202 of the Constitution deals with the command of the defence force.

The President (as the Commander-in-Chief of the defence force) appoints a Military Command<sup>40</sup> of the defence force.

5.37. The Defence Act 42 of 2002 ("**Defence Act**") is the national legislation that regulates the SANDF. This Act provides inter alia for the defence of the Republic, for the composition of the Department of Defence, the composition of the South African National Defence Force, and the establishment of a Defence Secretariat. It also permits the establishment of a Council of Defence, which is the highest defence decision-making body. The Council of Defence is chaired by the Minister of Defence, and a Defence Staff Council.

5.38. Chapter 6 of the Defence Act deals with Defence Intelligence. Defence Intelligence includes national security intelligence as defined in the National Strategic Intelligence Act 39 of 1994 ("**NSI Act**").<sup>41</sup> This Act defines national security

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<sup>39</sup> Section 201(2) of the Constitution.

<sup>40</sup> In terms of section 4A of the Defence Act 42 of 2002, the Military Command comprises: (a) the Chief of the Defence Force; (b) the Chief of the South African Army; (c) the Chief of the South African Air Force; (d) the Chief of the South African Navy; (e) the Surgeon-General of the South African Military Health Service; (f) the Chief of Joint Operations of the Defence Force; (g) the Chief of Defence Intelligence; (h) the Chief of Human Resources; and (i) the Chief of Logistics.

<sup>41</sup> Section 32 of the Defence Act.

intelligence as intelligence “which relates to or may be relevant to the assessment of any threat or potential threat to the security of the Republic in any field.”<sup>42</sup>

5.39. Section 33 of the Defence Act provides for the continued existence of the Intelligence Division of Defence Force. In terms of section 34, the Intelligence Division must, subject to NSI Act, gather, correlate, evaluate and use strategic intelligence for various purposes, which include ensuring national security.<sup>43</sup>

5.40. The Intelligence Division has an obligation to co-operate with any intelligence service or body established under any other law in South Africa.<sup>44</sup>

5.41. Section 2(4) of the NSI Act sets out the Defence Force’s function in relation to national security intelligence. The provision reads as follows:

*“(4) The National Defence Force shall, subject to section 3-*

*(a) gather, correlate, evaluate and use foreign military intelligence, and supply foreign military intelligence relating to national strategic intelligence to NICOC, but the National Defence Force shall not gather intelligence of a non-military nature in a covert manner;*

*(b) gather, correlate, evaluate and use domestic military intelligence excluding covert collection, except when employed for service as contemplated in section 201 (2) (a) of the Constitution and under conditions set out in section 3 (2) of this Act, and supply such intelligence to NICOC; and*

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<sup>42</sup> Section 1 of the National Strategic Intelligence Act 39 of 1994.

<sup>43</sup> Section 34(1)(a)(i) of the Defence Act.

<sup>44</sup> Section 35 of the Defence Act.

*(c) institute counter-intelligence measures within the National Defence Force.”*

5.42. In terms of this section, the Defence Force may gather, correlate, evaluate and use domestic military intelligence excluding covert (undercover) collection except when employed in co-operation with the SAPS.

5.43. However, whenever the President on the advice of the Minister of Defence is of the opinion that conditions are such that the said Force has to prepare itself for possible employment for service in co-operation with the SAPS, as contemplated in section 201(2)(a) of the Constitution, and when NICOC acting with the concurrence of the Cabinet, has authorised it, the National Defence Force through its intelligence division may gather domestic military intelligence in a covert manner within the geographical area and the time-scales specified in such authorisation.<sup>45</sup>

5.44. Simply put, section 3(2) of the NSI Act empowers the intelligence division of the Defence Force to gather domestic intelligence in a covert manner when the force has been employed in co-operation with the SAPS. The division will require authorisation from NICOC, which must act in concurrence with Cabinet.

### **Proclamation on The National Security Council**

5.45. In February 2020 President Ramaphosa signed a proclamation which formally established and set out the mandate of the National Security Council. It is quite distinct from that of the JCPS cluster. The National Security Council is:

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<sup>45</sup> Section 3(2) of the NSI Act.

- A structure at the level of the National Executive responsible for ensuring the national security of the Republic of South Africa
- Is responsible for the approval of the National Security Strategy, the National Intelligence Estimate and National Intelligence Priorities; the coordination of the work of security services, law enforcement agencies and relevant organs of state to ensure national security; receiving coordinated, integrated intelligence assessments from the national security structures of the Republic and for mandating said structures to attend to matters of national security as required.

5.46. The National Security Council consists of the following persons:

- The President
- The Deputy President
- Minister of Defence and Military Veterans
- Minister of State Security
- Minister of Police
- Minister of International Relation and Cooperation
- Minister of Home Affairs
- Minister of Finance
- Minister of Justice and Correctional Services
- Minister of Cooperative Governance and Traditional Affairs

Other Ministers may be invited to meetings of the NSC, depending on matters to be discussed.

5.47. It is unclear whether it is intended that the Proclamation that formalised the establishment of the NSC is a precursor to legislating this body, its composition and its functions, or whether it will remain as an executive edict, presumably to aggregate the functions of the President and the security cluster Ministers in relation to national security matters. This question should be clarified.

5.48. It is important to appreciate the differences between a National Security Council and the JCPS cluster of Ministers. Clusters were established to foster an integrated approach to governance aimed at improving government's planning, decision making and service delivery. The main objective of clusters is to ensure proper coordination of government programmes at national and provincial levels. The main functions of clusters are to:

- Ensure alignment of government-wide priorities
- Facilitate and monitor the implementation of those priority programmes
- Provide a consultative platform on cross-cutting priorities and matters being taken to Cabinet.

### **Critique of the legislative terrain**

5.49. There is a myriad of legislation which regulates the security services. However, there is little clarity in respect of co-ordination, especially in the context of the gathering and supply of intelligence, and the operation of law enforcement on the strength of the intelligence. This is borne out by the existence of several structures, such as the NATJOINTS, PROVJOINTS, NICOC, JCPS Clusters, and yet despite these, the flow of information appears hampered, and there is a lack of clarity about

actions by the SAPS in response to the intelligence, both at National and Provincial level.

5.50. There also do not seem to be clear steps or protocols that the various players in the intelligence spaces (whether it be under the NSI Act, the ISA Act, the SAPS Act or the Defence) ought to follow in order to get information to decision makers. There is room for clarity in the law, or in the regulatory framework in this regard.

5.51. Whilst the President's own powers are clearly defined in the Constitution and law, the mechanisms to ensure that he is fully kept abreast on matters of national security are opaque. This may be deliberate, given the sensitivity of such matters, but they limit the ability of the public and Parliament to hold the President accountable.

5.52. There is a risk of over-emphasising the importance of systems, including legislation at the national level. This runs contrary to the spirit of the intergovernmental framework where all spheres of government have a critical role to play in ensuring national and public security. In our view, more attention should be given to strengthening the systems and capacity for law enforcement at local or municipal level. We are not in a position to say whether this will require legislative changes, but we are alive to the concerns of the local level police, and representatives of community-policing forums whom we met. They emphasised the role of strong partnerships between the police and communities if the rule of law is to be maintained. Consequently, we would like to argue that the national and provincial level governments do more to create enabling conditions for the police to work with the communities they serve.

