



JULY'S PEOPLE
THE NATIONAL INVESTIGATIVE HEARING
REPORT INTO THE JULY 2021 UNREST
IN GAUTENG AND KWAZULU-NATAL

29 JANUARY 2024

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LIST OF ACRONYMS AND ABBREVIATIONS

Acronym & Abbreviation	Full
4IR	Fourth Industrial Revolution
ANC	African National Congress
ASAS	Alert Safe Analytics System
CBOs	Community Based Organisations
CEO	Chief Executive Officer
CHP	The South African Human Rights Commission's Complaints Handling Procedure Manual (January 2018)
CID	Crime Intelligence Division
Commission	The South African Human Rights Commission
the Constitution	The Constitution of the Republic of South Africa Act 108 of 1996
Covid or Covid-19	COVID-19 pandemic
Covid-19 TERS Scheme	The Covid-19 Temporary Employer-Employee Relief Scheme established by the Department of Employment and Labour.
CPA	Criminal Procedure Act 51 of 1977
CPF(s)	Community Policing Forum/Forums
the Disaster Management Act	the Disaster Management Act 57 of 2002
DCCI	Durban Chamber of Commerce & Industry
DoJCD	Department of Justice and Constitutional Development
DPCI	Directorate for Priority Crime Investigation
DPP	Directorate of Public Prosecutions
DSBD	Department of Small Business Development
DTIC	Department of Trade, Industry and Competition
EU	European Union
eThekwini Metro	eThekwini Metropolitan Municipality
EDTEA	Department of Economic Development, Tourism and Environmental Affairs
FATF	Financial Action Task Force
GCRO	Gauteng City Regional Observatory

GDP	Gross Domestic Product
GILAB	General Intelligence Laws Amendment Bill of 2023
Hearing	The National Investigative Hearing into the July 2021 Unrest
Hearing Panel / Panel	The Panel of the National Investigative Hearing into the July 2021 Unrest made up of Commissioners André Gaum, Chris Nissen and Philile Ntuli
ISS	Institute for Security Studies
JCPS Cluster	The core JCPS is cluster is made up of the DoJ (Correctional Services and Constitutional Development), SAPS, Crime Intelligence (Hawks), DCS, NPA (including DPCI), SSA, SANDF, DHA, Treasury and SARS with support from respective departments such as DSD, DoH and DIRCO.
JMPD	Johannesburg Metropolitan Police Department
JCPS	Justice, Crime Prevention and Security Cluster (JCPS)
JICC	Joint Initiative to Fight Crime and Corruption
KZN	KwaZulu-Natal Province
KZN EDTEA	KwaZulu-Natal Department of Economic Development, Tourism and Environmental Affairs
Mi7	Mi7 National Group private security company based in Pietermaritzburg
MITP	Malicious injury to property
MKVA	uMkhonto we Sizwe Military Veterans Association
MLA	Mutual Legal Assistance - Mutual legal assistance is any assistance given by the Requested State in respect of investigations, prosecutions or proceedings in the Requesting State in a criminal matter, irrespective of whether the assistance is sought or is to be provided by a court or some other competent authority.
NATJOINTS	National Joint Operational and Intelligence Structure. It is the operational arm of the JCPS Cluster, tasked with developing and coordinating measures to deal with any situation requiring focussed actions by the JCPS Cluster
NCC	National Communications Centre
NDPP	National Director of Public Prosecutions
NEDLAC	National Economic Development and Labour Council
NEMA	National Environmental Management Act 107 of 1998
NICOC	The National Intelligence Coordination Committee.

NIE	National Intelligence Estimate
NPA	National Prosecuting Authority
NPC	Non-Profit Company registered in terms of the Companies Act 71 of 2008 with the Companies and Intellectual Properties Commission
NPO	Non-Profit Organisation registered in terms of the Nonprofit Organisations Act 71 of 1997 with the Department of Social Development
NSC	National Security Council
NSI Act	The National Intelligence Act 39 of 1994
NSS	National Security Strategy
OOP of KZN	Office of the Premier of KwaZulu-Natal
PCLU	Priority Crimes Litigation Unit
PEPUDA	Promotion of Equality and the Prevention of Unfair Discrimination Act 4 of 2000
PFMA	Public Finance Management Act 1 of 1999
PMCB	Pietermaritzburg & Midlands Chamber of Business
POP	Public Order Policing
PROVJOINTS	Provincial Joint Operational and Intelligence Structure
PSC(s)	Public Security Company/Companies
PSiRA	Private Security Industry Regulatory Authority
PSO(s)	Private Security Officer/Officers
RDP Plan	Reconstruction & Development Plan
RET	Radical Economic Transformation
RFPs	Request for Proposals
RZS	RZS Protection private security company based in Pietermaritzburg
SAHRC	South African Human Rights Commission
SAHRC Act	The South African Human Rights Commission Act 40 of 2013
SANDF	South African National Defence Force
SAPA	South African Property Association
SAPS	South African Police Services

SAPS Act	South African Police Service Act 88 of 1995
SASRIA	South African Special Risk Insurance Association / SASRIA SOC (Pty) Ltd
SASSETA	Safety and Security Sector Training Authority
SEDA	The Small Enterprise Development Agency established in terms of the National Small Business Amendment Act 29 of 2004, as an agency under the Department of Trade, Industry and Competition but has since been transferred to the Department of Small Business Development.
SEFA	The Small Enterprise Financing Agency established in terms of the National Small Business Act 102 of 1996 as an implementing agency of the Department of Small Business Development.
SIU	Special Investigation(s) Unit established under Section 2, of the Special Investigating Units and Special Tribunals Act No. 74 of 1996 (as amended).
SMMEs	Small and Medium Enterprises
SRD Grant	The Social Relief of Distress Grant administered in terms of section 32 of the Social Assistance Act 13 of 2004.
SSA	State Security Agency of South Africa
Stats SA	Statistics South Africa
The Unrest	2021 July Unrest, which unfolded primarily in the KwaZulu-Natal and Gauteng Provinces
The Zondo Commission	The Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State
TEDA	Township Economy Development Act, No. 2 of 2022
ToRs	Terms of Reference of the National Hearing National Investigative Hearing Into the July 2021 Unrest in Kwa-Zulu Natal and Gauteng
TRC	Truth and Reconciliation Commission
UPL	UPL South Africa (Pty) Ltd a subsidiary of United Phosphorous Limited
UPL Action Group	UPL Cornubia Civil Society Action Group
WHO	World Health Organisation

EXECUTIVE SUMMARY

July's People

1. In 1981 Nadine Gordimer published 'July's People', an astoundingly prognostic tale of a South Africa undergoing a liberation war and revolution after thirty-years of the rule of the apartheid government. During the uprising, anarchy envelopes the nation. Many of those who had benefitted from the racialised system flee the country. But when airports are bombed during the riots, travel outside of the country ceases.
2. July's People narrates the confrontation between the Smales - a middle class, liberal white family – and the rootedness of racialised socialisation. Having lost all their material belongings to the war, and under threat of revolutionary violence in the cities and suburbs, they take refuge at the rural village of their African helper, Mr July. Once servant, Mr July dramatically transforms into 'saviour' and 'host'. As powers and roles are forced to change, the interpersonal relationships expose the difficulties of transitioning out of an old order towards an imagined new society.
3. What ensues as the political, social, and interpersonal relationships are reconfigured is remarkable interrogation of the complex interdependencies, tensions and conflicts that permeate across racial, cultural and class differences.
4. The themes invoked by Gordimer's July's People of 1981 starkly resemble those arising out of democratic South Africa's people of July 2021. At the time of the occurrence of the July 2021 Unrest, the material and social lives of South Africans were characterised by patterns that largely resemble their colonial and apartheid origins. South Africa not only has some of the highest income inequalities globally, but the people who fill either ends of the inequality spectrums largely belong to the same subjective categories of privilege or underprivilege which they occupied in July 1981.

Introduction

5. The 2021 July Unrest, which unfolded primarily in the KwaZulu-Natal and Gauteng Provinces occurred amidst a tense social, economic, and political period in South Africa. At the time, the country, and world, were still struggling to come to terms with the costs of the Covid-19 Pandemic. The country was on adjusted Alert Level 4 from 28 June to 25 July 2021. In the period immediately prior the declaration of the Pandemic, the International Monetary Fund had described South Africa

as “an extremely unequal society, with high and rising unemployment”. By June 2021 South Africa had moved from a 29% unemployment rate to a recorded all-time high of 34.4%.

6. Amidst this socio-economic downturn, the nation was also facing the unprecedented event of the possible incarceration of a former Head of State.
7. On 29 June 2021, the Constitutional Court found former President Jacob Zuma guilty of the crime of contempt of court for failing to comply with its previous order in the matter of Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma. President Zuma was sentenced to 15 months imprisonment.
8. From the day after the court ruling, on 30 June 2021, until his incarceration on 7 July 2021, former President Zuma’s supporters gathered outside his home in Nkandla. Most supporters were reportedly wearing either the regalia of the African National Congress, army fatigues representing uMkhonto weSizwe, or the full gear of the Amabutho. War cries and songs reverberated. Some brandished weapons, and the sound of live ammunition featured prominently in media reports.
9. In the days that followed President Zuma’s imprisonment, between 8 and 19 July 2021, acts of protest, violence and looting spread across the KwaZulu Natal and Gauteng provinces. Access to vital services such as food, medicine, medical care, security, and basic education as well as important national and international supply chains were disrupted. It was reported that 40 000 businesses and 50 000 informal traders were affected, with 150 000 jobs put at risk. The financial damage of the Unrest was estimated at R50 billion, and approximately 353 lives were lost.
10. In the immediate aftermath of the Unrest, the South African Human Rights Commission held a public Imbizo. The Imbizo had sought to create a platform for a collective reflection and reckoning with the unprecedented events. At the Imbizo members of the public requested the Commission investigate certain aspects of the Unrest “with a view to preventing such a recurrence in the future and in the interests of victims”. This catalysed the National Hearing which was held from 15 November 2021 to 21 June 2022 in Durban and Johannesburg. By the end of the National Hearing, the Hearing Panel had heard 54 oral testimonies and received more than 120 written submissions.
11. As per the ToRs, the Commission, represented by the Hearing Panel and the Evidence Team inquired into the following:
 - a. The social, economic, spatial, and political factors prevalent in the various affected areas, and the extent to which these played a role in the Unrest (**‘Issue One’**).

- b. The causes of the alleged racially motivated attacks and killings in the country ('Issue Two').
- c. The causes of the apparent lapses in law enforcement by state security agencies, particularly in the South African Police Service; and the role of private security companies in the Unrest ('Issue Three').
- d. The causes of the July Unrest, with particular focus on Gauteng Province and KwaZulu-Natal Province ('Issue Four').

Summary of Report

Issue One:

With regard to the **social, economic, spatial and political factors prevalent in the various affected areas and the extent to which these played a role in the July Unrest**, the Commission makes the following findings:

FINDINGS

- 1.1 The evidence presented to the Commission shows that acts which occurred during the Unrest were indeed orchestrated. The blocking of the N3 and the N2, the calculated destruction of factories and warehouses, the organised disconnection of security and fire alarm systems, the attack on government communication facilities at the Durban Port, and the bombing and removal of ATM's – together cannot be viewed as mutually distinct. These events point to a significant investment in the execution of the July Unrest.
- 1.2 The evidence further points to two types of actors in and during the July unrest. Primary actors who were well resourced, led and executed the widespread destruction of property, and perpetrated arson attacks. They in turn mobilised secondary actors, who participated in acts of theft at malls and other business premises.
- 1.3 The timing of the events of the July Unrest coincided with the incarceration of former President Jacob Zuma. This caused an intertwining that blurred the lines between where one ended, and when the other started. This intersection of events has led many to conclude that the two are related.

- 1.4 However, the commission finds that while the timing of the events of the July Unrest coincided with the incarceration of former President Jacob Zuma, it could not find evidence to link the two events.
- 1.5 It is probable that the Unrest was undertaken to destabilise the economy. However, it will ultimately be within the purview of the South African Police Service (SAPS) and the National Prosecutions Authority to make a conclusive finding regarding the orchestration of the Unrest.
- 1.6 The government's shortcomings in effectively sharing intelligence products and information played a significant role in the escalation of the Unrest. This refers to the inability to gather timely and accurate information about potential threats and to share it among relevant security agencies.
- 1.7 The South African Police Service was ill-prepared to deal with the orchestrated attacks. This might include insufficient training, equipment, or resources to effectively respond to the situation.
- 1.8 The lack of appropriate action in response to the initial signs of unrest led to criminal activities such as theft, arson, and malicious damage to property.
- 1.9 The failure to promptly address and counter digital orchestration and instigation through social media and other online platforms allowed the Unrest to grow. This suggests that online communication and coordination played a role in fuelling the violence.
- 1.10 The working relationship between the Minister of Police and the National Commissioner of Police had a negative impact on the collection and sharing of intelligence information and thereby employing the response of the SAPS effectively.

Socio-Economic Factors in the Unrest

- 1.11 The socio-economic conditions of the majority of South Africans were a major factor in the spread, extent, and scale of the Unrest. However, it was not the cause.
- 1.12 The socio-economic conditions and the disillusionment with the government in its ability to provide better living conditions allowed "secondary" actors to express their exclusion and frustration through participation in the Unrest.

The Use of Social Media Platforms

- 1.13 The Commission finds that through the creation and dissemination of inflammatory content, social media amplified grievances, stoked fear and anger, and mobilised individuals towards disruptive actions.
- 1.14 Social media and the nature of moving towards the fourth industrial revolution calls upon the government to halt any traditional way of thinking and to operationalise the gathering of intelligent information from social media platforms. It was clear from the evidence obtained that mechanisms to gather information to counter the weaponization of these platforms are available. However, the responsible entities did not take steps to improve their skills, neither did they have the capacity to do so at the time.
- 1.15 As set out above, the Commission has found that the state did not have the capability or the mechanisms to adequately address and combat mis- and disinformation - and if they had it, they did not employ it effectively. Furthermore, digital media monitoring experts determined that no singular cause could be established from the data generated through online monitoring.
- 1.16 The Commission further finds a concerning lack of awareness among the public regarding their online duties and responsibilities in practising responsible communication on social media platforms. This lack of awareness clearly had severe consequences, leading to various offences such as incitement, hate speech, and harassment being committed during the Unrest.
- 1.17 The Commission, therefore, finds that it is essential to recognise that combating disinformation is not only about safeguarding the right to access accurate information, but also about preserving the integrity of democratic systems, protecting national security interests, and ensuring the well-being of citizens. A comprehensive approach that combines technological solutions, media literacy, and collaboration among governments, tech companies, and civil society is vital to effectively counter disinformation as both a human rights and national security threat.

RECOMMENDATIONS

With respect to the social, economic, spatial and political factors prevalent in the various affected areas and the extent to which these played a role in the July Unrest, the Commission makes the following recommendations:

Political Factors Played a Part in the Unrest

- 1.18 Both the SSA and Crime Intelligence are to engage and deepen relationships with different sectors of society to enhance the quality of intelligence gathered and its management.
- 1.19 Mechanisms and measures should be put in place to address the rapid and timely flow of information in order to promote effective and efficient responses to national security threats.
- 1.20 The President must take steps to ensure that the Commission is provided with a report on how such mechanisms and measures are being developed.

Socio-Economic Factors Played a Role in the Unrest

- 1.21 The government and the private sector have an urgent responsibility to address the socio-economic inequalities and the inequalities of access to the economy which are differentiated along racial lines in patterns that are reflective of a racialised economy. The state must take steps to ensure socio-economic transformation of the racial dynamic of the economy.
- 1.22 Despite the realisation of socio-economic rights being the responsibility of the government, the Commission is including the private sector in its recommendations not only because of its historical and current importance in the nation-building project but that the sector remains central to the National Economic Recovery Plan.
- 1.23 There is a need for all South Africans to have a share in the economy and for common ownership of the country's vast natural and other resources. The Unrest has demonstrated the need to create a legitimate inclusive economy.
- 1.24 The State must invest in monitoring and evaluation tools and resources to record and measure the impact upon implementing their socio-economic action steps as outlined above. The Commission acknowledges work done by the Gauteng Provincial Government in this regard.

The Use of Social Media Platforms

- 1.25 The Commission recommends that the Minister of Communications, in collaboration with the Department of Communications and Digital Technologies and the public broadcaster, take proactive measures to promote public understanding of the legislative framework that safeguards against the abuse and misuse of misinformation and disinformation. Further to this, the Commission recommends that its Social Media Charter be used as an advocacy tool in this regard.

- 1.26 The Commission recommends that in the development and implementation of relevant laws regarding disinformation and misinformation the State should ensure that this is done through a balanced approach to safeguard against harm and the risk of harm to society. While recognising the need to combat the spread of violence through online mediums, it is essential to avoid the undue limitation of the right to freedom of expression.
- 1.27 The Commission further recommends that the President considers measures to curb misinformation and disinformation aimed at causing harm and include during such consideration, consulting representatives from the Commission to deliberate on an appropriate way forward to address challenges related thereto.
- 1.28 To effectively address online threats such as incitement to commit acts of violence, harassment, hate speech, and the activities of organised criminal syndicates, the Commission recommends that the state allocate resources to establish an expert-level panel. This panel should be composed of professionals with relevant expertise who can provide guidance, draft directives, and advise on identifying and mitigating online threats.

Issue Two: The Causes of the Alleged Racially Motivated Attacks and Killings in the Country

FINDINGS

In respect of the causes of the alleged racially motivated attacks and killings in the country, the Commission makes the following findings:

- 2.1. Whereas the July Unrest was initially, and mainly branded and characterised by news reports of protests supporting former President Jacob Zuma, and their subsequent development into, and intertwining with the mass anarchy that ensued, – a tone of racialised violence began to emerge amidst the narrative.
- 2.2. The July Unrest created a climate of fear and tension, prompting many people of all races to take to the streets in an effort to protect their homes and neighbourhoods, particularly in the absence of visible policing. Amid this climate, the generalising notion of 'swart gevaar' (the perceived threat of Black individuals) began to emerge, or to re-emerge from its dormant places. This contributed to a generalised fear and suspicion of the intentions of Black African people during the Unrest.

- 2.3. Submissions received by the Hearing Panel suggest that the incidences that occurred in Phoenix and surrounding areas, were / are viewed by some in the Indian community as necessitated by a legitimate concern that African people would, once they had looted all the shops of their goods, descend upon Indian neighbourhoods and homes to rob and steal.
- 2.4. As the propaganda travelled through the social media channels, communities, some working with security companies, formed street committees to regulate movement and to protect their community. Yet amid the absence of evidence to legitimise the threat, what is left is a reconstruction of a historical trope: that of a fearsome African man, or a mob of fearsome African men. The social construction of the possible, and imminent violence of African men in particular, has a specific historical origin and background.
- 2.5. The National Hearing received multiple testimonies that sought to connect the racialised violence that occurred in July 2021, especially between African and Indian persons and communities, to racialised events that occurred in Cato Manor in 1949 and in Inanda in 1985. It does appear from the references made to 1949 and 1985, that the events have been communicated either directly or indirectly across generations, in ways that have the potential of influencing the views of present reality.
- 2.6. The references made to Cato Manor 1949 and Inanda 1985 in reflections about July 2021, especially racialised violence in Phoenix, suggest that the violence that ensued in Phoenix as part of the July Unrest enjoys a historical reference point which for some explains, justifies, or clarifies interracial violence between African and Indian persons. These historical events, when considered alongside the racially motivated killings and assaults during the July unrest, highlight the importance of addressing broader social harmony issues to prevent such incidents from recurring in the future.
- 2.7. During the 2021 July Unrest, there was a significant number of racially motivated killings and assaults that occurred at numerous roadblocks, especially throughout Phoenix. The level of organisation involved in these acts, coupled with the lack of intervention by the mainly Indian police officers stationed at the SAPS office, and, racist social media messages in circulation, points to a larger racial problem within the community. This also suggests the need for a thorough examination of systemic issues and potential biases within local law enforcement.
- 2.8. Racial socialisation played a crucial role in the perpetration of violence. It is likely that the socialisation process, which includes the transmission of harmful stereotypes and narratives, extends beyond the immediate perpetrators. This suggests a broader racial problem within the community.

- 2.9. The testimony of the victims of racist violent attacks makes it evident that there has been a loss to the victims in the form of loved ones, breadwinners, income, property, the ability by some to continue earning an income due to injuries sustained and emotional pain and suffering.

RECOMMENDATIONS

In respect of the causes of the alleged racially motivated attacks and killings in the country, the Commission makes the following recommendations:

- 2.10. The JSCP Cluster must be victim-centred in its approach to the Victims of the Unrest related inter-personal violence. Inclusive of the SAPS 'Phoenix Unrest Task Team,' the KwaZulu-Natal Provincial Commissioner, in collaboration with the NPA, and specifically the KwaZulu-Natal DPP, in the spirit of ubuntu-botho and in accordance with the Victim Charter, must advise victims of their rights and recourse, pertaining to their status as victims.
- 2.11. Mechanisms of victim support, in line with the Victim Charter, international principles and as envisioned by the tabled Victim Support Services Bill, should be considered by the NPA during the course of the criminal procedure and the Department of Justice, once matters have been finalised - with the involvement of Legal Aid SA. This may include inter alia, enduring legal costs for victims who wish to pursue litigation against the accused for damages, or through an inter-departmental partnership with Department of Social Development in prescribing psychosocial assistance.
- 2.12. In accordance with the SAHRC Act, the Commission further recommends to Parliament, the adoption or further development of the VSS Bill or other law, which may fully support and achieve a victim-centred approach, which may assist victims towards restorative justice.
- 2.13. Victims of unfair discrimination utilise the Equality Courts and seek justice against their perpetrators. It is acknowledged that the lack of applications instituted in KwaZulu-Natal regarding the Unrest may be due to challenges in identifying perpetrators or awaiting the outcome of criminal trials.
- 2.14. A collaborative effort should be initiated between the Commission, government departments, sociologists, and psychologists to devise and test proposals that tackle systemic racism and cultivate a unified national identity. This identity should aim to explore innovative approaches

to address racism and prevent future racial violence as a response to the tragic killings of Black individuals that occurred during the Unrest.

Issue Three: The Causes of the Apparent Lapses in Law Enforcement by Intelligence Agencies, particularly in the South African Police Service; and the Role of Private Security Companies in the Unrest

FINDINGS

In respect of the Causes of the apparent lapses in law enforcement by state security agencies, particularly the South African Police Service and the role of Private Security Companies in the Unrest, the Commission makes the following findings:

Lapses in Intelligence Coordination and Communication

- 3.1. SAPS failed to detect the planning and execution of the unrest, which falls within its mandate. A combination of factors appeared to have caused these shortcomings. Evidence tabled before the panel points to the under-resourcing and the consequent lack of capacity within Crime Intelligence. Evidently, there has also been a breakdown in coherent communication within the SAPS between Crime Intelligence, the National Commissioner of Police, relevant operational divisions and the Minister of Police.
- 3.2. The state's intelligence apparatus and approach to the Unrest have self-evidently proven to be ineffective. Excessive secrecy, insufficient resources and a lack of technological capability appear to have been the cause of the failure to detect and respond effectively to the planned Unrest as well as contribute effectively to stabilisation efforts.
- 3.3. The evidence points to a need for urgent and comprehensive improvement within SAPS and the crime intelligence structures in order to address systemic issues and ensure accountability to restore public trust, and confidence and prevent future instances similar to the unrest.

Inadequate Preparedness and Response of the National Security Council

- 3.4. National security as envisioned in Section 198 and Section 199 of the Constitution, would require the prioritisation and effective coordination of the national security apparatus through the National Security Council. The President, in his testimony, reflected that not focusing on

the NSC was “a great mistake on our part but at the same time, without putting it forward[s] as an excuse, we were called upon to focus more on the pandemic.”

- 3.5. While the Commission acknowledges that the pandemic demanded immediate attention and resources, it could not have come at the expense of national security. The government had to strike a delicate balance between addressing public health concerns and upholding the fundamental principles of human rights. Even in times of external challenges, the protection and respect for human rights should have been maintained. By ensuring that the NSC responded to its proclaimed mandate, the government could have effectively responded to the pandemic while safeguarding the rights and liberties of its citizens.
- 3.6. The Commission therefore, finds that despite the challenges caused by the pandemic, the President should have taken steps to ensure that the NSC was convened, that national security was prioritised, and an effective and transparent National Security Strategy was in place.

Insufficient Security Expertise and Resource Management

- 3.7. The state's response to the Unrest in the Provinces of KwaZulu-Natal and Gauteng was hindered by poor communication, coordination, planning, and high-level management. There was a delayed response and inadequate resource management, leading to an ineffective response to the crisis. Early warning signs were disregarded, and intelligence gathering and sharing were ineffective. There was a total breakdown in law and order in the affected areas for at least five days. The President, as the head of the executive, Ministers for Intelligence, Police Services and their Director's General committed to ensuring a timeous and effectively coordinated response to the unfolding crisis and omitted to prevent the breakdown in law and order in the affected areas.

Failure of Joint Security Intelligence and Operations Bodies

- 3.8. The National Joint Operational and Intelligence Structure (NATJOINTS) failed to promptly respond to the security risks information and early warning mechanisms provided by NICOC and this led to the escalation of the violence.

Absence of Community Engagement in Case Reporting and Access to Justice

- 3.9. During the investigation, it became apparent that the victims of violence were not being adequately engaged with by SAPS or the NPA nor kept informed of their rights and the processes of the criminal justice system.

Lack of Accountability and Impunity within Justice Institutions

- 3.10. Despite probative evidence suggesting the involvement of former or current members of the security and law enforcement sectors in criminal activities during the unrest, neither the NPA nor the DoJCD could confirm any ongoing investigations or prosecutions against such individuals. The perceived lack of action, disciplinary measures, or prosecutions against such persons over the past two years are of concern.

PSiRA Findings: Poor Regulation and Abuse of Power

- 3.11. Evidence obtained during the investigation makes it apparent, that many private security companies failed to comply with regulations and operated without effective oversight. This is further apparent from the evidence of inadequate vetting of private security officers and the indiscriminate distribution of firearms to officers without firearm licences. PSCs thus largely operated during the Unrest, without proper and effective regulation. The PSiRA has failed in its mandate to report and address these contraventions of the law.
- 3.12. The evidence indicates that PSCs operated with an unregulated and unchecked policing power, including irregularly acting as Public Order Policing units without appropriate crowd management training (which training PSiRA admits to not providing despite the clear need therefore). In crisis situations like the July Unrest, PSCs appeared to have usurped the roles of the South African Police Service due to the capacity limitations within SAPS. This eroded public confidence in SAPS. These PSC's became *de facto* law enforcers who lacked the required training and expertise.
- 3.13. While the Commission commends PSiRA for taking action against PSCs found to have violated the law during the Unrest (as communicated by PSiRA in its letter of 23 May 2023), it finds that it failed to fulfil its duty to regulate the private security sector which resulted in the widespread violation of human rights during the Unrest.

- 3.14 PSiRA's code of conduct does not sufficiently incorporate human rights values, such as community engagement and compensation for victims in case of violations.

Government Accountability:

- 3.14. The Commission found that since the July Unrest, there have been several structural changes and shifts within the security cluster. In particular, the former Ministers of Defence and the SSA, the DG of the SSA and the National Commissioner of SAPS, have respectively either resigned or been removed from Cabinet and their positions.

RECOMMENDATIONS

In respect of the Causes of the apparent lapses in law enforcement by state security agencies, particularly the South African Police Service and the role of Private Security Companies in the Unrest, the Commission makes the following recommendations:

Absence of Community Engagement in Case Reporting and Access to Justice

- 3.15. The Commission recommends that the DoJCD, the NPA, the SAPS and Treasury must make capacity available for regular communication with victims and victim's families. An understanding that SAPS officials and the NPA are acting within the confines of the law may assist in the reduction of criticism of SAPS and NPA officials as well as reduce vigilante justice.

Comprehensive Database of Deaths

- 3.16. The Commission recommends that SAPS compile a full and comprehensive report on all unrest-related deaths and submit same to the Commission. A clear explanation of the circumstances in which these occurred must be included.
- 3.17. The Commission recommends that SAPS examines the high number of deaths as a result of police action during the unrest and implements measures to reduce the risk of such deaths in future, SAPS is required to provide the Commission with a report in this regard.

Develop a National Security Strategy

3.18. The Security Sector, which includes the State Security Agency, South African National Defence Force, and relevant stakeholders, must urgently develop a national security strategy and provide an assurance to the Commission and the public, that this plan has been developed and must take steps to implement it. 1 This plan should aim to achieve, inter alia the following:

- i. strengthen cooperative governance within the security sector and promote government preparedness by establishing a clear and comprehensive NSS;²
- ii. strengthen intergovernmental coordination between national, provincial, and local authorities for a comprehensive and cohesive response to crises;
- iii. establish a multi-stakeholder task force for ongoing dialogue, collaboration, and monitoring of progress in addressing underlying causes of unrest; and
- iv. establish a specialised national disaster and crisis management unit within SANDF structures with specific training in early disaster management relief.

Improve Delivery of Security Information & National Security Intelligence

3.19. The Commission recommends that the Joint Standing Committee on Intelligence oversees the enhancement of the regular and consistent delivery of quality safety, security and emergency services to the public while combating information disorder.

3.20. The Commission recommends that the Office of the President determines a framework for the escalation protocols within the Presidency to address and respond to information provided by anonymous witnesses and members of the public which prima facie are in the interests of national security in line with the precepts of Section 198 of the Constitution.

3.21. The Joint Standing Committee on Intelligence and the Inspector General of Intelligence (IGI) should take accountability for oversight over both the SSA and the Division of Crime Intelligence and the following proposed improvements, inter alia regularly vetting security access and intelligence, the development of a centralised data security system, which both the SSA and SAPS can share, could potentially offer a self-correcting solution to the breakdown in intelligence information sharing.

Improve Security Establishment and Rebuild Trust and CPFs

- 3.22. The Commission recommends that the Presidency, Cabinet and the respective Ministers and Departments which fall within the JCPS Cluster ensure that CPF's become more effective in order to build trust within the Communities and in doing so take note of the following:
- 3.23. Prioritise reform and capacitation of the SAPS to address deficiencies in personnel, training, and public order policing.³
- 3.24. Refer to both the 'Africa Report' and the HLRP which intimate the risks of politicisation of police and security functions. Meaningful community engagement with CPFs and a definitive consultative process with the Provincial and National Commissioner could potentially depoliticise the complex bureaucratic arrangements which appear to create operative lag-times, with devastating consequences.
- 3.25. The CPF reports should be regularly reviewed and allegations of CPF's being infiltrated by criminal elements should be taken seriously by SAPS.
- 3.26. Integration of neighbourhood watches and CPF's should be facilitated by local SAPS precincts, as it appears that neighbourhood watches operate parallel and at times collaborate with local CPFs, Metro Units and other law enforcement agencies. The public is therefore an invaluable resource and stakeholder for SAPS to invest in.
- 3.27. Fostering procedural justice, the capacity and ability for SAPS to carry out its functions in a procedurally correct manner without fear or favour: delivering intelligence on time, informing communities of growing instability, employing rights-sensitive POP methods, effecting arrests with the minimum force method and rooting out institutional corruption, are all areas where public confidence could be restored through proper procedural mechanisms.
- 3.28. Considering the consistent use by the SAPS of rubber bullets in crowd management.
- 3.29. Introduce a clear national instruction regulating the use of rubber bullets by SAPS members.

- 3.30. Routinely report on the use of rubber bullets including providing details of the use of rubber bullets by each unit involved in their use.

Regulating the National Security Council

- 3.31. The Commission recommends that the President must take steps to ensure that regular meetings of the NSC are convened, ensuring it effectively and efficiently meets its mandate in terms of the presidential Proclamation No 13 of 2020. and that a public indication is given of the date/s of each NSC meeting once they have taken place.

Transparent Sharing of Judicial Proceedings

- 3.32. The Department of Justice and Office of the National Director of Public Prosecutions must engage directly with affected communities and provide transparent and comprehensive accounts of prosecutions and inquests conducted following the July Unrest. The SAPS must also be present at these engagements and give account of any pending investigations. These engagements should be convened at least twice a year until the investigations, inquest and prosecutions have been finalised.
- 3.33. This includes sharing a post-unrest report on the NDPP's assessment of access to justice in Gauteng and KwaZulu-Natal areas while ensuring a transformative and restorative justice approach. The information shared should strike a balance between the rights of the accused and the victims.

Improving Cyber-Crime Prosecution

- 3.34. The Commission recommends that the NDPP outlines the NPA's strategic response to cyber-crime, especially the crime of incitement to commit violence. The evidence furnished by law enforcement, the national security sector, media and security experts has highlighted the rapidly developing threat of social media-mobilised violence. The Commission notes that several prosecutions of incitement to commit public violence resulted in the withdrawal of cases due to technical challenges presented by the complex nature of MLA proceedings.⁴ The Commission encourages the NDPP to strengthen MLA practices between South Africa and other countries within the global community to safeguard the right to safety and security and to ensure successful prosecution of cyber-crime.

Private Security Sector

- 3.35. Implementation of Internal Human Rights Policy for Private Security Officers should be implemented with the following considerations in compiling a regulatory framework:
- i. That all law enforcement and security sectors establish and enforce an internal human rights policy during the training of private security officers.
 - ii. This policy should ensure that private security officers understand their roles exclusively under the law and are strictly prohibited from assuming the responsibilities of the SAPS during unrest, and protest actions.
 - iii. In instances of unrest where the SAPS lacks the capacity with crowd management and where it may require the support and the assistance of PSOs, this must be done with the following proviso, the consent from the National Commissioner of Police is obtained and their assistance is supervised by SAPs.
 - iv. The training of private security officers must align with Constitutional values, particularly in relation to the regulation of excessive use of force.
 - v. Reports of disciplinary processes involving private security officers relating to the Unrest must be disclosed to the public, promoting transparency and accountability, with consideration being made of the provisions of POPIA, PAIA and other relevant statutory provisions.

Standardise the Use of 'Less-Lethal' Weapons in Crowd Management

- 3.36. The Commission recommends that the Minister of Police, through written direction to the National Commissioner or by Regulation, impose a standard regarding the use of 'less-lethal' weapons in crowd management. This standard should align with international policing and crowd management standards, with a strong emphasis on minimizing the risk of human rights violations and excessive use of force. Training programs should be updated to ensure that SAPS officers are adequately trained in the proper use of 'less-lethal' weapons, emphasising de-escalation techniques and the proportional use of force.
- 3.37. With regards to the limited personnel strength in the Public Order Policing (POP) units, the Commission recommends, that SAPS must provide a report to the Commission on steps taken to address, *inter alia*, capacity constraints, financial constraints, recruitment and training.

- 3.38. SAPS must ensure regular engagements, such as national symposiums, should be organised to promote solutions-based outcomes and foster professionalism and constructive dialogue on enhancing the protection of human rights during protests.
- 3.39. It is essential for SAPS and POP to prioritise de-escalation techniques, proportional use of force, and the safeguarding of human rights while effectively managing crowds and maintaining public order.

Issue Four: The Causes of the July Unrest, with Particular Focus on Gauteng Province and KwaZulu-Natal

- 4.1. The July Unrest was a violent culmination of deep-rooted political and social challenges that the country had been grappling with. The Unrest was largely attributed to typologies of organization and orchestration of public discord, crime, and protest. In a concluding section of the report, the Commission addressed Issue Four, encapsulating the causes of the Unrest and incorporating Issues One, Two and Three.
- 4.2. Evidence indicated that the acts during the Unrest were well-orchestrated, including the blocking of the N3, destruction of factories and warehouses, attack on government communication facilities, and bombing and theft of ATMs. These events were interconnected and required significant resources. Two types of actors were identified during the Unrest: primary actors who led and executed widespread destruction, and secondary actors who participated in theft. The timing of the events coincided with the incarceration of former President Jacob Zuma, leading to a perception that the two were related.
- 4.3. Intelligence reports revealed a fragile social fabric with security threats detected from December 2020, escalating to the July Unrest. Various alerts were issued on threats to shut down regions, demand the removal of the President, target national highways, and protest foreign nationals and drug dealers. The roles, resources, and opportunities of groups posing threats were critical in understanding the narrative of the Unrest. Between December 2020 and July 2021, diverse sectors and actors with varying agendas were mobilizing against the state's security.
- 4.4. The Commission did not receive clear evidence identifying specific groups or individuals as primary actors. While evidence pointed to high-level orchestration, the common purpose or intention behind the Unrest remained unclear.

- 4.5. The violence and destruction were symptomatic of unresolved systemic conditions, including post-Covid-19 economic recovery, high unemployment, lawlessness, discrimination, socio-economic divides, and issues within the security sector. The Commission concluded that organized groups and individuals opportunistically exploited these conditions to attempt to usurp the rule of law.