## **SECTION 6: CONTEXT FOR ASSESSING THE RESPONSE TO THE VIOLENCE**

### **Introduction**

6.1. Long after the unrest that devastated parts of KwaZulu-Natal and Gauteng, many still wonder how the looting, destruction and violence could have crept up and occurred, undetected, spread so rapidly and wreaked such havoc. The results of the looting and riots are palpable: lives have been lost and many injured; jobs and livelihoods have been erased; many businesses – small and large, informal and formal - have been broken or destroyed; food security has been affected, and in some instances, people having to fork out transport costs to get to faraway places where they can buy food. Government has been unable to provide the reassurance of a common narrative to explain the events, leaving the public feeling angry, insecure, and abandoned. The security services have largely admitted to their incapacity to contain the wanton lawlessness that characterized the country over less than two weeks. All that they say is that the scale and ferocity of the destruction was something they had not anticipated.

6.2. It is important to understand the events of July in context. Our own analysis suggests that the violence was complex, multi-dimensional, and obscure in its causes and manifestation – leading to contestations in the public space – even between senior members of government – over how to characterize it. We try to present here a picture of what was going on in the country at the time. This will be important if government is to respond to and lead an effective response.

## The Covid-19 pandemic

6.3. The violent unrest took place in the shadow of a State of Disaster that has been implemented in terms of the Disaster Management Act (no. 57 of 2002). The Act aims to mitigate the severity of the impact of disasters and facilitate preparedness to address the risks that arise out of them.<sup>46</sup> The Covid-19 pandemic was the disaster that the State of Disaster sought to address, and at the time of the unrest, a multipronged strategy was being implemented by government to ensure that the country mitigated the damaging effects of the pandemic. South Africans were already experiencing considerable hardship at the time, with one of the highest reported death tolls from the virus in the world. At the end of June, the National Institute for Communicable Diseases reported that the total number of laboratory-confirmed cases in SA was 1,973,972, with Gauteng and KwaZulu-Natal, being among the provinces that had borne the brunt of cases.

6.4. With Covid-19 infections rising, the State of Disaster regulations had also been progressively tightening. When the violence erupted, the country had just been moved to Alert level 4,<sup>47</sup> with the all-too-familiar tightening of restrictions being brought into play yet again to minimise the spread of the virus. But people had become tired of the lockdown and defiant over time, and the State was unable to

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<sup>46</sup> <https://www.gov.za/documents/disaster-management-act>

<sup>47</sup> For details, see: <https://www.gov.za/covid-19/resources/regulations-and-guidelines-coronavirus-covid-19>

contain the movement of people who openly defied the curfews, restrictions on the numbers of people allowed to gather, and the requirements to wear masks to prevent the spread of the virus.

6.5. The SA government has tried hard to provide a buffer against the effects of the pandemic with an economic stimulus plan that tried to keep the struggling economy afloat and to provide social support to the most vulnerable.<sup>48</sup> A Solidarity Fund was set up to supplement government's efforts by pooling contributions from private citizens and business. The Fund, with the support of corporate players, has been run with much needed efficiency, and provided a lifeline to NGOs, small businesses, and other entities.

6.6. In spite of these efforts this public disaffection continued, with outrage and despair when allegations surfaced of tender-related fraud by government officials in the procurement of personal protective equipment (PPE) for Covid-19. There were also complaints about unscrupulous employers who claimed relief funds but did not pass the money on to employees who were the intended beneficiaries, and sluggish and cumbersome procedures for those trying to access funds to keep their businesses afloat. The scandals affecting the government's generally good management of the pandemic, at times implicating senior public officials, resulted in a degree of public

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<sup>48</sup> [Social Assistance Amidst the Covid-19 Epidemic in South Africa: A Policy Assessment](#). *South African Journal of Economics* 89: 63-81. First published: 04 January 2021. (Bhorat, H, Oosthuizen, M. and Stanwix, B)

cynicism about the government's integrity and undermined efforts to get everybody behind initiatives to fight the pandemic.

### **South Africa's regional security challenges**

6.7. At the time that the unrest in KwaZulu-Natal and Gauteng occurred, several security challenges were unfolding in the regional and domestic spheres. During the month of June 2021, South Africa was seized with a number of security challenges affecting the SADC region.

6.8. In the preceding weeks, there had been mobilization against the monarchy in eSwatini by groups demanding a widening of democracy. Whilst there was some solidarity action in South Africa, including by members of the eSwatini diaspora, the South African government was watching the situation closely.

6.9. In Mozambique, preparations were underway to deploy SANDF troops to the Cabo Delgado region, pursuant to the SADC Summit decision to support the request from the Mozambican government to send a SADC mission to the area to assist in combatting terrorism and violent extremism.

6.10. In the Democratic Republic of Congo (DRC) the SANDF was in the process of rotating its troops who were part of the Force Intervention Brigade (FIB), a UN mandated mission aimed at fighting armed rebel groups.

6.11. For many South Africans, these problems seem far away, even though they are playing out on the country's doorstep. They involve the deployment of SA troops, the commitment of financial resources and for that reason should be of interest to South Africans.

6.12. South Africa is also an active member state of the African Union (in 2020 President Ramaphosa was the rotating President of the Union) and has used its voice to promote the agenda of African integration, with the establishment of an African Continental Free Trade Area as a key component of a strategy to stimulate economic growth and trade among countries on the Continent.

6.13. Other developments threatening stability have been unfolding across the continent, some of them after the July unrest, for example the coups in Mali, Guinea, and instability in Sudan and Ethiopia.

### **South Africa's domestic security challenges**

6.14. To most South Africans, of more immediate relevance are the security concerns affecting their lives on a day-to-day basis: high levels of crime, unsafe public spaces, gender-based violence, white collar crime, scams, and corruption, to name some.

6.15. Among the security challenges that the security services were monitoring at the time of the unrest were the following:

- Ongoing taxi violence between rival associations in the Western Cape
- Demonstrations in contravention of state of disaster regulations about the decisions being taken at the Constitutional and Pietermaritzburg courts around the former President Jacob Zuma.
- Protests by communities against service delivery failures, to ensure they did not become violent or destructive.

6.16. The security services had several other security challenges on their hands. For example, politically motivated killings or assassinations in parts of KwaZulu-Natal have been a persistent feature of political competition, worryingly, within the ranks

of the governing party, the ANC. This trend seems to be spreading to other provinces and is reflective of tensions and divisions between rivals and rival groupings (some would say factions) in the party.

6.17. There are other manifestations of a culture of lawlessness in South Africa: the destruction of infrastructure (e.g. the theft of steel, copper on the railways) which was brought into the public spotlight, and has been happening to a greater or lesser extent over a long period now; the pilfering of fuel from the strategic supply lines; invasion of disused mines by illicit artisanal miners (*zama zamas*); the periodic blockading of national roads by disgruntled truck drivers; the illegal occupation of buildings by bullying municipal officials or in some cases collusion with them by 'business forums' undermining procurement procedures – these are all indications of how the authority of the state has been eroded without any visible plan to respond.

6.18. Realising this apparent incapacity of the state to deal with these challenges, many middle-class South Africans have resorted to hiring private security companies to guard their homes and businesses. Private security companies are also relied upon by government to protect government buildings and infrastructure as it does not have sufficient personnel in the SAPS to address all its physical security needs.

6.19. The criminal justice system has had its own challenges in keeping up with the demands on it and South Africa's prisons are filled to capacity and beyond. We learned from the SAPS in KZN that one of the dilemmas they faced when arresting people who took part in the looting was that they reached a point when they had nowhere to keep them. The prisons capacity in KZN is 18 000 and already before

the looting they were sitting at over 21 000 inmates.<sup>49</sup> Consequently, they had no option but to release many of those arrested on a warning, shortly after they had been apprehended.

### **The use and role of social media**

6.20. The use of social media by various networks to instigate the violence and to organize themselves to carry out the violence was extensive. They left a clear trail of evidence and as a result several could be apprehended and charged. The use of social media platforms seemed to confound the security services, who seemed unable to process the information that was spreading in the community and to respond by putting in place operational plans to respond. It appears that the violence was largely enabled by social media. Tweets, WhatsApp messages, Facebook, and other media were an easy way of spreading news about what was happening or about to happen. In organizing to defend themselves, communities and even businesses used the same methods: it was fast, inexpensive, and efficient. One problem is that social media is also a way of spreading false information, rumours, and sowing panic. The role of traditional media, with trained and ethical journalists, was a critical factor in the information equation. The media covered the events extensively, often taking risks to bring what was happening to the attention of the public. This was a commendable and the alternative, of under-reporting, would have left an information gap.

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<sup>49</sup> According to Lt-General Mkhwanazi, SAPS Provincial Commissioner, KZN.

6.21. As usually happens, there was some debate about whether the media, by focusing the spotlight constantly on the violence, did not give more publicity to the attention-seeking instigators than was due. This criticism came from some quarters in the police. Another criticism, also emanating from the police, was about the media not reporting on their successes – the many instances where they had successfully defended and protected property and infrastructure. But the police cannot place all the blame on the media. They could have taken the initiative to publicise their own successes, and perhaps won back some of the confidence that had waned.

6.22. The recent signing into law of the Cybercrimes Act (Act no. 19 of 2020) may provide the State with additional tools to counter cybercrimes committed on computer platforms, and provide clarity on where the lines should be drawn on legitimate voicing on political opinion using digital tools, and the use of such tools to threaten persons with damage to property or violence, or to send data messages which incite damage to property or violence. The Act also provides the SAPS with the authority to investigate, search and seize, and cooperate with foreign governments to investigate cybercrimes. Some have argued that if the Act had already been in operation in the period before the unrest, it might have been possible to apprehend any instigators using social media platforms.

## **Groups who may have played an active part in the violence**

### **Unnamed masterminds**

6.23. The ringleaders of the violence remained largely faceless, at least to the public at large. No organized movement came forward to claim responsibility for the acts

of violence or to justify the violence in the name of a cause. The African National Congress (ANC) condemned it and condemned those members expressing their solidarity with the former President through violent means. Claims by the Police Minister that they had identified 12 instigators who would be brought to book, resulted in disappointment when only a handful of individuals identified based on their incendiary social media accounts were charged for incitement to violence.

6.24. If it is true that there was a ‘mastermind(s)’ behind the violence they may be in breach of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004).<sup>50</sup>

6.25. The Act defines a ‘terrorist activity’ as any act committed in or outside the Republic, which involves the systematic, repeated or arbitrary use of violence by any means or method. It also includes any act that is designed or calculated to cause serious interference with or serious disruption of an essential service, facility or system, or the delivery of any such service, facility or system, whether public or private. These could include:

- a system used for, or by, an electronic system, including an information system;
- a telecommunication service or system;
- a banking or financial service or financial system;
- a system used for the delivery of essential government services;
- a system used for, or by, an essential public utility or transport provider;

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<sup>50</sup> [https://www.saps.gov.za/resource\\_centre/acts/downloads/juta/terrorism\\_act.pdf](https://www.saps.gov.za/resource_centre/acts/downloads/juta/terrorism_act.pdf)

- an essential infrastructure facility; or
- any essential emergency services, such as police, medical or civil defence services.

6.26. In its definition of a ‘terrorist activity’ the Act also includes one which causes any major economic loss or extensive destabilisation of an economic system or substantial devastation of the national economy of a country. It also includes an act that creates a serious public emergency situation or a general insurrection in the Republic,<sup>51</sup>

6.27. These would amount to serious charges against any individual if they were to be brought against an individual, and would certainly be reason why any ‘mastermind’ would go to extraordinary lengths to evade detection.

#### **Politically-motivated individuals**

6.28. Some of those who took part in the violence, looting and destruction appear to have been politically motivated people angered by the sentencing of former President Zuma to 15 months’ imprisonment. They were responding to the national shutdown calls, and the social media mobilization of the so-called Radical Economic Transformation (RET) forces. The ANC admits that some people inciting violence were their members and called on them to put a stop to that behavior, but it is unclear whether disciplinary action was taken against such members. In some townships we visited in eThekweni, we saw that slogans such as “Free Zuma”,

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<sup>51</sup> [https://www.saps.gov.za/resource\\_centre/acts/downloads/juta/terrorism\\_act.pdf](https://www.saps.gov.za/resource_centre/acts/downloads/juta/terrorism_act.pdf)

“wenzenizuma” were spray-painted on looted and destroyed buildings, indicating there had been a political motive behind the looting. Some of these properties were looted over several days, and afterwards burnt to the ground.

### **Some hostel dwellers**

6.29. In some instances, people living in hostels were mobilized as a surge capacity, continuing a pattern that repeats itself in periods of tension and so it was easy to get them to come out in numbers to protest through looting and destruction. The hostels are notoriously difficult to police, and crime, illegal weapons, drug dealing, and other anti-social conduct is rife in the harsh, crowded living conditions of the hostel. However, it would be wrong to paint the hostels and hostel-dwellers uniformly; many families, live as law-abiding citizens, as part of the communities, in the hostels.

### **By-standers from adjacent informal settlements or within communities**

6.30. People who were initially observers or on the fringes of the action but became more emboldened when they saw there was no overt resistance from the police. They included people from both formal and informal settlements. Some were desperate for food and basic goods and saw the looting as an opportunity to lay their hands on such. In fact, the view of some organisations analysing the events is that they were ‘bread riots’.<sup>52</sup> Many came on foot (including the elderly and some

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<sup>52</sup> The leadership of the social movement, Abahlali baseMjondolo described them as ‘bread riots’ when we met them.

children), and walked off with handfuls of goods, baskets or shopping trolleys or racks. Some seem to have been transported to the sites of looting.

### **Organised criminals**

6.31. Organised looters who had inside information about how to enter, made their way around large stores, warehouses and distribution centres. They could operate forklifts and other machinery necessary to remove goods. When these sites were targeted, it is interesting how people arrived with large vehicles, some even commandeered trucks to take away the goods. Some had removed their licence plates. From the methods used, it appeared that there were organized criminals involved in these instances, whilst some may just be streetwise opportunists. Many high-end vehicles were seen queuing to get to the looting, and it was clear that many of those taking part were opportunists, people with means and livelihoods who had absolutely no justification for their part in the theft.

### **Disgruntled and undisciplined security force elements:**

6.32. There are reports that disgruntled and undisciplined elements in the police also took part in the looting. These members should face the might of the law if investigations find this to be true. Similarly, there are reports that elements from within the SSA, owing to their factional political allegiances, also instigated or took part in the looting. These are serious allegations that should be further investigated.