As President Cyril Ramaphosa observed:

“For one week and one day in July 2021, we stared into the heart of darkness. We watched in horror as parts of Kwa-Zulu Natal were engulfed in violence, looting, destruction, and death. We saw scenes of homes being ransacked and destroyed and shops, businesses and warehouses being looted and torched; and of people being beaten and humiliated. We felt uncertain, fearful for ourselves, our loved ones, and our country. We felt the greatest sense of betrayal that there were some amongst us who would go so far as to plot to destroy this country we had spent the past 28 years to build”.

- 4.6. As a nation on a continuous journey away from our colonial past, we must take the July Unrest as a marker, and a lesson. Building a united, inclusive, safe and prosperous South Africa requires confronting the past, acknowledging present challenges, and working together for positive change. The Unrest was a wake-up call, nudging us all to the reality of the fragility of the peace and security that some enjoy. It was a reminder that the process of democracy and constitutionalism must benefit all, if it to be sustained. It was a confrontation with the reality that the Bill of Rights must be realised for all, and particularly for those to whom the same rights were deprived by the colonial and apartheid governments.

THE NATIONAL HEARING INTO THE JULY UNREST

Background and Introduction

“For one week and one day in July 2021, we stared into the heart of darkness. We watched in horror as parts of Kwa-Zulu Natal were engulfed in violence, looting, destruction and death. We saw scenes of homes being ransacked and destroyed and shops, businesses and warehouses being looted and torched; and of people being beaten and humiliated. We felt uncertain, fearful for ourselves, our loved ones and our country. We felt the greatest sense of betrayal that there were some amongst us who would go so far as to plot to destroy this country we had spent the past 28 years to build”.⁵

The 2021 July Unrest, which unfolded primarily in the KwaZulu-Natal and Gauteng Provinces (**‘the Unrest’**) occurred amidst a difficult social, economic and political period in South Africa. At the time, the country, and world, were still struggling to come to terms with the costs of the Covid-19 Pandemic. The country was on adjusted Alert Level 4 from 28 June to 25 July 2021.⁶

The outbreak of the COVID-19 (**‘Covid-19’**) pandemic, as declared by the World Health Organisation (**WHO**) on 11 March 2020, has reordered much of the global socio-economic fabric. The health crisis contributed to a massive loss of life. Numerous people lost their jobs and with that, their homes, and livelihoods. Predictably, the global prevalence of anxiety and depression increased by 25% in the first year of Covid-19.

South Africa, whom the International Monetary Fund described on 30 January 2020, as “an extremely unequal society, with high and rising unemployment (29 percent)”⁷ was not spared the ruination that followed with the spread of, and attempts to manage the spread of, Covid-19. In June 2021, Statistics South African (**‘Stats SA’**) recorded an all-time high unemployment rate of 34.4%.⁸

Amidst this economic downturn, on 29 June 2021, the Constitutional Court found former President Jacob Zuma guilty of the crime of contempt of court for failing to comply with the previous order made by it in Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma,⁹ directing President Zuma to comply with the summonses issued by the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (**‘the Zondo Commission’**) and to appear before and provide evidence to the Zondo Commission.¹⁰ For the crime of contempt of court, the Constitutional Court sentenced President Zuma to 15 months imprisonment.¹¹

Events at the Zuma Nkandla Homestead

On 30 June 2021, just one day after the Constitutional Court ordered President Zuma’s detention, Zuma’s supporters reportedly gathered outside his home in Nkandla or made their way there. Most supporters reportedly wore the insignia of the African National Congress (ANC), uMkhonto weSizwe army uniforms or full Amabutho gear.

There were reportedly “[d]ozens of cars” in around President Zuma’s Nkandla homestead with many supporters being bussed in to show support for President Zuma. Supporters carried placards saying, “Wenzen’uZuma?”¹². War cries and songs were the order of the day for President Zuma’s supporters.

Some brandished weapons and the sound of live ammunition featured prominently in media reports of the happenings outside President Zuma's home.¹³

On 2 July 2021, as crowds increased, the KwaZulu-Natal Public Order Policing unit (POP) members were deployed to the Nkandla homestead.

The uMkhonto weSizwe Military Veterans Association's (MKMVA) Carl Niehaus vowed that the MKMVA would "do everything within [their] means to prevent president Zuma from being arrested and imprisoned ... [using their] constitutional and legal rights to do so, including ... freedom of speech and to express our opposition to this unjustifiable action by the Constitutional Court".¹⁴ And on 3 July 2021, President Zuma's son, Edward Zuma was reported to have claimed that "[they] do not care about the police. But should they dare come close to Zuma's house, there will be bloodshed. If they provoke us, we will give them the bloodshed that they want. Nkandla is on a total shutdown. Zuma is not going anywhere even if he elects to do so we will stop him".¹⁵

Despite all the bravado and assertions of his supporters, on 7 July 2021, President Zuma presented himself to the Estcourt Correctional Centre, marking the first time a former President was jailed in South Africa.

The Unrest

In the days following President Zuma's imprisonment, between 8 and 19 July 2021, there were protests, violence and looting in the provinces of KwaZulu Natal and Gauteng. The protests, looting and violence resulted in mass killings and the vandalism and damage of commercial property. Commercial and government owned property was destroyed, shopping centres and shops were looted and critical public infrastructure was damaged. Access to vital services such as food, medicine, medical care, security and basic education as well as important national and international supply chains were disrupted. As a result of the destruction and looting, many people lost their jobs, pushing South Africa's record-breaking unemployment rate even higher.

It was reported, that, in total, an estimated 40 000 businesses and 50 000 informal traders were affected, with 150 000 jobs put at risk. The financial damage of the Unrest was estimated at R50 billion,¹⁶ and approximately 353 lives were lost because of the Unrest in the Gauteng and KwaZulu-Natal provinces.¹⁷ Many more persons were injured, with some sustaining lifelong physical disabilities.

The Immediate Reaction of the South African Human Rights Commission

Shortly after the outbreak of the Unrest, on 23 July 2021, the South African Human Rights Commission (**'the Commission'**) hosted a public virtual imbizo (**'the Imbizo'**) to facilitate a discussion aimed at understanding the causes of the Unrest and their impact on the nation.

The diverse voices gathered at the Imbizo pointed to the alarming nature and scale of the Unrest and the complex layers of social, economic and political factors which contributed to its occurrence, proliferation and reach. Concerns and questions were raised about the function of South Africa's security apparatus including the flawed focus of the law enforcement machinery on reactive and not preventive security and policing measures. A further concern related to the erosion of the rule of law and the impunity with which illegal activities took place during the Unrest and the causes and

preventability of the loss of lives, with specific reference to alleged racially motivated attacks in parts of Durban, especially in Phoenix.

It was suggested by participants to the Imbizo, that the Commission, in accordance with its mandate, engage in further investigations of the causes of the Unrest. Accepting this suggestion, on 6 August 2021, the Commission released a statement informing the public that following the Imbizo and the discussions and recommendations that emanated therefrom, it “deem[ed] it necessary in terms of its mandate, to investigate and to take steps to secure appropriate redress with a view to preventing such a recurrence in the future and in the interests of victims.”¹⁸

Terms of Reference for the National Hearing

On 20 September 2021, the Commission issued a public statement setting out the Terms of Reference of the National Hearing (**ToRs**);¹⁹ the scope and the procedure of the National Hearing; and the members of the National Hearing Panel (**the Hearing Panel**).²⁰ The statement also invited oral and written submissions from “those who have information that can assist” with the investigation.²¹ A set of rules governing proceedings was further developed and published.²²



The National Hearing took place from 15 November 2021 to 21 June 2022 in Durban and Johannesburg. Inspections in loco by the Hearing Panel took place in Phoenix and Raisethorpe (KwaZulu-Natal) on 19 November 2021, and in Alexandra (Gauteng) on 1 March 2022. By the end of the National Hearing, the Hearing Panel had heard 53 oral testimonies and received more than 120 written submissions.



As per the ToRs, the Commission, represented by the Hearing Panel and the Evidence Team²³ inquired into the:

1. The social, economic, spatial and political factors prevalent in the various affected areas and the extent to which these played a role in the Unrest (**'Issue One'**);
2. The causes of the alleged racially motivated attacks and killings in the country (**'Issue Two'**);
3. The causes of the apparent lapses in law enforcement by state security agencies, particularly in the South African Police Service; and the role of private security companies in the Unrest (**'Issue Three'**); and
4. The causes of the July Unrest, with particular focus on Gauteng Province and KwaZulu-Natal Province (**'Issue Four'**).²⁴



The Mandate of the Commission

The Commission is one of six independent state institutions established in terms of section 181 of the Constitution of the Republic of South Africa Act 108 of 1996 (**'the Constitution'**), to strengthen constitutional democracy.

In terms of section 184(1) of the Constitution, the Commission is mandated to:

- “(a) promote respect for human rights and a culture of human rights;*
- (b) promote the protection, development and attainment of human rights; and*
- (c) monitor and assess the observance of human rights in the Republic.”*

Section 184(2) further states that the Commission is empowered to, “as regulated by national legislation, necessary to perform its functions”:

- “(a) to investigate and to report on the observance of human rights;*
- (b) to take steps to secure appropriate redress where human rights have been violated;*
- (c) to carry out research; and*
- (d) to educate.”*

The South African Human Rights Commission Act, 40 of 2013 (**'the SAHRC Act'**), and its 2018 Complaints Handling Procedure (**CHP**) provides the enabling framework for the powers and processes of the Commission in carrying out the National Investigative Hearing into the July 2021 Unrest in KwaZulu-Natal and Gauteng (**'the National Hearing'** or **'the Hearing'**).

The South African Human Rights Commission Act

The Commission's powers and obligations are fleshed out, in the SAHRC Act which permits it to, in terms of section 13(3)(a):

“to investigate on its own initiative or on receipt of a complaint, any alleged violation of human rights, and if, after due investigation, the Commission is of the opinion that there is substance in any complaint made to it, it must, in so far as it is able to do so, assist the complainant and other persons adversely affected thereby, to secure redress, and where it is necessary for that purpose to do so, it may arrange for or provide financial assistance to enable proceedings to be taken to a competent court for the necessary relief or may direct a complainant to an appropriate forum”.

“[H]uman rights” are defined in the SAHRC Act as “the human rights contained in Chapter 2 of the Constitution”, making the Commission's mandate in respect of human rights quite all-encompassing and only limited by the mandate of other Chapter 9 institutions. The Commission's findings are, therefore, limited to violations of human rights and cannot make findings on the “conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice”²⁵ as that falls within the jurisdiction of the Public Protector.

“[I]nvestigation” is defined in the SAHRC Act as an investigation as contemplated in section 15.²⁶ Section 15 gives practical effect to the powers and obligations set out in section 13(3) and allowed for the Commission to request the submission of documents and the appearance of persons, organisational entities and government executives to appear before it at its National Hearing.

As regards the findings and recommendations²⁷ in this report, the Commission is required under section 18 of the SAHRC Act to:

“In writing, make known to any person, the head of the organisation or institution, or the executive authority of any national or provincial department, any finding ... or recommendation in respect of a matter investigated”²⁸

And it also requires any respondent to the findings and recommendations made by the Commission to:

“Within 60 days after becoming aware of such finding or recommendation respond in writing to the Commission, indicating whether his or her organisation, institution or department intends taking any steps to give effect to such finding or recommendation, if any such steps are required.”

The Commission’s Complaints Handling Procedure

The Commission’s CHP, operational from 1 January 2018, further fleshes out the procedures to be followed by the Commission in conducting investigations of alleged human rights violations.²⁹ It made provision for “complex legal investigations”, such as the National Hearing to deviate from “normal [p]rocedures”³⁰

And, in response to any submissions received by the Hearing Panel, in accordance with the CHP, together with non-retrospective effects of legislation, the Commission does not have the jurisdiction to deal with alleged violations of human rights which occurred prior to 27 April 1994.³¹

The Promotion of Equality and the Prevention of Unfair Discrimination Act

To give effect to section 9(4) of the Constitution,³² Parliament passed the Promotion of Equality and the Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA). The Commission has been described as a custodian of PEPUDA, as it is empowered to make findings of unfair discrimination, hate speech and/or harassment under PEPUDA, which can be confirmed or rejected by Equality Courts.

The preamble to PEPUDA states that to strengthen democracy, an obligation which the Commission shares with other Chapter 9 institutions, our country requires —

“The eradication of social and economic inequalities, especially those that are systemic in nature, which were generated in our history by colonialism, apartheid and patriarchy, and which brought pain and suffering to the great majority of our people ... systemic inequalities and unfair discrimination remain deeply embedded in social structures, practices and attitudes, undermining the aspirations of our constitutional democracy”.

CHAPTER 1: ISSUE ONE: THE SOCIAL, ECONOMIC, SPATIAL AND POLITICAL FACTORS PREVALENT IN THE VARIOUS AFFECTED AREAS AND THE EXTENT TO WHICH THESE PLAYED A ROLE IN THE UNREST

1.1. EVIDENCE

1.1.1. Business, the Economy & Socio-Economic Conditions

Introduction

In the period leading to the July Unrest, media reporting, and public discourse was dominated, largely, by the anticipation of, and eventual incarceration of President Jacob Zuma on 7 July 2021.

The mass thefts and looting that followed, the damage to businesses and public infrastructure, the burning of cargo trucks, factories, and mass distribution centres – all this focused attention on the economy.

Television news footage showed masses calmly leaving damaged shops and malls with stolen goods, while some people were filmed loading forklifts and cars with electronics, furniture, and appliances. Images were beamed across the world of various stores, pharmacies, distributors, and wholesale warehouses being emptied and/or destroyed. The footage portrayed SAPS and SANDF as outnumbered and unable to stop the thefts and deliberate destruction of business property.

In August 2021, the National Treasury submitted a presentation titled '*The Economic Impact of the July Unrest*' to the Parliamentary Select Committee on the July Unrest. The presentation revealed the following, which offered context to the investigation of the Commission into the economic impact of the July Unrest.

The impact of the unrest on national GDP was estimated to be R50 billion, with the impact in KwaZulu-Natal alone exceeding R20 billion. Over 200 shopping malls and 1,787 retailers' stores were targeted, with most of them having been looted and damaged. 14,500 jobs were affected in Gauteng, and 150,000 jobs were estimated to be at risk in KwaZulu-Natal. Between 9 and 19 July 2021, the Rand had depreciated by 2.4%.

Regarding specific industries: The transport sector was impacted by various supply chain disruptions; the agriculture sector by restricted market access and transport disruptions; in the mining sector, some mines reported operational closures as a preventative measure to protect the workforce, and transportation blockages affected mining exports; the manufacturing sector was impacted by damage to production facilities, such as looting and stealing of goods. The manufacturing sector was affected by damage to production facilities, such as the looting and burning of the LG Electronics factory in Durban, the looting of machinery and raw materials at Kingspark Manufacturers (Isithebe Industrial Park), and the loss of stock at Tiger Brands and South African Breweries.

Despite the stated devastation to businesses and the economy, very few submissions were made by business owners or their employees in response to the Commission's invitation to make submissions during the consultation on the Unrest Hearing. Except for two small and medium-sized enterprises and one informal trader, no other submissions were received on the impact of the July Unrest on employment and the economy. The Commission thus directed invitations for submissions to business organisations and government bodies that are part of the government's cluster for economic sectors, investment, employment and infrastructure development.

The Commission received valuable information from community members and representatives in Gauteng, on the socio-economic conditions in townships and the effects of the Unrest on community economies.

The evidence in this sector is made up of oral and written testimony received from religious institutions, SMMEs, business associations, community members and national and provincial organs of state.

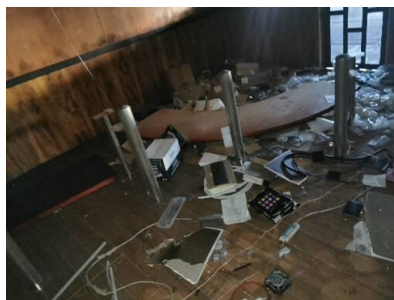
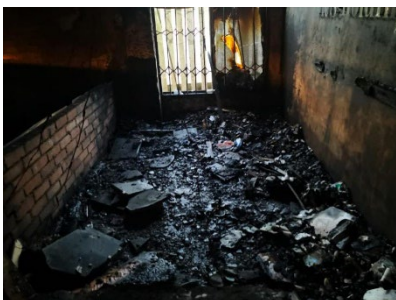
1.1.1.1. Small and Medium Enterprises & Informal Traders

a. *Splish Splash Car Wash, Nina's Foods & Labour Recruitment Specialist*³³

Mr Sanjay Sewmungal is the owner of Splish Splash Car Wash, Nina's Foods, which is a "car wash, restaurant, licensed bar, butcher, shisanyama and laundromat" and the Labour Recruitment Specialist CC"

Mr Sewmungal's businesses were or are situated on Harry Gwala Road, in Cato Manor. Mr Sewmungal has "maintained and shared a very cordial relationship with all the people from the [a]rea and surrounds", which includes his employees, customers, the ward councillors, and local SAPS officials. In addition, Mr Sewmungal provided charitable support at local schools in the form of food and monetary donations for books and other stationery.

This all changed for Mr Sewmungal during the week of 12 July 2021, during which his businesses were looted. His equipment, utensils, and machines were damaged or stolen. He lost everything, including computers, servers, data, his safe was stolen which contained his title deeds and trust documents, asset registers and other files. Below are photos of Mr Sewmungal's looted and burnt business premises:



b. *Yogi Govender*³⁴

During the Unrest, Mr Yogi Govender's businesses which was, at the time of the submission, situated at Leicester Road, Moberi, Durban "was completely destroyed".

At the time of the of his submission, he had yet to be compensated by Sasria. The submission did not state the name or type of business.

c. *Sthembiso Jele*³⁵

Before the Unrest, Mr Sthembiso Jele ran a small business fixing mobile phones and laptops as well as selling chips and sweets. His business' stock together with his customer's phones and laptops were burnt or damaged during the Unrest.

Mr Jele's biggest concern was trying to compensate his customers before he could even think of restarting his business. Mr Jele was hoping for some compensation from the state.

1.1.1.2. Religious Buildings

*Mayville Mosque*³⁶

Mr Abdul Kader Lockhat made submissions to the Commission in respect of looting and damage done to property in the Mayville area of Durban. Mr Lockhat reported that on Sunday, 11 July 2021, he received a called from the Imam of the mosque in Mayville informing him that people were breaking into Bassa's Wholesalers. Mr Lockhat approached the Mayville SAPS, where he was told that the officers could not help or attend to the break-in. Unfortunately, the private security guards, employed by Bassa's Wholesalers, were "not able to do anything against the mob."

At 02:00 on 12 July 2021, Mr Lockhat received another call from the Imam informing him that people had "petrol bombed" the school run by the mosque in Mayville, which taught sewing skills to unemployed members of the surrounding community. The sewing skills were taught to community members with the intention that they could "s[e]w and sustain themselves". Mr Lockhat telephoned the local fire station, but his calls went unanswered. By 06:00 shops adjoining the mosque had been "looted" and the mosque itself had been set alight.³⁷

On the way to the mosque, Mr Lockhat encountered firefighters and SAPS officers putting out fires at a supermarket. He allegedly stopped and asked the firefighters and SAPS to assist in putting out the fires at and surrounding the mosque, but they refused to help. It took eight members of the congregation two and half hours to put out the fire at the mosque. This group of civilians also put out the fire at the sewing school and the shops. Mr Lockhat stated that because the mosque staff and congregants had provided food to surrounding communities on a weekly basis prior to the Unrest, many people, who were dependent on the mosque's charity had to go without food while the mosque was being repaired.

Families who attend the mosque did buy groceries for the surrounding community members but there was no regular supply of food.

1.1.1.3. Business Associations

a. *The Pietermaritzburg & Midlands Chamber of Business*³⁸



The Pietermaritzburg & Midlands Chamber of Business (**'PMCB'**), a comprehensive business organisation with "wide credibility and full confidence of government at all levels".³⁹ was represented at the Hearings by its Chief Executive Officer, Ms Melanie Veness.

According to Ms Veness, the July Unrest was "devastating" to all the PMCB members. She stated that businesses across a wide geographic area in Pietermaritzburg, from Brookside Mall, Edendale to Barnsley Road, were "looted", business premises were destroyed, and company vehicles were destroyed or stolen. Ms Veness noted that when she visited Barnsley Road on the first day businesses reported attacks and looting, it looked like "some kind of war zone". She could not believe that it was the same place that she regularly visited as the CEO of the PMCB. Ms Veness noted that it was not the looting, per se, that disturbed her, but the "wanton destruction" of businesses, including machinery.

For Ms Veness, the targeting of business was "orchestrated". She stated that people did not just break-in, enter and loot. Fire sprinkler systems had been disabled, fire protectant lining from businesses' ceilings had been removed and the fires had been ignited using petrol not readily available at the business premises. Some businesses walls were spraypainted with slogans, including "Free Zuma", "Ramaphosa must go back to Venda" and "White Monopoly

Capital". People even defecated on the business floors.

According to Ms Veness, the devastation was prolonged and possibly exacerbated by the absence of any appropriate response from SAPS, and government more broadly. Prior to the Unrest Ms Veness, in her capacity as the CEO of the PMCB, had engaged government departments, including the SAPS, on behalf of PMCB members, on a regular basis. She engaged brigadiers regularly as part of a forum that, at the time of testifying met every six weeks. However, during the Unrest her calls to these brigadiers were unanswered. Due to the absence of the SAPS, ordinary staff members tried to intervene or to protect business premises. According to Ms Veness, the absence of police presence was so prolonged that people who had looted were able to sit on their looted goods and wait for transport.

When SAPS finally answered Ms Veness' calls they informed her that they were not able to assist. The Mayor of Msunduzi Municipality commiserated with her, but there was no support provided to looted businesses during the Unrest. Members of the PMCB alleged they were informed by the politicians they later engaged that during the Unrest SAPS officers were instructed to "stand down" and not to respond to calls for assistance. Based on the "modus operandi" of the targeting of businesses and the unresponsiveness of SAPS, the PMCB was of the view that the Unrest, and, specifically, the attacks on businesses, was orchestrated to destabilise South Africa.

According to Ms Veness, through the Unrest, KwaZulu-Natal lost 15 years of economic growth. Some of the businesses that were destroyed did not reopen, while others were compelled to open smaller entities, resulting in significant job losses.

As a result of the "stampede[s]" for goods that occurred in some areas, and the rampant consumption of looted alcohol, there were deaths that occurred. In some instances, dead bodies were found lying along the Msunduzi River next to the businesses and factories on Barnsley Road. Ms Veness stated that she witnessed about seven (7) dead bodies along the banks of the Msunduzi River.

b. Durban Chamber of Commerce and Industry⁴⁰



The Durban Chamber of Commerce and Industry ('DCCI') was represented at the Hearings by its Chief Executive Officer, Ms Palesa Phili and its Manager, Policy and Advocacy, Mr Yolani Nagoor.

The DCCI operates as a non-profit organisation. It lobbies and negotiates with various stakeholders as part of various forums on behalf of its membership. "Over many years, the discussions of member representatives in these forums have enabled the Chamber to make influential submissions regarding matters of current business concern and interest to local government and beyond at provincial and national levels," on behalf of its members. At the time of testifying, the DCCI membership included 3000 formal businesses and 5400 informal businesses around the eThekweni Municipality area.

On the morning of Friday, 9 July 2021, Ms Phili was called by members of the DCCI informing her that their trucks were being blocked on the N3. She was later informed of damage, destruction and looting on members' business premises. Ms Phili said she called the SAPS Provincial Commissioner for KwaZulu-Natal as well as the KwaZulu-Natal MEC for Safety and Security but received no assistance. According to Ms Phili, the SAPS Provincial Commissioner for KwaZulu-Natal informed Ms Phili that stability

could only be restored if a State of Emergency was declared.

In addition to the damage, destruction and looting of businesses, the DCCI was also informed of voice notes of people threatening to damage and/or destroy water reservoirs and key electricity points. It was therefore assumed that most SAPS staff would have to protect state infrastructure, and that the members of the private sector would have to employ private security guards to protect themselves from further damage and loss.

There were, however, not enough private security guards in KwaZulu-Natal to protect business premises from the numbers of people targeting businesses and looting. To address this, additional private security guards were flown in from Gauteng.

Ms Phili engaged the eThekweni Metro Police and believed some of the businesses in Durban that were saved would not have been saved without the interventions of the eThekweni Metro Police. The DCCI also developed or commissioned an online tracking map platform through which it and its members could track and add additional geographical information on where looting, arson and, to a limited extent, other forms of violence was happening.⁴¹

Ms Phili submitted that to assist government and the private sector and to ensure that important infrastructure, such as the airports and the ports, were not destroyed, DCCI members offered cars, accommodation, and food for SANDF members, to secure their presence in KwaZulu-Natal. The DCCI also relied on the use of media to try and ensure that certain buildings and factories that contained flammable and harmful materials would not be attacked. According to the DCCI the biggest impact of both Covid-19 and the Unrest was on SMMEs, as many such businesses were opened with peoples' lifesavings or small loans, and they frequently had no insurance.

c. *Business Unity South Africa*⁴²



Business Unity South Africa was represented by its Chief Executive Officer, Mr Cas Coovadia.

BUSA is a confederal structure that does not have individual business membership. Its membership is made up of business associations – sectors of the economy, chambers of commerce and industry, professional bodies, and corporate boards of trustees. At the time of testifying BUSA had 78 “members . . . all trade associations”, who joined voluntarily. Based on its structure, BUSA represents an approximated 95% of business, nationally.

BUSA’s key mandate is to “influence and advocate and lobby [for] an environment where businesses can do responsible and profitable and sustainable business”. BUSA is also a member of NEDLAC. Through its mandate BUSA tries to get its internal structures and membership to ensure employment equity or employment representation representing the racial demographics of South Africa. It also aims to promote the growth of “historically disadvantaged groups” through entry into and participation in businesses, and the economy more broadly.

Mr Coovadia submitted that BUSA “wouldn’t say the socio-economic conditions fuelled the Unrest”. Instead, they thought the “Unrest was fuelled by other people [who] took advantage of the socio-economic conditions to encourage people to loot”. The causes of the Unrest, according to BUSA were, broadly speaking, political. It was motivated by political discord within the ANC and the avoidance of imprisonment of former President Jacob Zuma, stemming from the findings of the Zondo Commission.

The Unrest, for BUSA, was a “full frontal attack on the entire supply value chain of the country”. According to

Mr Coovadia and BUSA, the Unrest was orchestrated by people with a clear agenda to destroy infrastructure and destabilise the country. BUSA does not believe the Unrest started in July 2021, but rather that it started months earlier—

- i. First, with the hijacking, attacking, burning and the immobilising of commercial trucks on the N3, destroying the “arterial” line and the flow of goods between KwaZulu-Natal and Gauteng.
- ii. Secondly, in July 2021, warehouses, where millions of rands worth of goods (to be distributed across the country) were kept, were destroyed in an orchestrated manner.
- iii. Third, was the cyber-attack on Transnet – attacking the heart of the ports system in South Africa.
- iv. Fourth and lastly was the targeting of the retail outlets (such as shopping malls).

Mr Coovadia readily acknowledged that South Africa’s socio-economic conditions and social upheaval are detrimental to business growth. Social upheaval makes it more expensive to do business or causes businesses to close, reducing confidence in the country, causing the loss of actual and potential investments. According to Mr Coovadia, approximately 20% to 25% of businesses have not been able to reopen following the Unrest.

Mr Coovadia emphasised that he felt South Africa needed “an environment where we can create an economy such that the majority of people in our country have a stake in that economy”. Such an economy would be created through employment, the opportunity to start a business, and having access to a good education, healthcare and a public transport system.

BUSA stated that the “levers” for progress rested in the hands of government. With reference to specific examples, Mr Coovadia showed that government has been delaying the implementation of actions that would help business progress. – such as labour laws that make it difficult to hire people or to fire poor performing people; onerous regulatory requirements for the registration and licensing of businesses, the delay of the auction of Spectrum so that the cost of data can be brought down, and the delay in issuing RFPs for renewable energy.

To respond to the Unrest and protect business, BUSA employed specialists who tracked social media traffic during the Unrest and made this information available to the security cluster’s joint operations centre which included SAPS and the SANDF.

1.1.1.4. Community Members and Representatives

KwaZulu-Natal

a. Sibusiso Zikode⁴³



Mr Sibusiso Zikode is the co-founder and current President of South Africa's biggest shack dwellers' movement, Abahlali baseMjondo. Mr Zikode submitted that Abahlali baseMjondolo had been warning the government for years that the growing anger of the poor can spill over in many ways. He stated that there were several causes to the way the Unrest unfolded. He mentioned two main causes.

First, the lives people live in informal settlements – which is characterised by no access to water, sanitation, and electricity, at risk for regular shack fires and flooding – is shameful and undignifying. Continuing to ignore the inequality is abnormal. The level of greed, the corruption that has contributed to inequality in South Africa cannot be treated as normal. Mr Zikode stated that—

“as long as we put profit and private property ahead of human needs - leads us to where we are ... It cannot be Uhuru until South Africans learn to share. How can you enjoy having seven pairs of shoes when your neighbour has no shoes.”

According to Mr Zikode, people were poor before and during former President Jacob Zuma's term. For most ordinary people the Unrest had nothing to do with Zuma's arrest. According to Mr Zikode the property value and the loss to the private sector had been viewed by many in society to “become more important than human lives”. Mr Zikode acknowledged that “losing billions of rands is not a Mickey Mouse thing” but he felt that the importance of people's lives or more particularly the lives lost had been portrayed as secondary or less significant to the loss to the private sector.

Second, according to Mr Zikode, the poor in South Africa are conditioned by violence. They are i) treated with violence by police, private security guards and red ants, and ii) thought of as violent. He used the example of the Khiph'iReceipt / Produce your Receipt campaign, to demonstrate how poor people were targeted. Mr Zikode mentioned that in Lamontville, for example, a woman who was observing the Khiph'iReceipt operations was shot dead by a member of the SAPS. Mr Zikode stated that in KwaZulu-Natal, poor people “eat violence every day. It did not end in July for poor people”. In Mr Zikode's submission, the indignity and shamefulness of the socio-economic conditions in which poor people live, as well as the violence they are assumed to harbour make for a ripe context for brewing further unrest.

Gauteng

b. Themba Makhubela⁴⁴



Mr Makhubela submitted testimony on behalf of Bahlali/Baduli Soweto Housing Committee, an NPO founded in 2015 or 2016, by the “landless and homeless people from Soweto” and surrounds. Bahlali/Baduli Soweto Housing Committee works on access to housing and services related to housing including water and electricity.

The members of the Committee live in shacks, in backyard dwellings, and in one-roomed brick dwellings, with an average of three people living in each dwelling. These poor living conditions, according to Mr Makhubela, are exacerbated by a lack of access to quality education and employment. According to Mr Makhubela, these conditions have contributed to general “social unrest.” Mr Makhubela felt that the eruption of the “social unrest” had been brewing since the 2008 xenophobic violence, noting that the government made no changes or systemic interventions following the 2008 violence.

Mr Makhubela also highlighted the under-resourced or “outnumbered” SAPS, drawing attention to the lack of police services within Soweto, during the Unrest. He stated that this lack of SAPS officers and visibility allowed for the “looting” which took place in Soweto, where businesses were affected at Bara Mall and Diepkloof Square, both in Diepkloof, and at Jabulani Mall, in Jabulani.

Mr Makhubela witnessed the “looting” first-hand, stating that he saw poor families looting together, people dependent on SASSA grants looting, and the same people or groups looting multiple times. This “looting” resulted in food shortages in Soweto, as well as difficulties accessing to cash because of attacks on ATMs.

Mr Makhubela noted that unrest actions did not take place in areas like Sandton, but almost exclusively in Black townships. From this, Mr Makhubela inferred that townships were not prioritised in terms of safety and its community members were not part of, or consulted as part of, the decisions taken by SAPS leadership.

Mr Makhubela interrogated the way that the term “looting” was used. He opined that the term “looting” obscured the fact that “looting” was, in fact, the criminal act of theft. Mr Makhubela noted that the term “looting” first came to his attention, and became widely used in 2008, when the “looting of foreigner’s shops” took place. The use of the term “looting”, in the public mind, according to Mr Makhubela, is understood differently to the crime of theft.

During Operation Khiph’iReceipt, the community members were shocked because SAPS, who had not been present during the “looting”, were coming into community member’s homes and dwellings and confiscating half-used bags of mielie-meal and cooking oil because people could not produce receipts. This food was subsequently destroyed.

To Mr Makhubela, the feeling within the community was that, while “it might be legally correct to do so ... it was immoral in the eyes of Africans. How do you dispose [of] fresh foods while we have millions of people that go to bed on an empty stomach?” According to Mr Makhubela, “justice was not done for the people of Soweto”.

c. **Tshidi Madibakwana**⁴⁵



Ms Madibakwana was, at the time of testifying, the Chairperson of the Meadowlands Community Forum, an entity registered in 2012, with the initial purpose of addressing criminal activities in Meadowlands, but which developed its aims to deal with other socio-economic issues, such as housing. The organisation's meetings or forums were also attended by people from areas outside of Meadowlands such as Braam Fisher, Snake Park, Tshepisong.

Ms Madibakwana added that the looting, during the Unrest, was painful because even though "at times we view the Checkers, the Pick n' Pay, Mr Price and the other retails stores as belonging to the white people ... most of those belong to our own brothers and sisters who are also Black South Africans and those owners of shops that were looted ... also contributed in assisting our community when poverty strikes". In addition, a lot of people lost their jobs because of stores not reopening or relocating premises.

Ms Madibakwana stated that it was very difficult to convince those who took part in the "looting" that the stores that were looted were owned by black South Africans, many of whom had supported the community during fundraising for funerals, as well as by providing food parcels during the Covid-19 lock downs.

Ms Madibakwana stated that SAPS were not present when they needed to be. While the communities in Soweto have neighbourhood watches or community security, areas like

Meadowlands and Dobsonville were caught off-guard. This was because messages on social media stated that the "looting" would only take place closer to the hostels. This led people in areas located further away from the hostels, such as Meadowlands and Dobsonville, to think that "looting" would not take place in their areas. Looting did, in fact, take place in Meadowlands in the early hours of the morning. People who were just passing by the areas being looted were called to join the looting. Ms Madibakwana added that even though stealing is a "criminal activity ... if you are poverty stricken and food is offered, at times your conscience, your moral stance ... might escape you".

Ms Madibakwana differentiated between two different kinds of people who engaged in looting: "primary" looters, who appeared to be organised. They would "hit" a mall or shop and messages would be sent on WhatsApp⁴⁶ saying that a specific mall or shop had been "hit" and then the second group, which she called "secondary" looters, would go and see what they could get, or see what was left. According to Ms Madibakwana it was the "secondary" looters who were arrested, injured, or killed by SAPS, by private security guards, or in the stampede that often accompanied the looting.

Ms Madibakwana emphasised that it was the responsibility of the government to prevent the Unrest. SAPS, JMPD and SANDF (the entire security cluster) did not fulfil their constitutional obligation to keep the community safe. Ms Madibakwana estimates that SAPS was outnumbered one to five by community members who were looting.

Through a clean-up campaign organised in Meadowlands after the Unrest, Ms Madibakwana and the community wanted to show the businesses that were looted, and the employees who were employed in those businesses, that the community supported them. The clean-up campaign was an attempt to communicate to those businesses that they wanted those businesses to continue operating in their community.

d. **Benjamin Chisari**⁴⁷



Mr Benjamin Chisari testified before the Commission as a community member of Alexandra township. Mr Chisari claimed that the Unrest was not an unrest but rather a warning of a revolution led by a propaganda tool – President Zuma’s arrest - which was a diversion which allowed “secondary” looters to target malls and shops, while the “primary” looters or orchestrators targeted ATMs, petrol stations and radio stations. Mr Chisari pointed out that in Alexandra or Johannesburg, public buildings were untouched, which is very different to usual protest action.

According to Mr Chisari, the Pan Africa Mall became central to the “propaganda tool” because it was on top of a large taxi rank. Alex Mall which does not have many taxis, was not looted.

The primary platform for the sharing of information regarding the Unrest and looting, in Alexandra, like Soweto, was WhatsApp. Mr Chisari stated that because information was received and then forwarded on WhatsApp, people unknowingly or unintentionally became owners of these messages or information. Information was spread tactically. The information or “propaganda tool” was passed through the hostels. The hostel dwellers were encouraged to use issues of

service delivery in messages to other community members to encourage “unrest”.

Mr Chisari noted that the types of goods that were taken were either things that the community needed, like food, nappies and clothing, or things that the community would never be able to afford, such as large appliances, fancy jeans or sneakers. According to Mr Chisari, people went back into the malls two or three times, while SAPS was standing around and watching. SAPS did not act, because SAPS officers knew that they were outnumbered and that they did not have the necessary intelligence to stop the July Unrest. It was only once the SANDF arrived that the looting stopped, and people stayed inside their homes.

Mr Chisari observed that private security companies were present during the Unrest, but that they were not able to stop the looting. If there were private security companies “that could withstand the heat” of the Unrest or there would have been no need to call in the SANDF.