6.33. In our interviews with the police, we repeatedly asked if they could account for all the people who were reported to have died. The rising death toll was announced by the acting Minister in the Presidency on a daily basis. It is a matter of great concern that to this day, as a society we are unable to name all those who died in

the violence. When we interacted with some Station Commanders in Gauteng, we were relieved that they could name those (or at least some of those) who had died in their policing precincts. We saw this as humanizing, and giving dignity to the departed, irrespective of the circumstances under which they died. Much more needs to be done to find out about who the people who died were, what needs their deaths has left. In addition, it is likely that many who participated in the rioting were physically injured or psychologically traumatized by the violence: both the victims and the perpetrators. More needs to be done to unpack this reality, and deal with the scarring effects of the violence at all levels.

### **Lessons from policing violence and public disorder in other countries**

6.34. It may be useful to place these manifestations of violence in some perspective by looking at how protests have manifested around the globe over the past decade: what factors have driven violent acts, and what trends can be seen. We have selected a few instances in recent history to help us reflect on strategies for addressing large scale riots that have taken place in other contexts and what we can learn from how they have played out, and the lessons that have been learnt by those societies in addressing violence and conflict.

#### **UK riots 2011**

6.35. In 2011, there were mass riots in England, largely by young people. The issues informing those riots bear a striking resemblance to our July unrest, especially with regard to the socio-economic factors underlying the unrest. The violence also took part in a short five-day outburst, with about 15,000 people rioting, looting and destroying facilities and homes in business districts in parts of England. The loss of

life (of five people) shocked the nation, and the economic costs was estimated at half a billion pounds. Afterwards, several bodies evaluated what had led to the violence. One of these, set up by the Prime Minister, was the Riots Communities and Victims Panel to investigate the causes of the riots and to consider what more could be done to build greater social and economic resilience.<sup>53</sup>

6.36. A useful takeaway from this report was that the review addressed how the communities' resilience could be strengthened, and this was reflected in the recommendations. A further relevant issue was the importance of a relationship of trust between the communities and the police and how to foster that.

### **The 'Occupy' Movement**

6.37. After the collapse of banking systems that followed the 2007 global financial crisis, there was growing disenchantment with growing inequality. From about 2011, policing Occupy protestors became a matter of course for police in western capitals. Demonstrators were persistent and unapologetic. This led to drawn out confrontations with police, and often resulted in escalations. On the other hand, the police had the responsibility to minimize destruction of property and avert the loss

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<sup>53</sup> After the riots – the Final Report of the Riots Communities and Victims Panel, UK See [final report \(PDF, 4.85MB\)](#); [The UK Government's response to the riots is captured here: \[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\\_data/file/211617/Govt\\\_Response\\\_to\\\_the\\\_Riots - Final\\\_Report.pdf\]\(https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/211617/Govt\_Response\_to\_the\_Riots\_-\_Final\_Report.pdf\)](#)

of life. One study reflects on lessons learnt about policing protest from the Occupy protests, mass protests following Ferguson and other contexts<sup>54</sup>

6.38. Some of the lessons learnt summarized in the report resonate with the July 2021 experience. The researchers found that in a mass protest crowd, participants *are* usually a heterogeneous group and urged police to try to better understand the social identities of the various subgroups in a crowd, and what had led them to participate in the protest.

6.39. Another aspect emphasised in the research was the need for ongoing communication with communities, which is the best way to receive any early warning signs about potential public order challenges that might emerge. A relationship of trust is important in this context. This contact enables the police to identify who the influential people are when protests are happening, and who they might be able to communicate with in order to ensure order and prevent conflict. In some cases, it might even be possible to mobilise such actors as marshalls to ensure a safe and orderly conduct of the protests.

6.40. The Occupy protests raised the dilemma of what police should do when protestors became violent towards them. One of the lessons learnt was that it was unreasonable to expect police officers to face violent protestors without adequate protective gear. On the other hand, there was a concern that if police presented

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<sup>54</sup> [https://www.hfg.org/hfg\\_reports/policing-protests-lessons-from-the-occupy-movement-ferguson-and-beyond/](https://www.hfg.org/hfg_reports/policing-protests-lessons-from-the-occupy-movement-ferguson-and-beyond/)

themselves from the beginning in a heavily combat-ready appearance, this might be seen as provocative and cause the situation to escalate quickly. One of the suggested strategies was for the police to plan for a progressively graded response plan. If the situation should deteriorate the appropriate means would be available nearby and could be activated if necessary. However, they would not be visible to the crowd and if it was not necessary they would not be activated at all.

6.41. The SAPS told us that they are continually looking out for international experiences to inform and benchmark their own practices. One recent such example had been the Santiago riots in Chile in 2019, where the levels of frustration against living conditions had resulted in mainly young Chileans destroying public infrastructure and engaging in other forms of destruction. There too the authorities had had to undertake emergency measures to restore the rule of law.

### **Prospects for peace and non-violence in South Africa**

6.42. For a democratic society struggling to wrench itself of the legacy of its violent past, no argument can justify the use of violence of the kind South Africa saw in July 2021. The brief but destructive interlude, over and above all the other forms of violence that the country has been subjected to must not be allowed to repeat itself.

6.43. Professional and accountable security services are important, but the people of the country are the ultimate bedrock of stability. For this, giving people a meaningful stake in society is essential. That the State should maintain the use of force in a democracy is a principle that cannot be argued against. South Africans were disappointed that the State was unable to protect them and their property when this was needed. This has raised questions about what value system holds the

society together, or tears it apart. In South Africa we have seen how the poor have been marginalized from opportunities. Spaces where people are especially vulnerable (like the hostels, and informal settlements) must receive greater, more urgent, and more compassionate attention to ensure that all people can live in dignity. Local government elections, held in November 2021 should provide an opportunity to turn around the country's fortunes and build meaningful compacts between various sectors in society. The crisis of politics, as epitomized by the violent ructions in July 2021, should also indicate to all that when political rivals choose violence over contestation within the rule of law, it is ordinary members of society who become collateral damage.

## **Conclusions**

6.44. It is clear that frustration levels among South Africans were at an all-time high at the time that the violence broke out. Not only was the country being ravaged by a health pandemic, but the levels of poverty were being exacerbated by the hard-hit economy. In this context, the unfolding political drama was ignited, leading to what the President described as an attempted insurrection. The repeated calls for a shutdown, followed by what seemed to be carefully calculated attacks on the economy and the country's infrastructure have led many observers to a similar assessment. This includes many in the leadership of the security services. If this was indeed the case, then it must be asked what the response of the government will be. South Africans are earnestly waiting to find out.

## **SECTION 7: FINDINGS AND RECOMMENDATIONS OF THE EXPERT PANEL**

### **Was there a governance failure in anticipating, preventing and responding to the failure?**

#### **Our findings**

We make the following findings:

- 7.1. Cabinet had been seized with the country's response to the Covid-19 pandemic as its main priority in the period leading up to the violence. Regular reports on the stability situation in the country were provided to the National Coronavirus Command Council (NCCC) and the NATJOINTS and its sub-structures ensured that the programme was rolled out in conditions of relative stability.
- 7.2. Poorly rolled out programmes of service delivery and unacceptable living conditions, the state of the economy, and the persistent levels of poverty, served to provide the ripe environment to light the tinder box that was the incarceration of former President Zuma that led to many poor and desperate people joining in the looting, alongside those more calculating in their objectives and motivation.
- 7.3. Responses to the violence in some communities exposed deep-seated racial prejudices and tensions indicating that there is much to be done to achieve racial justice and greater social cohesion.
- 7.4. There was no meeting of the NSC which is chaired by the President immediately prior to the riots. The NSC had not been meeting for an extended period before the violence erupted. At a meeting of the NSC held on 16 July the it received a

report to the effect that the violent situation constituted an attack on the South African Constitutional order. This classification of the violent attacks was accepted as sound. Once the NSC accepted this classification of the threat facing the country, its constituents should have acted with commensurate seriousness to ensure that all relevant state institution focus to bring to book those behind the violence.

### **Our recommendations**

7.5. Cabinet must take overall responsibility for the events of July 2021. It must drive a national response plan that demonstrates its own willingness to be held accountable, and to hold the public office bearers who failed in their responsibilities to account. It must give regular feedback on what is happening to ensure that those who planned and instigated the violence are being brought to book.

7.6. The NSC must function more effectively. Its composition needs to be streamlined and its role better understood within government. The NSC plays a distinctly different role from the Justice and Crime Prevention and Security (JCPS) cluster of Ministers. The latter is meant to coordinate and ensure policy coherence in the area of justice, crime prevention and security. The former is supposed to take decisions on matters presenting the highest threat to the security of the country. It meets as and when needed, but needs to meet regularly to be appraised of possible threats to the security of the country. In some countries, the NSC meets regularly at the level of Principals, which includes the President, The Deputy

President, Ministers of Security and Finance and the National Security Advisor only. The South African NSC may consider this model.

7.7. As required by the Proclamation on the National Security Council, the President should ensure that a National Security Strategy is urgently developed for the country, inviting input from as wide a variety of stakeholders as reasonable. We need a national security strategy that binds us to consciously act together irrespective of our political affiliation or social standing.

7.8. Local government should be encouraged to undertake initiatives, including strengthening community policing forums, that establish partnerships between the public and the police.

7.9. Social cohesion and support programmes, including solidarity networks that bridge the racial and class divides in society must be supported by all social partners, to ensure that there is accountability, restorative justice and compensation of those who have suffered harm through the violence.

## **Was there an intelligence failure?**

### **In arriving at a position, we have noted the following:**

The National Intelligence Estimate had warned that conditions were ripe for unrest and possibly violence in 2021, yet key government ministries and department had not planned accordingly;

There had been several acts of major public disorder and violence in the lead up to former President Zuma's incarceration, with firearms being discharged publicly, among other. There were increasingly emboldened calls for disruptions,

on social media, including a call for a national shutdown. In spite of this none of the intelligence structures of the state was able to predict or forewarn that the outbreak of looting, violence and destruction would take place in the form, and the manner that it did.

Several communities, in the days leading up to the violence, were aware that it would take place. Business delegations also informed us that they had been made aware that violence was imminent. It struck us as inexplicable that the security services, and in particular the intelligence services, did not know the violence would happen and take the form that it did. The intelligence services have at their disposal the most intrusive of state powers, and from what we learnt did not use such powers to the extent that they could and should have, in the period leading up to the outbreak of the violence.

### **Our Findings**

We make the following findings:

- 7.10. There was a significant intelligence failure to anticipate, prevent or disrupt the planned and orchestrated violence;
- 7.11. The intelligence appreciation and interpretation of what was building up happened too late, if at all; and as a result the security services failed to put in place the necessary interventions to detect and disrupt the plans.
- 7.12. There was ambivalence and hesitancy on the part of the intelligence services about whether they should gather intelligence about persons with a political profile, for fear of being castigated for interfering in politics.

7.13. Dysfunctional relationships between ministers and their senior leadership teams in the departments in some cases, impeded synergy in the flow of intelligence which affected decision-making.

7.14. The executive authorities moreover failed to coordinate their own efforts in the period leading up to the violence, in order to give coherent guidance to the structures for which they were responsible. At times, they appeared to be working in silos, as evidenced by the mixed and contradictory public statements that emanated from them in response to the crisis.

### **Our Recommendations**

7.15. A national early warning capability must be established to ensure accurate and timely intelligence is provided to the government on an ongoing basis.

7.16. The multiplicity of intelligence coordinating structures must be rationalised. The proposals made in the High Review Panel need to be evaluated against the experience of these riots.

7.17. The country needs a more effective and streamlined and accountable intelligence capacity. Thus the President should identify and implement those recommendations of the High-Level Review Panel that need urgent implementation. The steps by the President should include:

7.18. Bringing stability to the SSA by appointing suitable people into positions of leadership is an urgent priority to counter the demoralisation that has dogged the agency for years.

- 7.19. Holding accountable those accused of criminal conduct; and insisting on expediting internal disciplinary processes.
- 7.20. Government needs to take a firm decision about whether the Agency is going to be split into two and initiate the legislative processes for that if this is to be pursued;
- 7.21. The problems in the Crime Intelligence Division of the SAPS must be addressed with urgency, meaning there must be stability at the top. There are good officers in this section of the police who are dedicated to their work but are frustrated by the instability at the top, including that introduced into police structures by the instability within the governing party
- 7.22. Government must ensure that the National Intelligence Estimate (NIE) developed for 2022, and for all years going forward after being approved by the NSC and the Cabinet, informs planning across all government departments, and that there is accountability by various government departments for their role in averting threats to national security;
- 7.23. Institutionalising intelligence briefings to the Premiers of the provinces on a regular basis should be re-established as the norm.
- 7.24. There is a need for regulations to compel intelligence structures to provide intelligence to NICOC.
- 7.25. The Intelligence services can benefit from structured interaction with State-Owned Companies, the business sector, the private security industry, think tanks, and most importantly community based organisations. Whilst the primary

function of these organisations differs from Intelligence, what they do often entails the gathering of information relevant to the security of the country.

### **Why did the police fail to prevent the violence?**

The testimonies we received from civil society organisations and the countless media reports indicate that the people felt abandoned by the State during the violence, or that the police were simply not up to the task of protecting the public. Even the police admit that they were hopelessly outnumbered, and outmanoeuvred and could not keep pace with the fast-moving, dynamic and dangerous conditions.

### **Our findings**

7.26. The differences in opinion between the Minister of Police and the National Commissioner about whether the Police did enough to prevent the violence shows that there is no agreement on the capacity of SAPS at the very top. This is a matter of great concern. For the Minister to come out publicly saying SAPS could and should have prevented this violence has major consequences, in particular because people died, others were injured and properties were destroyed. That statement alone can expose the State to major claims. On the other hand, the National Commissioner of police cannot just throw his hands in the air and state that the police were overwhelmed. There will be instances in the future where large numbers of people come out to protest;

7.27. The police may have failed initially because they did not have the intelligence that the violence would take the form that it did, but they should have changed plans once they realised what was going on;

- 7.28. The police are not always embedded in the communities they serve and the lack of trust between them and the communities resulted in their failing to pick up vital signals and information, and losing the opportunity to defuse and disrupt the planned violence.
- 7.29. To their credit the police avoided the use of excessive force, which suggests that previous lessons about the consequences of using lethal force are being heeded.
- 7.30. The combination of poorly equipped police stations and inadequately trained police resulted in the police being overwhelmed and not being able to deploy sufficient and properly trained and equipped officers, backed by the necessary intelligence, to deal with the threat;
- 7.31. The police were poorly poised to deal with the modus operandi of the looters who were organised, armed and dangerous, and to some extent were able to use the general public who took part in the violence as human shields;
- 7.32. The sheer numbers of people involved in the looting and destruction overwhelmed the police.
- 7.33. The numbers of POP officers are pitifully low, they are inadequately equipped and their equipment is not optimally maintained. (We were informed that they have access to only one water cannon per province, they have no air capacity, they ran out of rubber bullets).
- 7.34. The working conditions in many of the police stations in the areas where the violence took place are not conducive to the police providing a productive and professional service.