Because of the looting, members of certain sections of Alexandra were without ATMs, and had to walk substantial distances or catch a taxi to Sandton, Houghton or even Parktown just to draw money. People who looted were selling the “stock” that they stole and were charging excessive mark-ups for basics that they knew were no longer available in the areas around the Pan Africa Mall.

Mr Chisari emphasised the importance of the Commission revealing the root causes of the Unrest, detailing some of the questions that he felt needed answering, including: Where did the information come from? Where did the explosives for bombing the ATMs come from? Where did the petrol to set the buildings on fire come from?

1.1.1.5. Organs of State

a. Department of Trade, Industry & Competition⁴⁸



The Department of Trade, Industry & Competition (**DTIC**) was represented before the Hearing by its Minister, Minister Ebrahim Patel and Acting Director-General Ms Malebo Mabitje-Thompson.

Minister Patel opened by stating that what happened in July 2021 was “one of the most difficult and challenging moments in our democracy”. He stated that the Unrest “was a law-and-order challenge ... a law-and-order failure” but the context in which the Unrest took place was “deeply and profoundly” influenced by the socio-economic context of South Africa.

At the time of testifying, the South African economy was the third biggest economy in Africa,⁴⁹ and was Africa’s most diversified and industrialised economy, generating approximately 5.5 trillion rands worth of goods and services every year. However, Minister Patel stated that the South African economy also had significant challenges, including inequality, unemployment, and poverty. Shortly before the Unrest, in June 2021, 34,5% of the employable population of South Africa, about 7 826 000 people, were unemployed. Covid-19 contributed to the increase in unemployment numbers in 2021. The Eastern Cape and the Free State had the highest numbers of unemployment, and not KwaZulu-Natal and Gauteng where much of the Unrest had taken place.

Minister Patel then outlined the steps that DTIC took during and after the Unrest. On 12 July 2021, the DTIC put together a rapid support team or network to support businesses affected by the Unrest.

- i. *First*, the DTIC created a chain of communication between businesses, private security firms and the state security cluster. Information in respect of acts of crime against property was also shared with other Ministers. The DTIC took action to limit the damage to persons and property, held site-visits to assess the impact or damage at affected sites once looting had died down, engaged community leaders of affected areas, and engaged trade unions and shop stewards. The DTIC realised that the security cluster was overstretched and that it was not going to be possible to send them to every “flashpoint”. They therefore developed “strategic economic

key points” (which should be differentiated from statutory key points), which included key food distribution centres, fresh produce markets, medicine depots, medical suppliers, chemical plants, oxygen infrastructure, general distribution plants, port and logistics infrastructure, water and electricity sites, industrial plants and key logistics hubs. Security cluster colleagues were advised to direct resources to these sites. DTIC also worked with chemical and explosives factories and factories that posed significant threats to human life to ensure that these factories were guarded by SAPS initially, and later by SANDF officials.

- ii. Second, the DTIC took steps to particularly re-establish supply chains disrupted by the Unrest, seeking to “get basic goods into the homes of people”, particularly those whose access to food and medicine had been disrupted. This included accessing raw materials, identifying alternatives for destroyed manufacturing, identifying production and distribution centres, and clearing roads to allow for delivery, particularly the arterial N3. DTIC gazetted exemptions to the Competition regulations so that companies could work together to get food and medicine to communities as quickly as possible. DTIC also published a “rebate facility” for companies to import critical goods where the stock or production facilities were damaged, and there was no immediate alternative source.
- iii. Third, the DTIC needed to assess the impact of the Unrest on the economy. DTIC collated data from various business groups and did financial modelling on the impact of the Unrest. This was shared “with businesses and within government”.
- iv. Fourth, an economic support and recovery support fund was established, with R3.7 billion earmarked by the DTIC and a R38 million relief package announced by the Presidency.
- v. Finally, the Minister stated, while it was true that there were those “with a different agenda who lit the match, that match was thrown on dry tinder” in communities where there were severe unemployment and poverty. Minister Patel told the Hearing Panel that, when he met with trade unions and shop stewards, he made clear that “those behind the damage” caused during the Unrest, who used WhatsApp to call people to loot or take action, were well organised, “and not on the side of the workers or citizens” because they “looted and damaged”, amongst other entities, factories that made antiretroviral medication, the blood transfusion services, chemists that sell medication to all people, shops belonging to small business owners, and investment that was hard to attract to KwaZulu-Natal.

Minister Patel highlighted projects introduced by government “to build a more inclusive economy”, designed to reduce the ability of those seeking “to undermine the constitutional order to find fertile conditions in communities”. The Minister acknowledged that current measures taken by the state had not been sufficient to reduce inequality. From the DTIC’s perspective, the three big areas of “work” were: i) industrialisation, ii) dynamically growing the domestic market in South Africa and iii) capitalising on free trade on the African continent and developing stronger continental partnerships. He stated that there was a need to build a capable state and an economy that would ensure that the most vulnerable society have access to the needs to live a dignified life.

- i. The DTIC listed several structural issues relating to economic growth or economic inclusion: In South Africa structural interventions help bring about dynamic growth by breaking down the market dominance and increasing industrialisation. The DTIC is in the process of creating and implementing an industrial policy that requires the DTIC to look at where growth and economic inclusion is or can be fostered in South Africa.

- ii. DTIC stated that South Africa was importing approximately 25% of its gross domestic product (**GDP**) and, when a country has such a big import bill, it reduces opportunities for local jobs and employment. To reduce imports and increase local production (and local jobs), DTIC is using an array of policies to promote localisation. Countries on the African continent only do about 16% of trading with each other. In the European Union (**EU**) it is about 70% and in North America about 45% of trading is done within the continent. DTIC is hoping that the Africa Free Trade Area Agreement will allow for an increase of trade on the continent, also increasing job opportunities.
- iii. South Africa still has a colonial economy model where we produce and sell raw materials (diamonds, gold, platinum) and we buy/import finished products. There are a few challenges to this - with South Africa's trade agreements with the EU, the downside of having access to the European market is that we cannot have export taxes on a certain number or percentage of products, preventing South Africa from promoting localisation. Minister Patel mentioned, as an example, that the DTIC was, at the time of the Hearing, being challenged in court for placing an export tax on scrap metal. The other big issue raised by the DTIC was that for beneficiation, South Africa needs a regular and reliable supply of electricity – a necessity the government has increasingly had a problem providing.

Minister Patel noted that as DTIC seeks to make structural changes, those with “vested interests” in the existing structures staying the same would put up a fight. However, Minister Patel observed that the government and the DTIC’s “guidance comes from the Constitution, and the Constitution envisages a society with opportunity.” Accordingly, if these structural challenges are not “tackled” the government and DTIC will not make “opportunity for ordinary South Africans ... [leaving] the ground fertile for those who wish to exploit the grievances of ordinary people.” Minister Patel said that during the Unrest, the reality of the frustration caused by unemployment and poverty was there for everyone to see. In respect of the pressure on the economy and the job losses that resulted from the Covid-19, government sought to intervene with measures such as the Social Relief Distress Grant (**‘SRD Grant’**), business credit-guarantee schemes, the Covid-19 Temporary Employer-Employee Relief Scheme (**‘Covid TERS Scheme’**), and extensions or relief by banks on loans taken out by small businesses.

Changing the economy is difficult, Minister Patel asserted. On the one hand you must retain investor confidence so that money doesn’t leave the country, and on the other hand you must be able to address “the legitimate expectations of the majority of South Africans that democracy must bring change. That democracy is not fundamentally about standing in a queue every five years to make a cross”. The cross must enable progressive policy making (and implementation). He added that there is a need to implement the Reconstruction and Development Plan (**‘RDP Plan’**) with scale and speed.

Minister Patel wished to temper his own remarks to state, with reference to progress made since 1994. However, he added, that the pace of change and the boldness of the change needs to be “lifted”, while convincing foreign investment that this is a country that adheres to the Rule of Law and the independence of the judiciary.

Mr Patel ended by stating that if government departments are going to be defensive in respect of failings, they will never learn.

b. The Department of Small Business Development⁵⁰

The Department of Small Business Development ('DSBD') was represented by Minister Stella Ndabeni-Abrahams, who opened by advising the Commission that DSBD's submissions would focus on Issue One of the ToRs.

Minister Ndabeni-Abrahams explained that following the Unrest, the DSBD, together with the DTIC, established a recovery fund of R300 million for "small businesses". By 30 September 2021, the fund had received 785 claims amounting to R657 million. At the date of Minister Ndabeni-Abraham's appearance, DSBD had paid out R173 million, of the R300 million, to "173 small businesses". R73 million went to 72 businesses in Gauteng and R99 million went to 101 businesses in KwaZulu-Natal. 33% went to women-owned businesses and 22% to youth-owned businesses. The Departments also created a R10 million recovery fund for businesses that fall within the informal sector. DSBD worked together with local municipalities, the Small Enterprise Development Agency and the Small Enterprise Financing Agency to authenticate applications from Small and Medium Enterprises (SMMEs) and the informal sector.

In addition to the recovery funds, the DSBD has identified SMME sector-specific initiatives which include: an SMME ombud which will deal with grievances by SMMEs and protect the collective interests of SMMEs; investigating ways of providing insurance for SMMEs; and the development of a funding and support model that is long term in nature and allows for SMMEs access to and support from bigger businesses, access to state-procurement and creating targeted sectors for SMME growth.

DSBD does also currently administer a townships and rural entrepreneurship programme, which seeks to assist businesses with financing of business infrastructure, as well as manufacturing of products. Financing support is different to the provision of a grant.

This entrepreneurship programme was, at the time of providing testimony, focussed on the food sector, the car maintenance sector and the health and beauty sector. This financing is focussed on enabling small businesses to grow into medium businesses, thus growing the economy in accordance with the National Development Plan objectives.

c. The Department of Social Development⁵¹

The Department of Social Development ('DSD') was represented at the Hearing by Minister Lindiwe Zulu, who opened by explaining the mandate of DSD.

The DSD was affected by the Unrest. Post Offices, and some the South African Social Security Agency (SASSA) offices were destroyed and some of the DSD's food storage and packing houses were destroyed and burnt down during the Unrest disrupting food delivery and grant processing at certain centres and offices. Cash-in-Transit firms halted operations during and shortly after the Unrest for fear of hijackings and attacks, further delaying grant payments.

Following the Unrest, the DSD conducted a "rapid assessment" to determine the impact of the Unrest of individual households and communities in the most affected areas within Gauteng and KwaZulu-Natal, with a focus on child welfare and the need for goods and services, such as food, monetary grants, psychological support, social mobilisation and infrastructure.

According to Minister Zulu the research provided empirical evidence of the increased vulnerability of children in households that were affected by the Unrest, with food security, economic wellbeing and childcare protection having "significantly deteriorated due to the violence". Following the assessment, the DSD provided psychosocial support, food and

access to healthcare services to those affected.

Minister Zulu advised that children who were arrested during the Unrest were assessed in line with the Child Justice Act 75 of 2008 and placed with their parents or guardians or in other places of safety. Children and their families were also provided with psychosocial support.

During the period of Unrest, 1060 people (across Gauteng and KwaZulu-Natal) made use of the psychosocial services, while 322 964 individuals in Gauteng and 251 103 people in KwaZulu-Natal were fed through food banks. SASSA in KwaZulu-Natal issued food vouchers to the value of R3 862 000. 22 of the families affected by the deaths in Phoenix, KwaZulu-Natal also received food vouchers, as did 28 families affected by the fire in Northgate in Pietermaritzburg. Further funding for food parcels was provided by the Solidarity Fund.

In respect of the violence, Minister Zulu stated that “the July unrest left a trail of destruction and ... brought into sharp focus the need to scale up social behavioural change ... across communities”. The DSD had, at the time of testifying, conducted more than 40 “social mobilisation sessions with civil society organisations in Gauteng and in KwaZulu-Natal” relating to the building of social cohesion in communities. But, Minister Zulu said, this work had to be continuous. For the DSD this moral fibre includes “law and order” as law and order is, according to the DSD, essential in making people feel safe.

Minister Zulu stated that in terms of South Africa’s socio-economic profile, South Africa is a country of extremes – “extreme wealth in the sea of poverty” – which worsened during Covid-19. Minister Zulu stated that “social discontent around unemployment, lack of opportunities, for instance, for SMMEs and informal businesses, delivery of services and the challenges many of our people face to simply attain basic needs such as food” are

indications that inequality could have been a driver of the Unrest. She stated that the high levels of inequality and the “realisation that it is getting worse can fuel discontent” which would allow people to be easily influenced towards taking protest action. When asked to elaborate on this point, Minister Zulu stated that—

“at the end of the day, if you have people who are happy in their environment, people who feel they belong, from an economic point of view, people who think they have the most basics, it’s not very easy to mobilize those kind of people. But it’s easier to mobilize them when they feel they have very little to lose.”

Minister Zulu mentioned that Stats SA conducted a survey between April and May 2020 and found that from a sample of 2688, in the first six weeks of Covid-19 lockdown, those who received no income increased from 5.2% to 15.4%; the average wage reduced from 76.6% to 66.7%; and the percentage of individuals experiencing hunger on a regular basis increased from 4.3% to 7%. Covid-19, according to Minister Zulu, “exposed the pre-pandemic fault lines and laid bare some of the sobering truths in our society”.

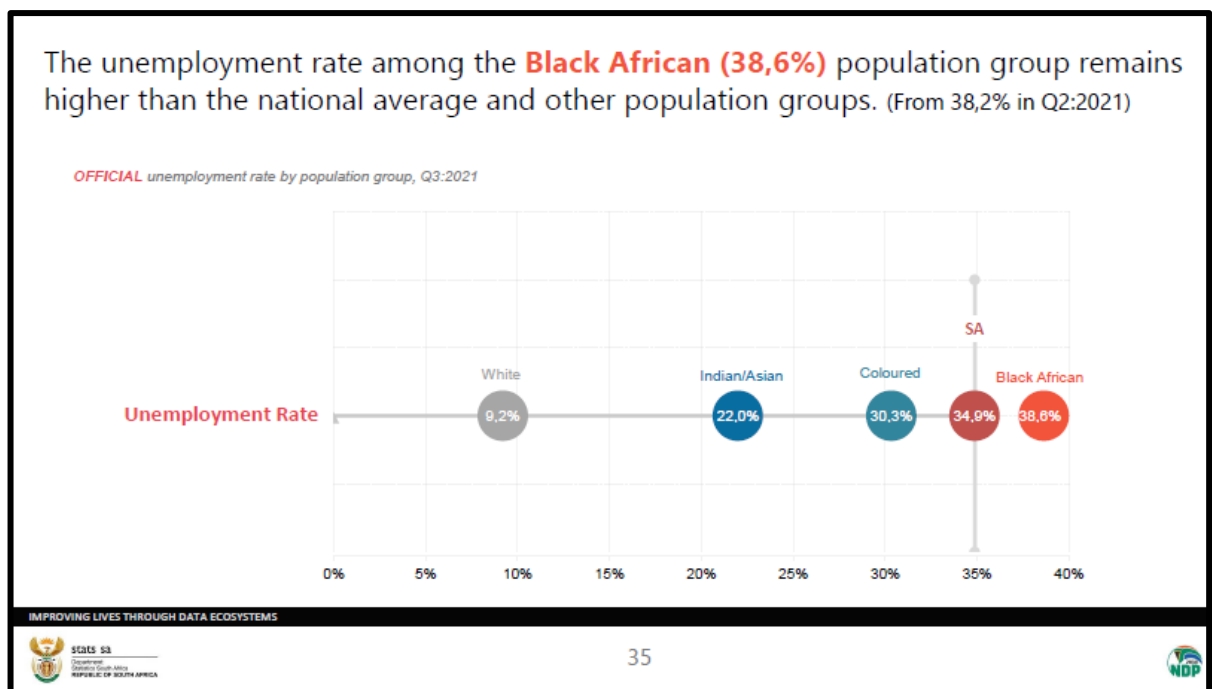
The Minister stated that they hoped to learn from Covid-19 and improve support to the most vulnerable in South Africa. She stated that government, “cabinet in particular”, has a full appreciation of the levels of poverty and unemployment and the state of South Africa’s people. The weakness, she stated, was that they “still need to look into” what it is they will do about the poverty and inequality.

d. **Statistics South Africa**⁵²

According to Stats SA, in 2021, the estimated South African population was 60.1 million, with a growth of 4 million people happening between 2016 and 2021. 57,2% of the population lived in Gauteng (26.3%), and 19.1% lived in KwaZulu-Natal.

According to Stats SA, between 2006 and 2015, Limpopo, the Eastern Cape and KwaZulu-Natal had consistently been the country's poorest provinces. Between 2019 and 2020 there was an increase of 9% on the reliance on social "grants as a main source of income by people living in South Africa", and a slight increase in vulnerability to hunger "at an individual and household level between 2019 and 2020. Between 2003 and 2020 the vulnerability to hunger increased by between 12 and 15%.

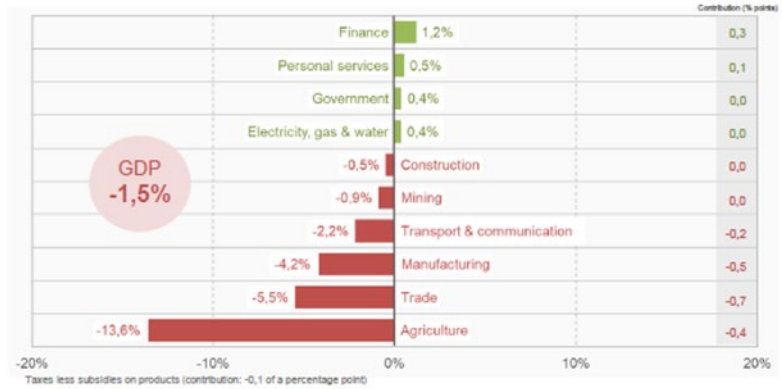
In respect of employment and unemployment, after the Unrest, there were approximately 660 000 fewer people employed in South Africa in Q3: 2021 than in Q2: 2021, with the Gauteng Province and KwaZulu-Natal accounting for approximately half of the 660 000 person decrease in employment. 82% and 77% of persons aged 15 to 24, in KwaZulu-Natal and Gauteng respectively, were unemployed. The unemployment rate among Black/African people remained the highest, higher than the national average:



Industries that recorded a contraction in Q3: 2021, after the Unrest included transport and communication, trade, manufacturing and construction:

Six industries recorded a contraction in Q3: 2021

Industry growth rates. Q3: 2021 compared with Q2: 2021 (constant 2015 prices, seasonally adjusted)



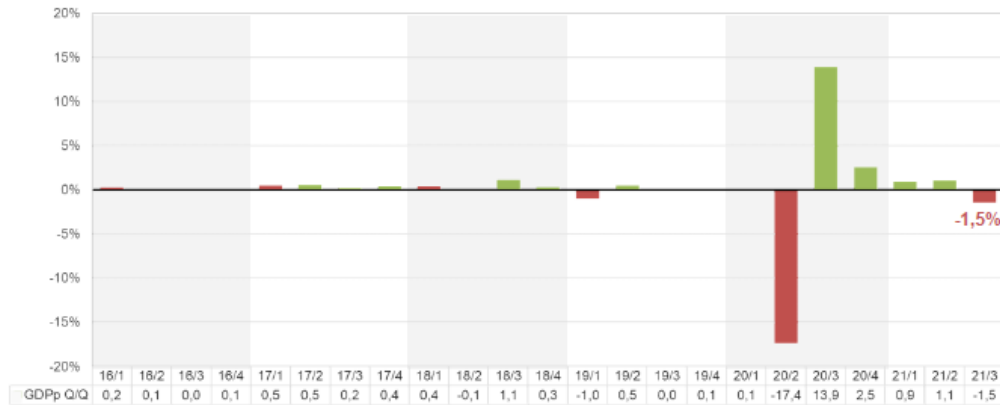
IMPROVING LIVES THROUGH DATA ECOSYSTEMS



Following the Unrest, the South African economy “contracted by 1,5% in Q3: 2021”:

The economy contracted by 1,5% in Q3: 2021

Quarter-on-quarter percentage change in GDP production (constant 2015 prices, seasonally adjusted)



The most significant negative contributors to the contraction in Q3: 2021 were the trade, manufacturing, agriculture, and transport industries

IMPROVING LIVES THROUGH DATA ECOSYSTEMS



Gross domestic product (GDP), Q3: 2021

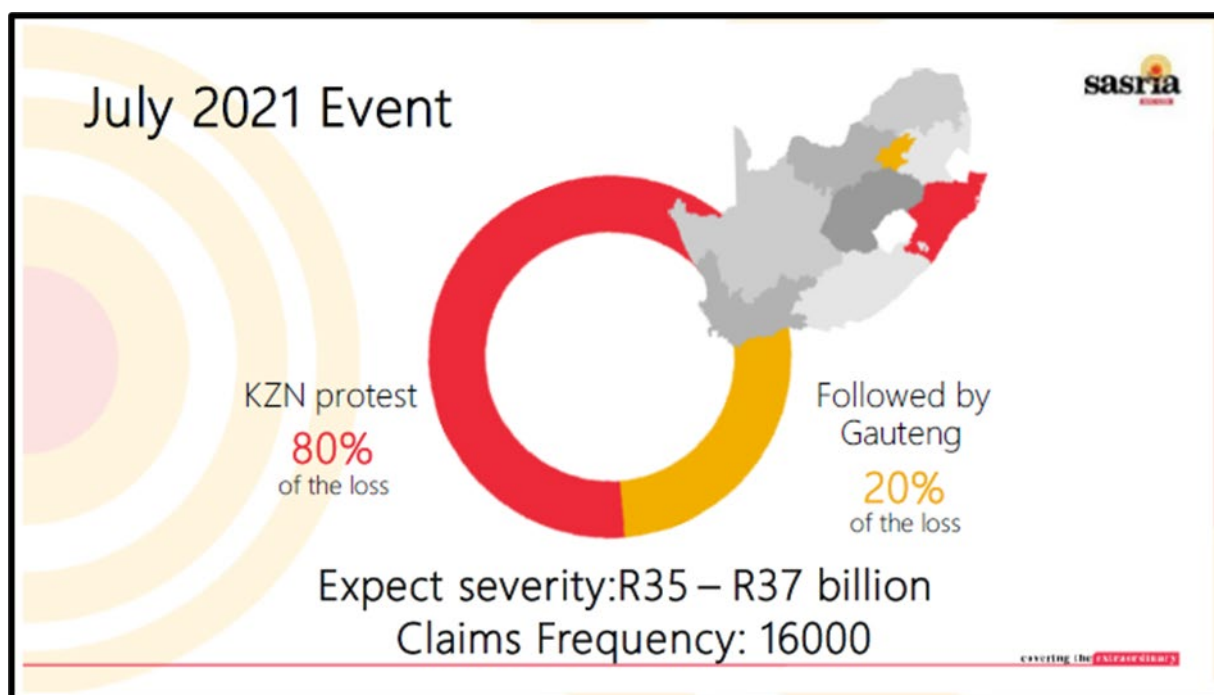


e. **Sasria (SOC) Ltd**⁵³

Following the 1976 Soweto Uprisings, the Short-Term Insurance Industry realised that it could “no longer underwrite losses arising from politically motivated acts of civil disobedience and unrest of the time”⁵⁴ as the risk was too high, making it very difficult to purchase reinsurance cover. This resulted in the incorporation of Sasria SOC Ltd (**‘Sasria’**) to insure against “perils”.⁵⁵

Sasria is now a public enterprise listed under schedule 3B of the Public Finance Management Act and is the only South African non-life insurer that provides special risk cover against risks such as civil commotion, public disorder, strikes, riots and terrorism to all individuals, businesses, and state entities that own assets in South Africa. Sasria plays a significant role in preventing job losses and maintaining dignity by enabling businesses to restore their liquidity or operations quickly and efficiently after experiencing loss.

In its submission, Sasria provided that KwaZulu-Natal accounted for 80% of the total business losses, while Gauteng accounted for the remaining 20%. The expected severity of the losses amounted to between R35 to R37 billion at the time.



According to Sasria the extent of the damage and the consequent claims resulted in the insolvency of Sasria. The final tally of Sasria incurred claims resulting from the Unrest was R32 billion which “wiped out” Sasria’s pre-Unrest balance sheet of R10 billion. As a result, Sasria had to be recapitalised by the State/National Treasury by R22 billion and had to initiate claims with its reinsurance companies. The claims from businesses insured at the time of loss are set out below:

Class of business	Claim Value	Percentage
Commercial Property Line	31 052 600 355,17	83,20%
Excess Of Loss	3 065 150 000,00	8,21%
Business Interruption Line	2 041 453 725,75	5,47%
Commercial Auto Line	895 212 241,74	2,40%
Personal Auto Line	101 339 614,09	0,27%
Homeowners Line	89 556 938,11	0,24%
Contract Works	79 309 992,15	0,21%
	37 324 622 867,01	100,00%

Claim bands	Number of claims	Claim Value
1. Claims below R1m	14615	2 758 672 991,00
2. Claims R1m - R10m	1756	5 480 594 950,75
3. Claims R10m - R30m	280	4 768 802 908,83
4. Claims R30m - R60m	76	3 390 193 997,89
5. Claims R60m - R100m	43	3 278 901 834,85
6. Claims R100m - R300m	35	6 057 287 964,46
7. Claims R300m - R500m	17	7 582 628 528,07
8. Claims above R500m	7	4 007 539 691,16
Total	16829	37 324 622 867,01

In its recommendations Sasria included that there was an expectation that SAPS would, and there remains an expectation that SAPS will ensure “law and order”. According to Sasria, SAPS’ lack of timeous response allowed looters to “escalate their efforts”. Sasria stated that it was “paramount to the success of risk and identification of mitigation” for the SSA and SAPS to engage each other and for there to be better coordination between the JCPS Cluster in order for Sasria and other businesses to receive early warnings of events such as the Unrest. Sasria, would also be looking into using analytics technologies “to tap into news and social media platforms in order to identify possible triggers to such incidents”.

Sasria added that government needs to address the issues relating to “basic needs of communities to avoid these type of events”, to educate SMMEs and the public about the importance of insuring their goods, and to consider “buying special risk cover for government buildings”.

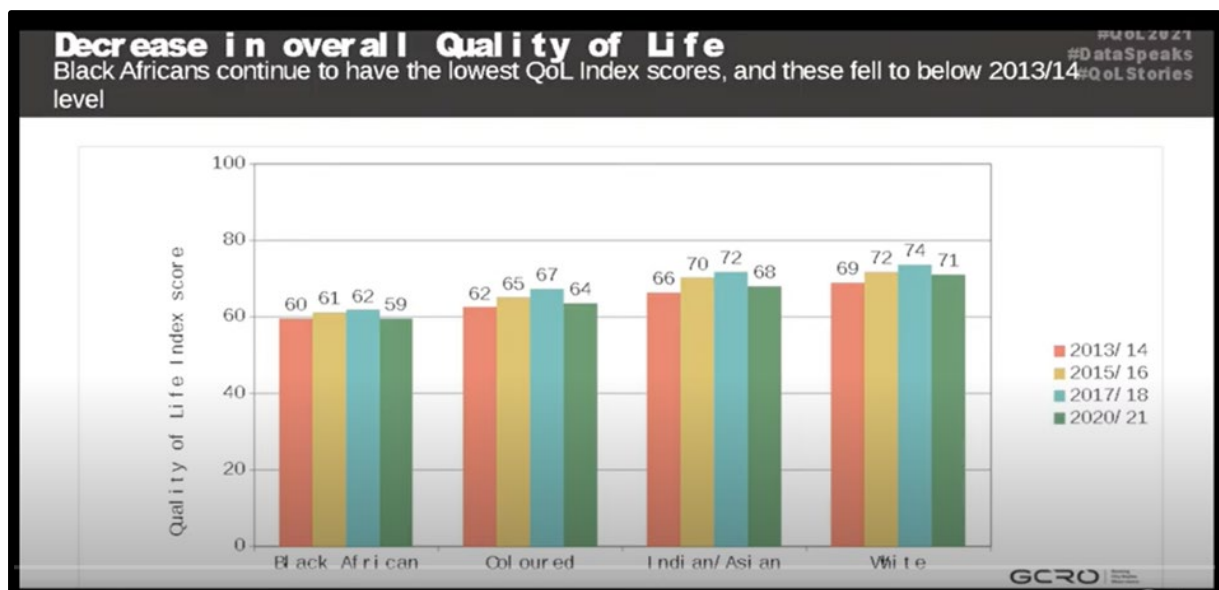
f. Gauteng City Regional Observatory⁵⁶

The Gauteng City Regional Observatory ('GCRO') was represented by their Executive Director, Rashid Seedat, Director of Research, Graeme Gotz and Researcher, Dr Mamokete Modiba.

The GCRO was established as a partnership between the Gauteng Provincial Government and the Universities of Johannesburg and Witwatersrand. The GCRO undertakes extensive data collection and provides critical analysis and evaluation to provide data sets and information that inform evidence-based strategies for provincial and local government in Gauteng, aiming to contribute to the growth and progression of the city-region in and around the Gauteng Province. This work allows the GCRO to assist the spheres of government in Gauteng in fulfilling their constitutional obligations.

The Commission invited the GCRO to present its flagship annual survey Quality of Life Survey 6 (2020/21) ('the Survey').⁵⁷ This would help the Commission gain a better understanding of the economic conditions that people faced at the time of the Unrest in the areas in which "looting" took place.

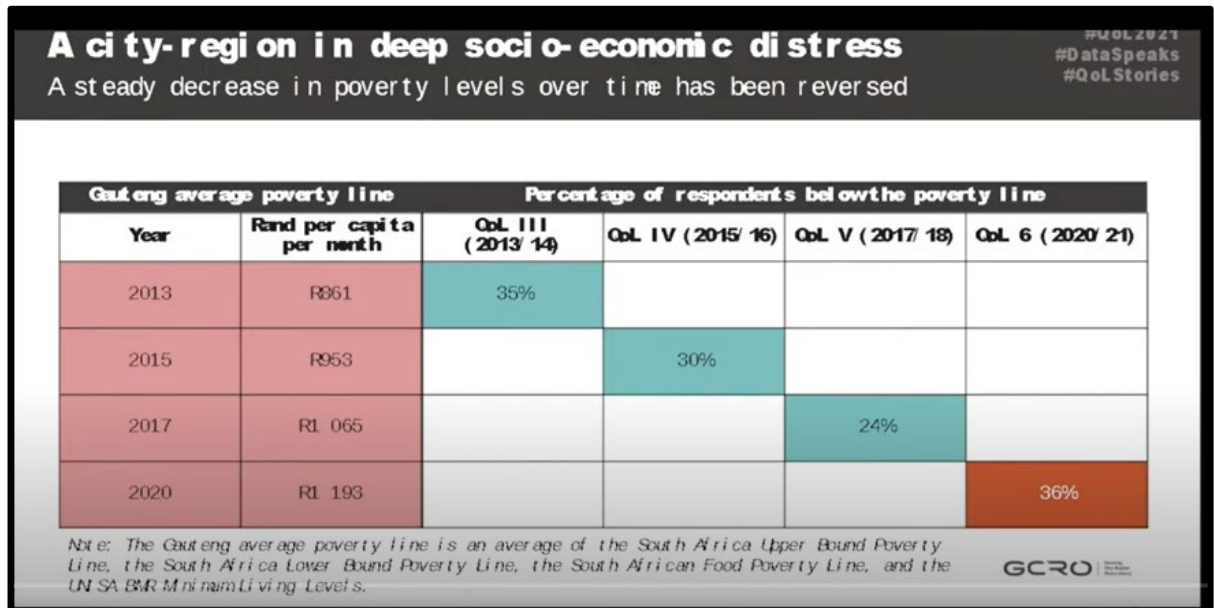
An overview of the Survey showed: i) a significant impact by Covid-19 "on households and daily life"; ii) a city-region in "deep economic distress"; iii) a fragile social fabric; iv) growing dissatisfaction with government; and v) a reduction in overall quality of life in the years immediately before the violence, particularly for Black people.



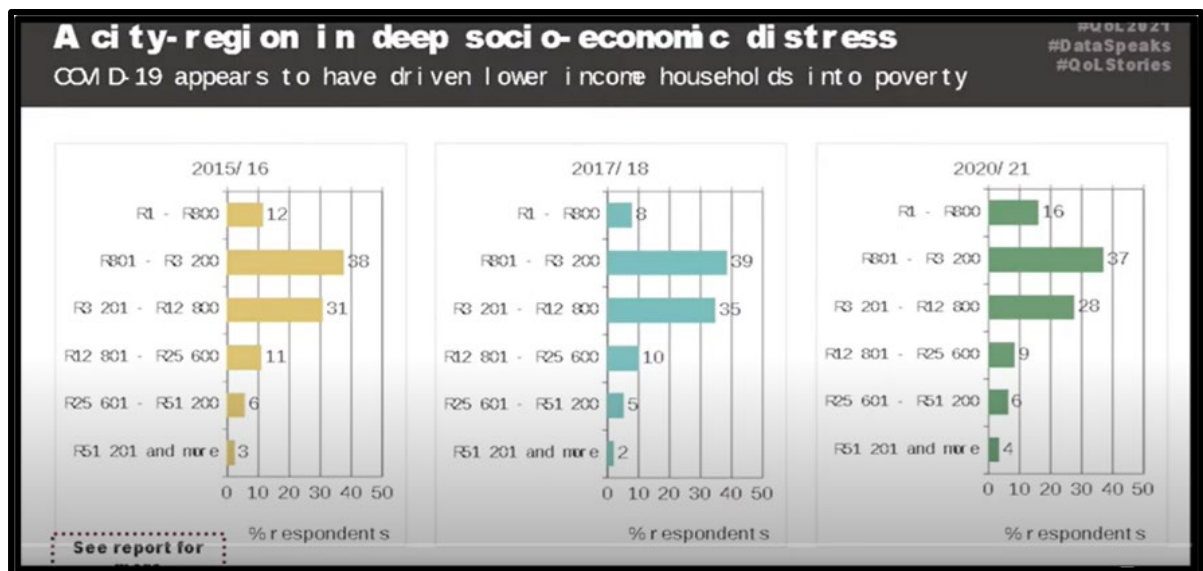
The Survey showed that for applicable respondents 30% experienced a reduction in working hours and salaries since the start of Covid-19 in March 2000. 18% of respondents had lost their jobs since March 2020, with uneducated Black people/African, Coloured people and Indian people being most affected, with a lower likelihood than their white counterparts of returning to employment.

There was a significant increase in the number of respondents living below the poverty line, with several years of growth and poverty reduction in the province, reversed between 2017

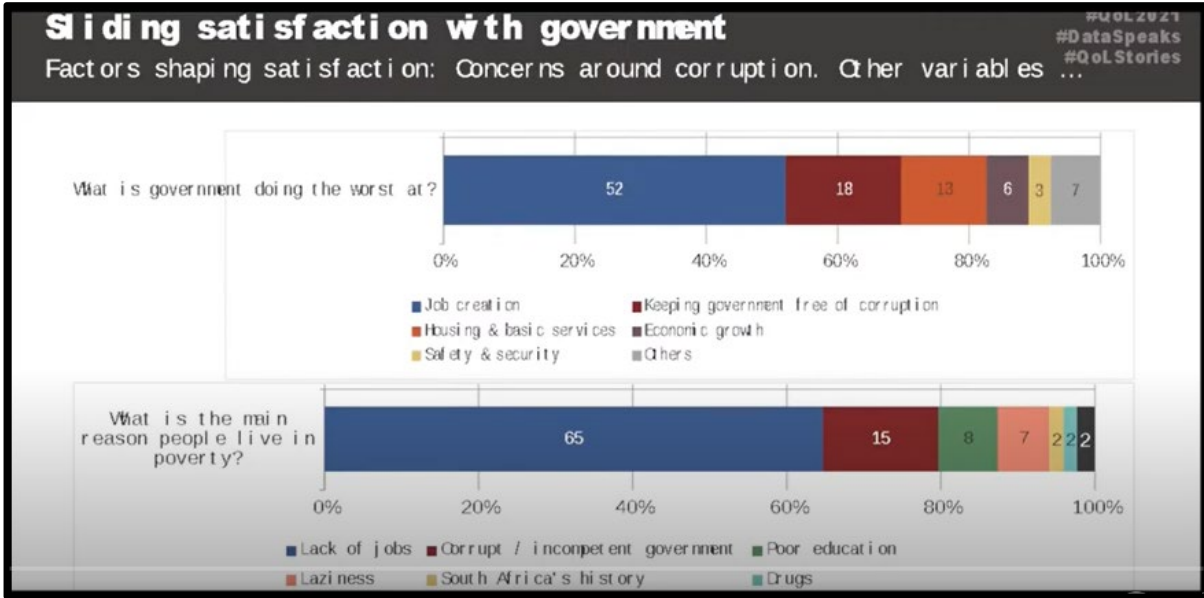
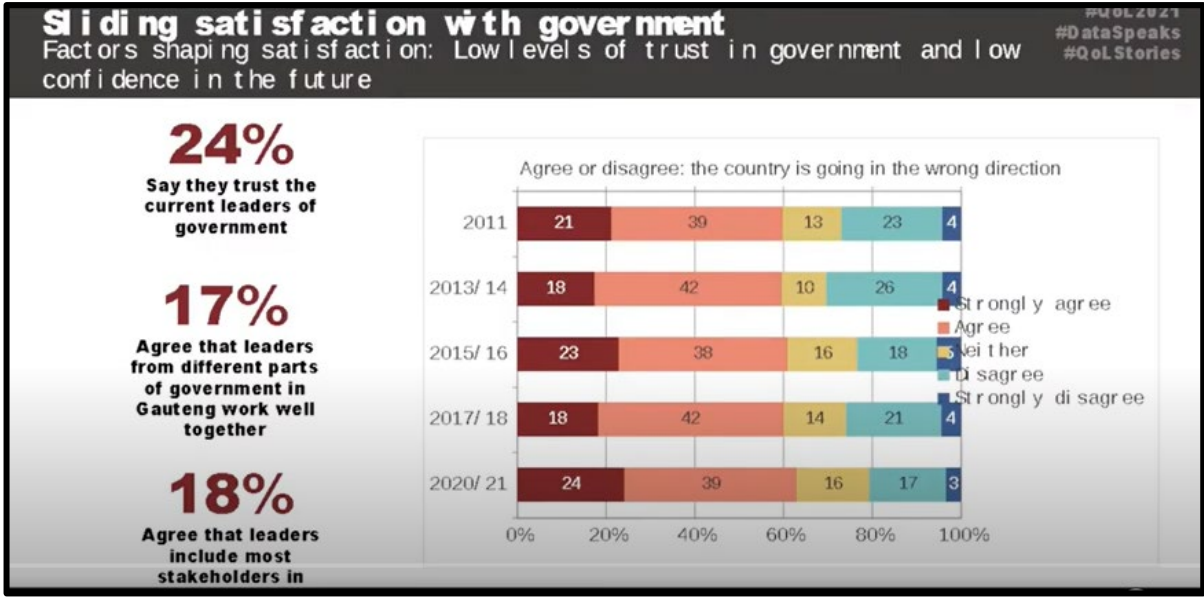
and 2020. In 2020, the percentage of respondents living beyond the poverty line fell below the 2013 level.