7.35. And finally, the instability in the police leadership ranks as well as the strained relationship between the Minister as the executive authority and the National Commissioner, is not conducive to providing coherent direction and leadership to police officers they are meant to lead, and to the public at large.

#### **Our recommendations**

7.36. The recommendations contained in the Panel of Experts Report on Policing and Crowd Management established by the Minister of Police in terms of the recommendations of the Marikana Commission of Inquiry should be implemented without further delay.

7.37. The police should work towards rebuilding the trust of the communities, and build or strengthen formal and informal relations between the communities they serve, including community leaders;

7.38. The police should work closely with other government departments at district level to ensure that there is an integrated plan to address the socio-economic ills that make the population vulnerable to criminal conduct;

7.39. Police officers at station level should receive adequate training in crowd control; they should also be involved in exercises to simulate what to do under conditions of extreme violence;

7.40. The Public Order Police unit needs to be properly capacitated, and equipped, and their methods and training revised to deal with large scale operations.

## **Is the perception that the SANDF was slow to react, justified?**

### **Our findings**

7.41. The SANDF was the last of the security services on the scene of the violence. This is in line with the Constitution since law enforcement is not their primary function and they can only be employed for law enforcement functions within the borders of SA, on the instruction of the Commander-in-Chief, the President.

7.42. The then Minister of Defence was initially under the impression that the SAPS could contain the spread of the violence, and did not reach consensus with Cabinet colleagues on the nature of the threat, possibly losing a critical opportunity to preempt a crisis.

7.43. Consequently, at an operational level, whilst they observed what was going on, the SANDF did not undertake any scenario planning for a possible sudden deployment, nor put in place measures necessary to deploy, should they be called upon to do so;

7.44. It appears there was some delay from the Executive side to employ the troops. The President, upon receiving calls from citizens, Premiers, the business community, faith-based organisations, was perfectly within his rights to call the relevant Ministers and express his view that he believed that members of the SANDF would assist to calm the situation.

7.45. Thereafter the correct procedures were followed, although the Minister of Defence's interpretation of the process, that the Minister of Police had to first ask her, is not strictly correct. The SAPS request for assistance by the Defence

Force is directed to the President who then requests the Minister of Defence to work with the Minister of Police to bring a joint submission, which will have numbers, places of deployment and budget. The process can be cumbersome, because the actual deployment requires a Presidential Minute. In this case, however, once the Minister of Defence was persuaded, the parties moved with some speed.

7.46. With the Executive not having fully appreciated the scale of the threat, it took political intervention by other actors to persuade the President to scale up the numbers. The initial hesitancy to deploy resulted in the violence spiraling further out of control and the debate over numbers caused some delays, though minor;

7.47. The SANDF operational command, was able to move efficiently and in line with the instructions given, once they had received the go-ahead. Having received the command on Sunday evening they worked throughout the night and had started deploying by the next morning, the fastest ever in their history in a democratic South Africa;

7.48. The SANDF moved as fast as they could but they are not equipped for riot control; thus they could not meet all the expectations that the public had of them;

7.49. There was no clarity initially on where the soldiers were to be deployed once they arrived on the scene, particularly in KwaZulu-Natal;

7.50. The presence of the soldiers on the ground, with their show of force, had the effect of bringing the situation under control and restoring order.

## **Our recommendations**

7.51. The authorization process for the employment of the SANDF, and the request to the President, must be streamlined to avoid unnecessary delay. The best approach would be that once the Minister of Police, determines that the police need the support of the army, she/he must immediately approach the President to authorise such, with details of how many SANDF members are needed, where. The Minister of Defence will then get an instruction from the President to start preparing for the deployment, while the joint submission to the President is prepared. In cases of emergency phone calls should be used, as long as the joint submission and the employment are in writing. Such a process can take less than an hour to finalise.

## **Other findings**

7.52. It is not clear whether the Ministers, in particular the Ministers of Police, Defence and State Security received authorization for their different actions and interventions from the President, who is the chairperson of the NSC. They informed us that they took their own initiatives once the violence broke out, such as travelling to KZN and setting up operation centres there.

7.53. Ministers seemed to have been more directly involved in intelligence and operational work than their portfolios require, giving the appearance of an element of executive overreach or interference in the line function work of the services. At best, the lines between the executive authorities and the security services seemed blurred.

7.54. It does not appear that the Ministers acted in a consciously coordinated way; there were too many public contradictory statements and spats between them

#### **Other recommendations**

7.55. Government should pay close attention to the issues of poverty, underdevelopment and inequality. While we accept that the issues are top of mind, there does not seem to exist a clear plan, with budgets and a timetable, to effectively address this matter. If one adds the general unhappiness with corruption within the ruling party many of the interlocutors that appeared before us warned that what happened in July will definitely happen again if these matters are not addressed.

7.56. It would be remiss of us if we did not express the strong view expressed by some of the groups we met, to the effect that the internal differences within the governing party, the ANC, contributed to the unrest and should be addressed as a matter of national security now.

7.57. The fact that none of the organisers or real instigators of the violence have been apprehended is a matter of concern. If there is such intelligence that has been shared by the intelligence services, the President should address any systemic weaknesses that may have caused such intelligence to escape his review. If the President has received intelligence about the instigators, the question would be why has he not assured the nation that the government will act on this matter. Consequently, to establish trust, the President must inform

the public if he is on top of the situation and what they can expect with holding any culprits responsible for the violence and looting.

7.58. In times of crisis, more than at any other time, the President must lead government in communicating a single, clear message about what is happening, why it is happening and what the government is doing to address the matter.

**In conclusion:**

7.59. Mr. President, you asked us to determine whether the response by the security services was timeous, appropriate and sufficient. The answer to that, in respect of the police and the intelligence services, is an unequivocal no. Many reasons were proffered for this failure, but in the end the response remains that they failed to do the necessary to protect life, limb and property. The reasons are set out in the body of our report. The Executive, however carries some of the blame too and must take responsibility for its lapse of leadership.

## **SECTION 8: CONCLUSION**

Mr President, our findings and recommendations related to the July 2021 rioting and looting are set out in another part of the report. In this section, we draw your attention to what we consider as related, though broader policy matters. During our interaction with the interlocutors we met, the refrain: “this Constitution was drafted for a different period” kept coming up. There was a clear appreciation of the overall progressive path set by our Constitution. The concern was limited to a few areas, some falling more in the realm of legislation and policy. Accordingly, we conclude this report with the following proposals:

- 8.1. A national security strategy should be just that, national. For too long, we have delayed embarking on an inclusive process of defining what we regard as the threats to our common security. We propose that the President initiates the drawing up of a national security strategy, in an open manner that involves all sectors of society. It should eventually be debated and agreed to in Parliament. It should be reviewed at three-year intervals, or when circumstances require. There necessarily would be aspects of national security that cannot be debated and disclosed publicly, but these should not be used to create a secretive society, under the pretext that discussing national security should be the preserve of a few.
- 8.2. South Africa has in many ways ‘come of age’. The environment that informed our policy formulation in the formative years of our democracy has changed. Accordingly, we need to evaluate the appropriateness of certain policies to current

challenges. An example is the difficult and sensitive challenge of finding the correct balance between the need to give effect to section 14(d) of the Constitution, which upholds the right not to have the privacy of communication infringed, and section 19 which protects political rights. What we have observed is a growing trend of criminality, including the threat or instigation of violence, cloaked as legitimate political activity. This is a difficult but necessary conversation that we must have, which may impact on policies that are interpreted by the security structures as inhibiting them from gathering intelligence on politically connected targets. It is important that these policy debates take place in society and in Parliament as we strengthen our democracy and laws against subversion, terrorism and the resort to or threat of violence to achieve political goals.