According to the Survey and GCRO's interpretation, Covid-19 drove lower income households into poverty, with 52% of respondents experiencing food insecurity (adults and children having to skip a meal because there is less money for food) and 18% of respondents experiencing severe food insecurity (having to skip multiple meals because there is little to no money for food). There was however an increase in access to food for children, through school feeding schemes.



In addition to the increase in poverty levels, the Survey indicated that there had been an increase in dissatisfaction with or lack of trust in the government. Many respondents held the view that government was doing worst at job creation and keeping South Africa corruption-free.



Historical apartheid spatial planning has been difficult to undo. While there has been integration, it has been on a class basis, leaving townships inhabited by poorer or less financially mobile communities or groups. In addition, when building RDP housing, Provincial and Local Governments continue to build housing settlements on open land on the peripheries of existing townships, located significant distances from employment opportunities. Legislation has however been introduced to try and promote or progress township economies and, while there has been a shift to develop township economies so that townships are not just “labour camps”, this has been a slow progression. The GCRO noted that there has been an increase in backyard dwellers in both historical and newer townships.

While the GCRO makes no direct links between inequality, the decrease in quality of life and the Unrest, the Survey does emphasize how difficult life became financially during the Covid-19 lockdowns, with its business closures and the consequent job losses, particularly for those who were working in, or were dependent on, the informal sector.

GCRO pointed out that—

“when we think about the State, it’s basically a social contract and ... [where ordinary residents give over to government the responsibility and the right to rule. The contract] basically contains a set of basically contains a set of rules and regulations that expect citizens to be responsible ... you give over to government that right to rule but ... in exchange you expect government to take care of you in various ways ... provide infrastructure, provide health etcetera ...”.

However, this social contract has, particularly over the course of Covid-19, with the restrictions on movement, the loss of income and reports of PPE corruption, lost its value or worth, resulting in an “overwhelming impression spread out there in communities, [that] government is [not taking enough care of people but is] taking care of itself.” GCRO also noted that poverty and inequality by themselves do not lead to violence, but that other factors were at play: “Poverty and inequality are being intensified through ruptures that happen in the economy or society and at the same time the State doesn’t look like it is stable enough or strong enough or coherent enough or agile enough or capable enough to take care of us in this context and that can often lead to an unravelling of that social contract in that moment.” This social contract needs to be restored if South Africa is to progress holistically.

1.1.2. The UPL Cornubia Factory Fire

Introduction

At the beginning of the Unrest, around 13 July 2021, the UPL chemical warehouse (‘the UPL Warehouse’),⁵⁸ housing thousands of tons of chemical products, was set ablaze. (‘the UPL Fire’).⁵⁹ The fire lasted for approximately ten to twelve days,⁶⁰ blanketing the surrounding human settlements in “acidic [and toxic] smoke for more than a week, leaving residents struggling to breathe and with few answers about what was in the air”.⁶¹ The burnt mixture of chemicals “flowed into the Ohlanga River, turning the Umhlanga Lagoon a luminous turquoise and killing thousands of fish”.⁶² The areas affected by the UPL Fire included Blackburn Village, Blackburn Estate, Woodlands, Prestondale, Herrwood Park, Phoenix, Umhlanga, Mount Edgecombe, Westham, and Umdloti.



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In respect of the UPL Fire, the Commission received limited oral testimony and written submissions, but benefited from reports released by Economic Development Tourism and Environmental Affairs, KwaZulu-Natal (‘**EDTEA**’), and responses to the Provisional Report from the Office of the Premier of KwaZulu Natal (‘**the KZN Premier**’). The submissions received sought to highlight the likely risks posed by the existence of the UPL Warehouse in Cornubia City, the irregularities and illegalities of its existence at the time of the UPL Fire and the adverse effects of the UPL Fire on the constitutional rights of the affected communities, including their rights to an environment not harmful to their health and well-being, to have access to healthcare services, to have access to sufficient water, and of access to information needed to exercise or protect a right.

a. Kwanele Msizazwe⁶⁴

Mr. Kwanele Msizazwe, a resident of Blackburn Village, provided firsthand evidence of the impact of the UPL Fire on the residents of Blackburn Village, who prior to the UPL Fire, faced a plethora of socio-economic issues including insufficient access to electricity, healthcare, sanitation, and school-transport. The community also suffered from high crime-rates and a lack of skills development training and thus unemployment.

Mr. Msizazwe testified that he was alerted to the UPL Fire on his way to work, as he could “see and smell [it]”. Mr Msizazwe testified that Blackburn Village residents, other communities and schools located in the affected areas were not provided with early warnings or alerts or advice on protection from chemical exposure, by authorities, during or after the UPL Fire.⁶⁵ According to Mr Msizazwe, it was only three days after the Fire, when the water in the river and estuaries, adjacent to Blackburn, changed colour that the eThekweni Metropolitan Municipality (‘eThekweni Metro’) put up warning signs alerting the community of chemical contamination.

Mr Msizazwe stated that information about the UPL Fire, and where to get treated for exposure to toxic chemicals was not easily accessible for the community. Mr. Msizazwe indicated that, at the time of the Hearings, community members were suffering with respiratory issues, such as “blocked noses, chest issues [and] burning eyes [sic]” as result of the UPL Fire and that a doctor or other specific health practitioner had not been to Blackburn Village since the date of the incident, until the time of the Hearings. He further submitted that there were three (3) deaths following the UPL Fire and consequent environmental disaster.⁶⁶

Mr Msizazwe informed the Hearing Panel that the water from the Ohlange River was mainly used for non-drinking amenities, and after the eThekweni Metro informed residents that the water was contaminated, they stopped using it or limited use where they could. Mr Msizazwe believed that because children continued to swim in the polluted Ohlange River, there is a decline in the productivity of these children, particularly those above the age of five.

Mr. Msizazwe testified that the environmental disaster had caused food insecurity in Blackburn Village. Two community vegetable gardens close to the Ohlange River were contaminated, describing that, “the crops and sand changed colour. The vegetables died”. Samples were taken for lab-testing, however, at the date of the Hearing, he had not received any feedback on the extent of the contamination.

Mr. Msizazwe submitted that because Blackburn Village served as “a passage [for] people who were looting in the nearby warehouses”, SAPS arrived only to retrieve alleged stolen property from “looters”, and not to enquire about residents’ safety and security following the UPL Fire. He also felt aggrieved that, despite residents applying to be part of the environmental remediation process, UPL-South Africa excluded Blackburn Village residents from the environmental remedial process to remedy the consequences of the UPL Fire on the affected environment and community members.



b. Professor Rajen Naidoo⁶⁷

Professor Rajen Naidoo represented the Comubia Civil Society Action Group’s (‘the Action Group’), a volunteer grouping of academics, concerned citizens, residents, and representatives of NPOs whose main objective was to engage all government stakeholders, and to provide necessary information to communities affected by the pollution from the UPL Fire.

In Prof. Naidoo’s professional opinion, the UPL Fire has been ranked as one of the largest environmental disasters that has occurred in South Africa in the last 30-40 years and that the medium and long-term effects of the disaster are not yet known.

Prof. Naidoo stated that the Action Group did not have insight into the factual cause of the UPL Fire and did not wish to speculate on whether the UPL Warehouse was deliberately damaged with the intention of destabilising KwaZulu-Natal.

What the Action Group did wish to provide insight on, was how the UPL Fire became the catalyst for exposing the irregular existence, unlawful operations, and corporate liability of UPL. According to the Action Group, the factory was predisposed to causing such an environmental disaster due to UPL's failure to comply with national, provincial, and local legislation. According to the Action Group, if UPL had complied with the regulatory framework governing the storing of the chemicals,⁶⁸ it and the environment of KwaZulu-Natal would not have experienced a disaster of this size. The effects of such a fire on the environment and community members, had the regulations being followed, in respect of amongst others, the location of the UPL Warehouse, adequate water supply to the Warehouse and personal protective machinery and equipment at or near the Warehouse, would have been minimal.

Like Mr Msizazwe, the Action Group through Prof. Naidoo highlighted the health issues experienced by residents in the areas surrounding the UPL Warehouse, such as chest tightness, dry nose and mouth, coughing, choking sensations, skin rashes, headaches, and irritated eyes. Exposure to the chemical smog, caused by the ignition of the chemicals, reduced visibility, caused nausea, vomiting, and pet fatalities.

The Action Group advised that five days into the twelve-day fire, specialist UPL-employed consultants, who had allegedly signed non-disclosure agreements (NDAs), were appointed to monitor airborne pollutants. The report which was published by the UPL-employed consultants ('the UPL Report') had the only information available on the contents of the particulate matter,⁶⁹ directly after the UPL Fire.

According to the UPL-consultants, the airborne particulate matter from the UPL Fire contained PM10 and PM2.5, and that the amount of these two sized particles exceeded the national limits for those two particles.⁷⁰ Prof. Naidoo advised that the Action Group was concerned that the consultant did not adequately measure the particle matter for dioxins - persistent organic pollutants associated with long-term health risks such as immune system impairment, cancers,

endocrine disruption, and reproductive system dysfunction. According to Prof. Naidoo, it is plausible that the UPL Report could have been 'sanitised,' but he did not provide evidence on this point.

Prof. Naidoo testified that in addition to a possibly 'sanitised' UPL Report, the UPL-employed consultants failed to communicate or educate the affected communities on the potential harms and risks of the UPL Fire pollution, save for telling them to "wear masks and stay indoors". The Action Group alleged that that by failing to communicate pertinent health and safety information, UPL violated section 30(3) of the National Environmental Management Act 107 of 1998 (NEMA)⁷¹ and section 32(1)(b) of the Constitution – the right of access to information held by another person required for the exercise or protection of any rights.

Prof. Naidoo could not confirm whether the NEMA required environmental impact study had been carried out before UPL's operations in Comubia, but he could confirm that UPL had not conducted any consultations with Blackburn Village prior to its operations and had not conducted any environmental or health and safety awareness campaigns on the chemical dangers before the UPL Fire. Prof. Naidoo advised the Hearing Panel that because of the types of chemicals which were stored at UPL, it was required of UPL, in accordance with local by-laws and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade,⁷² to have 'prior informed consent' from authorities and community stakeholders for the storage and transportation of some of the chemicals which were stored at, and being transported to and from, the UPL Warehouse. Prof. Naidoo added that had not been conducted by UPL in Blackburn Village.

The Action Group advised that the only way affected communities would receive full remediation, is by enforcing the "polluter pays" principle, as set out by NEMA. Although UPL provided remediation-related services to the communities affected by the UPL Fire, there was no oversight from government to ensure that the remedial actions provided adequate redres

c. Professor Patrick Bond⁷³

Professor Bond stated that as a Professor of Sociology and a political economist, he had long been concerned that South Africa's economic development strategy was "too generous to multinational corporations". He submitted that the case of the UPL Fire highlighted the government's "low quality approach" to Foreign Direct Investment attraction. According to Prof. Bond, "by 'fast-tracking' this investment of Trade and Industry was negligent, and Treasury's losses – through deferred taxpayer funds to UPL require further investigation". Prof. Bond added that officials responsible for investment attraction have an enormous responsibility to assess the risk of potential damage caused by greenhouse gas emissions, such as in the case of UPL's storage of chemicals. Prof. Bond stated that the impression left by the 'fast-tracking' and the subsequent UPL Fire and the environmental damage was that no such assessment or carbon pricing strategy was applied to UPL. He stated that the specific problems of the 'fast-tracking of UPL is evident in the Daily Maverick report by Tony Carnie.⁷⁴ An excerpt is quoted below:

"The Indian-owned toxic chemical plant that blew up and polluted air, rivers and sea around Durban was part of a special 'fast-track' economic investment scheme by national government, with no specific environmental or hazardous substance approvals or any local government scrutiny. Back in India, the company has just been fined nearly R2-million after one of the company's pesticide manufacturing plants was shut down by authorities following an explosion five months ago, which killed three workers and injured many more. The Supreme Court in New Delhi has also ordered it to pay another R20-million for operating a major plant for decades without valid environmental authorisation – while company lawyers have hounded journalists for decades for publishing 'defamatory' stories about its legacy of environmental pollution".

d. The KwaZulu-Natal Department of Economic Development Tourism and Environmental Affairs

On 14 October 2021, EDTEA sent a copy of its UPL Preliminary Report ('**the Preliminary Report**') to the Commission's KwaZulu-Natal Provincial Office (**KZNPO**) in response to an allegations letter sent to it in respect of an investigation initiated by the KZNPO before the National Hearings commenced. In the cover letter to the Preliminary Report, EDTEA advised the Commission that "[a] team of Environmental Management Inspectors from both EDTEA and the Department of Forestry, Fisheries and the Environment (NDoFFEA), is in the process of undertaking a criminal investigation against UPL, under Verulam CAS 06/09/2021" and that they had created an information repository where all non-confidential information and reports were available.⁷⁵

The executive summary of the Preliminary Report starts by stating that:

"A multi-departmental team has been investigating the UPL South Africa (Pty) Limited ("UPL") fire incident and resulting widespread

pollution within the ambit of the regulatory environment applicable to such a facility and in particular the compliance profile of those entities involved. This preliminary investigation involved a factual assessment of the permissions/authorisations that were required by a facility of this nature prior to the fire incident and whether the facility was in compliance with the applicable legal requirements. This report was prepared with input from all the affected authorities which exercise a regulatory function over a facility of this nature”.⁷⁶

It is set out “upfront” that environmental rights places human beings at the centre of environmental decision making and replicated the definition of “environment” in terms of the NEMA ⁷⁷and the requirement in terms of section 2(2) that ““environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably”.

The Key findings of the Preliminary Report can be summarised as follows:

- i. Based on information available to the team, “UPL’s operations involved the unlawful storage of chemicals classified as “a dangerous good”.
- ii. The storing of chemicals in excess of 500m³ constituted a listed activity⁷⁸ in terms of section 24(2)(a) of NEMA and, therefore, required prior operational environmental authorisation (EA).
- iii. The storage and handling of the chemicals without an EA was a contravention of section 24(F)(1)(a), hence the initiation of the criminal process with a case opened at a police station in Verulam.
- iv. To apply for an EA, a UPL specific environmental impact assessment, together with all relevant reports and documentation would have had to be submitted to EDTEA and the eThekweni Metro. “This process would have, among other things, assessed the readiness of the facility to respond to an emergency situation. Furthermore, any EA issued would have been subject to a number of conditions aimed at mitigating risks identified”.⁷⁹
- v. Considering the volume and nature of the chemicals stored at the UPL Warehouse, it was reasonable to conclude that the facility fell within the definition of a Major Hazard Installation and was subject to the requirements in terms of the Major Hazard Installation Regulations⁸⁰ of the Occupational Health and Safety Act 85 of 1993 (‘OHS Act’).

The Preliminary Report stated that the Unrest did not cause the pollution. It stated that a fire at the UPL Warehouse “from any cause (which must have been foreseeable whether caused accidentally or by sabotage) was likely to cause a serious pollution event”. It further stated that it was fair to find that if UPL had applied for the necessary authorisations “the risks associated with a possible fire ... would have been assessed and guarded against; or the necessary appropriate controls would have been required to be put in place based on the EIA”. The Report also stated that these omissions gave rise to the pollution and, therefore, may attract criminal liability, to be prosecuted by and decided on by a court of law.

To prevent future UPL Fire-like incidents, the Preliminary Report made several recommendations, including to:

- i. Conduct a compliance profile assessment of the agrochemical storage and manufacturing sector to establish a national compliance and enforcement program for the sector;
- ii. Review applicable protocols and processes within relevant departments to streamline procedures, improve communication, and enhance coordination;
- iii. Create a panel of intergovernmental specialists available for expert advice when needed and identify capability gaps in toxicology and chemical scientific disciplines and appoint such experts, to fill the gaps, on proposed panel;
- iv. Evaluate the response by authorities to ensure consistent adherence to incident management procedures within environmental regulation, and establish an interdepartmental rapid emergency response team to handle specific incident categories;
- v. Initiate a review of guidelines and legislation by the MINTEC Working Group IV regarding the administration of NEMA section 30 incidents, aiming to improve the coordination of intergovernmental responses to high-risk emergencies; and
- vi. Engage the Environmental Assessment Practitioners Association of South Africa to investigate the establishment of a mechanism where government-appointed specialist organisations are selected and compensated by polluters, ensuring impartiality (Polluter Pays Principle).

The KZN Premier informed the Commission that in October 2021, the MEC for EDTEA launched a multi-stakeholder forum (**‘the stakeholder forum’**) “in fulfillment of the government’s commitment to transparency on the UPL chemical spill incident and other related matters”.⁸¹ One of the objectives of the stakeholder forum was to ensure community stakeholder involvement in the environmental rehabilitation of the areas affected by the UPL Fire.

The KZN Premier also advised that:

- i. Human health risk assessments were being conducted on an ongoing basis to determine the prevalence of long-term health effects of the UPL Fire on affected communities;
- ii. Directives were issued to address human health impacts and assessments by way of several pre-directives issued on 20 and 28 July 2021, and finally on 17 August 2021, to address environmental remediation measures;
- iii. UPL responded to and acted on the directives issued and that meetings were and are being held on a continuous basis to supervise the UPL remediation efforts; and
- iv. EDTEA is monitoring the UPL employed-consultants remediation work in terms of NEMA.

1.1.3. The Role of Media & Social Media

Introduction

The evidence presented below has been compiled from various sources, including the State Security Agency (**SSA**), think tanks, and research institutions.

The purpose of collecting this evidence is to provide concrete examples that show that social media platforms, whether open or closed, were utilised by individuals and specific groups to organise and aid in the spread of the Unrest. These forums served to advance various agendas during the July Unrest, including establishing collaborative networks, strategically spreading misinformation and disinformation, and mobilising and celebrating looting, and violence.

a. State Security Agency

The written submission provided by the former Minister Ayanda Dlodlo to the Hearing Panel included the observations by the SSA of the use of technology during the Unrest. Minister Dlodlo pointed to the use of social media accounts to promote “messages of chaos”. Numerous social media messages were being circulated in KwaZulu-Natal, Gauteng and the Eastern Cape.

On 22 January 2021, a red alert had informed the SSA that members of MKMVA planned to shut down KwaZulu-Natal and demand the removal of President Ramaphosa.

The first signs of a mobilisation to march on the Constitutional Court was picked up on the 24th of March 2021, allegedly organised by the Radical Economic Transformation faction of the ANC and MKMVA. It appeared that the social media messages indicated that MKMVA members had been instructed to cause “chaos and confusion in big cities across the country” and to target strategic national roads, such as the N3 and N2.

Images and the geographic location of the private residence of (then) Deputy Chief Justice Raymond Zondo in Hillcrest, Durban were circulated on social media.⁸² Social media messages continued to fuel violence and instil fear among citizens, especially in KwaZulu-Natal and Gauteng.

The former Minister also referred to internal correspondence dating to 6 July 2021, which raised issues and caution on the spread of dis-information.⁸³

On 14 July 2021, the former Minister had followed up on whether the Agency met with Facebook, Twitter, and mobile operators to identify instigators.

The former Minister concluded that social media incitement and mobilisation, in respect of the Unrest, should be investigated in order to apply relevant punitive measures. After the Unrest, ongoing

mobilisation by former President Jacob Zuma’s supporters, utilising social media posed a further security risk. According to the former Minister, the continuous weaponisation of social media requires urgent government intervention. Alerts were made or suggested for the following hashtags, during, and after the Unrest:

Hashtags Related to Jacob Zuma	Hashtags Related to Cyril Ramaphosa	Civil Unrest Hashtags
#ZumaUnrest	#CyrilMustGo	#KZNViolence
#FreeJacobZuma	#CyrilMustResign	#KZNshutdown
#FreeZuma	#ThumaMinaMediaGroup	#Gautengshutdown
#FreeJacobZumaNow	#OpenLetterToRamaphosa	#VoetsekEFF
#ZumaUnrest		#VoetsekANC
#JacobZuma		#pheonixmassacre
#WeAreJacobZuma		#civilunrest
#ZumaConCourt		#EthnicMobilisation
		#SouthAfricalsBurning
		#ShutdownSA
		#SAshutdown
		#IndiansMustFall

b. Digital Forensic Research Lab

The Digital Forensic Research Lab (**the DFRL**) was represented by Mr. Jean Le Roux. The DFRL investigates mis- and disinformation in South African media and social media. Mr Le Roux has expertise in digital investigations and previously uncovered the fake Gupta Bot Network and the owner of the Tracey Zille Twitter account. Mr Le Roux testified that his team investigated and examined trending hashtags, incitement calls, and social media posts during the July Unrest.

According to his submission, social media has three dimensions: i) open-source atmosphere, ii) professional threats, and iii) criminal elements on closed-source platforms. According to Mr Le Roux, many posts during the period of the Unrest encouraged and endorsed violence and looting. Incitement, and most posts inciting violence likely occurred on closed platforms like Telegram or WhatsApp.

According to Mr Le Roux, the July Unrest was influenced by political players, the incarceration of former President Jacob Zuma, socio-economic conditions in South African exacerbated by the economic fallout of Covid-19.

Effective investigation of social media activities requires cooperation between government intelligence services and social media platforms. Closed-source platforms require device access for message retrieval.

c. Media Monitoring Africa



Mr William Bird, the Executive Director of Media Monitoring Africa (MMA), represented MMA at the Hearings. MMA, amongst other things monitors online activity and aims to combat mis- and disinformation, as well as harmful speech.

According to MMA disinformation during the Unrest included false protest reports, racial abuse claims, conspiracy theories, and attacks on political figures. MMA criticised the government's response to social media for failing to provide an adequate counter-narrative to misinformation. Mainstream media coverage was also criticised for the lack of timely and accurate reporting, while some independent media outlets actively contributed to fear and anxiety.

Mr Bird stated that trust in public institutions and a strong public broadcaster were highlighted as crucial. He stated that overall, a multistakeholder approach, accurate information dissemination, and trust-building in public institutions were necessary to address disinformation effectively, during crises.

Mr Bird called for a narrow limitation on freedom of expression and opposed unlawful internet

shutdowns. He suggested a Rapid Information and Communications Task Team (**RICTT**) led by the South African Human Rights Commission to address disinformation. Instead of criminalising or shutting down platforms, independent watchdogs and multistakeholder working groups are recommended.

d. Paul Brink

The evidence submitted by Mr. Paul Brink included a WhatsApp communication from a "EthekwiniShutdown" group, dated 9 July 2021. The communication referred to former President Jacob Zuma being in prison, Ace Magashule being suspended, Carl Niehaus being suspended, and directed criticism towards President Ramaphosa and his faction in the ANC leadership.

From the WhatsApp screenshots, it appeared that certain ANC branches in the eThekweni region participated in the orchestration of the looting, burning, and destruction of property. According to Mr Brink the "unrest" was organised on a ward-by-ward basis, with a primary organiser known as "MaSosha" or "MaGuerrilla".

According to Mr Brink, the organisers viewed the looting and destruction as part of a strategy for a revolution. The messages on the WhatsApp group contained instructions regarding meeting locations, incitement to shut down business operations and transport routes (N2 and N3), and called for the destruction of private commercial property or businesses that provided essential services to people in South Africa.

1.2. ANALYSIS OF EVIDENCE

1.2.1. *Business, the Economy, and Socio-Political Conditions*

- 1.2.1.1. The ToR for the Commission in terms of Issue One was to assess the social, economic, spatial and/or political factors prevalent in the various affected areas and the extent to which these played a role in the Unrest.
- 1.2.1.2. As a consequence of the July 2021 unrest, South Africa was left with the stark reality of a fragile society. As reflected upon by President Ramaphosa, for many, a sense of betrayal is felt by the experience that overnight, “there were some amongst us who would go so far as to plot to destroy this country we had spent the past 28 years to build.”
- 1.2.1.3. The extent of the damage brought on by the Unrest was extreme, with far-reaching consequences. Numerous types of buildings and businesses, ranging from factories and malls to SMMEs and government-owned properties were severely impacted by the violent unruly conduct of some. Schools reported approximately 300 million rands in losses while some businesses faced such extensive damage that they were forced to permanently close their doors. Around 25% of the affected businesses did not reopen, resulting in a significant loss of employment opportunities and contributing to a reduction of about 1.5% in the South African economy.
- 1.2.1.4. According to Stats SA, employment decreased to the amount of 660,000 people with KwaZulu-Natal accounting for more than half of this number. This was compounded by the effects of the Covid-19 pandemic. The country’s economic growth was reported to have been reversed by approximately 15 years. The estimated cost of the losses caused by the Unrest and crimes against property amounted to an estimated R50 billion. The repercussions were not limited to the businesses and the economy alone but also impacted communities, particularly those residing in Black townships. The Unrest led to food shortages, disruptions in social grant processing, and increased travel distances for essential items, further exacerbating the challenges faced by already marginalised communities.
- 1.2.1.5. To mitigate the losses, several economic recovery support funds were established. A R38 million relief package was created by the Office of the Presidency; a R3.7 billion economic support fund was “earmarked” by the DTIC; the DSD established a R300 million recovery fund for small businesses; and a R10 million recovery fund for informal traders. In addition, Sasria had to be recapitalised by National Treasury by R22 billion. Altogether,

over R26 billion that could have been spent creating additional business or additional forms of employment or funding a basic income grant or funding of university education or providing electricity or energy support for businesses struggling due to Covid-19 or struggling due to loadshedding had to be allocated to mitigating the loss of the Unrest.

Political Factors and the Unrest

- 1.2.1.6. There was consensus amongst the people who testified (and their represented entities) that the acts of malicious damage to property were planned and were not spontaneous criminal acts.
- 1.2.1.7. Business associations set out the big picture of the plans to “destabilise the economy” by making a “full frontal attack on the entire supply value chain of the country”: blocking the arterial N3 highway between KwaZulu-Natal and Gauteng and disrupting the flow of goods; by destroying warehouses and the machinery and stock therein and by attacking the communications of KwaZulu-Natal’s ports.
- 1.2.1.8. The business associations, and community members from Gauteng detailed the steps taken by those involved in “orchestrating” the damage to property - The buildings targeted had fire safety and security systems disabled as well as the fire safety insulation in the ceilings and roofs removed. Petrol or other flammable liquids were used to ignite fires; and explosives were used to blow up ATMs and trucks were used to transport them away from where they were stolen. Ms Madibakwana, from Meadowlands Community Forum provided insightful and helpful language, labelling the orchestrators or persons who were organised with explosives to bomb ATMs, and trucks to remove ATMs, as “primary” actors - and those who were encouraged or roused to commit acts of theft at specific shops, shopping centres and malls, the “secondary” actors.
- 1.2.1.9. Mr Coovadia of BUSA, Ms Veness, the former Minister for SSA and Mr Paul Brink, were of the opinion that the causes of this orchestration were broadly political, and motivated by political discord within the ANC. Ms Veness of the PMCB also stated that certain actors wanted their cause for action to be known, leaving messages in favour of former President Jacob Zuma, and calling for the removal of current President Cyril Ramaphosa on the surfaces of damaged business properties. This was also evidenced by the pro-Zuma and anti-Ramaphosa messaging on social media. Members of the PMCB alleged that they were informed by politicians they engaged after the Unrest that SAPS officials had been told to “stand down”, as part of what was believed to be an orchestrated attempt to destabilise the country.

- 1.2.1.10. Professor Paulus Zulu, whose submissions are summarised in Chapter 2, also opined on the organisation of the Unrest. He said the organisation – how organised the orchestrators were - showed us a distinction between how South Africa should be run versus how it is being deliberately run. He intimated that people were encouraged by politicians to contravene the Rule of Law. He stated that its usually the good people who are unorganised and the “sinister” powerful groupings who are organised. He suggested that the “primary looters” remain intermediaries, and a distraction, from the true architects of the Unrest.
- 1.2.1.11. There is consensus amongst the testimonies that there was, as Minister Patel put it, “a law-and-order failure”. Those who witnessed the Unrest as it was happening, who witnessed the malicious damage to property, the arson and the theft, testified that there was a dearth of police presence and where police were present, they were clearly outnumbered. The DCCI provided the exception, stating that they received vital services from the eThekweni Metropolitan Police, asserting that a number of Durban businesses would not have been saved without the intervention of the eThekweni Metropolitan Police.
- 1.2.1.12. Some alleged, such as Mr Lockhat from the Mayville Mosque and Ms Veness from the PMCB, that when they requested assistance from SAPS and the Fire Department respectively, they received no support. In Soweto, during the Unrest SAPS was not present. Staff in warehouses and shops, and community members risked their own lives trying to prevent acts of malicious damage to property, arson and theft.
- 1.2.1.13. Based on the testimonies there was an expectation that the SSA would have had intelligence on the Unrest and that SAPS would intervene and limit the damage caused during the Unrest and would reinstate law and order. Instead, people who committed acts of theft were able to do so repeatedly, going into stores two or three times, or were allowed to sit on stolen items and wait for someone to assist them in transporting the goods. In addition, where social media messaging was sent to instigate acts of theft and/or malicious damage to property, or where community members in Soweto were told there would only be incidents of Unrest occurring near the hostels, there was an expectation that SSA and/or SAPS would have been aware of such messages, and would have intervened to counter the incitement, to protect the communities, or to help people to prepare for action and mitigate against the crimes against property.
- 1.2.1.14. The DTIC (and the DCCI), being aware that SAPS was overwhelmed and under-capacitated, developed “strategic economic key points” towards which SAPS could direct resources. While members of the DCCI, who had received forwarded voice notes

containing threats to important infrastructure such as water reservoirs, electricity infrastructure, airports and harbour ports, took unorthodox, desperate, and risky steps to secure the presence of the SANDF to supplement the SAPS capacity or to cover the large gaps that SAPS was not able to reach. In addition to creating economic key points, DTIC connected businesses and private security companies for additional private security companies to prevent or minimise malicious damage to property and theft.

- 1.2.1.15. Due to the insufficient capacity of SAPS, additional private security guards were sent from Gauteng to assist in alleviating the situation in KwaZulu-Natal, and members of the DCCI provided transport, food, and accommodation to secure the SANDF's presence in Durban, and in KwaZulu-Natal more generally. It was noted that there were ethical concerns with the private sector or civilians providing such support to the SANDF. Any deployment of the SANDF must be provided for by the State and should meet constitutional standards – be in accordance with the Defence Act and the Gazetted Notices issued under Operation Prosper - and should not be contingent on private sector support. The proper provisioning for the SANDF is something that the government should be held accountable for, as part of its obligation to serve the people of South Africa.
- 1.2.1.16. Due to the lack of intelligence from both the SSA and SAPS's Crime Intelligence, business associations employed private specialists to track social media in an attempt to mitigate attacks. It was again noted that SSA and the crime intelligence arm of SAPS should have been responsible for this.⁸⁴ BUSA stated that a capable state is needed to create economic stability but was not convinced that the current government responded to the Unrest, or to other challenges, in a manner that can allow it to be described as "capable". If the government had acted 'capably' there would not have been the need for the private sector to take over some of the responsibilities of the government.
- 1.2.1.17. Minister Patel stated that the DTIC had to gather information from businesses on the ground in order to identify where the Unrest hotspots were. The DTIC provided this information to the SAPS and the SSA. This is an example of the quick response and action of the DTIC – of the government departments involved in response to the Unrest, it appears that businesses got support most quickly, and primarily, from the DTIC. This included taking the lead in government initiatives to re-establish supply chains, and to get food and medication to people who needed those resources.
- 1.2.1.18. Business owners have lamented the failure of government to act to protect their businesses and the country's economy or economic interests, even though many, or most, businesses dutifully pay tax and provide employment for people in South Africa. Business

leaders and owners feel that the government is not holding up its end of the social compact. The lack of faith and growing disillusionment with the government was described by the GCRO.

Socio-Economic and Socio-Spatial Factors and the Unrest

- 1.2.1.19. While limited information was presented on “primary” actors, through witness testimony,⁸⁵ a lot was said about the “secondary” actors. The DTIC, the DSD, Stats SA and the GCRO provided statistics on the increased levels of unemployment; dependency on social grants; poverty; and vulnerability to hunger in the period just before the Unrest, with Covid-19 as a factor, and how, from its respective perspectives, these social and economic conditions, experienced primarily by Black South Africans, were the “dry tinder” that the orchestrators were able to set alight and take “advantage of”.
- 1.2.1.20. It appears that much of the Unrest (as displayed on news clips and media clips shared via social media), and particularly the theft, happened through the “secondary” acting. The orchestrators, it appears, relied on the substantial levels of inequality and the feelings and experiences of disenfranchisement, particularly by residents in Black townships for the creation of instability or chaos that was the Unrest.
- 1.2.1.21. As stated by community members, a lot of the people who committed alleged acts of theft were poorer members of the community. Despite the now notorious Mercedes Benz driver Mr Mbuso Moloi,⁸⁶ who was caught on camera stealing goods from a Woolworths in Glenwood Durban, the overwhelming majority of those who participated in acts of theft were poorer members of the community. People whom, the Minister of DSD described as “discontent” and were at the point of realising that living conditions or the quality of life, were statistically on the decrease (at the point of the Unrest).
- 1.2.1.22. While not a cause of the Unrest (the lighting of the match), the business associations were adamant that the “dry tinder” and the ease at which the socio-economic conditions could be manipulated, and people could be mobilised were detrimental to business growth. According to Mr Coovadia of BUSA, if Alexandra still exists in its current form in ten years, then Sandton, the financial hub of South Africa won’t exist. As a result of the Unrest, the South African economy contracted by 1.5% and between Gauteng and KwaZulu-Natal 330 000 people lost their jobs. The stability of South Africa’s economy, and its growth depends on correcting the socio-economic conditions which allowed people to be mobilised.

- 1.2.1.23. As stated by Mr Makhubela of Bahlali/Badhuli, the feelings of unhappiness with socio-economic status – a lack of access to dignified housing, and consistent water and electricity, clean living environments, employment – and feelings of general abandonment by the government, were expressed by people in townships, if not before that, by 2008 xenophobic riots. The riots were, if the Commission understands Mr Makhubela, less about the presence of non-nationals, but more about the frustration with their own living conditions and while the cause of the frustration is the government, with whom the social pact exists because community members cannot directly access government, the more accessible and vulnerable foreigners became the “scapegoat”, as per the frustration-aggression displacement theory.⁸⁷
- 1.2.1.24. Because the state made little to no intervention in the lives or living conditions of the communities to relieve the frustration and because community members feel powerless in terms of accessing the government to hold it to account, they continue to be catalysed by occurrences or events which allow for misdirection of their frustration.
- 1.2.1.25. This position was likely known by the orchestrators and preyed upon. As stated by the Minister of DSD:
- “at the end of the day, if you have people who are happy in their environment, people who feel they belong, from an economic point of view, people who think they have the most basics, it’s not very easy to mobilize those kinds of people. But it’s easier to mobilize them when they feel they have very little to lose.”
- 1.2.1.26. Based on the submissions it appears that people’s willingness to damage and steal from businesses or partake in acts that destabilise the economy or threaten investments comes from their feelings or lived experience of being excluded from the economy, the feeling that it is not ‘theirs’: there is no sense of collective ownership, of tenure, or enfranchisement in the economy, or in South Africa more broadly.
- 1.2.1.27. From a history that spans the introduction of notions of private/ individual property rights over communal land to no land ownership, that involves 99-year leases, forced removals and second-grade citizenship which has not improved for a critical mass of Black South Africans in the democratic era, it is not surprising that Black South Africans do not feel like they are stealing from themselves or their people. In 1996, the Constitution introduced the right to protect private property when the majority of South Africans didn’t have property. As explained by the GCRO spatial apartheid has been difficult to undo. While there has been integration in some areas, this integration, largely in areas that were previously White, Coloured, or Indian, has been on a class basis.