8.3. There are a number of policy issues relating to policing:

8.3.1. The appointment procedure of the National Police Commissioner as set out in the Constitution may need to be changed. The attempts in legislation to try and delineate the powers of the Minister of Police from those of the Commissioner, while commendable, have introduced some confusion over the years. We were informed that whether the relationship between a Minister and a Commissioner works depends on the individuals occupying the posts. This is clearly untenable, and if it requires closer scrutiny of the process leading to the appointment of the National Commissioner, this should receive urgent attention.

8.3.2. The policy relating to community patrols in support of anti-crime operations needs to be refined. There is merit in communities working closely with the police to fight crime, but there is a reason why the state is accorded a monopoly of the use

of force in a democracy. The move from armed community patrols to vigilantism can be swift, as seen during the July riots. Matters such as arms control and supervision of the activities of these groups, described by some as *militia*, fell by the wayside, with a mixture of 'community groups', private security and criminal groups seemingly heavily armed and, in some instances, taking the law into their own hands. Yes, in a democracy the people are the last line of defence, but that relates to them being their neighbour's keeper, being the eyes and ears of law enforcement agencies, being active in structures meant to build social cohesion, not shooting at each other.

8.3.3. In light of the reality that budget constraints limit the number of police we can employ in the short to medium term, our Constitution correctly envisaged that from time to time members of the South African National Defence Force may be called upon to assist the police in the execution of their duties. There is, however, no policy to require that members of the SANDF at the outset be trained in policing duties, such that they are always ready to perform this secondary role if called upon to do so. We should look into introducing basic police training to military recruits, rather than the proposal to create a separate military police unit.

8.3.4. Policy pronouncements on the responsibilities and powers of the police need to be streamlined, and communicated clearly to police officers. With inconsistent and sometimes conflicting messages coming from the Minister and National Commissioner it becomes very difficult for police to know whether, when faced with volatile situations, they can act firmly or not.

8.3.5. The matter of what constitutes ‘critical infrastructure’ or National Key Points needs to be reviewed. In spite of the Critical Infrastructure Protection Act having only recently been promulgated, we now have to pause to consider if its coverage is wide enough. We were informed, for example, that the Transnet oil pipeline is not a National Key Point, only certain parts are. The private sector raised the matter of key contributors to the food production value chain in the country. Should they not be considered for this category? Likewise, the supply and distribution of critical medical supplies, some of which ran out during the riots. Our proposal is that in line with new realities of what keeps nations together, the matter of what we regard as ‘critical infrastructure, or National Key Points should be revisited.

8.3.6. Section 37 of the Constitution makes provision for the declaration of a State of Emergency under certain circumstances. The State of Emergency Act, 1997 complements the constitutional provisions, and related regulations have been drafted but not finalised. On the other hand, the Disaster Management Act has been used to regulate the state’s response to the Covid-19 pandemic. The far-reaching regulations, which included provisions for the imposition of a curfew, and other lockdown rules, were deemed to grant the state sufficient extraordinary powers to bring the unrest under control. Either the Disaster Management Act must be revised to deal adequately with mass violent events, or the State of Emergency Act and its regulations must be fully realized to deal with emergencies of all the kinds we can contemplate including terror attacks, insurrections, major disruption of critical infrastructure, including through cyber-

attacks. We may need to broaden the meaning of an emergency in a democracy and in the context of emerging challenges to our democracy. In this regard, some of the presumptions of the constitutional state of emergency provision which, though greatly improved, should be revisited, given their echoes of our past.

8.3.7. A final suggestion we want to make relates to reimagining the social compact, and giving dignity to all. It cannot be that almost three decades into our democracy, there is still such deep racialized poverty and inequality in our society. Without an end to or a reversal of these conditions, we will only see greater insecurity, which will require more diversion of resources to security.

8.3.8. Investments in development at the local level are therefore vital, and in the spirit of distributed intergovernmental power, we urge you to facilitate conditions and pathways for vibrant conditions for development at the level of local government. In the words of one of the leaders of faith based organisations whom we met, it is time for South Africans to accept that those who have, must share with those who do not. It is that simple, really.

**We commend the report to you Mr President.**

## Annexure A



THE PRESIDENCY

REPUBLIC OF SOUTH AFRICA

### EXPERT PANEL

### TERMS OF REFERENCE

From 08 July 2021 and for a period of approximately two (2) weeks, South Africa experienced a period of unrest, characterised by violence, looting, destruction of property, disruption of economic activity, physical injury and over 300 deaths. These events occurred primarily in the provinces of Gauteng and KwaZulu Natal, but instances of unrest were reported also in Mpumalanga, the Eastern Cape and Limpopo.

In his address to the nation on 5 August 2021 President Ramaphosa said:

*"Three weeks have passed since the country experienced an orchestrated campaign of public violence, destruction and sabotage.*

*While calm has been restored to the affected areas and our law enforcement agencies are working hard to bring those responsible to justice, we have acknowledged that our security services were found wanting in several respects.*

*As part of the critical measures we are undertaking to strengthen our security services and to prevent a recurrence of such events, I am appointing an expert panel to lead a thorough and critical review of our preparedness and the shortcomings in our response."*

The Panel has been established with Prof. Sandy Africa as its Chairperson, assisted by Adv. Mojanku Gumbi and Mr Silumko Sokupa. The administrative support required by the Panel will be procured and coordinated by The Presidency.

The Terms of Reference of the Panel are as follows:

1. To inquire into and make findings on whether the government's response to the violence and associated security threat was appropriate, timely and coordinated.

If not, why not. Specifically, to inquire into the appropriateness of:

- 1.1 . Systems in place to forewarn the government of the possibility of like occurrences and how to respond to such.
- 1.2. The legal framework in place for the coordination of government's response to such occurrences.
- 1.3. Executive decision making:
  - 1.3.1. in the period leading up to the outbreak of the violence and looting,
  - 1.3.2. during the period that the affected communities experienced the violence and looting until it was brought under control
  - 1.3.3. in the period immediately thereafter.
- 1.4. Adequacy of security and law enforcement coordination and decision-making structures and processes (including at the levels of NATJOINTS and

the NSC), broadly, and to the extent that the Panel is able to determine, within the applicable time-frame.