- 1.2.1.28. Few, if any White, Indian or Coloured people, despite economic struggles, have moved to a “previously” Black township. Simultaneously, the movement of economically mobile Black people out of the townships has left townships economically poorer and in building RDP housing, provincial and municipal governments continue to build housing settlements in the townships, far away from employment opportunities, essentially reinforcing spatial apartheid and the concept of Black townships as labour camps.
- 1.2.1.29. With poverty we destroy a sense of community and introduce a capitalist, each man for himself, environment. As stated by community members from Soweto this growing unhappiness or feeling that the majority of South Africans have very little ownership in the country and that this unhappiness was most violently expressed in the 2008 (and subsequent) xenophobic riots.
- 1.2.1.30. The fact that the government did not intervene or create any noticeable change to this feeling of neglect or disenfranchisement is reflected in the ongoing xenophobic violence and the increase in partially replicated in the middle and upper classes, who, as will be discussed in the next section, frequently opt for private services: this community also feels neglected by the government but frequently has the resources to source services from the private sector, filling in where the government has, in their understanding, neglected them.
- 1.2.1.31. The community members from Soweto who appeared before the Commission communicated the feeling, held by them and apparently others in their communities, that formerly white areas, such as Sandton, were prioritised in terms of police resources, allowing Black townships to suffer the consequences of crimes against property. Under-resourcing of township police stations have been made in a number of places in South Africa and, at least in the Western Cape, has been proven in court, on a balance of probabilities, in the matter of Social Justice Coalition and Others v Minister of Police and Others.⁸⁸
- 1.2.1.32. This feeling of neglect and not being protected was further exacerbated by the mal execution of SAPS’ Operation Khip’i’Receipt”. Community members felt that given SAPS’ absence during the actual Unrest, where SAPS did not protect shops and stores, it was an additional slight for SAPS to enter people’s homes in the Black townships and destroy food. That this Operation was only carried out in Black townships reinforces the racist origins of the term “looting”, and which sectors of a population engages in looting. Both Mr Zikode of Abahlali baseMjondolo and Mr Makhubela of Bahlali/Baduli described Khip’i’Receipt as an injustice to the people who live in Black townships in KwaZulu-Natal

and Gauteng and a continuation of the violence through which Black people in South Africa are conditioned.

1.2.2. The UPL Cornubia Factory Fire

- 1.2.2.1. In respect of the UPL Fire, the Commission received limited oral testimony and written submissions but benefited from reports released by NDoFFEA and EDTEA, as well as the responses to the Provisional Report from the KwaZulu-Natal Premier. The evidence received by the evidence put before the Hearing Panel focused exclusively on the legality of the UPL Warehouse in Cornubia City, the irregularities and illegalities of its existence at the time of the UPL Fire and the adverse effects of the UPL Fire on the constitutional rights of the affected communities, including their rights to an environment not harmful to their health and well-being, to have access to health care services, to have access to sufficient water, and of access to information needed to exercise or protect a right. No evidence was tendered in respect of who or why the UPL Warehouse was set alight.
- 1.2.2.2. It is common cause that because of the chemicals stored in the Warehouse being set on fire, and firefighters using water to put out the fire, the air and water around the UPL Warehouse became polluted and has caused several illnesses and reduced the use of the water for recreation, irrigation and domestic use.
- 1.2.2.3. The NDoFFE and EDTEA, through the Preliminary Report, confirmed that UPL did not obtain all the necessary environmental authorisations in terms of NEMA and the Major Hazard Institution regulations in terms of the OHS Act, and was therefore operating irregularly. While the pollutants were only released after the UPL Warehouse was unlawfully set on fire, the unauthorised and irregular operation of UPL, and the storage of thousands of tons of dangerous chemicals resulted in environmental damage, continuing the theme of lawlessness or disregard for the rule of law that ran throughout the Unrest.
- 1.2.2.4. EDTEA and NDoFFE have laid criminal charges against UPL for contravention of NEMA and are continuing to investigate UPL and the remediation as part of the Stakeholders Forum.
- 1.2.2.5. Given the findings of EDTEA, and the fact this matter did not fall within the ToRs of the Unrest Hearing Panel, the Commission had accepted EDTEAs findings and will continue to engage EDTEA and the members of the Stakeholders Forum in obtaining updated information on the criminal investigation against UPL and the remediation process.

1.2.3. Lack of Understanding on the Use of Social Media Platforms

- 1.2.3.1. Social media platforms have emerged as powerful tools for communication and potent agents of socialisation. At the same time, social media platforms have proven to be vulnerable to being used to fuel unrest within societies. The speed and reach of information dissemination on these platforms have enabled the rapid spread of divisive narratives, misinformation, and propaganda. Irresponsible use of social media by individuals, groups, or foreign actors seeking to manipulate public opinion can exacerbate existing tensions and contribute to social unrest.
- 1.2.3.2. The anonymity that is possible with the use of social media further intensified the polarisation and radicalisation of societal discourse. Moreover, the ease of organizing and coordinating through social media enabled the swift mobilisation of groups with disruptive intentions, leading to the Unrest, and ultimately, human rights abuses. As social media continues to play a significant role in shaping public discourse, it is crucial to address the ethical challenges and develop strategies to promote responsible use, counter disinformation, and mitigate the potential for social media to fuel further unrest in society.
- 1.2.3.3. The Commission is cognisant that access to details of social media activity and accounts require a form of Mutual Legal Assistance (MLA)⁸⁹ to gather admissible evidence from social media platforms such as Meta and Twitter/X. The Commission recognises that this was highlighted as a challenge. The Commission noted however that this is not a new fact, and that proper mechanisms should have been in place to respond to any concerning activity without delay.
- 1.2.3.4. Addressing disinformation on social media platforms is of paramount importance, not only from the perspective of human rights but also as a critical national security concern. Disinformation campaigns spread through these platforms can undermine democratic processes, manipulate public opinion, and sow societal discord as was evident during the Unrest. The deliberate dissemination of false or misleading information eroded any trust in institutions, hindered informed decision-making, and even incited violence. By distorting facts, manipulating narratives, and exploiting vulnerabilities, disinformation threatened the very fabric of our democratic society.
- 1.2.3.5. When individuals are not mindful of the impact their words can have online, it paves the way for the spread of inflammatory content that can incite violence or unrest. Examples of this include posts inciting others to commit acts of violence, promoting hatred towards specific racial or ethnic groups, or engaging in persistent harassment of individuals. The anonymity and perceived detachment from consequences on social media emboldened

individuals to engage in such behaviours without fully understanding the harm they were causing. Therefore, it is imperative to educate the public about their responsibilities in online communication, promote digital literacy, and establish robust mechanisms to monitor and address offences on social media platforms. By fostering a culture of responsible online communication, the effects of the Unrest may have been mitigated.

1.3. FINDINGS

With respect to the **social, economic, spatial and political factors prevalent in the various affected areas and the extent to which these played a role in the July Unrest**, the Commission makes the following findings:

1.3.1. *Business, the Economy, and Socio-Political Conditions*

Political Factors Played a Part in the Unrest

- 1.3.1.1. There is evidence presented to the effect that acts which have occurred during the Unrest such as the blocking of the N3, the calculated destruction of factories and warehouses through the disconnection of security and fire alarm systems, the bombing and removal of ATM's and the messages of primary actors to secondary actors inciting such acts, were indeed orchestrated.
- 1.3.1.2. The Commission finds that while the timing of the events of the July Unrest coincided with the incarceration of former President Jacob Zuma, the unrest was indeed orchestrated, and it is probable that the orchestration was politically linked and undertaken to destabilise the economy. Further, it will ultimately be within the purview of SAPS and the NPA to make a conclusive finding of the politically linked orchestration of the Unrest.⁹⁰
- 1.3.1.3. The government's shortcomings in effectively collecting and sharing intelligence products and information played a significant role in the Unrest's escalation. This refers to the inability to gather timely and accurate information about potential threats and share it among relevant security agencies.
- 1.3.1.4. The South African Police Service (SAPS) was ill-prepared to deal with the orchestrated attacks and unrest. This might include insufficient training, equipment, or resources to effectively respond to the situation.
- 1.3.1.5. The lack of appropriate action in response to the initial signs of unrest led to criminal activities such as theft, arson, and malicious damage to property.

- 1.3.1.6. The failure to promptly address and counter digital orchestration and instigation through social media and other online platforms allowed the Unrest to grow. This suggests that online communication and coordination played a role in fuelling the violence.
- 1.3.1.7. The working relationship between the Minister of Police and the National Commissioner of Police had a negative impact on the collection and sharing of intelligence information and thereby employing the response of the SAPS effectively.

Socio-Economic Factors Played a Part in the Unrest

- 1.3.1.8. The socio-economic conditions of the majority of South Africans were a major factor in the spread, extent, and scale of the Unrest. However, it was not the cause.
- 1.3.1.9. The socio-economic conditions and the disillusionment with the government in its ability to provide better living conditions allowed “secondary” actors to express their exclusion and frustration through participation in the Unrest.

1.3.2. *The Use of Social Media Platforms*

- 1.3.2.1. The Commission finds that through the creation and dissemination of inflammatory content, social media amplified grievances, stoked fear and anger, and mobilised individuals towards disruptive actions.
- 1.3.2.2. Social media and the nature of moving towards the fourth industrial revolution calls upon the government to halt any traditional way of thinking and operationalise the gathering of intelligent intelligence from these platforms. It was clear from the evidence obtained that mechanisms to gather information to counter the weaponization of these platforms are available however, the responsible entities did not take steps to improve their skills or did not have the capacity to do so at the time.
- 1.3.2.3. As set out above, the Commission has found that the state did not have the capability or the mechanisms to adequately address and combat mis- and disinformation and if they had it, they did not employ it effectively. Furthermore, digital media monitoring experts determined that no singular cause could be established from the data generated through online monitoring.
- 1.3.2.4. The Commission further finds a concerning lack of awareness among the public regarding their online duties and responsibilities in practising responsible communication on social media platforms. This lack of awareness clearly had severe consequences, leading to

various offences such as incitement, hate speech, and harassment being committed during the Unrest.

- 1.3.2.5. The Commission therefore finds that it is essential to recognise that combating disinformation is not only about safeguarding the right to access accurate information, but also about preserving the integrity of democratic systems, protecting national security interests, and ensuring the well-being of citizens. A comprehensive approach that combines technological solutions, media literacy, and collaboration among governments, tech companies, and civil society is vital to effectively counter disinformation as both a human rights and national security threat.

1.4. RECOMMENDATIONS

With respect to the social, economic, spatial and political factors prevalent in the various affected areas and the extent to which these played a role in the July Unrest, the Commission makes the following recommendations:

1.4.1. *Business, the Economy, and Socio-Political Conditions*

Political Factors Played a Part in the Unrest

- 1.4.1.1. Both the SSA and Crime Intelligence are to engage and deepen relationships with different sectors of society to enhance the quality of intelligence gathered and its management.
- 1.4.1.2. Mechanisms and measures should be put in place to address the rapid and timely flow of information in order to promote effective and efficient responses to national security threats.
- 1.4.1.3. The President must take steps to ensure that the Commission is provided with a report on how such mechanisms and measures are being developed.

Socio-Economic Factors Played a Role in the Unrest

- 1.4.1.4. The government and the private sector have an urgent responsibility to address the socio-economic inequalities and the inequalities of access to the economy which are differentiated along racial lines in patterns that are reflective of a racialised economy. The state must take steps to ensure socio-economic transformation of the racial dynamic of the economy.
- 1.4.1.5. Despite the realisation of socio-economic rights being the responsibility of the government, the Commission is including the private sector in its recommendations not only because of its historical and current importance in the nation-building project but that the sector remains central to the National Economic Recovery Plan.⁹¹

- 1.4.1.6. There is a need for all South Africans to have a share in the economy and for common ownership of the country's vast natural and other resources. The Unrest has demonstrated the need to create a legitimate inclusive economy.
- 1.4.1.7. The State must invest in monitoring and evaluation tools and, or resources to record and measure the impact upon implementing their socio-economic action steps as outlined above. The Commission Acknowledges Work Done by the Gauteng Provincial Government in this regard.

1.4.2. *The Use of Social Media Platforms*

- 1.4.2.1. The Commission recommends that the Minister of Communications, in collaboration with the Department of Communications and Digital Technologies and the public broadcaster, take proactive measures to promote public understanding of the legislative framework that safeguards against the abuse and misuse of misinformation and disinformation. Further to this, the Commission recommends that its Social Media Charter⁹² be used as an advocacy tool in this regard.
- 1.4.2.2. The Commission recommends that in the development and implementation of relevant laws regarding disinformation and misinformation the State should ensure that this is done through a balanced approach to safeguard against harm and the risk of harm to society. While recognising the need to combat the spread of violence through online mediums, it is essential to avoid undue limitation of the right to freedom of expression.
- 1.4.2.3. The Commission further recommends that the President considers measures to curb misinformation and disinformation aimed at causing harm and include during such consideration, consulting representatives from the Commission to deliberate on an appropriate way forward to address challenges related thereto.
- 1.4.2.4. To effectively address online threats such as incitement to commit acts of violence, harassment, hate speech, and the activities of organised criminal syndicates, the Commission recommends that the state allocate resources to establish an expert-level panel. This panel should be composed of professionals with relevant expertise who can provide guidance, draft directives, and advise on identifying and mitigating online threats.

CHAPTER 2: ISSUE TWO: THE CAUSES OF THE ALLEGED RACIALLY MOTIVATED ATTACKS AND KILLINGS IN THE COUNTRY

2.1. EVIDENCE

INTRODUCTION

Whereas the July Unrest was initially, and mainly branded and characterised by news reports of protests supporting former President Jacob Zuma, and their subsequent development into, and intertwining with the mass anarchy that ensued, characterised by burning warehouses and shops, a racialised tone of interpersonal violence⁹³ began to emerge amidst the narrative. Images and footage of gruesome violence were shared on social media, particularly attached to the hashtags #KZNViolence, #pheonixmassacre, #EthnicMobilisation, and #IndiansMustFall.⁹⁴

Individuals and groups representing affected persons and communities deposited extensive testimony in response to the Commission's call for submissions to the National Hearing.

This section attempts to contain, with impartiality and care, the narratives submitted to the Unrest Hearing by July's People in their various voices.

2.1.1 KHAN ROAD CORNER INFORMAL SETTLEMENT - RAISETHORPE

The very first oral testimony received by the Hearing Panel was from Khan Road Corner Informal Settlement. Like many of its counterparts across the nation's metropolises and major cities, the Informal Settlement exists as a testament to the legacies of colonial and apartheid spatial planning policies. Khan Road Corner informal settlement is a smaller informal settlement in the Msunduzi Local Municipality of approximately 150 people. It is located in the sub-area of Raisethorpe, in the suburb of Northdale, in Pietermaritzburg. According to the 2011

Census, Raisethorpe is inhabited by approximately 6171 people, 82% of whom are persons of Indian origin, and 15% Black African.

It is said that the Informal Settlement, like many of its counterparts, was formed by persons who moved from rural KwaZulu-Natal to be closer to job opportunities. The community members share one standpipe between them to access water and have illegal electricity connections. Many of the witnesses from the Informal Settlement were not formally employed and relied on seasonal and/or "piece-jobs" and various SASSA grants.

a. **Zama Nguse**⁹⁵



At the time of testifying, Ms Zama Nguse had lived at Khan Road Corner for 18 years with her family. Her testimony can be summarised as follows:

She alleged that, on the night of 11 July, or the early morning of 12 July 2021, Ms Nguse heard noises in the yard outside the informal settlement. Upon investigating, she saw burning tyres on the road. Next to the fire were private security vehicles belonging to, or branded as belonging to, private security companies, RZS⁹⁶ and Mi7,⁹⁷ who had approached Khan Road Corner.

The occupants of the vehicles began to throw teargas into the informal settlement. As a result of the teargas spreading through the informal settlement, residents, who had left their homes to investigate the noises, were unable to return or to find a place of safety to shield from the teargas.

In the ensuing scuffles, she eventually managed to access her sister's home, from where she heard a large explosion. As they attempted to flee the explosion, amongst the screams and scuffles, she heard a voice shouting that her 16-year-old

nephew, Sibahle, had been shot. He was declared dead at the hospital. The cause of death was a bullet wound "close to or on his heart".

Upon returning from the hospital to Khan Road Corner, she and her family noticed people who were not from Khan Road Corner, running with liquor and auto-spare parts. They were being chased by the SAPS.

She alleged that she also noticed that large groups of South African Indians had surrounded Khan Road Corner and had set the informal settlement alight. When members of the informal settlement or outsiders from the surrounding communities tried to extinguish the fire and help the residents of Khan Road Corner, they were shot at, either by private security guards or members of the Indian community. Some of the attackers referred to them as animals.

When trying to access her home to retrieve her and her children's medication, identity documents and clinic cards, she was allegedly shot in the arm. It was unclear what type of ammunition was used. She was unable, at the time, to access medical attention as the roads were being blocked by the large groups of people of the Indian community. She, therefore, relied on members of the informal settlement to remove the bullet.

In the aftermath, and as Ministers Gwede Mantashe and Bheki Cele visited the area, criminal cases were opened against alleged perpetrators. While she provided a statement to the police about her ordeal, at the time of the Unrest Hearing, she and her family members

were not given updates regarding the investigations that ensued.

b. Thobani Nguse⁹⁸

Mr Thobani Nguse is Ms Zama Nguse's brother. His testimony can be summarised as follows:

He referred to chaos that ensued on the night of 11 July and early morning of 12 July 2021 – the presence of private security guards, people running with liquor and auto spare parts, explosions or explosion-like sounds, the teargas, gun shots and the death of his nephew, Sibahle or "Bahle" as he was known to his family and friends, and the arson attack on Khan Road Corner informal settlement.

When he tried to relocate his partner and children to a safer part of the informal settlement, he alleged that he was also shot in the arm. He did not seek medical attention; he merely wrapped a cloth around his wound. His home and his identity documents were destroyed in the fire. According to Mr Nguse, the chaos at Khan Road Corner ended when SAPS officers intervened and attempted to diffuse the chaos.

c. Lwandile Gumede⁹⁹

Mr Lwandile Gumede is the brother of Sibahle. His testimony can be summarised as follows:

He was at home in Umzimkulu when his brother was allegedly killed and his wife shot, at Khan Road Corner.

He was informed telephonically, by his aunt that his brother had been killed and his wife had been shot and injured. He stated that after being shot his wife struggled to get assistance or medical attention from SAPS. At the time of testifying, his wife was still in hospital in Howick. Due to the gunshot wound, she was unable to walk. He did not report the shooting and his wife's consequent condition to SAPS because he did not trust the Mountain Rise SAPS (the closest SAPS station to Khan Road Corner). He believed the flagrant shooting at Khan Road Corner was carried out by private security guards.

d. Siphosethu Msiya¹⁰⁰

Mr Siphosethu Msiya, a resident of Khan Road Corner for a decade. His testimony can be summarised as follows:

He was with a group of residents when they heard a noise on the night of July 11, 2021. They moved to higher ground within the informal settlement to investigate. He alleged that they observed people on the road burning tires, and a large fire. RZS private security personnel approached the scene but left shortly after. SAPS officers arrived, but when the people on the road began throwing stones at their van, the SAPS departed as well.

A few minutes later, RZS and Mi7 private security returned, and allegedly began to distribute guns and ammunition to individuals on the other side of Khan Road.

They then opened fire on the Khan Road Corner settlement. Sibahle Nguse, who was with him left the group to check on his siblings but did not return. When he went to find him, he discovered Sibahle lying on the ground, having been shot.

Roshan Jainath¹⁰¹



Mr Roshan Jainath has lived in Raisethorpe, Pietermaritzburg his entire life. He lives 12 kilometres from the Khan Road Corner informal settlement. His testimony can be summarised as follows:

He painted an historical picture of the race relations between the African people living in Khan Road Corner and the members of the Indian community living in Raisethorpe and Northdale.

He alleged that someone named Senzo Dlamini, was shot and killed by a SAPS reservist in a nearby area known as Parklands. Many community members knew who shot and killed Mr Senzo Dlamini but were too afraid to testify. He went to Mountain Rise SAPS with information about a suspect who was a member of the local neighbourhood watch. Despite numerous follow

ups with Mountain Rise SAPS, the suspect was not questioned or tested for gun residue. Station Commander Brigadier Boxer Pillay refused to meet with community members to listen to or note their concerns regarding the death and investigation of the killing of Mr Dlamini.

Despite Raisethorpe being the birthplace of many anti-apartheid activists, there were ongoing and historical racial tensions between some members of the African and Indian communities. He referred to the 1949 Durban Riots and the 1985 Inanda Riots, which extended, in part to Pietermaritzburg as examples of the longevity of the tensions.

He noted that he had expected altercations in respect of economic inequality but not race, not until the July Unrest, that is. He added that there was no racial tension between the Indian and Black African middle-classes as they protected their properties together. According to him, the African middle class did not assist the residents of Khan Road Corner informal settlement. He did admit that there are still a number of racist people in the surrounding Indian communities, saying they are bullies and that the use of social media has made both the expression of racism and the vigilantism “spread considerably”.¹⁰²

He alleged that the same neighbourhood watch that is responsible for the killing of Mr Dlamini is responsible for the shooting and killing at Khan Road Corner. He stated that when he went to Khan Road Corner it had already been set alight. He saw the son of one of the women who had been shot and killed. The woman was from

Lesotho, and he raised some funds to have her body repatriated.

He reported the killings at Khan Road Corner and got the cases moved from Mountain Rise SAPS. He advised that four people had, at the time of testimony, been arrested. One of them was a security guard who was employed by RZS private security. One of the residents from the surrounding townships who had been arrested, an Indian man, had his hands burnt by the petrol bombs that were thrown into the Khan Road informal settlement.

He stated that Mountain Rise SAPS station was an “Indian controlled station” that was linked, via personnel, directly to the neighbourhood watch responsible for Mr Dlamini’s killing and the attacks on Khan Road Corner. Mr Jainath described the neighbourhood watches in the surrounding Indian townships as “Rambos [with] guns on the back of bakkies”.

The people of Khan Road Corner were not offered any assistance by SAPS until the video of the burning of Khan Road Corner was shared with members of the ANC. After the video was seen, Minister Gwede Mantashe, National Chairperson of the ANC, visited Khan Road Corner. Without the video, the people of Khan Road Corner would have not received any support from SAPS. Mr Mantashe “made a two-year promise” to house the people of Khan Road informal settlement within that community, so that they could still access schools and potential jobs.

After Mr Mantashe’s visit, the then Mayor of Msunduzi Local Municipality, announced that

funds had been set aside by the Msunduzi Local Municipality to provide electricity for Khan Road informal settlement.

He had been coordinating a “cohesion project” at Khan Road Corner. He advised that because of the lengthy processes in securing municipal or state housing for the residents of Khan Road Corner – supply chain management procedures and the consequent delays that inevitably come with state contracting – he raised money through funds received from, amongst others, religious groups, individuals, and non-profit organisations to build homes for the residents of Khan Road Corner whose homes were burnt down.

Through this cohesion project he has engaged the provincial departments of Justice and of Community Safety, who at the time of testimony, agreed to provide support or assistance in facilitating peace between the people living at Khan Road Corner and the people living in the surrounding Indian townships.

He also spoke of his intention to arrange counselling for the victims of the attacks on Khan Road Corner as well as his intentions to make arrangements with the Department of Home Affairs for the residents of Khan Road Corner to replace their identity documents.

He invited members of the Indian community to put themselves forward for the Hearing, but some of them did not come forward.

e. **Yunus Carrim**¹⁰³

Mr Yunus Carrim is a member of the National Council of Provinces. He is the Chairperson of the Select Committee on Finance. Mr Carrim grew up near Khan Road Corner informal settlement and currently resides within the Msunduzi Local Municipal area. His extended family also lives near the settlement. He submitted an affidavit to the National Hearing on 3 December 2021 in which he stated the following:

Khan Road Corner is part of what is known as the “Northern Areas”,¹⁰⁴ which formed part of the “former ‘Indian’ and ‘Coloured’ Group Areas”.¹⁰⁵

He became aware of the Unrest, and what was ensuing at Khan Road Corner, through social media and viral videos. He contacted the ward councillor, Ms Rachel Soobiah, and learned that affected residents from Khan Road Corner were offered shelter at Truro Hall, and that Gift of the Givers had agreed to assist with food parcels. Ms Soobiah later advised Mr Carrim that the civilian roadblocks had prevented Gift of the Givers from accessing Khan Road Corner informal settlement. Ms Soobiah also advised that affected residents “were not prepared to move to the Truro Hall as they wanted to salvage their remaining belongings and also feared that others will move into the informal settlement and take the spaces that they had occupied”.¹⁰⁶

His affidavit focused on the responses of political activists and politicians during the Unrest in ward 30. He praised Mr Jainath's role in bridging the divides between the Indian and African residents, but however, disagreed with Mr Jainath's statement that politicians only responded after

Minister Mantashe visited the settlement. While, in his view, public representatives and political activists or politicians did not do enough to respond to the Unrest in Ward 30, they did not fold their arms and do nothing. He detailed a list of politicians, including then Secretary General of the ANC in the province, Mr Mdumiseni Ntuli, having visited the Khan Road Corner settlement.

He stated that on 13 July 2021, he was approached by representatives of the ANC regional structure and the Regional Task Team to assist in responding to the Unrest. He raised concerns to Brigadier Pillay from SAPS about the investigation into the burning of shacks and the deaths of three residents.

A meeting was held on 14 July 2021, with residents from both formal and informal settlements. Mr Jainath chaired the meeting, and politicians and civic organisation representatives attended. The Peace and Development Forum (P&DF) was established with Mr Jainath and Ms Nkwanyana as co-convenors.

Along with other politicians mentioned, he attended all P&DF meetings and participated in the Commission's Imbizo, and a workshop hosted by the DoJCDCD.

The third part of his affidavit covered probable reasons or the context for the racial tensions that arose at Khan Road Corner. While referencing the trigger for the unrest being the arrest of former President Jacob Zuma, the coordinated barricading of the N2 and N3 highways, the alleged acts of theft and the ineffectiveness or unpreparedness of the SAPS, he stated that due

to “extreme, mostly racialised, inequalities, made worse by Covid-19”,¹⁰⁷ social unrest was looming anyway.

He further elaborated, in his affidavit, that these inequalities take “a very stark, immediate form” where informal settlements adjoin formal settlements. In the case of Khan Road Corner, the informal settlement is surrounded by formal settlements. The formal settlements are occupied, mostly, by Indians and a smaller number of Black Africans “and residents from other backgrounds”,¹⁰⁸ while the residents of the informal settlements are all Black African. The conflict, therefore, inevitably, according to him, between residents of “formal and informal settlements” takes a racial form, even though what underlies the conflicts is the “have and have-nots, between classes” which include the Black Africans living in the formal settlements, who also oppose the adjoining or the proximity of their property to informal settlements because, amongst other reasons, “it tends to lower the value of their properties”.¹⁰⁹

He stated that there is a concerning degree of racism from some of the Indians towards Blacks and increasing racism among Blacks towards Indians “and other racial groups”.¹¹⁰ For these reasons, it is important to address both the material divide and the “racial antipathy”. “Racial stereotypes that all Indians are racist, or all Africans are potential looters obviously need to be debunked”.¹¹¹ He stated that these structural issues that allowed for the Unrest need to be addressed in order to reduce the prospects of an unrest reoccurring.

His affidavit then goes on to provide a context for the “anxieties”, “fear and paranoia” of the Indian community. This included the limited looting of businesses in Ward 30, propaganda on social media and absence of present or effective policing. He does, however, add that the killing of three people and the burning down of 62 shacks or homes “can never be justified ... people have the right to self-defence if their lives are threatened or their properties burnt down, but what seemed to have happened ... is that people took the law into their own hands ... the courts must deal with the alleged perpetrators”.¹¹²

f. *Trini Krishnan*¹¹³

Mr Trini Krishnan was, at the time of making his written submission an independent community liaison for Ward 30, within which Khan Road Corner informal settlement is situated. As a former activist with the United Democratic Movement, he was tasked with or undertook to engage the Indian community members who were manning the civilian roadblocks in Ward 30, to understand their perspectives and possibly understand some of what triggered the Unrest in Ward 30.

According to Mr Krishnan, the Indian community members at the roadblocks expressed, contradictory remarks. They told Mr Krishnan that both communities – the Indian community, living in the formal settlements and the Black African community, living in the informal settlement – fear each other. However, they also told Mr Krishnan that they do not need the intervention of the

government or the P&DF, firstly, because they do not trust the existing leadership as they have, in their opinion, failed the people of Ward 30, and secondly, because, as stated by Mr Krishnan, the Indian community members said “we are friends with them, the maids are already coming back to work”.

The members at the roadblock stated that both the Indian community from the formal settlements and the Black African community from the informal settlement at Khan Road Corner informal settlement want to get on with their lives. According to the people at the roadblocks, the persons from the informal settlement told them that they have no money, they live from day to day, they want to get back to “graft” they want to get back to working.

The members of the informal settlement do not have water, they don't have proper electricity they do not have homes, and nobody is fighting for them and that is one of the causes of tension between the Indian and Black African community. However, they also said that the people living in the informal settlement are poor they have nothing to lose so they will come and “crash into us and we will fight for what we've earned and what we've bought and what we have set up in our households” so they were going to continue putting up civilian roadblocks and employing Mi7. When asked by Mr Krishnan how they could say that when they had just said “we are friends”, the Indian community members responded by saying that there was a criminal element, within the informal settlement and SAPS will not protect the Indian community. So, according to the

community, they have to pay for private security and that it is another form of tax that they have to pay to look after ourselves. This is seen by the community as another state failure.

According to Mr Krishnan, the “toxic rhetoric ... demonisation of the communities is hurting” the Indian community in Ward 30 and the greater KZN. People have been living at Khan Road Corner informal settlement for more than 17 years. It is a disgrace to the country's leadership that progress has not been made for the residents of Khan Road Corner informal settlement. What is happening now, according to Mr Krishnan is that people have empowered themselves and are self-governing, unfortunately, along racial lines.

Mr Krishan advised that the people who erected and manned the roadblocks, in Ward 30, are DA aligned and do not want to report to an ANC structure. He stated further that an independent party or organisation is needed to undertake a scientific study in order to deal with the racism. There is also an urgent need for economic development to address the economic inequality so that everybody can earn their living and live a good peaceful life.

g. Sharlene Naidoo¹¹⁴

Ms Sharlene Naidoo lodged a complaint with the Commission. In her complaint she alleged the following:

Her father, who was a member of a community watch group, was killed in a hit-and-run incident

on the night of 12 July 2021, while protecting shops on the corner of Ohrtmann and Echo Road, Pietermaritzburg.¹¹⁵ Witnesses tried to call SAPS and the public emergency services, but due to receiving no response, her father was rushed to hospital by members of the community watch.

She stated that despite having the details of the car that hit her father and the drivers' licence of one of the occupants of that car, SAPS did not take witness statements and even asked her and

her family to do the job of SAPS and collect witness statements.

Someone was charged with the killing of her father, but the case was not pursued, and the individual was released by the court. The investigating officer, in response to her complaint, stated that they received no instructions from the NPA or the Magistrate's Court regarding how to proceed. As a result, there has been no progress in prosecuting the person or persons responsible for her father's death.

2.1.2 NOTTINGHAM ROAD

Nottingham Road is a town located approximately 60km west of Pietermaritzburg, in the uMgeni Municipality.¹¹⁶ Inhabited by slightly more than 1000 people, the population is composed of predominantly Black/ African people (70%) and a smaller number of white people (25%).¹¹⁷

a. *Tiballo Reginald Khami*¹¹⁸

According to Mr Tiballo Khami's affidavit, on 12 July 2021, he was shot in his right shoulder while at Standard Bank in Nottingham Road. He did not see who shot him but was admitted to Greys Hospital and later transferred to Inkosi Albert Luthuli Central Hospital due to the seriousness of his injuries.

b. *Steven Sello*¹¹⁹

Mr Sello's statements can be summarised as follows:

On an unspecified date during the July Unrest, he left his home at the Railway Compound to go to work when he noticed that the roads were closed, and it appeared as if there were protests taking place. He telephoned his boss to inform him and was advised to stay home that day. After about three hours, he noticed people running into the squatter camps with liquor, furniture, and building materials and knew they broke into such shops.

After a few hours he needed to use the toilet. He usually used the public toilets behind Build It Notts, which is next to the Railway Compound. He decided he would use the toilet after 16:00, as it appeared quiet and calm outside. However, when he went to the toilet, he was allegedly shot in the back by a white man. He sought refuge at his girlfriend's place and asked her to call his uncle. His uncle took him to Northdale Hospital, where he finally managed to use the restroom. No one was ever held accountable for his shooting.

2.1.3 CHATSWORTH

Chatsworth is one of the largest, formerly exclusively Indian, townships in KwaZulu-Natal. It is spread over seven municipal wards. It was formally established in the 1950s following the Asiatic Land Tenure Act, the Indian Representation Act and the Group Areas Act to segregate Indian people and create a buffer between the White suburbs to the North and East and the Black townships to the South and West of Chatsworth. It has, since the end of Apartheid, become slightly more integrated with several Black African families relocating to Chatsworth. In 2011, Chatsworth had 196 580 people, 60% Indian or Asian and 38% Black African.

a. *Thulebona Mpendulo Bhoyi Ngubo*¹²⁰

Mpendulo Ngubo submitted a written account to the Commission wherein he alleged the following:

An incident occurred on 14 July 2021. His cousins were driving in Chatsworth towards a petrol station to refuel their car when they encountered a civilian-manned roadblock operated by Indian individuals. When questioned about their presence in the area, they explained that they lived in Chatsworth and were on their way to refuel their vehicle. Despite their explanation, they were told to leave and chose to drive away instead.

Subsequently, Indian individuals in a vehicle began pursuing them and opened fire, resulting in the tragic death of Nhlanhla Mbatha, one of the occupants and Mr Ngubo's cousin. Fortunately, the other occupants managed to escape the vehicle without being

harmed. After their escape, the car was set ablaze and destroyed.

As of the date of his submission, the family had filed a case with the South African Police Service (SAPS), but there had been no significant progress regarding the investigation.

2.1.4 SHALLCROSS

Shallcross is a suburb of Durban, located in the eThekweni Metropolitan Municipality. Shallcross was founded in the 1960s as an apartheid dormitory suburb, a neighbourhood initially formed by people who were forcibly moved to Shallcross under the Group Areas Act.¹²¹ Present-day Shallcross remains predominantly populated along the old Group Areas Act lines, with 85% of the area's 14 000 people being people of Indian or other Asian origin.¹²² 13% of Shallcross' residents are Black /African people.¹²³

a. *Temo Dickson Mokotso*¹²⁴

Mr Temo Mokotso submitted a statement which can be summarised as follows:

An incident occurred on 14 July 2021, between 18:00 and 19:00. He was traveling in his van with six other individuals, heading home from Shallcross to Welbedacht in Chatsworth. To reach Welbedacht, he took the Moorton Offramp onto Arena Park Drive. However, they encountered a roadblock under the Higginson Highway Bridge on Arena Park Drive, consisting of large rocks that prevented them from driving through or around.

While they were stuck at the blocked road, a group of more than 15 Indian men, allegedly armed with guns, bats, and golf sticks, ambushed him and the other occupants of the van. They demanded that the occupants exit the van and lay down on the road. The assailants then proceeded to rob them of their belongings, including groceries and mobile phones, and physically assaulted them using the bats and golf sticks. They damaged his van by smashing windows,

windcreens, lights, and denting it with the large rocks used to block the road.

After a short while, the police (unclear if it was metro police or SAPS) arrived at the scene, causing the group of men to scatter. Fortunately, his van remained drivable, and the police escorted him and the other six individuals home safely.

He expressed surprise that other vehicles driven by Indians were allowed to pass through the same road without encountering any problems, highlighting the discriminatory nature of the incident he and his companions experienced.

b. *Previn Asoka Vedan*¹²⁵

Mr Previn Vedan, an attorney and a Ward Councillor for Ward 71 of the eThekweni Municipality's affidavit was submitted to the Commission as an annexure to the Collective's submission.¹²⁶ His submission can be summarised as follows:

Mr Vedan confirmed in his submission that in Ward 71 or Shallcross, only the Ridge Shopping Centre was "looted and damaged", and a mass food storage warehouse, was according to Mr Vedan, looted by "Indian, White, Coloured and African South Africans". Allegations of the looting of other business or homes in Shallcross "amounted to 'fake news' or 'false news'" spread via WhatsApp and Facebook. To his knowledge, no homes were looted in Ward 71.