2. To review what information relevant to the outbreak of violence and looting, mainly in KwaZulu-Natal and Gauteng, was available to the structures of government — whether law enforcement agencies or civilian authorities and at all relevant spheres of government — in the period leading up to the outbreak of such violence. In respect of such information, to establish its source(s) and the government structure(s) that received it.
3. To inquire into and make findings on:
  - 3.1. How information relevant to the violence and looting was managed, processed and coordinated within government, and
  - 3.2. What action should have been taken on the basis of such information, by whom, if action was required, and within what time frames.
4. To assess what information relevant to the situation was available to which spheres and structures of government, with effect from the time that the violence broke out until it was brought under control. In respect of such information, to inquire into and make findings on:
  - 4.1. Which structure(s) provided such information?
  - 4.2. Which government structure(s) received such information and when?
  - 4.3. How such information was managed/processed through government?
  - 4.4. Who acted or should have acted on such information, and when?

5. To inquire into community-based reaction and private sector initiatives, both in the period leading up to the outbreak of the violence, and in the period from the time the violence started until it was brought under control.

Specifically, to inquire into and make findings on:

5.1. The role played by the private security providers?

5.2. Whether and where security providers coordinated their response with government, at which level or with which structures, and how effective/useful this was?

5.3. Whether community policing forums, or any community based initiatives played a role in responding to the violence and how effective these responses were?

5.4. Whether organised business and labour structures contributed to the response to the violence and in what way?

6. To inquire into and make findings on allegations of the ineffectiveness, partiality or disinterest on the part of the security services. This will include an analysis of resources available to the services (human, material) and their deployment and use.

7. To assess whether the deployment of security services and law enforcement was unduly delayed, and, if so, to establish the reasons why.

8. To inquire into the adequacy and coherence of the government's public communications on the security situation.

9. To make recommendations to the President on all the matters referred to above.

10. Specifically, to make recommendations on measures and systems that need to be put in place by the government to respond to such occurrences.
  - 1 1 . To recommend how the implementation of the recommendations of recent relevant reports and reviews, including the High Level Review Panel Report of December 2018, can be expedited.
12. Further, to make recommendations on ensuring that the entirety of society, through its institutions such as parliament, as well as other structures and civil society organisations, appreciates its role in ensuring the security of the country for the benefit of citizens and the general public.
13. The Panel's report and recommendations will be provided to the President within three (3) months of its full establishment, therefore by or before 20 November 2021. Should there be a need for an extension of this time frame the Panel chairperson will inform the President of this timeously and provide appropriate motivation for the request to extend the time.

## Annexure B

### Names of heads of delegations, and individuals who met with the Expert Panel

1. Ms N Mapisa-Nqakula: Speaker of the National Assembly, Parliament of RSA
2. General B. Cele, Minister of Police
3. Ms A. Dlodlo, Minister of Public Service and Administration
4. Ms. T. Modise, Minister of Defence and Military Veterans
5. Mr S. Zikalala, Premier, KwaZulu-Natal Province
6. Mr D Makhura, Premier, Gauteng Province
7. Mr NG Kodwa, Deputy Minister: State Security Agency
8. Mr T. Makwetla, Deputy Minister of Defence and Military Veterans
9. MEC P Nkonyeni, KZN MEC for Transport, Community Safety and Liaison
10. General KJ Sitole, National Commissioner of the South African Police Service (SAPS)
11. Lieutenant-General E. Mawela, Gauteng Provincial Commissioner, SAPS
12. Lieutenant-General NS Mkhwanazi, KwaZulu-Natal Provincial Commissioner, SAPS
13. Major-General T. Tshika, KwaZulu-Natal Provincial Head: Crime Intelligence, SAPS
14. Major-General Lekalakala, Gauteng Provincial Head, Crime Intelligence,
15. Lieutenant-General Lebeya, Head, Directorate for Priority Crime Investigations (DPCI), SAPS
16. Ms Y Mokgabudi, Acting Divisional Commissioner: Crime Intelligence, SAPS
17. Lieutenant General FS Masemola, Deputy National Commissioner, SAPS NATJOINTS Chairperson
18. Amb. G. Msimang, Acting Director-General: State Security Agency
19. Dr Sefolo, Head of Research: NICOC
20. Ambassador Bam, Head of Operations, Domestic Branch, State Security Agency
21. Acting Provincial Head, KwaZulu Natal, State Security Agency
22. Acting Provincial Head, Gauteng, State Security Agency
23. General R Maphwanya, Chief of the South African National Defence Force (SANDF)
24. Lieutenant-General S Sangweni, Chief of Joint Operations SANDF
25. Ambassador S. Kudjoe, Secretary of Defence
26. Ms. P. Baleni, Director-General: The Presidency
27. Ms P. Derby, Chief Executive Officer, TRANSNET
28. Mr M Chauke, Director, Private Security Industry Regulatory Authority (PSIRA)
29. Mr J Sambo, Senior Manager, Law Enforcement, PSIRA
30. Mr C. Masondo, Managing Director, South African Special Risk Insurance Association, SASRIA SOC Ltd and delegation
31. Mr C Coovadia, CEO Business Unity SA (BUSA)
32. Mr G Ackermann, representing consumer goods industry
33. Mr M Kingston, Business for SA
34. Mr H Mtolo, representing the petroleum industry
35. Ms D Penfold, BUSA
36. Ms B Mavuso, Executive Director, Business Leadership SA
37. Ms G Serobe, Chairman, Solidarity Fund
38. Ms T Nzimande, CEO, Solidarity Fund
39. Mr R. Moalusi, South African National Editors' Forum (SANEF)

40. Ms M Papayya, SANEF
41. Dr V. Gounden, African Centre for the Constructive Resolution of Disputes (ACCORD) and his colleagues
42. Bishop Rubin Philip, Deputy Chairperson, KZN Social Cohesion and Moral Regeneration Forum
43. Mr Sibusiso Zikode, President, Abahlali baseMjondolo and his delegation
44. Mr Sham Maharaj, Convenor, Phoenix Ubuntu Forum
45. Dr Hersheela Narsee, representing Ms Ela Ghandi, Director of the Phoenix Settlement Trust and her delegation
46. Mr Nigel Ward, President, Durban Chamber of Commerce
47. Mr Gladwin Malishe, Deputy President, Durban Chamber of Commerce
48. Ms Palesa Phiri, CEO, Durban Chamber of Commerce
49. Mr Gareth Newham, Head of Programme, Institute for Security Studies
50. Reverend Moss Ntlha, General Secretary, The Evangelical Alliance of SA
51. Pastor G Khosa, International Federation of Christian Churches
52. Rev T Phechudi, Bantu Church of Christ
53. MI Abdul Khaliq Allie, Deputy President, Muslim Judicial Council
54. Adv. Ashwin Trikamjee, President. SA Hindu Maha Sabha
55. Reverend H O'Connor, Secretary General, South Africa Catholic Bishops Conference
56. Ms Shaun Zagnoev, National Chairperson, SA Jewish Board of Deputies
57. Prof K Milner, SA Jewish Board of Deputies
58. Ms Wendy Khan, National Director, SA Jewish Board of Deputies
59. Reverend Frank Chikane, former Director-General, The Presidency
60. Mr Raymond Lalla, former Head Crime Intelligence Division, SAPS
61. Mr Eldred de Klerk, Director/ Senior Associate, African Centre for Security and Intelligence Praxis
62. Dr Pingla Udit, former Deputy Coordinator for Intelligence
63. Mr Zola Ngcakani, former Inspector General for Intelligence
64. Lt-General Ramano (rtd), SANDF
65. Ambassador Welile Nhlapo, former National Security Adviser
66. Dr Yacoob Abba Omar, Chief Operating Officer, Mapungubwe Institute for Strategic Reflection (MISTRA)