During the Unrest, Mr Vedan actively tried to restore calm and compliance with the rule of law in Ward 71 and tried to counteract racial tensions that were brought to the fore as result of the Unrest.

He witnessed “an unprecedented availability of firearms and ammunition”.

According to Mr Vedan, while the roadblocks were “an innovative idea”, it appeared that those present at the roadblocks were “on occasion illegally stopping and searching vehicles”.

In respect of attacks that occurred in Ward 71, Mr Vedan stated that:

- i. A Black woman in Ward 71 was severely beaten and dropped outside of Mr Vedan’s municipal office. He stated that “her face was beaten so badly that it took [one] whole week before the community could identify who she was”.
- ii. A car driven by a Black, suspected of being a “looter”, was burnt outside Mr Vedan’s municipal offices.
- iii. A Black male, “well-known and a close friend” to Mr Vedan, had his vehicle stoned and shot at while travelling with his family. They stopped the vehicle and tried to run away. The man and his family called Mr Vedan from a bush they were hiding in. Mr Vedan collected them and took them home.
- iv. A Black minor child, who “was seen cutting mangoes from a Mango tree” and accused of stealing was assaulted by “being hit multiple times with an axe by Indian males”.
- v. Dead bodies laid at Crossmoor Park and the Ridge Shopping Centre for days due to the “state mortuary not having sufficient vehicles to attend to the collection of these bodies”.
- vi. Mr Vedan also stated that he witnessed Black people being denied access to Indian owned shops. However, he, Mr Vedan was allowed access to Black owned shops.

After many calls to the provincial and municipal leadership, the Mayor of eThekweni Municipality led a team to engage Ward 71 stakeholders, who were part of the attacks, mentioned below, who claimed that nothing serious was transpiring in Shallcross. Mr Vedan then decided to try and manage the negative

situation in Ward 71 himself. In respect of the actions taken and the reaction thereto Mr Vedan’s states:

“The first community meeting took place with representatives of SAPS, the CPF, wherein we identified community and religious leaders and persons of influence. We stated that the stop and searches of residents had to be halted immediately. We stated that persons must be allowed free passage and that there is a separation of powers between members of SAPS and members of the community, the SAPS holding the overriding power and role of law enforcement and protection. We further stated that looting will no longer be tolerated and that we will stand as a united multiracial team to ensure that no homes in Ward 71 were looted, damaged or destroyed. We thereafter elected a “Ward 71 Peace Committee” at the first meeting. The second meeting that we had held was a mass meeting with residents, mainly of the Bottlebrush community, who were upset and angry and potentially willing to retaliate to the violence that they, and members of their families and community, had unjustly faced and heard of, and which appeared to be motivated solely by the factor of race. We had advised of the outcome of our first meeting. It was agreed at the second meeting that all members of Ward 71 will work together and rebuild our community.

We visited all community “roadblock” sites with our newly formed Ward 71 Peace Committee as a united team. ... An incident of note was that an African policeman who was protecting the Moorton Shopping Centre from being looted was attacked. ... On his way home, he was asked to identify himself at a community “roadblock”, he did so, and also mentioned that he was a policeman. A gun shot was thereafter fired through vehicle and allegedly from a member of the community

manning the community
"roadblock". (Paragraph numbers
omitted.)

Mr Vedan was also informed by community members that Indian men (from one specific street in Shallcross) had gone into the "nearby African township" and opened fire in the township "without any provocation". When Mr Vedan went to the Street with SAPS to see if there was any "looting" or anything to "provoke" an attack on the nearby township, he found that most of the residents on that street were asleep, leading him to conclude that the residents were not fearing for their safety but "just enjoying the thrill of using their firearms with free reign and without legal consequences".

Mr Vedan tried to start an online campaign to prevent the spreading of mis- or disinformation in respect of Ward 71. He also actively took steps to rebuild Ward 71 after the Unrest using community clean-ups, interfaith prayers, engaging the business sector and advocating for and ensuring food parcels from the provincial government.

Mr Vedan stated that when he visited the Bottlebrush informal settlement, the children showed him their new toys, and an adult man told him "that he had the KFC secret spice" which he assumed were as a result of "looting". Mr Vedan did not see the looting as a criminal act, but rather a norm that was happening everywhere. The SANDF did, however, go to the informal settlement to collect what it believed to be looted goods.

2.1.5 MONTCLAIR / MOBENI / WENTWORTH

Montclair, Mobeni and Wentworth are discussed together because of the way the incidents that were described to the Hearing Panel took place. All three areas are located close to each other, in the South Durban Basin. Montclair is inhabited by slightly more than 16000 people, the majority of whom are Black African (71%), with substantial white (17%), Indian or Asian (8%) and Coloured (3%) inhabitants. Under the Group Areas Act, Montclair was a 'white area', and 1600 Black African and 175 Indian people were forcibly removed from the area in the late 1950s. Near Montclair is an area called Mobeni, which consists of three areas: (a) Mobeni Heights, a residential area, and two industrial areas, (b) Mobeni East and (c) Mobeni West. Mobeni Heights has a population of nearly 3500 people, with significant populations of Indian or Asian people (55%) and Black African people (42%). Mobeni East and Mobeni West are home to 3400 and 4000 people respectively, each populated almost entirely by Black African people (92% and 98%). Wentworth is a historically Coloured area of Durban South, inhabited by approximately 27 000 people.

a. *Bongani Iphraim Mkhize*¹²⁷



Mr Bongani Mkhize, a resident of V68 Umlazi, indicated his experience on 14 July 2021. His statements can be summarised as follows:

He was allegedly followed by a Crown Security van after leaving a petrol station in Montclair, Durban. Despite the van's attempts to stop him, he continued driving. The situation escalated when the van activated its sirens, forcing him to pull over at gunpoint.

Two men from the van searched his car and asked about his recent whereabouts. Suddenly, a white car arrived, blocking his escape route. Three Coloured men alighted with firearms and shot him. The bullet went into his right side and into his stomach.

In pain and fearing for his life, he sought refuge near Megalinen Factory Shop, where he contacted his son for help. His brother managed to arrange assistance from the eThekweni Metro Police, who escorted him to Prince Mshiyeni Hospital. However, due to the overwhelming number of patients, he could only see a doctor the next day and was provided with pain medication.

The following day, he underwent surgery to remove the bullet and received a temporary colostomy bag. He had to visit the hospital regularly for check-ups. His car, which had been damaged extensively, was located and returned to him. Mr Mkhize presented evidence of his injuries, and damage to his car to the Commission:



After being discharged, he reported the incident to Wentworth SAPS, unsure if his J88 form was collected. His case was transferred to the Durban Central Station.

Previously working as a bus driver, he can no longer continue in that role due to his injuries. At the time of the Hearing, he was receiving 50% of his salary while his employer sought to place him in a non-driving, less physically demanding position. Despite the challenges, he expressed gratitude for his family's support and sought justice through the arrest of his attackers and government compensation for his losses.



b. Mbongeni Ngcobo¹²⁸

Mr Mbongeni Ngcobo provided a brief account of his experience on 14 July 2021. His account contains the following allegations:

At around 20:00 while driving near the Wentworth offramp, he was stopped by armed private security guards. Aware of similar incidents, he attempted to flee and successfully escaped unharmed. However, upon returning to retrieve his car, he discovered it was missing. He reported a case of theft to the SAPS, however, the specific SAPS office where he filed the charge has no response.

Unfortunately, his ordeal continued as he fell victim to fraud. He received a text message claiming that his car, matching the correct registration number and CAS number, had been found but required a deposit for retrieval. After making the payment, the contact number ceased to function. It is unclear whether he filed a separate charge for the alleged fraudulent incident.



2.1.6 PINETOWN

Pinetown, located in the eThekweni municipal region of KwaZulu-Natal, derives its name from Sir Benjamin Pine, the former governor of Natal. This town served as a significant wagon route connecting Durban and PMB. It encompasses various suburbs, including New Germany and Cowies Hill. With its commendable schools, convenient shopping centres, and excellent sports facilities, Pinetown presents itself as a favourable area for property investment. Additionally, it holds industrial significance, housing factories that produce a range of goods such as leather, concrete, corrugated containers, plywood, aluminium, and confectionery. As per the 2011 census, Pinetown had a predominantly Black population, with 18% being White and 9% "Indian."

a. *Nkanyiso Buthelezi*¹²⁹

Mr Buthelezi's statement is summarised as follows:

On 14 July 2021, Mr Nkanyiso Buthelezi, accompanied by his friends, Sivuyile Qhele and Thabani Luthuli, drove to the Shell petrol station on the M19 in Reservoir Hills to get petrol for their Ford Ranger. After filling 20-litre containers with petrol, they encountered a blocked access road on their way back to Newlands West. They decided to head towards Pinetown and stopped at an Engen petrol station due to their car overheating.

He alleged that at the petrol station, an individual of Indian descent, carrying a shotgun, unexpectedly began shooting at their vehicle. Mr Qhele sustained gunshot wounds to his right and left foot, while Mr Luthuli, who was seated in the back of the vehicle, tragically lost his life. He stated that a murder case

was subsequently opened at the Pinetown SAPS under CAS number 233/07/2021 in relation to Mr Luthuli's death, while an attempted murder case was filed for Mr Qhele, who received treatment for his injuries at King George Hospital.

2.1.7 ISIPINGO

Isipingo is a town situated in eThekweni Metropolitan Municipality, inhabited by more than 30 000 people. Under the Group Areas Act, Isipingo was designated an Indian area, and retains an Indian majority today. The population is predominantly Indian/Asian (57%) and Black African (41%).

a. *Bo Dayal*¹³⁰

Mr Bo Dayal expressed his frustration by writing directly to President Cyril Ramaphosa. He shared a screenshot of a direct message he had sent to President Ramaphosa's Twitter account on 12 July 2021. In his message, he accused the President of complicity in undermining the rule of law, citing his inability to connect with emergency services or the Isipingo SAPS to report his fears and request protection. Mr Dayal implored the President to align himself with the Constitution and fulfil his duty to ensure the safety and security of all citizens. He pleaded for additional resources to help quell the Unrest.

b. *Vee Yesudas*¹³¹

Mr Vee Yesudas, a resident of Isipingo Hills, expressed deep concern about the lack of support and protection provided to law-abiding citizens during the recent unrest. He stated that he witnessed the brazen looting of goods by criminals who roamed freely in the Isipingo central business district. He stated that calls to the Isipingo SAPS went unanswered, and there was a noticeable absence of SAPS vehicles in the area during the Unrest. In response, the residents of Isipingo Hills took matters

into their own hands by barricading the main entrances to their neighbourhood in an attempt to prevent further theft and protect their homes and property. He emphasised the importance of holding the responsible entities accountable for their failures to protect the people of South Africa.

2.1.8 PHOENIX

Phoenix is located approximately 20km northwest of central Durban and was established as an Indian township in 1976. It is amongst the oldest “Indian” settlements in South Africa. The Phoenix Settlement is a South African Heritage site, marking the place Mahatma Gandhi developed his philosophy of passive resistance that was to eventually free his homeland of India from British colonial rule. In the last published Census (2011), Phoenix had a population of 177 000 and was 85% “Indian” or Asian and 12% Black/ African. Phoenix is surrounded by Inanda, KwaMashu, Mawoti, Ntuzuma, Blackburn, and Mount Edgecomb (Umhlanga).

During the July 2021 Unrest, the community of Phoenix witnessed a disturbing level of violence and destruction. The unrest in Phoenix resulted in a significant loss of life, extensive property damage, and profound societal divisions. Numerous sources reported that a total of 36 people lost their lives during the violence in Phoenix.

The violence in Phoenix during the July 2021 Unrest exposed deep divisions within the community and highlighted underlying tensions between different racial and ethnic groups. These divisions continue to have far-reaching implications for social cohesion and intergroup relations in the aftermath of the Unrest.

a. **Sham Maharaj**¹³²



Mr Sham Maharaj appeared before the Commission in his personal capacity and as a representative of the Phoenix Ubuntu Forum.¹³³ Mr Maharaj lives in an area in Phoenix known as “Southgate”. It is exclusively occupied by Indian people. His testimony can be summarised as follows:

He stated that the Unrest was caused, in part, by social and mainstream media. It was because of, and through the text messages, voice-notes and videos that hundreds of informal neighbourhood watches were formed in Phoenix during the July Unrest. He informed the Commission that there are about 800 roads in Phoenix, and in excess of 100 informal neighbourhood watches were formed to protect families and properties.

The Southgate Shopping Centre, which is, according to him, about 100 metres from his home, was targeted by looters. He had video evidence of people allegedly stealing meat from the butcher at Southgate Shopping Centre. He also mentioned video footage, shared on

WhatsApp, of people running from the Southgate Shopping Centre, shouting, “they are coming!”.

Following the incident at the Southgate Shopping Centre, some of the men who lived on the same street as he did, came together to discuss what they can do to “protect their families and property”. About fifty men (no women) formed an informal neighbourhood watch for that street. The men met, and stood watch on the street, for three nights during the Unrest. Nothing happened there for the three nights that the group stood watch. He advised that other than Southgate Shopping Centre, alleged theft and looting took place at shops or businesses in Westham, Woodview, and Whetstone. Two businesses, according to him, could not reopen after the Unrest.

A lot of footage was shared on various WhatsApp groups regarding various incidences of attempted theft and/or robbery. These videos included a break-in at a liquor store in Stanmore, Phoenix that was used by a vigilante group who stopped a taxi that was allegedly involved in that incident and shot the occupants of the taxi and burnt it.¹³⁴ Another video shared was one of people “marching” from Amaoti into Brookdale to “loot the Phoenix Plaza”. However, the video shows, according to him, people next to private property fences who were being beaten with sticks.¹³⁵ People who saw the videos

must have assumed people were “coming to loot or break into homes”. According to him, the videos shared on WhatsApp made people scared about what was going to happen in their neighbourhoods. The neighbourhood watches were formed to protect the homes and other property of the residents of Phoenix.

He further testified that people in Phoenix do not rely on SAPS. Rather, they use private security companies. There is one SAPS station in Phoenix, that is intended to service the approximately 700 000 residents. There are approximately 50 (fifty) private security companies operating in Phoenix.

He was of the view that the roadblocks were unlawful, and he condemned the killings that took place. He was also of the opinion that the roadblocks, at which people were assaulted and/or killed, were infiltrated by gangsters, drug lords and shebeen owners.

He detailed efforts taken by Phoenix community members to rebuild relationships between the community members of Phoenix and the surrounding areas, which included distributing 23 000 food parcels to people in Inanda and KwaMashu; and working with DBE in Pinelands to assist children in schools to work towards cohesion through art projects. He informed the Commission

that the Black/African children at the schools they visited said they were scared to attend their schools in the Indian townships because they feared getting killed. He stated that “in one week in July, all the work done to build trust between communities was undone”.

Despite saying that work had to be done over many years to build trust between the Black/African and Indian communities, he stated that prior to the Unrest, there had been no tension between these communities, as they “worked together, ate together, played soccer together”.

He further stated that the narrative that “Phoenix is on fire” was driven by the media and was factually incorrect. He asserted that the media portrayed the Indian community in Phoenix as villains or as not belonging in South Africa. He advised the Commission that Indian community members in Phoenix were “indiscriminately arrested” and alleged that one community member had died in a correctional centre or remand detention facility after being arrested for alleged crimes committed in Phoenix.

He acknowledged the 36 deaths in Phoenix, of which few of the victims were of Indian origin and refused to define the deaths of Black African people in Phoenix as a “massacre”.¹³⁶

b. Chris Biyela¹³⁷



At the time of testifying, Mr Chris Biyela lived in Bhambayi in Inanda, approximately one kilometre away from Phoenix. His statements are summarised as follows:

On 12 July 2021, he travelled in his car, on Stoneham Avenue, which crosses from Bhambayi into Phoenix. He was stopped at a civilian roadblock. A group of Indian men and boys came up to his car door, and aggressively told him to get out of his car. According to him the group of Indian men called him a “kaffir”, a “darkie” an “arsehole” and said, “come out you poes”.

Once he alighted his car he was grabbed by the men and his car keys were snatched. Other men in the group damaged his car with sticks and bats. Someone in the group then stated that they knew him and that the group should let him go. He stated that he did not recognise anyone in the group but was thankful he got away.

He stated that the group of Indian men who attacked him said that this was “revenge for 1949”. He indicated that he did not know what they were referring to and had to ask people and conduct a Google search to look into the historical reference. He learnt that there was a “war” between Indians and Black people in 1949 and that as a result 148 people had died.

He further stated that the main reason he had come to testify was to inform the Commission of the horrific ordeal suffered by his neighbours, Mr Bongani Skumbuzo Mokubung and another neighbour known as ‘Lokishi’.

He stated that after he had made it home safely from Phoenix on 12 July, he enquired about his neighbours

whom he was aware had gone to Phoenix to get petrol but had not returned home by the morning of 13 July 2021.

Through the sharing of videos on WhatsApp, which showed Indian people attacking and killing Black/African people in Phoenix, he identified his neighbour’s car as one being torched near the Shell Garage on Phoenix Highway.

He alleged that his neighbours were found alive a few days later. Mr Mokubung was found at Mahatma Gandhi Hospital and Lokishi at Inanda C Clinic.

He alleged that Mr Mokubung informed him that he and Lokishi were travelling back from the Shell Garage on Phoenix Highway on 12 July 2021, when they were stopped by a large group of Indian men. He alleged further that they informed him that Mr Mokubung and Lokishi were forced out of the car, after it was set alight. A picture of the car:



It is alleged that Mr Mokubung and Lokishi were assaulted by two separate groups.

Further, Lokishi stated to him that when he returned from Mahatma Gandhi Hospital, he had stitches on his head due to facial abrasions and lacerations. His face was swollen, and his broken arm was wrapped up in plaster. Lokishi told him that after being assaulted by a group of Indian men he managed to escape into nearby foliage. Lokishi came out of hiding when he spotted a SAPS van, thinking that he would get help from SAPS. Instead, when he flagged down the SAPS van, the two Indian police officers told him to “fuck off from here and go and die in hospital”.

He stated that Mr Mokubung had his arm and leg broken and suffered burns. He also had to get

stitches and an “external fixator” and “internal fixator” inserted in and outside of his broken leg in order to carefully stabilise the bones until it is strong enough to handle the body weight and movement.¹³⁸ He was practically bedridden as he was not allowed to walk. Pictures of Mr Mokubung’s injuries:



On its inspection-in loco of Phoenix on 19 November 2021, the Commission visited Mr Mokubung’s home in Bhambayi. The Commission took note of the injuries sustained to Mr Mokubung’s body. The Commission was informed that Mr Mokubung used to be the family breadwinner. His inability to work, in addition to the trauma of the physical attack, had severe negative psychological impacts.

Mr Mokubung told the Commission that his son is angry about what happened to his father and that he had taken his son out of school in Phoenix because he was worried that his son would retaliate or direct his anger towards Indian children in his class.

Mr Biyela stated that, on 18 July 2021, Minister Bheki Cele visited Bhambayi. He was met with an angry crowd of more than 15 000 people. Minister Cele announced that he would set up a task team of ten investigating officers to investigate the attacks and murders that occurred in Phoenix. The community members requested that the task-team not include SAPS officers from Inanda or Phoenix and demanded the “quick arrest of [the] Indian criminals”. The community also requested that, for the sake of transparency, three community members be placed on the task-team.

The community members from the townships surrounding Phoenix requested that SAPS and the task-team escort them into Phoenix in order for them to locate missing members of the community. Missing community members were found in Mahatma Gandhi Hospital and in the mortuary.

He stated that following the Unrest, the relationship between the two communities in Phoenix and Bhambayi was “very bad”. He stated that it was not as bad before. The tension is made worse, since there has been no acknowledgment by the people of Phoenix and no apology. Instead, the people of Phoenix have been hailed as heroes. According to him, unless the racism is confronted head on, it cannot be rooted out.

c. Thulani Mseleku¹³⁹



At the time of testifying, Mr Thulani Mseleku had lived with his family in Brooks Farm, Phoenix for 22 (twenty-two) years, and had been employed at the eThekweni Municipality as a technical operator and driver. His testimony can be summarised as follows:

He alleged that on 12 July 2021, he was travelling alone by car, from Mahatma Gandhi Park onto Phoenix Highway. While driving on Phoenix Highway, he was passed, in the opposite direction, by a SAPS vehicle. The police officers in the vehicle did not indicate that there was anything untoward happening ahead on the Phoenix Highway. However, shortly after passing the police, Mr Mseleku was “flagged down” at a civilian roadblock by a group of Indian men. The men asked him where he was going, and he explained, showing them his eThekweni employment card. A group of Indian men let him through. He stated that the traffic on Phoenix Highway was slow as all Black African drivers were being stopped while Indian drivers were not.

After passing several civilian roadblocks, he alleged that he was stopped at the fourth roadblock, where a group of Indian men made up of approximately 50 to 80 people were standing. One of the men reached into Mr Mseleku’s car window, grabbing his sunglasses and the keys from the ignition. The sunglasses and keys were thrown on the road. The group also smashed his car’s back

windscreen. He then got out of his car to pick up his car keys and sunglasses. As he got back into his car the group smashed Mr Mseleku’s car’s front windscreen and called him a “kaffir”. Mr Mseleku drove off and refused to stop at the fifth roadblock. When Mr Mseleku arrived at or tried to pass the sixth civilian roadblock, which was less than 100 metres from the Phoenix SAPS, his car was shot at by groups of Indian men and a brick was thrown through his already broken windscreen. The brick and shattering glass hit him in the face. At that same time, he stated, his car was starting to give in, but he managed to make it to the Phoenix SAPS before the radiator finally stopped working. He alleged that when he arrived at the Phoenix Police station his face was bleeding. He tried to approach the incidence desk to get urgent help. However, before he made it inside the Station, he was stopped by a Colonel Naidoo. He told Colonel Naidoo that he needed an ambulance. Colonel Naidoo told him to wait outside. When he asked Colonel Naidoo why SAPS officers were not intervening in the civilian roadblocks at which Black people were being assaulted just outside the Police station, he was ignored and not provided with an answer. As Mr Mseleku put it, “it seemed as though I had farted in the water”.

Mr Mseleku then waited outside in the Phoenix SAPS yard, bleeding, for an extended period of time. He asked one of the officers if he could make a phone call to his family. He was again told to wait outside. A young Black man or boy, not a police officer, appeared in the yard and offered to assist Mr Mseleku make a phone call. Mr Mseleku then phoned his wife and told her what had happened to him and gave her strict instructions not come to Phoenix.

Mr Mseleku waited for approximately two hours before he was assisted. He said during those two hours the police officers in the SAPS Phoenix yard,

“were cocking big guns and they were happy. It was like a movie. It was like they were in a picnic party. The police vehicle would drive in and out of the police station, but nobody cared about me. ... It was getting cold, and I could feel like I was losing strength. I even asked Colonel Naidoo, this lady, if they could drive me themselves. Why are none of the people driving the van and not taking me to the hospital? They were all Indian”.

He stated that eventually an officer, Mr Bhengu, came to the Phoenix SAPS with a police van and picked up Mr Mseleku and another Black man who had cuts on his head. Mr Bhengu drove Mr Mseleku and the other passenger to Mahatma Gandhi Hospital. At the hospital, Mr Mseleku noticed that there were ambulances, and ambulance drivers “just standing around”.

Mr Mseleku was transferred to Life Mount Edgecombe Hospital. According to Mr Mseleku, the Indian nurses at Mount Edgecome Hospital asked where he incurred the injuries. When he told them he was attacked on Phoenix Highway they laughed and told him they have to transfer him back to Mahatma Gandhi Hospital.

As a result of the attack on Phoenix Highway, Mr Mseleku suffered, what sounded like a stroke - permanent neurological damage, the loss of use of his left side of his body, and permanent damage to his eye. His eye leaks constantly. Mr Mseleku carries a cloth to wipe his leaking eye. His left leg is also permanently damaged. He now has to use public transport, since his car was damaged, and he struggles with his “numb” left leg.

He stated that he is 61 years old now and at the end of his life. He recounted being abused “so badly by Afrikaners in Amaoti” during Apartheid. He informed the Commission that the Afrikaners would drag Black people like him with motor vehicles and put their “boere feet” on their heads. Mr Mseleku recounted these instances saying that he never thought he would experience the violence he experienced again, in a post-apartheid South Africa.

Mr Mseleku stated that “Indians” have a lot of “hate against Black people” and that they “don’t want Black people” around. He said that the social cohesion programmes are not going to help. He has not received any support from the government, including SAPS. Mr Mseleku said that because he could not identify individuals from the groups at the roadblocks that SAPS could not arrest and charge anyone responsible for the assault or the malicious damage of his property. Government, according to Mr Mseleku, is prioritising “business” and not lives. He believes that government should provide reparations to victims like him.

d. Zwelethu Chamane¹⁴⁰



Mr Zwelethu Chamane had, at the time of testifying, lived in Phoenix for ten years. Mr Chamane said that there were a few Black African people residing in Phoenix, but that it was clear that Indian people did not want Black

African people there. His statements can be summarised as follows:

On 12 July 2021, Mr Chamane, on his way back from work, was driving along or joining the Phoenix Highway at about 17:30 or 18:00, when he spotted a civilian roadblock. As he drove towards the roadblock, three people “detached themselves from the group” at the roadblock and approached him. An Indian man, driving a Nissan 1400 bakkie, who was ahead of Mr Chamane in the traffic was not stopped.

He was asked where he was going or coming from and responded that he was on his way home from work. He gave the Indian man his “residential address”. He was, thereafter, asked whether he had any “stuff” in his vehicle. He confirmed that he did not have anything in his vehicle and invited the group to search his vehicle. One of the men aggressively removed the key from Mr Chamane’s vehicle, instructed Mr Chamane to get out of his vehicle, while another Indian man got into the passenger side of the vehicle. While standing outside of his vehicle Mr Chamane was hit on his back with a construction rod and hit on the head with a cricket bat. Another Indian man approached, with a firearm, while another Indian man shouted, “shoot this motherfucker and “shoot this monkey”.

He stated that he ran away and hid along the stream and foliage on Phoenix Highway. When he returned to the road, he allegedly came across another group of Indian men. They were older than the group who assaulted him. He told them what had happened to him at the roadblock, and he told them that he was trying to reach Phoenix SAPS. The group of older Indian men told him to walk in a different

direction than the way he was walking because they advised that if he continued walking in the same direction he would come across another group of Indian men and that he could “be murdered”.

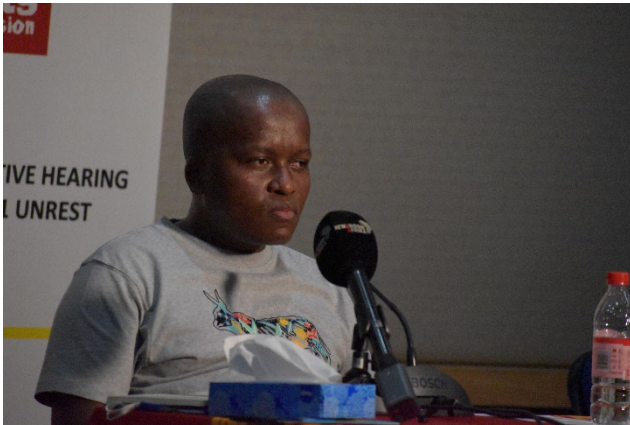
After taking a different direction, he came across a Black/African security guard who was reluctant to give him a lift to the police station, but ultimately did. The Black security guard advised that he put on part of his security guard uniform so that the Indian men at the roadblocks would not be suspicious of him. At the Phoenix SAPS, he was advised to stay in the security guard’s car until his Indian colleague, who was at the SAPS Phoenix Station when they arrived, had left. The security guard was worried that if he was caught helping a Black civilian that he would be “fired”.

Once at the SAPS Phoenix, he informed the SAPS officers of the assault he had experienced and asked the SAPS officers to please take him home so he could fetch his spare key and collect his car. The SAPS officers then advised him that the car he described, with the licence registration had already been torched. The SAPS officers then just dropped him at his home.

Once at home, he tried to call an ambulance, but he was told that no ambulances would go to Phoenix. His neighbour then drove him to Amaoti, to where the ambulances were willing to travel. From Amaoti Mr Chamane was taken to Netcare Umhlanga Hospital.

He then opened a case of assault and malicious damage to property, but because he could not identify individuals or the cars they were driving, his case did not progress.

e. Ntethelelo Refuge Mkhize¹⁴¹



Mr Ntethelelo Mkhize, at the time of testifying, lived in Ntuzuma Township.

On 12 July 2021, Mr Mkhize was travelling with nine (9) friends, and friends of friends, from Cornubia back to KwaMashu via Phoenix, in his 2016 Nissan Hardbody. They had been in Cornubia, eating game that a friend in Cornubia had hunted.

When Mr Mkhize drove into Phoenix, around 15:00, he noticed civilian roadblocks manned by groups of Indian men and boys, estimated to be aged between 12 and 14 years old. He also noticed tyres burning on the road, on which they were driving. When asked by the Panelists what the name of the road he was on was, Mr Mkhize said he could not remember but he thought it was Palmview Drive. During the inspection in-loco carried out by the Commission on 19 November 2021, it was confirmed that the assault and killing took place on JG Champion Drive which intersects with Palmview Drive.

Mr Mkhize, in his car, was then stopped by one of the groups of Indian men and boys. The group called Mr Mkhize and the other occupants of Mr Mkhize's car, "Zuma's people" and "monkeys" and told Mr Mkhize and the other occupants of the car that they need to step out of the car so that it could be searched. They did not understand why the car needed to be searched but got out, allowed the Indian people to search the car and got back into the car.

However, as Mr Mkhize was driving away, a young Indian boy from the group of Indian men

and boys, hit Mr Mkhize's vehicle with an axe or something resembling an axe. Mr Mkhize stated that other occupants of his car, Mr Magwaza and Mr Nzuzwa wanted to get out to stop the boy from further damaging the car, but Mr Mkhize told them not to, as he was concerned that the group of Indian men and boys were out looking for a fight.

According to Mr Mkhize, after the car was "hacked", the other men and boys started banging and throwing stones at the car. Mr Mkhize stopped the car and some of the occupants got out. Mr Nzuzwa was hit in the face with a rock and shot in the chest and Mr Magwaza was assaulted "and hacked". Mr Ntsele, another occupant in the car, alighted from the vehicle and tried to assist Mr Nzuzwa.

Another "Indian fat guy" then shot at Mr Ntsele. At this point, the occupants who had occupied the back of the Nissan Hardbody, the part of the car known as the "tray" or "truck bed", had either alighted from the vehicle and been assaulted or shot or managed to run away. Mr Mkhize, therefore, tried to drive away with the occupants in the front of his car. However, the group of Indian men and boys started shooting at Mr Mkhize's vehicle. The "fat Indian man" who shot Mr Ntsele managed to shoot into the passenger window of Mr Mkhize's car, firing two bullets into the left side and back of Mr Mkhize's torso.

Mr Mkhize then stopped his vehicle. The group of Indian men and boys he was trying to get away from (that had first shot him) and the group of Indian men ahead of Mr Mkhize's car then got into his car and took videos and/or photos of him as he was bleeding. The group of Indian men instructed Mr Mkhize to "run to the river, run to the river" but as he tried to run to the river, he fell and was shot a third time, in his back.

While Mr Mkhize was lying on the ground "a dark Indian guy with gold teeth" proceeded to rob Mr Mkhize of his mobile phone, his jacket and his flip flops. While he was screaming and asking for help, the group of Indian men continued to hurl derogatory remarks at Mr Mkhize and threatened to kill him, shooting him for a fourth time.

Mr Mkhize tried to run away again and ended up at someone's house gate. He then lost consciousness and woke up around 20:00 at Unit

10 Clinic in Phoenix. Mr Mkhize did not know how he arrived at the clinic. His stomach was inflamed from the bullets. (It is unclear as to whether Mr Mkhize was shot with a firearm or a pellet or airgun). Mr Mkhize also noticed that there were a number of injured Black African people lying on the floor of the clinic. The nurse told Mr Mkhize that he cannot be transferred to the hospital as two of the ambulances for the region had been torched.

On 13 July 2021, Mr Mkhize was transferred to Addington Hospital. He was told by one of the nurses attending to him that the ambulance was organised for Mr Mkhize by his wife and daughter.

Mr Mkhize informed the Commission that when he was being transferred in the ambulance from the clinic to Addington Hospital, the ambulance was also stopped at the civilian roadblocks and had to plead with the people standing at the roadblocks to be allowed to pass.

After three surgeries, attempts to heal Mr Mkhize's "intestines" and a three-week coma, it was decided not to stitch up the wound but to leave it open and later to dress or bandage Mr Mkhize's stomach. Pictures of Mr Mkhize's stomach and other bullet wound were shared with the Panel and described by Commissioner Nissen.¹⁴²



On 20 August 2021, Mr Mkhize transferred to Eshowe Gateway Clinic to be closer to his home so it would be easier for his family to visit him. Mr Mkhize was discharged on 24 August 2021, but had to return every three days to have his wound redressed. It was then extended to every seven days. Mr Mkhize's wife, who is a nurse, had for the two weeks prior to the Hearing, been assisting Mr Mkhize.

When at home, and in a better mental state, he was informed by his family members that Mr Nzuzza, Mr Ntsele and Mr Jiyane had not survived the attacks on JG Champion Drive. He was also informed that his car was torched. Mr Mkhize had been shown photos of the vehicle, taken by his family before it was impounded.

Mr Mkhize then attempted to locate his burnt car for insurance purposes. He was sent from pillar to post at the Durban Central SAPS Station to find out where the remains of his car were. SAPS officers, unfortunately, did not know what had happened to the remains of Mr Mkhize's car. SAPS investigating officers at Durban Central had alleged that several of the torched vehicles had been collected for scrap metal by Indian people in Phoenix. Mr Mkhize still has to pay for instalments on a car he no longer possesses. He was hoping that "government" would intervene with compensation for the unjust loss of his car.

As a result of this attack, Mr Mkhize suffered financial losses in the form of medical expenses, loss of income from teaching classes, due to having to take unpaid leave and he lost the use of his car, which he also used to sell and transport livestock. Mr Mkhize cannot stand for longer than ten minutes, he cannot bend down to tie his shoelaces and has to wear slip on shoes. He stated that he is easily agitated, which was not the case prior to his attempted murder. He cannot sleep without medication, and he found the therapy or psychiatric sessions at Addington Hospital irritating. Mr Mkhize's family also suffered emotionally as a result of the attack, and what they perceived as a near-death experience. The families of Mr Ntsele, Jiyane and Mr Nzuzza are, according to Mr Mkhize, also suffering.

The investigating officer, Mr Bhengu, invited Mr Mkhize and the other occupants who survived the attack, to a bail application hearing at the Verulam Magistrates Court. The bail hearing was for a charge in which Mr Mkhize's attack was included. While at the Magistrates Court, he saw, on trial or being charged, the man who shot him and Mr Ntsele. The "fat Indian man" was accused number four. Accused number one was the man who shot Mr Nzuzza and the one who inserted the firearm into Mr Nzuzza's mouth. Accused number two was the young Indian man or boy who had wielded the axe during the attack.

Mr Mkhize informed Mr Bhengu of these identifications. In the gallery was a dark Indian male who was also part of the attack. Again, Mr Mkhize informed Mr Bhengu. Mr Bhengu then allowed Mr Mkhize and Mr Magwaza to update their statements.

Mr Mkhize expressed extreme disappointment with the bail hearing and proceedings. He alleged that three of the accused were granted bail without the state opposing bail or calling Mr Mkhize to give evidence as to why bail should not be granted. According to Mr Mkhize, their bail amounts were really low and the information that their defence lawyers put forward, saying that some of the accused require chronic medication and cannot be imprisoned was questionable. Mr Mkhize wondered what happened to the chronic illnesses on the day of the attack. According to Mr Mkhize the accused's statements during the bail hearings were blatant lies.

Mr Mkhize and his co-victims were upset that the matter was being heard in Verulam because it is difficult to get there as you have to cross Phoenix and even the Magistrate was Indian and the victims were not represented.

Mr Mkhize provided statements but was not informed of any rearrests or new arrests.

In respect of media coverage of the Unrest, Mr Mkhize said the media only showed "looting" in Durban. The media did not share the videos and images of people without any goods being attacked and killed. They did not show the images of the dead bodies lying in Phoenix. Those videos exist.

In response to Mr Maharaj's statement and putting forward the Phoenix Ubuntu Forum, Mr Mkhize said there was no "humanity" in Phoenix. Mr Maharaj was misleading people. What happened in Phoenix was properly organised or orchestrated together with private security. There was no help.

There were no SAPS officers in sight in Phoenix, according to Mr Mkhize. Even after the attack, Mr Mkhize had to approach SAPS, they did not reach out to Mr Mkhize.

f. **Mzwandile Magwaza** ¹⁴³



At the time of his testimony, Mr Magwaza had resided in KwaMashu since 2005. His testimony can be summarised in the following paragraphs.

At the onset of his testimony, he declared that what happened on 12 July 2021, in Phoenix had left him severely traumatised. He was initially hesitant to testify and voiced his concern that his testimony was going to amount to a waste of time as the Indian people who allegedly attacked them would not be held accountable. He conveyed deep regrets for not fighting back when the incident occurred. He stated that any Black person who was in Phoenix on that day must have suffered – women, men, children. Dead bodies of black people were lying on the roads.

He also expressed discontent with the Unrest Hearing process, as he found the questions asked quite agitating. He interpreted the questions to imply that the victims of the “Phoenix Massacre” were not believed and that they, or he, had to convince the Panel of what happened – that they were indiscriminately attacked by Indian men and boys.

Mr Magwaza stated the sequence of events as per the testimony of Mr Ntethelelo Mkhize, as they were together on the day of and during the attack at JG Champion Drive. He is one of the survivors. He emphasised that when they were stopped by the group of Indian men and boys, he and Mr Nzuzza were hesitant and asked the group what rights they have to search the car as they

are not police. However, Mr Mkhize stated that he did not have a problem with the group of Indian men searching the car and so the occupants alighted the car for it to be searched. He confirmed that after the young Indian boy or man hit Mr Mkhize’s car with the axe or axe-like instrument, that he and Mr Nzuzza wanted to get out of the car, but Mr Mkhize again told them to stay in the car because it appeared as if this group of Indian men were ‘looking for a fight’.

However, he added, he and Mr Nzuzza did in fact get out of the car and tried to approach the group to find out why they were not preventing the young Indian boy from damaging Mr Mkhize’s car. This, according to him was when the group of Indian men and boys started throwing stones or rocks and attacking those who had gotten out of Mr Mkhize’s car and later those inside the car. Mr Magwaza, Mr Jiyane, Mr Nkosi, Mr Zwide, and a younger gentleman were attacked, and all ran to hide in bushes lining the stream on JG Champion Drive. Mr Nzuzza had been severely injured. Mr Manene Nkosi and Robert Jiyane tried to leave the riverside after a while but ended up being shot at. Mr Jiyane was killed.

The only way for the group to leave Phoenix was to pass the civilian roadblocks again. The remaining group (of three) attempted to negotiate with the groups of Indian men to allow them to leave Phoenix. While the first group initially allowed Mr Magwaza and the other men to pass, other groups of Indian men got into their private security cars (Reaction Unit South Africa)¹⁴⁴ and chased Mr Magwaza and Mr Zwide, shooting at them. Fortunately, they survived.

Mr Magwaza then called an Indian colleague, Mr Pakri Govender whom he worked with in order to get assistance. Mr Govender picked them up and took him and Mr Zwide back to KwaMashu.

He stated that he was injured and bleeding but that his injuries were not severe. He recalled that as Mr Govender drove them home to Crossroads,¹⁴⁵ he witnessed the severity of “what Indians did to Black people”. He remembered witnessing two Black women who were shot in Brookdale, by a young Indian man they said was

named Philip. He recalled seeing Mr Mkhize's car which had been burnt at an intersection. He also recalled seeing Indian people loading dead bodies into "bakkies". Mr Magwaza believes that not all the bodies that were killed in Phoenix have been fully recovered.

He then went to SAPS at "Crossroads" 146 to ask them to accompany him to Mahatma Gandhi Hospital to find his friends. At Mahatma Gandhi Hospital there were, according to him, many Black people who had been attacked and who were lying on the Hospital floor. He found Mr Nhlana, who told him that Mr Lamola Ncele was also admitted to the Hospital.

He went back to Phoenix to find missing friends. The Unrest was still ongoing, but he returned to Phoenix with his own firearm. When he showed the groups the firearm they backed off. He also went to SAPS KwaMashu to try to open a case but the Captain at SAPS KwaMashu refused and said he had to go to Phoenix, which Mr Magwaza did. It is only after Mr Magwaza made several follow up calls to SAPS, and after Mr Jiyane died, that steps were taken by SAPS. He then had regular contact with warrant officer Bhengu and Sergeant Madonsela, who were, according to Mr Magwaza, part of the Task-Team established by Minister Bheki Cele, to address the violence from the Unrest.

He voiced the same concerns regarding the bail hearing, as expressed by Mr Mkhize. He had not, at the time of the Hearing, been updated on the process of the trial of the people who attacked him and killed his friends on 12 July 2021. He also stated that justice would involve the compensation of the victims of the "Phoenix Massacre".

He advised the Hearing Panel that the relationships between Indians and Black people have not been good. He likes Mr Pakri Govender, but not other Indians. He also told the Panel that upon return to work, he had been accused of looting by his Indian co-workers,

despite him having a doctor's note for his absence or sick leave from work.

g. Phumzile Mzimela¹⁴⁷

Ms Phumzile Mzimela is the widow of Mr Robert Jiyane, the friend of Mr Ntethelelo Mkhize and Mr Mzwandile Magwaza (whose testimonies are set out above) who was killed in Phoenix on or about 12 July 2021. Her statement is summarised as follows:

Ms Mzimela related the events as described by Messrs Mkhize and Magwaza, but further alleged that the group of Indians who had shot Mr Jiyane had allegedly tied him up in their garden. Ms Mzimela does not know how Mr Jiyane ended up at Mount Edgecombe Hospital, but at around 17:00 on 12 July 2021, he phoned Ms Mzimela to inform her that he had been taken to the hospital but that there were no beds available. Despite being allegedly shot and hacked, he was not operated on until the next day. Between 13 July and 21 July 2021, Mr Jiyane underwent several operations and was in an out of the Intensive Care Unit of the Hospital, succumbing to the injuries inflicted upon him around 22:00 on 21 July 2021.

Ms Mzimela stated that "the Indians" traumatised her and her family, and they were all struggling to accept the reality of his death, "I have lost a partner. Amandiya asiphuca ubaba, umyeni kanye nomuntu owondla ekhaya sekunzima kakhulu ngobakwesinye isikhathi sibuye singazi nokuthi solala sidleni".¹⁴⁸

h. Mbuso Xaba¹⁴⁹



Mr Mbuso Xaba had, at the time of his testimony, resided in KwaMashu his entire life. His testimony can be summarised as follows:

On 12 July 2021, at around 17:00, Mr Xaba had been sitting at home with younger boys in the area who had been washing his car. He was “well-aware” of what was happening in the country regarding the Unrest. He had “seen on the TV what was happening”. According to the TV news, “this thing” had started on the weekend and Mr Xaba heard that big shops were being “looted”. He heard that the Shoprite in KwaMashu had been “looted”. He did not receive any news about Phoenix. He, therefore, did not expect to be attacked in Phoenix.

On 12 July 2021, at around 17:15, Mr Xaba took a trip to the King Shaka International Airport to pick up his girlfriend. The “boys” aged 17 to 21 years, who had been washing his car, asked if they could also go with to the airport as they had been stuck at home in KwaMashu all day or for many days. Mr Xaba and three of the boys then left KwaMashu for the airport in Mr Xaba’s vehicle.

While approaching Phoenix Highway, on his way to the petrol station, he encountered a civilian roadblock manned by a group of Indian gentlemen, who stopped him. At this point during his testimony, Mr Xaba became quite emotional. He stated that an older Indian man with grey hair, that appeared to be the “ringleader” of the group, approached to ask him where he was going and

asked if they were in Phoenix to “loot”. He informed him that he is on the way to the airport and was in Phoenix to get petrol. The old man then allowed him to proceed, however, he was then blocked at a subsequent civilian roadblock by a group of young Indian men armed with bats, bush knives and firearms – three shotguns, three automatic rifles. He alleged that this group of young Indian men were wearing masks and caps, and that some group members had been wearing private security guard uniforms.

He indicated that he was very confused then as he was told by the older Indian man at the previous roadblock that he could proceed and was then blocked from proceeding. The group of younger Indian men then started pelting his vehicle with stones and “hacking” it with axes and bush knives. He alleged that the occupants of his car were called “Zuma’s dogs”, “kaffirs” and were accused of being in Phoenix to “loot”. He was then pulled out of his car and was beaten with baseball bats. The group also got into the car and assaulted the other three boys in his car. During the assault he kept telling the group that they did not loot, he asked them to check his car.

The boys tried to escape the assault. As they tried to run away, they were allegedly shot at, but were not hit and survived.

According to him, the older Indian man tried to help him escape the assault. Eventually, the older Indian man got the younger group to stop and told him to get into his car and leave and to not even attempt trying to get petrol. However, the only route he could take was on Phoenix Highway. He was then stopped by another group of Indian men. He stated he was again pulled out of his car, assaulted with sticks and hit with a brick on the back of his head. According to him, this group looked really happy to be assaulting him. The group also took things from Mr Xaba’s car, such as his partner’s sunglasses and USBs. He indicated that he told them that they are now “looting” him. Below is a picture of Xaba’s car.



According to him, while he was being assaulted by the second group, a white Volkswagen Polo

sedan stopped next to where he was being assaulted. The Polo was occupied by two Indian police officers – he could not tell that they were police because the Polo was unmarked, and they were in civilian clothes. Mr Xaba only realised they were police officers when he saw their bullet-proof vests. The police officers stopped the assault of Mr Xaba but refused to escort him out of Phoenix. They told him he must get back into his car and find his own way out. They did not advise him to go the police station.

He stated that he then drove towards the SAPS Phoenix Police Station, but in front of him he could see a Polo containing two Black men being attacked by a group of Indian men. He then tried to drive a different route past Phoenix Plaza, but that road was also blocked with “big water pipes”. He then followed a lane of cars on another road that Mr Xaba knew would take him to Laneham Road, which would take him to Westham. However, when Mr Xaba got to Laneham Road there was another civilian roadblock. At this roadblock, also manned by a group of Indian gentlemen, he stated that he was again verbally assaulted, pulled out of his car, he was told to sit down “on his bum” and he was physically assaulted with a baseball bat. As he was sitting on the road, they made another old Black woman sit next to him. She was also assaulted. She was bleeding and had big cuts on her body. She was crying and trying to explain that she works in Phoenix, and she was on her way home from work.

Another gentleman joined the group of Indian men. He had a shotgun. He shot at Mr Xaba’s car. The man then asked the group why they were still there and that they should be dead. Mr Xaba said that he thought he was going to be shot, but the Indian man was pushed aside by another older man.

At that point, the white utility vehicle of a private security company emerged. The occupants of the utility vehicle had rifles. The private security guards, or person from the utility vehicle, asked the group assaulting Mr Xaba and the older woman if they had found anything (any stolen items) on Mr Xaba and the older woman, and the

members of the group said “no”. The security personnel, thereafter, asked the Indian gentlemen why they were assaulting Mr Xaba and the older woman. One of the security guards said they would assist Mr Xaba and the older woman to return home. However, a white Ford Ranger arrived with two civilian police, a Black and Indian police officer in civilian clothes with SAPS bulletproof vests. The Indian men with the shotguns and rifles then disappeared. SAPS officers escorted Mr Xaba, and the security officers escorted the old woman. Mr Xaba’s car, despite being shot at, including the tyre, was still functioning enough for him to be escorted out of Phoenix via Bhambayi.

Mr Xaba had not been back to Phoenix since his assault. The closest he had been, at the time of the Hearing, was Mount Edgecombe. At this point of his testimony Mr Xaba cried, explaining that he is too scared to go back. He is not sure how he survived. Mr Xaba mentioned that he had a lot of anger towards Indians – they assaulted and killed Black children. He stated that the attacks against Black people in Phoenix and Chatsworth seemed well orchestrated. The civilian roadblocks that Mr Xaba heard about in Westville and Kloof seemed more indiscriminate. He said that every race – Black, Indian, Coloured – had their cars checked. Whereas in the “Indian” areas it was only the Black/African people who were targeted.

Mr Xaba, like others who testified before, expressed upset at the media. He stated that all the media showed was people “looting”. The media did not show Black people being attacked and killed in Phoenix. They did not mention the property of Black people that was stolen and damaged in Phoenix.

For Mr Xaba, justice means the arrests and prosecution of the people who attacked him in Phoenix, and for the government to compensate victims for their losses. He wants the media to show the videos of Black people getting horrendously attacked and assaulted by Indians.

i. Linda Dlamini¹⁵⁰

Ms Linda Dlamini provided a statement to the Commission regarding the death of her brother, Njabulo Dlamini, in Phoenix on July 12, 2021. According to Ms Dlamini, her brother and his friends took a taxi to T's Tavern to buy alcohol. While Mr Dlamini remained in the taxi, his friends went inside to make the purchase. As they were leaving, a group of Indian men ambushed them and assaulted them. Tragically, Mr Njabulo Dlamini was shot in the head and later died at Mahatma Gandhi Hospital.

The alleged killing of Mr Dlamini and the alleged attempted killing of his friends outside T's Tavern was publicised on television and online news outlets.¹⁵¹ A video posted on YouTube on 12 July 2021 by Meshan Naidoo shows the result of the T's Tavern killing and the taxi Mr Dlamini and his friends were travelling in, engulfed in flames.¹⁵² The videographer and/or narrator of the video claimed to be recording live from T's Tavern and described the deceased as a group of Black men who allegedly attempted to steal liquor but were ambushed by civilians. The video seemed to serve as a warning to potential looters.

Seven men, including the owner of T's Tavern, were charged with murder, attempted murder, robbery with aggravating circumstances, and public violence in connection with the incident. As of May 2022, their trial was ongoing.

j. Nomhle Tshewa¹⁵³

Ms Nomhle Tshewa, a single parent, wrote to the Commission about the disappearance and death of her first-born son, 17-year-old Kamvelihle Tshewa.

According to Ms Tshewa, Kamvelihle did not return home on Monday 12 July 2021. He had never not returned home before. It is her statement that she asked his friends about his whereabouts the next morning and they told her that he had gone with another friend to Phoenix

but advised that she not go to Phoenix because “Black people were killed at Phoenix”.

Ms Tshecwa called a police officer she knew, who was not on duty, and who advised her to not go to Phoenix “because [she] won’t come back alive”. The police officer advised Ms Tshecwa to call the Phoenix Police Station instead. She did not receive any information from the Phoenix Police Station and on Wednesday, 14 July 2021, Ms Tshecwa tried to “find a car that could take [her] to the mortuary in Phoenix”. Nobody was willing to help Ms Tshecwa because people were afraid to go back into Phoenix. Ms Tshecwa then borrowed money to pay someone to take her into Phoenix. According to Ms Tshecwa, when they approached Phoenix on Wednesday, there were still roadblocks up, manned by armed Indian men. She stated that burnt cars were also used to block the roads in Phoenix.

Ms Tshecwa, in search of her son, was stopped by armed Indian men. When she told them that she was searching for her missing child they let her through. According to Ms Tshecwa,

“The road was closed with burnt cars and logs of woods, only one lane was used for one car to pass. We were very scared, in case they decided to block us in that tiny road we wouldn’t even survive. When we arrived at forensic, they said they could not help us because they were short-staffed and there were a lot of dead bodies to be dealt with. Some of the bodies were lying on the floor. They told us to come back the following day, but we did not because I did not have transport. We only managed to go back there the next Friday. On that Friday they wanted us to produce the letter from the police station with the name of the detective, of which we did not have. The police who were there took us to the police station to fetch the letter. On Saturday we found my child’s naked body at the government mortuary. The body

was full of bruises. He was shot on his bums and his neck was broken. They told us to leave and wait for doctor to operate on him so as to ascertain the cause of death. I was very hurt because all along I was busy describing my child with the clothes he was wearing, only to find him naked”.

Ms Tshecwa received a death certificate where the cause of death was listed as “natural causes”. After contacting SAPS, Home Affairs and the mortuary and having to return her son’s body to the mortuary after his funeral, the doctors at the mortuary informed Ms Tshecwa that her son died of a ruptured appendix and not the assault and bullet in his back. She stated that “the detective told [her] that the doctor had made so many mistakes to various people by declaring their death as natural death.” She felt that it was a further injustice to have her son’s death be declared as “natural” despite the broken neck, bruising and bullet wound.

Ms Tshecwa stated that she was informed by the police that her son was likely killed somewhere in Phoenix and dumped in another location because they found him naked and covered with a blanket.

Ms Tshecwa is a SASSA grant recipient and believes that her son would have gotten a job after completing high school and supported her financially. She wants her son’s killers to be arrested and prosecuted and for the state to pay monetary compensation to the families of the victims who were killed.

k. Philani Zondo¹⁵⁴

On the night of 12 July 2021, at around 22:00, Mr Philani Zondo had attempted to drive from Inanda where he lived, to Phoenix to fill his car with petrol. Mr Zondo’s sister was pregnant at that time, and he wanted to make sure his car had

enough petrol to get her to the hospital, as she was due to give birth imminently.

Due to the Unrest, the petrol stations near Mr Zondo's home had not been refilled or had shut down completely. He, therefore, decided to go in search of petrol in neighbouring Phoenix. While on Phoenix Highway, he was allegedly stopped at one of the many civilian roadblocks by a group of Indian men with the words, "[H]ey fucking kaffir! Stop here!". He was asked where he was going, and he explained about his sister's pregnancy. They did not believe him. They then searched his car and commanded him to get out. He asked the group why he should get out and the group allegedly responded to his questions with "Fucking kaffir! Jump Off!". He refused and the group then started to break his car windows. Mr Zondo tried to drive away but ended up running out of petrol after he passed the third roadblock. He then saw a group of Indian men and boys running towards him with sticks, machetes and golf sticks. He then got out of his car, took his keys and mobile phones and ran towards the Shell Petrol Station. The petrol station was closed and so he ran into the gorge behind the petrol station, to hide. He was spotted and started running again, at which point he was shot in the back. He then ran into another group of Indian men. Bleeding and crying, he begged for help. The group made him kneel down and stole his mobile phones and further assaulted him with golf sticks, planks and machetes.

The man who shot him then told the group of Indian men to stop hitting him and to leave him be as he would not make it to the hospital alive. Mr Zondo then tried to run away and found another group of Indian men who took him to the Phoenix SAPS Police Station. According to Mr Zondo, there were many injured people at the Phoenix Police Station by the time he arrived there. The group of Indian men who helped Mr Zondo took his car keys to go and get his car, but it was torched by the time they had arrived at his car. He was taken by SAPS officer to Mahatma Gandhi Hospital where he was treated for the assault and gunshot wound.

Because of the loss of his car and the expenses involved, Mr Zondo moved from his home in Inanda closer to work so that he can walk or catch a taxi.

I. **Thuto Sandile Shwaka**¹⁵⁵

Mr Thuto Sandile Shwaka, 19 years old at the time of the written submission, was walking with friends to play soccer at the soccer field. His statements can be summarised as follows:

As they were walked past a set of robots on the way to Phoenix, he and his friends saw "boys and girls running towards [them] being chased by a 4x4 car". The people in the car were shooting at the boys and girls and men and women and subsequently, Mr Shwaka and his friends. They ran towards one of the gorges on the sides of the roads in Phoenix to try and hide from the bullets. When they arrived at the gorge, there were already Indian men and boys waiting for them with "slashers, sticks and stones". They demanded to know where Mr Shwaka and his friends were coming from, and they informed them that they had tried to go to the soccer field.

Despite searching their bags and finding only soccer boots, they said Mr Shwaka and his friends were lying. Mr Shwaka's friend, Mr Sphelele, managed to run away. Unfortunately, Mr Shwaka and Lindokuhle were assaulted. Mr Shwaka was allegedly hit in the face with a rock and passed out. When he regained consciousness, he was lying in water in the gorge, being bitten by a crab. His body was sore, and his left hand was "slashed" and broken and both his feet were "slashed". Lindokuhle was lying face-down in the gorge but was alive.

A Black /African woman then came into the gorge and took their names and parents' details and phoned their parents. The woman got some Indian boys to help her pull Mr Shwaka and Lindokuhle out of the water. She also gave Mr Shwaka and Lindokuhle dry clothes, masks and food. Mr Shwaka and Lindokuhle were collected by their mothers, who took them to Phoenix

Clinic. They were kept overnight at Phoenix Clinic. Mr Shwaka alleged that when they were discharged, there were Indian people outside protesting that Phoenix Clinic be shut down.

m. Sibahle Bhengu¹⁵⁶

My Bhengu's testimony can be summarised as follows:

On 12 July 2021, Mr Sibahle Bhengu was a passenger in a Toyota Quantum Taxi, being driven by Mr Mtambo, from the Shell Petrol Station in Phoenix, joining the Phoenix Highway. There were other passengers in the Quantum. A firearm shot went off near the robot. 115hey noticed the shot was coming from a green car with tinted windows. The bullets were being shot in the direction of the Taxi. Mr Mtambo's nephew was hit with a bullet. Mr Mtambo tried to speed off to escape the bullets, however, Phoenix Highway had been blocked with civilian roadblocks and burning tyres and in trying to avoid the roadblocks and burning tyres, the Taxi hit the pavement and ended up crashing into someone's house.

Mr Mtambo and Mr Bhengu got out of the Taxi to avoid the bullets and to try and get help for his nephew. When they approached a group of Indian men for help, they were called "Zuma's people" or "Zuma's supporters" and were beaten with machetes and golf clubs. Mr Bhengu was stabbed in the stomach; his hand was cut with a machete, and he was hit in the head with a golf stick.

Mr Mtambo was allegedly assaulted or hit in the head with a machete until his body was motionless. They pulled his body to the side of the road where there was a fire. While they were doing this, Mr Bhengu ran away into a gorge to hide. He hid there until the next day. When he saw a stationery SAPS van, he came out of hiding and asked for help from the police officers. The police officers took him to the Phoenix Police Station where he laid a charge. From the

Phoenix Police Station, he was taken to King Edward Hospital.

n. Mthokozisi Ndlovu¹⁵⁷

Mr Mthokozisi Ndlovu is a teenager that was also one of the occupants of Mr Mtambo's Quantum on Monday, 12 July 2021. He confirmed, in his statement, that Mr Mtambo, his uncle, was killed. Mr Ndlovu had managed to escape to a nearby gorge or forest, after which he found a school building where he hid in a toilet for three nights, and only came out on 14 July 2021. When he emerged, he asked an Indian man to show him the way out of Phoenix. The Indian man told him he would take him to people who would help him. However, the people did not help him.

Instead, he was allegedly hacked at, pepper sprayed and shot, and the group poured petrol in his hand. After assaulting him, one of the members of the group, someone driving a white Volkswagen Amarok, without a licence plate, dropped Mr Ndlovu off at Addington Hospital. He dropped him "far away from the hospital gate" and told him to go to the bright door. The Hospital was packed with injured persons, and he stated that he was not assisted until the next day, where his eye and hand were stitched up and later, he had his teeth fixed. The matter was reported under the same case number as that referred to by Mr Sibahle Bhengu. Mr Ndlovu added that the detective assigned to the case was Mr T.S Mhlongo.

The testimonies of Mr Bhengu and Mr Mndlovu in respect of Mr Mtambo, were confirmed by Mr Mtambo's widow, Nonhlanhla Ndlovu.

o. Siyabonga Gumede¹⁵⁸

Mr Siyabonga Gumede, a 37-year-old artist from KwaMashu J Section, and his friend Mr Zakhele Hlabisa, were searching for an open petrol station but faced access restrictions in Umhlanga and Cornubia. On their way back through Phoenix Highway, they were stopped at a roadblock manned by Indian civilians. Mr

Gumede was assaulted with a golf stick when he stepped out of the car. The group threw stones and bottles at him until an Indian man complained. Meanwhile, their car was set on fire. With no escape, Mr Gumede attempted to run back but was further assaulted by the group, including being kicked and attacked with a bush knife. Another group intervened, leading to an argument between the two groups. Mr Gumede hid in a river for hours. He heard gunshots and witnessed an accidental shooting of a Phoenix resident.

One of the Indian men volunteered to take the injured man to the hospital or police station. Mr Gumede took the opportunity and asked for transportation, lying flat in the back of the van to avoid detection. At the Phoenix Police Station, he declined to open a case but changed his mind at Mahatma Gandhi Hospital and opened a case at KwaMashu Police Station. He walked from KwaMashu E Section to KwaMashu J Section. The fate of Mr Hlabisa was not mentioned.

Mr Gumede concluded that the attackers were not racist but cowardly individuals who killed innocent people without reason.

p. Siyabonga Ncobela¹⁵⁹

On July 12, 2021, Mr Siyabonga Ncobela was transporting an injured person to Mahatma Gandhi Hospital when they encountered a roadblock with Indian men carrying golf clubs near Mandela Park. They were allowed to pass but were shot at another roadblock near the Brookdale petrol station. Mr Ncobela tried to escape but was met by another group of Indians near Phoenix Plaza who also fired shots and damaged his car.

They abandoned the car, except for the injured person, and fled on foot. Mr Ncobela ran towards a nearby market where he saw a woman closing a gate. Mr Ncobela asked the woman for help. The woman let him into her yard and allowed him to sleep there overnight. She then escorted him out of Phoenix the next morning, as the

roadblocks were still up and being manned by Indian men – “the Indians were still standing in their spots”. On 14 July 2021, Mr Ncobela reported the assault and opened a case at Amaoti Police Station. Mr Ncobela also added that the J88s – the hospital report – did not correspond with his injuries.

q. Sbongile Innocentia Mthiya¹⁶⁰

On 14 July 2021, Ms Sbongile Innocentia Mthiya and her son, Sizwe Kindokuhle Mthiya, were walking from Bhambayi to buy potatoes at the tented markets in Unit 10. Finding the tents absent, they decided to continue to Phoenix Plaza. During their walk, they were shot at by two individuals in an unmarked police car, believed to be Indians.

Sizwe was struck on the side of his forehead, prompting Ms Mthiya to use her jacket to bind his wound. They quickly retreated to Bhambayi and Ms Mthiya called her daughter for assistance. Both Ms Mthiya and Sizwe were deeply traumatised by the incident, expressing their belief that Black/African people are unwelcome in Phoenix and questioning why they were targeted. Ms Mthiya seeks justice for the harm inflicted upon her and her son.

r. Ziphatele Majola¹⁶¹

On 14 July 2021, Mr Ziphatele Majola was driving his Toyota Hilux on Phoenix Highway when he was intercepted by a group of approximately nine or ten individuals of Indian descent. They asked him where he was going, and he explained that he wanted to get petrol. According to Mr Majola, the group of Indian people then asked him “if [he] knew that area was not for Black people”, to which he responded that he “did not know that”.

The group forced Mr Majola out of his car and took his mobile phone and R700.00 in cash from his pocket. The group also verbally and physically assaulted Mr Majola. They called him

“the ‘K’ word”, beat him with a gold stick and tried to stab him. According to Mr Majola, he grabbed the knife before he was stabbed, which resulted in his finger being cut. When the members of the group argued about Mr Majola’s mobile phone and cash, he tried to get into his car and escape further violence. He, however, crashed his car and ended up running away on foot. He later found his car burnt and its tyres slashed.

s. Eric Khethukuthla¹⁶²

On 12 July 2021, Mr Eric Khethukuthula was driving from Waterloo, in Verulam, back to KwaMashu, where he resided at the time of the July Unrest. He drove via Phoenix. He had driven to Verulam through Phoenix that morning and had not encountered any problems. However, during the afternoon when he entered Phoenix, he noticed groups of Indians blocking the road with burning tyres. The car in front of Mr Khethukuthula was allowed to pass the blockade of Indians, but Mr Khethukuthula was not allowed to pass. Instead, he had a brick thrown through his car windscreen. When he asked the group why they did that to his car, they responded by asking him what he was “doing in Phoenix cause [he’s] not a Charo”.

According to Mr Khethukuthula, after they informed him that he is not allowed in Phoenix, the group started shooting and throwing stones at his car. He then decided to try and drive over the burning tyres to get to the Phoenix Police Station, however, before he could reach the inside of the SAPS Phoenix Station he was attacked. Right outside the SAPS station, he was beaten with golf sticks. The SAPS officers did not come out to try to stop the attack. Mr Khethukuthula left his car at the SAPS station and tried to run away. He made it to a petrol station where he tried to wash the blood from his wounds away. He then tried to stay with the private security guards and other men at the petrol station who were trying to avoid being further attacked. Mr Khethukuthula and some of the men he had taken refuge with at the petrol

station tried to find ways to walk out of Phoenix. Unfortunately, there was no safe way out. When men tried to walk or run out of the petrol station they were stabbed or shot at by Indian men.

Mr Khethukuthula tried to hide in a “forest” in Phoenix. He hid until the morning of 13 July 2022, after which he got help from private security guards who helped him out of Phoenix. He opened a case at Phoenix Police Station.

t. Lungisani Cele¹⁶³

Mr Lungisani Cele and his colleague Vukani Mabanga, who worked as e-hailing taxi drivers, were searching for petrol due to shortages caused by the recent violence in the area. While driving in Phoenix, they were unexpectedly stopped at a civilian roadblock near Bester.

Their car was shot at, prompting them to flee on foot. Thankfully, both Mr Cele and Mabanga escaped unharmed, but their car, which was used to support ten people, was set on fire. Mr Cele reported the incident to SAPS but had not received any updates at the time of his submission.

u. Nomboniso Portia Majola¹⁶⁴

Ms Nomboniso Majola recalled the tragedy of losing her minor son, Mondli Majola, allegedly killed in Phoenix. According to Ms Majola, her son was killed in Phoenix, only because he was Black:

“He died for no reason apart from the fact that he was black, and Indians hate black people that they enjoyed each and every pain that we felt as a family and we still feeling. ... He went missing on the day of the [U]nrest which was [M]onday we started looking for him on [T]uesday but we could not enter [P]hoenix as the Indians

who were there had guns and they had blocked the roads ... we had no transport no help from the police meaning we were left on our own. The pain we felt [I] don't wish it on anyone not knowing what has happened to y[ou]r child while [you] see on the news that people are killed not knowing if your child is still alive or maybe he needs help where [you] cannot help him as [I] write this letter it brings tears to my eyes just thinking about the pain we went throu[gh] as the parents.”.

Ms Majola and her family found Mondli's body at the mortuary, after four days of searching. Ms Majola stated that she tried to start healing after her son was buried, but his body had to be exhumed for the inquest into the cause of death, causing her so much pain she felt she “was losing [her] mind”. She stated:

“I can never understand why Indians hated us so much that they played God with my child[’s] life what did we ever do to them to cause me and my family so much pain ... The whole experience has left me with questions as to what did my son do to be killed like a dog by Indians, why do Indians hate black people so much as to kill them just for fun what about me as a mother did they not think about me before they killed him did they think the trauma they have left me with every time [I] look at any Indian [I]’m terrified because if they could kill an innocent child what about me what did [I] ever do to deserve the pain”.

v. Philani Elliott Chagi¹⁶⁵

On Monday, 12 July 2021, at around 11:30, Mr Philani Elliott Chagi, his partner and his child, received a lift with his friend to travel from Shellbrook, in Phoenix to KwaMashu, where his partner and child lived, with her family. Mr Chagi's partner and child had come to visit him in his home in Phoenix for the weekend.

On the way back to Phoenix from KwaMashu, they were stopped at a roadblock and approached by a group of Indians which included young and old men, a disabled person and a woman. The group told them to “go back or we'll bust your car”. Mr Chagi and his friend tried to explain that they live in Phoenix and were on their way home. However, before they were done explaining, the back windscreen of their car had been smashed and Mr Chagi and his friend were being attacked “from all sides of the car” with golf sticks, baseball bats, cricket bats, bush knives and tree branch cutters. Mr Chagi and his friend were called the “K word” and “Zuma's monkeys”.

Mr Chagi sustained multiple gaping, bleeding wounds and his jaw and fingers had been broken. Mr Chagi remembers hearing his friend apologise to the Indians, but they had done nothing wrong. Mr Chagi and his friend managed to run away. They received help from a Black African man who had also been shot at a roadblock but who had managed to drive away. Mr Chagi and his friend got dropped off near the Ntuzuma Magistrates Court, from where they had to walk back to Shellbrooke. They felt like outsiders in their own home. Mr Chagi was so scared of leaving home that he did not seek medical attention for a few days.

w. Nozipho Vilakazi¹⁶⁶

Ms Nozipho Vilakazi wrote to the Commission on behalf of the Ngidi family, expressing their anguish over the killing of their family member, Philani Ngidi, in Phoenix. She emphasises that his death was unjust and prays for justice to be served. She also calls for strength and honesty in the fight for justice for those who were killed based on their skin color.

Ms Vilakazi states that her family is still grieving, and that Philani's car is still missing. She strongly asserts that people in Phoenix engaged in a killing spree and rejects any attempts to sugarcoat the situation. She believes that the killers are in denial and condemns their actions as unjustifiable, labelling them as killers regardless of their level of involvement. Ms Vilakazi refers to the Phoenix Massacre videos and asserts that the intention was to kill black individuals, dismissing claims of neighbourhood protection. The Ngidi family feels deeply wounded and doubts that they will ever heal if the killers continue to deny their actions.

x. Pinky Makalima¹⁶⁷

Ms Pinky Makalima, who resided in Zwelisha, Amaoti, submitted that on 12 July 2021 her son, Sibusiso Nkosinathi Makalima, went out to play football as he usually did. However, he never returned home, and Ms Makalima's attempts to locate him through phone calls proved unsuccessful. The next day, a former neighbour informed Ms Makalima that she had seen what appeared to be Sibusiso's lifeless body in Phoenix but was unable to confirm it due to the ongoing violence and attacks against black people in the area.

Concerned and desperate to find her son, Ms Makalima and her partner visited the Amaoti Police Station seeking assistance. However, they were advised to check mortuaries and hospitals themselves. With the help of a friend, they eventually arrived at the Phoenix Mortuary, which was overwhelmed with grieving black families

searching for their loved ones. The conditions were distressing, with bodies left unattended, an understaffed and overworked team, and security guards struggling to keep up with the influx of bodies.

After a few days, Ms Makalima finally found her son's body at the mortuary. He had been shot in the chest. Due to the staff shortage, the autopsy process was significantly delayed, leaving Ms Makalima and her partner waiting anxiously for the results. Throughout this ordeal, Ms Makalima also faced a strained relationship with her Indian employers, who showed no sympathy or understanding for her pain and instead celebrated the actions of the Indians in Phoenix during the Unrest.

Financially burdened and unable to afford a proper burial for her son, Ms Makalima relied on community donations to lay Sibusiso to rest. She continues to suffer from the excruciating pain of losing her son and the absence of a valid reason for his brutal murder. Sibusiso, a disciplined and promising young student, had been her hope for a better future, and she mourns the missed opportunities he could have provided for their family's escape from poverty.

y. Witness Makalima¹⁶⁸

Mr Witness Makalima, brother of Ms Pinky Makalima and uncle of Sibusiso Makalima, submitted his account to the Commission. He accompanied his sister to the Phoenix Mortuary, witnessing the distressing scenes she described. Witnessing the sight of burnt and butchered black bodies and having to identify his nephew's body caused Mr Makalima his own trauma.

He also recounted incidents of racism by Indians, such as a confrontation in a Shoprite and his degrading treatment as a domestic worker where he had to sleep in front of the toilet in the garage and was not allowed to use any of the toilets inside the house he was cleaning. He expressed a deep belief that black people are treated as

inferior by Indians, with no hope for love and acceptance from the Indian community.

z. Wonderboy Bhoyie Caluza¹⁶⁹

Mr Wonderboy Bhoyie Caluza and his family, at the time of the submission, lived in Inanda. On 12 July 2021, Mr Caluza's son Amahle Yanga Caluza left their home. He told his father that he was going to visit his friends, who lived about one kilometre away.

When he did not return home by the morning of 13 July 2021, Mr Caluza went to the Mtshebani Police Station in to get assistance. He was advised to look for his son at the Mahatma Gandhi Hospital, the Phoenix Mortuary and/or the Phoenix Police Station. Mr Caluza did as advised but did not find his son. On 14 July 2021, Mr Caluza went back to the Phoenix Mortuary to check again. He stated that there were so many dead bodies at the Mortuary that he didn't manage to go through all the bodies on 13 July 2021, but also did not manage to find his son on 14 July 2021. Mr Caluza returned to the Mortuary on 15 July 2021, and found his sons body. Amahle had been shot, and his body brought into the Mortuary on Tuesday, 13 July 2021.

Mr Caluza stated that "Indians are incredibly cruel. I saw a lot of hatred coming from them".

aa. Thami Cele¹⁷⁰

On 12 July 2021, Mr Cele and his brother were returning from a petrol station in Brookdale when they encountered a civilian roadblock manned by a group of Indian men. The men demanded their address, but upon providing it, they were met with disbelief and faced an attack. The assailants proceeded to vandalise their car using bats and bricks. Mr Cele and his brother attempted to flee the scene, managing to avoid being shot, but Mr Cele sustained a broken hand while his brother

was stabbed in the shoulder. Both received medical treatment at Osindisweni Hospital.

Following the incident, Mr Cele filed a case with the police. Unfortunately, the loss of his car resulted in the loss of his sole source of income, which he relied on to support his three children.

bb. Thandi Ngcobo¹⁷¹

On 13 July 2021, Ms Thandi Ngcobo's daughter, who was approximately 30 weeks pregnant, went into labour at around 17:30. As they resided in Amaoti, and unable to find transportation to a hospital due to safety concerns in Phoenix, Ms Ngcobo's daughter ended up delivering two premature babies at home.

According to Ms Ngcobo, her daughter and the babies did not receive proper medical attention for over a week. The local clinic explained that ambulances from nearby hospitals were unwilling to travel to Amaoti. Ms Ngcobo and her daughter struggled to find transport to the hospitals and mentioned that they couldn't reach the hospital due to KwaMashu residents marching to Phoenix, although the specific reasons are unclear.

The statement does not provide the exact timeline of when Ms Ngcobo's daughter eventually reached a hospital. However, Ms Ngcobo mentions that the doctor informed them that if they had arrived one day later, the twins would not have survived. Her daughter required a blood transfusion, and the twins needed to see pulmonary specialists for their care.

cc. Nothando Mdunge-Khumalo¹⁷²

Ms Nothando Mdunge-Khumalo's husband, Bongani Mlondi Khumalo, was allegedly killed in Phoenix on 12 July 2021, with his feet being cut off before his body was allegedly set alight.

She stated that there were videos shared on WhatsApp of her husband Bongani, and his

brother-in-law, Delani, lying dying with comments calling them “that dead poes”.¹⁷³

When she and her brother tried to go to the Phoenix Mortuary to find her husband and brother-in-law, they were prevented from entering Phoenix. Ms Khumalo then requested help from SAPS to escort them to Phoenix Mortuary. On their first visit to the Mortuary, they did not identify Bongani or Delani. The bodies were eventually found at the Mortuary, severely burnt and only identifiable by their gold capped teeth.

Ms Khumalo opened a case of murder at Durban Central SAPS, which was being handled by investigating officer Mlongi.

Ms Khumalo appeared on Cutting Edge, talking about her experience during the July Unrest and the death of her husband and brother-in-law.¹⁷⁴ She alleged that following her appearance on Cutting Edge, she was telephoned by IO Mlongi who informed her that Minister Cele was extremely upset with her and the other witnesses who appeared on Cutting Edge and that she and the witnesses have to be taken to CR Swart Police Station to be interrogated. Ms Khumalo stated that the issue seemed to have been managed by Cutting Edge. It is assumed that Minister Cele was upset with interviews taking place on active investigations which may negatively affect SAPS's case work.

treatment of Indians and Africans during that time, and the lack of support from Indians for the African National Congress (ANC) during the struggle for freedom. He also noted that Indians did not participate in protests, boycotts, and stay-aways from white-owned shops. Their voting patterns, favouring the National Party in the first democratic elections and subsequently the Democratic Alliance (DA), were seen as evidence of this lack of support.

Mr Sibisi emphasised that the killing of black people by Indians was unwarranted, and he attributed the deep-seated animosity to historical events such as the 1949 protests and the 1985 Inanda uprising. He believed that there were no threats on Phoenix highways or other parts of Phoenix that justified the loss of numerous lives. The stopping of vehicles on Phoenix highways, racial profiling, and the subsequent torture and killings of black individuals, were deemed unnecessary and barbaric by Mr Sibisi.

In summary, Mr Sibisi's submission conveyed his perspective that the violent acts committed by some members of the Indian community against black South Africans during the Unrest were driven by racial hatred and historical animosities, and he emphasised that these actions were unjustified and disproportionate to any perceived threats.

dd. Zakheleni Sibisi¹⁷⁵

Mr Zakheleni Sibisi's submission did not detail specific incidents, assaults, or killings but instead focused on his observations regarding the Unrest where certain Indians targeted and killed South Africans without provocation. According to Mr Sibisi, these actions stemmed from racial hatred and unresolved issues between South Africans and the Indian community.

Mr Sibisi highlighted historical factors, such as the role of Indians in apartheid-era suppression of African people in the workplace, the differential

ee. **Krishna Glen Naidoo**¹⁷⁶



Mr Glen Naidoo is an ex-police officer who joined the South African Police in 1980 and retired from the post-apartheid SAPS in 1998. At the time of testifying, Mr Naidoo was a former employee of the family run private security firm, KZN VIP Private Security. The following is an account of his testimony.

Mr Naidoo informed the Commission that the private security industry, SAPS and the eThekweni Metropolitan Police co-exist in Durban. Private security firms, according to Mr Naidoo act as “force multipliers” or as “backup” to SAPS and the eThekweni Metro Police.

According to Mr Naidoo, KZN VIP had an excellent relationship with the communities it serves: Phoenix, Verulam, Newlands, Ottawa and Umhlanga Rocks. He stated that KZN VIP had 64 000 followers on Facebook at the time of the Unrest. KZN VIP’s Facebook page, before being closed for alleged misinformation, like other private security firm’s Facebook pages, contained crime alerts and successes in foiling crimes and/or apprehending alleged criminals.

According to Mr Naidoo, while working at KZN VIP in July 2021, their switchboard was overflowing with calls. The callers informed KZN VIP that they were receiving messages (it was

not stated on what platform) stating that Phoenix was going to be attacked; businesses and houses in Phoenix were going to “burn” and be looted. According to Mr Naidoo, the messages or information received came from “helpers and gardeners and painters” employed in Phoenix who live or lived in the areas surrounding Phoenix. Messages conveying information that Phoenix would be attacked or was under attack were also shared in real-time on Zello Chat¹⁷⁷ Mr Naidoo argued that as a lot of them had worked all their lives for what they own and because they hold their families “dear”, they (being the people of Phoenix) would do “everything in [their] power to protect that”.

Mr Naidoo said that in making the video¹⁷⁸ which was uploaded to KZN VIP’s Facebook page and shared on various other social media platforms, he felt that he was preventing people in Phoenix from being hurt and preventing Phoenix from being looted. In the video, Mr Naidoo instructed viewers or informed viewers that he, or rather Phoenix, needed “20 to 30” people, ideally, “80 to 100” people to form a “civil defence force”. Mr Naidoo repeatedly stated in different words that when he sent out the “mobilisation order”, he “expected everyone to [mobilise] legally” or “act within the law”. Mr Naidoo told the Commission that this was his expectation, despite him stating in the video:

“[Y]ou must do whatever you think is right. You must do everything in your power now to assist and help the community. If you don’t help yourselves, and you die, then that is your problem. I am not interested in who you are, gangster, drug-dealer or police ... show up”.

Mr Naidoo advised the Commission that he expected members of the Community Policing

Forums to head-up the civilian roadblocks that he instructed the people of Phoenix to erect at every entrance to Phoenix, and not for civilians to take the lead at the civilian roadblocks. As per Mr Naidoo's instruction, or coincidentally, all access points to Phoenix had been "barricaded", so much so that "even [Mr Naidoo] was prevented from going through" the roadblocks.

Mr Naidoo admitted that he was aware that civilian roadblocks are unlawful but stated that because of the absence of SAPS and the EMPD, that people were justified in erecting civilian roadblocks and controlling access into and out of Phoenix. According to Mr Naidoo, SAPS in Phoenix did not have the manpower to handle the Unrest. He said that "police resources were stretched so far and wide" and thus, "any ordinary person would have [said] the same things [he] said". He further said, "if your house is on fire, do you wait for the fire brigade or do you take action?". He also stated that the barricades went up before he posted the video to Facebook. He emphasised that people were acting out of fear for their homes being destroyed and Phoenix being "looted" but added that he cannot be held responsible for the behaviours that resulted in assaults, attempted killing and actual killings and that the people responsible for the assaults, attempted killings and killings "must face justice". Going back to justifying the unlawful civilian roadblocks, Mr Naidoo stated that the "looting" only stopped when communities barricaded the roads to their communities and that the communities, the ordinary people (who manned the barricades) need to be thanked. He informed the Commission that the people who manned the barricades were all civilians who lived in the Phoenix and stated that none of them were manned by gangsters or drug-dealers.

According to Mr Naidoo, members of the CPF and street committees contacted KZN VIP to inform them that Black people were being assaulted in Phoenix and that they need to be taken to the police station or to the hospital. Mr Naidoo said that KZN VIP ambulances were attacked for trying to help Black people that had been assaulted.

In the 60 years that Mr Naidoo has lived in Phoenix, he had not been aware of any racial tensions between the Indian community and Black African community. According to him, the Unrest caused the racial tension between the Indian and Black communities.

At the time of testifying, KZN VIP and its employees were being investigated by PSiRA. According to Mr Naidoo, all their firearms were confiscated for ballistics testing.

In terms of orchestration of the Unrest, Mr Naidoo referred to the regular "hijacking" of, or at the Mooi River Toll Plaza as indicative of South Africa's state security failure or state security being compromised. According to Mr Naidoo, the more the Mooi River Toll Plaza was attacked or hijacked without police intervention, the more brazen attacks became. This lack of SAPS or state security intervention was, according to Mr Naidoo, what enabled the Unrest. Mr Naidoo stated that people behind the Unrest knew, based on the lack of intervention at Mooi River Toll Plaza, that there was a lack of state security or SAPS to stop any "orchestrated" unrest. Mr Naidoo stated that he tried to share information about the UPL Factory in Cornubia with the SAPS's crime intelligence unit but nothing was done to protect the UPL Factory. Mr Naidoo believed that UPL was deliberately targeted.

ff. Taliyah Chetty¹⁷⁹

Ms Taliyah Chetty's father, Shaun Chetty, was a member of the neighbourhood watch/CPF, aiming to safeguard their properties, families, and community. While on duty at the intersection of Firpalm and Fullpalm Close, Mr Chetty was reportedly assaulted with a pick handle by an individual whose name is mentioned in the statement. Ms Chetty further claims that her father was shot and killed during the incident.

Mr Chetty served as the sole breadwinner for their family, and his untimely death has brought both financial and emotional challenges for them. The Chetty family has filed a case with the police to address the matter.

gg. Jayshree Raghubeer¹⁸⁰

Mr Jayshree Raghubeer submitted a statement on behalf of the suspects who have been arrested and detained during the recent unrest. His statement is summarised as follows.

He claimed that many of these suspects, charged with offenses such as murder, assault, and arson, were being unlawfully denied bail for extended periods of time. According to Mr Raghubeer, these individuals were law-abiding, tax-paying individuals who defended their neighbourhoods and families under the guidance of their leaders.

Mr Raghubeer asserted that the protection of Phoenix during the Unrest was a political matter, leading to the characterisation of the arrested

individuals as "political prisoners". He highlighted the guarantee in the Bill of Rights that everyone is presumed innocent until proven guilty and questioned whether the courts were biased against Indians. Additionally, he claimed that the community of Phoenix had become a scapegoat for the government's failure to protect both black and Indian individuals, who had been a united community for over 40 years until the Unrest occurred.

In summary, Mr Raghubeer's submission contended that the suspects facing charges were being unfairly denied bail and referred to them as political prisoners. He raised concerns about potential bias in the court system and argued that the Phoenix community had been unjustly targeted as a result of the government's failure to protect both black/African and "Indian" residents.

hh. Aniruth Ramcharithar¹⁸¹

Mr Jayshree Ramcharithar submitted a statement on behalf of the suspects who have been arrested and detained during the recent unrest. He claimed that many of these suspects, charged with offenses such as murder, assault, and arson, were being unlawfully denied bail for extended periods of time. According to Mr Ramcharithar, these were law-abiding, tax-paying individuals who defended their neighbourhoods and families under the guidance of their leaders.

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In summary, Mr Ramcharithar's submission contended that the suspects facing charges were being unfairly denied bail and referred to them as political prisoners. He raised concerns about potential bias in the court system and argued that the Phoenix community had been unjustly targeted as a result of the government's failure to protect both black and Indian residents.

ii. **Nadine Naidoo**¹⁸²

Ms Nadine Naidoo made submissions in respect of her father's arrest and, at the time of submission, his being in remand after being denied bail. She stated that her father was wrongfully arrested for murder and malicious damage to property. Since his arrest, Ms Naidoo and her 13-year-old brother have been without their sole parent, as their mother died in 2020.

Ms Naidoo and her brother have been on the verge of losing their home (as their father had lost his job due to his incarceration). She added that there was no solid evidence against her father as the witnesses, including the investigation officers, were not reliable witnesses.

jj. **Shanice Singh**¹⁸³

On 12 July 2021, Ms Singh woke up to news of blocked roads and industrial warehouses being broken into, with a noticeable absence of police presence. Amidst the backdrop of explosions and gunshots, the community decided to come together and form patrols to protect each other.

Ms Singh believed the patrols were necessary to ensure the safety of the community, given the suspicious activities and the need to identify outsiders during a time of heightened fear. She clarified that these actions were not racist but rather aimed at safeguarding the community.

A house burglary incident further intensified the atmosphere of fear when a shootout occurred for three hours, with limited assistance from the police or the SANDF. Ms Singh emphasised that the media's portrayal of Phoenix residents as dangerous and violent was misleading, as both Indians and Africans were affected, and it was not representative of the entire community. She expressed concern about ignored threats on social media and the constant fear she lived with every day.

kk. **Brenda Chetty**¹⁸⁴

Ms Brenda Chetty emphasised in her submission that the individuals from Phoenix were heroes who were protecting their families and communities. She expressed concern about their unfair imprisonment without a proper trial and insufficient evidence.

According to her, the denial of bail to these heroes was a violation of their human rights, fuelled by a perceived bias against their Indian ethnicity and political motivations to appease Black voters by the ANC government.

II. **Danny Thesan**¹⁸⁵

Mr Danny Thesan alleged that the “Phoenix accused” had been in prison for nearly three months without a verdict. He alleged that “they are being mistreated and not receiving all their meals” and that the families of the Phoenix accused suffer while they remain on remand.

mm. **Fathima Ismail**¹⁸⁶

Ms Fathima Ismail, a family member of one of the “Phoenix Accused”, criticised the SAHRC for allegedly demonising the residents of Phoenix, particularly those who are accused of crimes in relation to the Unrest. She argued that Phoenix was under attack and that the accused individuals were being denied their constitutional right to bail, purportedly based on racial factors.

Ms Ismail expressed frustration with the SAHRC's perceived lack of interest in hearing the pleas of the families of the accused and their failure to consider the potential involvement of the looters in criminal activities in Phoenix.

She highlighted that the residents of Phoenix were threatened and faced advancing looters, and questioned why the Commission did not show interest in protecting their rights or

addressing the looting of businesses. Ms Ismail also pointed out that barricades were present in other areas like Durban North, but the Commission focused primarily on Phoenix.

nn. **Raeesa Ismail**¹⁸⁷

Ms Raeesa Ismail was, at the time of submission, a resident of Phoenix. According to her statement, on 12 July 2021,

“[a]fter much destruction in the cities, malls ... the community of Phoenix was targeted together with Verulam, Chatsworth, Is[i]pingo [-] all previously Indian dominated areas. It was mayhem, fear and anxiety for everyone. The community panicked with fear of their lives and homes”.

As a result, the community of Phoenix, which included Ms Ismail's neighbours, were forced to protect the streets of Phoenix. Several residents of Phoenix operated businesses in the area which they grew over many years. They were thus in fear of losing their lives and businesses. The SAPS and SANDF did not respond to the community's calls for help. Potential thieves were, according to Ms Ismail, coming in their numbers while community members blocked off entry into Phoenix to prevent theft and damage. According to Ms Ismail, members of the Phoenix community received numerous threats under the “hands off Zuma campaign”. SAPS did not react to the threats, so the community had to react.

Sadly, the community members of Phoenix were labelled “racist Indians” for allegedly “killing innocent Black people”. Ms Ismail stated that she was astonished that self-protection and defence had been “exaggerated into a racial war”. According to Ms Ismail, “there were no tensions between Blacks and Indians” before the Unrest, and the Phoenix Accused have been charged without any evidence. Residents who tried to protect their “homes ... families, supermarkets, petrol stations and shops ... are behind bars ... stripped of their constitutional rights for bail”.

oo. Reverend John James¹⁸⁸

Reverend Johan James made written submissions on behalf of the Woodview Ratepayers Association, which stated that the community of Phoenix, comprising of Africans, Whites, Coloured and Indians have served and protected the community, families and properties during the unrest. He further stated that Phoenix is a peace-loving community, serving all races, creating jobs, feeding and religiously caring for all races.

The statement also stated that the community members of Phoenix put up civilian roadblocks because of a lack of police visibility, and that roadblocks were allegedly only done between 23:00 and 04:00 – the Covid-19 curfew time – when “no one should be on the road outside of their residential area”.

Reverend James stated that at one of the roadblocks they stopped “a vehicle carrying

stolen goods”. They then called a private security company who escorted the vehicle to the Phoenix Police Station.

pp. Shabir Nazeer¹⁸⁹

Mr Shabir Nazeer's statement emphasised the importance of upholding democracy and ensuring a fair trial for all accused individuals. He called for an unbiased, non-racial, and corruption-free judicial process where the principle of presumption of innocence is respected.

Mr Nazeer highlighted that the right to self-defence should be considered irrespective of a person's race or ethnicity. He stated that the Phoenix Accused played a crucial role in safeguarding the residents, infrastructure, and businesses of Phoenix when the authorities failed to provide adequate protection for all South Africans.

qq. Jayson Govender¹⁹⁰

In his statement, Mr Jayson Govender expressed his dissatisfaction with the government's handling of the situation, stating that the people of Phoenix were left without support from both the government and the SAPS. He questioned why the SAPS lacked sufficient manpower, ammunition, rubber bullets, and vehicles to protect KwaZulu-Natal. Mr Govender criticised certain individuals who were responsible for looting but shifted the blame onto the people of Phoenix, accusing them of racism to divert

attention from the government's failure to protect the citizens of KwaZulu-Natal.

Mr Govender recounted the night of 11 July 2021, when the Bridge City Shopping Centre was being looted and set on fire. The terrifying screams of the looters could be heard throughout the night, causing his family to fear for their safety. Social media messages circulating at the time created panic among the Indian community, with threats of violence and destruction directed towards them. Mr Govender received similar messages throughout the week, forcing them to stand guard outside their homes to protect their livelihoods.

According to Mr Govender, racial tensions were provoked by the media, despite the fact that they were not truly prevalent. He concluded his statement by reiterating that the government had failed the people of KwaZulu-Natal, and the creation of the Phoenix Massacre was an attempt to deflect attention from this failure.

rr. Vijay Ramlal¹⁹¹

Mr Vijay Ramlal, who, at the time of this submission resided in Shallcross, Durban, submitted that they “engaged with non-residents and peacefully escorted them out of Shallcross”. However, in respect of Phoenix, he stated that he took “umbrage” at the term “Phoenix Massacre” as he believed it suited the agenda of the ANC and deflected from the inadequacies of SAPS and the eThekweni Metro Police.

Mr Ramlal stated that residents were forced to setup civilian roadblocks because “SAPS were

instructed to stand down”. He stated that it was sad that some residents of Phoenix took the law into their own hands “and lives, some innocent, were lost”. But Mr Ramlal alleges, or suggests, that some people were killed by “KwaMashu gangsters and [their bodies] dumped in Phoenix” and thus that not all “corpses” found in Phoenix or the mortuary were victims of violence in the area.

ss. Lee Chetty¹⁹²

In her submission regarding the Phoenix Accused, Ms Lee Chetty called for the preservation of democracy, a non-racist, non-corrupted, free, and fair trial, and the recognition of self-defence against criminals, highlighting the failures of the state.

According to Ms Chetty, people are dying before their cases can be proven, subjected to treatment akin to animals. The Phoenix Accused, she argued, were hardworking individuals who resorted to self-defence against what she deemed a clear threat to the people of Phoenix. Ms Chetty emphasised that the residents of Phoenix do not engage in looting or stealing but strive to earn their livelihood. However, she criticised the law in South Africa for seemingly condoning and permitting theft, while those who stood up to protect what little they have are imprisoned, and looters and genuine criminals remain unpunished in their homes.

Regarding the civilian roadblocks, Ms Chetty clarified that those present carried weapons for protection rather than to cause harm. Their

actions were driven by the government's failure to provide adequate protection for the community.

tt. Narendh Ganesh¹⁹³

Mr Narenshe Ganesh expressed scepticism about the hearings, considering them to be dubious and a mere facade for an allegedly biased inquiry. He questioned the potential outcomes of the process, expressing doubt about the ability of a president who failed to act during critical moments to implement any resulting recommendations.

According to Mr Ganesh, if the violence in Phoenix is portrayed in racial terms, the inquiry is bound to be futile. He raised concerns about the Hearings' premise and criticised the Commission for not investigating the 1985 Inanda riots with the same vigour, suggesting that the reason might be that the largely Indian community were victims in that event and did not frame it in racial terms.

Mr Ganesh pointed out that the incidents during the dark days in July took place during the Covid-19 State of Disaster curfew. With widespread footage showing marauding thugs, he argued that it would not have been difficult to anticipate people defending their lives and property. However, he emphasised the need for the South African Police Service (SAPS) to investigate all criminal acts leading to deaths. He expressed scepticism about fair and unbiased investigations from a security cluster that failed to protect citizens when needed.

In Mr Ganesh's perspective, the passionate investigation of the Phoenix incident, labelled as the "Phoenix Massacre", serves as an attempt to mitigate the gratuitous criminality that occurred while highlighting the ineptness and incapability of the country's leaders to act promptly and in the best interest of all people. He criticised the aftermath of the Phoenix incident, which he believes unfairly targeted and demonised the predominantly Indian community.

uu. Natalie Naidoo¹⁹⁴

Ms Natalie Naidoo, residing in Johannesburg but with a beachfront apartment in KwaZulu-Natal, claims to have personally witnessed the looting during the riots. She criticised the lack of empathy displayed by the Black/African community during the looting and defended the actions of the Phoenix Accused, stating that they were merely protecting their property and families.

Ms Naidoo expressed dissatisfaction with the police's failure to support the Phoenix Accused and the unjust denial of bail to both the accused and the Indian community.

vv. Duane Moodley¹⁹⁵

Mr Duane Moodley, in his complaint statement, aimed to highlight the differing perspectives on race within Phoenix. He described his attempt to sell his parents' house to Black individuals as a means to promote non-racism, social cohesion, equal opportunities, and harmony in the

community following the Unrest in July. However, he encountered opposition from his sister, who even lodged a complaint via email to the Master of the High Court regarding the potential sale to Black individuals.

Mr Moodley expressed disappointment that the Master, Mr Ollewagen, did not address his sister's racist remarks in the email. He accused his sister of actively opposing transformation in Phoenix and suggested that legislation in the property sector should be strengthened to prioritise Black/African individuals in property purchases throughout South Africa.

ww. *Geshy Reddy*¹⁹⁶

Ms Reddy submitted a statement on behalf of a group of Indian and Black persons, who were carbon copied in her submission but whose names were not all fully spelt out. Ms Reddy stated that she was a member of the Democratic Alliance and prefaced her statement by saying that she was saddened by “the insensitive poster the DA had in Phoenix”.

She stated that charity by Indians towards Black people does not “sanitise [their] racism”, as she has witnessed deep prejudice “by the very Indian volunteers serving the poor – who [happen] to be Black South Africans”. While the Zuma siblings may have begun the hashtag #Phoenixmassacre, they are “not wide off the mark as the fact remains, 33 black South Africans were pitilessly robbed of their right to life all because of the colour of their skin”.

Ms Reddy also acknowledged that while Indians were also victims of Apartheid, they were privileged in comparison to Black African South Africans. She added that Mahatma Gandhi “practiced biased ahimsa (nonviolence in thought, word and deed) as he viewed blacks as inferior.

Ms Reddy stated that chaos, fear and panic were not unique to Phoenix, as is evident from the other submissions in respect of other areas in KwaZulu-Natal, but that because of lawlessness and vigilantism in these communities, the entire Indian community now suffers the stigma of racism.

xx. *The Phoenix Accused*¹⁹⁷

A written submission was made on behalf of 17 individuals who were detained at the time of the submission. The spouse of one of the detainees submitted the document to the Commission, alleging that their arrests and continued remand were influenced by the dominating presence of political parties during their bail hearing. While expressing condolences for the killings in Phoenix, the group maintains their innocence. The submission includes a list of issues and questions pertaining to the Unrest and subsequent legal proceedings.

The submission made on behalf of the Phoenix Accused raises several concerns regarding their arrests, investigations, court proceedings, and prison conditions. The accused individuals outline alleged poor investigations conducted by investigating officers, including forcible removal

from their homes without proper procedure, and the presence of fabricated evidence and false accusations. They question the lack of search warrants and the mishandling of confiscated items. The accused express their belief that the task team responsible for arrests seemed to be mandated to apprehend anyone, leading to their detention under false pretences.

Regarding the courts, the accused claim that the remand process was abnormal and characterised by long appearance dates, despite promises of fast-tracking. They assert that protestors had influence over court proceedings and express dissatisfaction with the establishment of a dedicated court for the Phoenix killings only, rather than addressing the broader unrest and looting. The accused raise concerns about changes in the court and prosecutors after the initial granting of bail to some individuals, suggesting political interference. They criticise the limited court hours and allege that politicians exploited the court and magistrates to advance their political agenda.

The accused also argue that judges were influenced and cite fabricated public petitions used to deny bail. They claim that magistrates led state prosecutors and investigating officers in their questioning, indicating bias. The accused further point out delay tactics, such as prolonged remand durations, inconsistent court hours, and frequent non-appearances by investigating officers, prosecutors, and translators. They argue that biased bail adjudication was evident, with bail denial conditions focusing on potential public

outcry, civil unrest, and racial tensions rather than exceptional circumstances.

The submission emphasises the implications of biased adjudications and rulings, including job losses, financial strain, and reputational damage. The accused highlight poor prison conditions, such as the lack of available doctors, threats from other inmates, issues with medication, and concerns about food quality and portions. They further allege incidents of physical and verbal abuse, including one incident of sodomy.

Overall, the submission presents a series of grievances raised by the Phoenix Accused, challenging the fairness and transparency of the legal process and highlighting concerns about their treatment and conditions during detention.

2.1.9 TESTIMONY FROM CIVIL SOCIETY AND ACADEMICS

Several civil society and community-based organisations as well as academics made submissions regarding the Unrest and the violence in KwaZulu-Natal's suburbs, during the Unrest.

a. The Community Advice Offices of South Africa – National ¹⁹⁸



Mr Seth Mnguni, the Deputy President of CAOSA, represented the organisation at the Hearing. He emphasised the role of CAOSA in providing access to justice, noting that justice in the country is not free. During the Unrest, CAOSA staff in KwaZulu-Natal and Gauteng worked to calm community members and reassure them that the situation would eventually pass.

Mr Mnguni acknowledged that during times of tension in South Africa, people often retreat to their historical localities or groups. He stated that racial tensions have persisted in the country for a long time, even if they are not frequently discussed. The events of the July Unrest brought these tensions to the forefront, making them more apparent to everyone.

b. The Community Advice Offices of South Africa – KwaZulu-Natal ¹⁹⁹

CAOSA KwaZulu-Natal's submissions were based on information collected by their community-based paralegals in various advice

offices. They highlighted the emergence of racial tensions between African and Indian communities in areas such as Inanda, Mawothi, Bambayi, Amaoti, and KwaMashu, resulting in injuries and deaths. CAOSA also mentioned the denial of access for black school children to schools in Phoenix during the Unrest. The use of private security companies, particularly Reaction Unit, was noted.

In Amanzimtoti, black individuals were required to provide proof of residence to enter the suburb. CAOSA emphasised the need for discussions on racism and the addressing of inequalities until a solution is found. They listed various locations that were damaged during the looting, including malls and shops in different areas.

CAOSA highlighted the participation of many South Africans in looting following the end of the social relief grant, which exacerbated poverty. They criticised the President's characterisation of the Unrest as agitated along ethnic lines, considering it reckless and undermining peace-building efforts. CAOSA also mentioned complaints regarding Bhejane Hardware in Umzimkhulu, where allegations were made that the owner set the store on fire, resulting in multiple deaths.

The closure of shops at Bridge City Mall led to job losses and had a negative impact on taxi drivers. Retail, banking, and petrol station employees were among the most affected by the Unrest and subsequent job losses.

c. *Collective Submission Towards Nation Building*²⁰⁰

The Hearing Panel received a 'collective' submission towards nation building by a group encompassing community leaders in and around KwaZulu Natal. As an introduction to their submission, the Collective stated that they remain deeply committed to building a "non-racial and non-sexist society" through nation building. They stated that to progress with nation building "we have to confront painful truths but [also] rely on the overwhelming goodness of the vast majority of people".

The Collective also wished to express their sincere condolences and deepest sympathy to the families and friends of all those who lost their lives or suffered severe injuries as well as those who lost their jobs or businesses during the Unrest.

By making the submission, they had felt compelled to provide a deeper understanding of the causes of the Unrest and positive lessons to take forward, so that something such as the Unrest does not happen again.

The Collective proposed that one way of understanding the deaths that occurred during the Unrest is to look at each cause of the "340 deaths". They stated that it was important that the Commission investigate "when did these deaths actually occur, what was the date and time of these deaths, where did these deaths occur, how and when were the bodies of the deceased identified and removed to mortuary facilities".

The Collective, like the individual submissions, laments the "lacklustre" response by the police in quelling the violence that enveloped [KwaZulu-Natal]. The Collective alleges that despite submissions made to the Commission by the government there remains a number of unanswered questions regarding, amongst others, what information was provided by SSA to the SAPS and the Metro Police; were the SAPS and Metro Police aware of the messages or propaganda being spread on social media, particularly WhatsApp that instigated "looting", were there members of SSA and/or SAPS or Metro Police who supported "the so-called insurrection" and will they be investigated and held accountable?

The Collective stated that the trigger for the Unrest was "undeniably the arrest and incarceration of our former President, President Zuma". The underlying causes of the Unrest, however, according to the Collective were:

the entrenched inequalities, the consequent poverty and high rates of unemployment, made worse by Covid-19, which were preyed upon by politicians to instigate violence;

the factionalism within the ANC. The aim of the Unrest, according to the Collective was to destabilise the leadership of the ANC and shift the balance of power from one faction to another by destabilising an already fragile economy and causing mayhem; and

a culture of impunity that pervades South African society, with particular reference to the trucking industry and the pervasive hijacking and

destruction of trucks near the Mooi River toll plaza on the N3, a key economic arterial road. According to the group, during the Unrest, 37 trucks were hijacked and burnt. There are allegedly no arrests and accountability indicating government failure.

According to the Collective, instigation happened mainly using social media. Although the economic inequality was preyed upon it was not a social unrest due to economic inequality but a well-planned “strategy that had been developed prior to the incarceration of our former President”.

The looting that took place during the Unrest was, according to the Collective, acted upon by different classes or categories of people: the indigent who acted opportunistically and not with “associated demands” of the agent provocateurs; there were people who did not appear to be indigent who came in “very nice cars”; there was what could only be described as “organised crime where people came equipped with angle grinders to cut out ATM machines and trucks to load large amounts of looted goods”; and the group “which in the [their] view must bear maximum culpability and that is that group of people who individually or collectively organised, coordinated or incited the Unrest with the diabolical agenda which [they] believe to have been the destabilisation of the democratic state and the advancement of a political agenda”.

Given that businesses were not just looted, but also burnt down, is another indicator, according to the Collective, that certain attacks (on businesses) during the Unrest were planned. There was also targeting of distribution and

supply lines causing temporary food shortages in KwaZulu-Natal, with bread costing R58.00 at one point during the Unrest.

The Collective alleged inaction, on the part of SAPS, for at least the first four days of the Unrest. The Collective stated that due to the lack of policing,

“ordinary people some with the assistance of private security companies were compelled to seek to protect their person and property including their homes and businesses and they reacted by putting up barricades and other structures. It appeared as though in some areas the police had outsourced their functions to private security companies”.

The Collective stated that they were aware that the SANDF and SAPS were stretched and had to prioritise key points but added that better planning or having intelligence ahead of time may have allowed for better planning so that civilians and high value sites were all protected.

The Collective referred to admirable examples of leadership that helped protect communities, such as actions taken by the Mayor of Kokstad. Chatsworth SAPS and Community Policing Forums (“CPFs”) also worked together to make sure attempts to attack the Chatsworth Centre were unsuccessful. Police, together with private security, also worked to protect amongst others, the Pavilion Shopping Centre, Gateway Mall, Northway Mall, Hayfields Mall and Mills Circle (also in Hayfields).

The effective protection of the centres listed above highlight, according to the Collective, “the

importance of coordination, collaboration, collective action, committed leadership and a non-racial approach to addressing problems like those ... experienced in July 2021". The Collective further stated that "greater cooperation between police, the CPFs, civil society generally and private security companies are key to preventing such loss".

The Collective submitted that the acts of violence in Phoenix, unlike incidents in other areas of KwaZulu-Natal, "took on a particular racial form". The Collective were "outraged by the violence that "marked some of the incidents". The Collective "condemn[ed] the perpetrators who carried out ... vicious acts without qualification".

However, the Collective felt that the perceptions that arose as a result of the violence that took on a particular racial form, caused division and anguish throughout KwaZulu-Natal. The Collective also objected to the use of the term "massacre" as they believe the deaths did not occur at the same time, in the same place. The labelling of the acts of violence as a "massacre" has resulted, according to the Collective, in the demonisation of the entire Indian community and race relations in KwaZulu-Natal had been severely damaged.

When asked by the Evidence Leader why, given the dictionary definition of massacre²⁰¹ as well as the Phoenix Mortuary statistics showing in excess of 80 people killed during the Unrest due to gunshot wounds and blunt force trauma, the Collective failed to acknowledge what happened in Phoenix as a massacre, the collective responded that it had not seen the evidence from

the Phoenix Mortuary and that it happened over a number of days.

The Collective implored the Commission to;

"make a conscious effort to distinguish between the actions of the perpetrators ... from those of the community [of Phoenix] as a whole. Based on the Collective's "experience and from the information [they] have the overwhelming majority of people involved in self-protection acted lawfully and in a disciplined fashion".

According to the Collective, the deaths or the attacks in Phoenix have been perceived in an acontextual manner and that's how labelling was characterised. The Collective provided that the context in which they occurred was a lack of police and SANDF presence which led communities through CPFs, private security firms and community patrol groups, to arm themselves with all manner of weapons, including guns. In addition, rampant social media messages in which Indians' lives were threatened raised deep fear and panic in many Indian communities. Many communities were, therefore, expecting large groups of people to come into their areas to attack them and damage property and businesses.

The Collective however, condemned racism by "some" Indian South Africans as well as Black South Africans and stated that we must not be distracted by this racism. The Collective is of the opinion that such racism is only located in the "extremes of our spectrum" and not in the mainstream. In order to understand the context in which the racist acts took place, the Collective

went into their understanding of the historical socio-spatial and economic context of the “tensions between Indian and African communities”. The emphasis being on not labelling an entire group [Indians] as racists.

They stated that colonial and apartheid rule “helped determine how all of our four main racial groups conceive of their identities as well as the identities of others” – this history has shaped the way South African’s see themselves and other racial groups. Deliberate attempts at successive colonial governments and apartheid governments to separate Indian and African communities “combined with the 1949 Cato Manor Riots and the 1985 Inanda Riots provide starting points to unravelling the nature of tensions between Africans and Indians “especially in Phoenix”.

Through formalised Apartheid introduced by the National Party in 1948, and racial oppression, South Africa became explicitly hierarchical with the Group Areas Act creating “spatial settlement ... designed to protect the White minority, marginalise the African community and set up others [Indian and Coloured] as buffer groups or buffer strips”.

The Collective, in speaking about the Cato Manor Riots, stated that there was evidence, or a suggestion of evidence, that it was instigated by the Apartheid government to drive a wedge between Indian and African communities. The Cato Manor Riots which lead to “some Africans attacking Indians has left an indelible scar on the psyche of Indian people and fear of similar incidents occurring always lurks in their

subconscious”. Similarly, according to the Collective, the 1985 Inanda Riots, in which Indians were forced to relocate from Inanda, “left a deep-seated scar in the minds and hearts of many in the Indian community who were victims of this forced removal ... to the nearby Phoenix, and July 2021 rekindled horrific memories and generated fear and panic”.

The Collective stated that the continued spatial inequality – Black people living in informal townships next to middle class communities is “create[ing] conditions that are a recipe for contradiction and conflict” and that economic inequality was at the root of the instability which caused or led to the Unrest. A lot of focus was placed on economic inequality as the root cause.

The Collective opined that numerous and consistent attempts have been made to bridge the economic inequality, and to provide social cohesion, and that these attempts need to be continued – that and the provision of proper housing and housing infrastructure and appropriate service delivery – must become a priority.

With references to historical attempts at bridging the racial divide between Indians and Black people - interventions by Inkosi Albert Luthuli and Dr Monty Naicker that contributed to subduing the Cato Manor Riots and the Three Doctors’ Pact of Doctors A.B. Xuma, Yusuf Dadoo and Monty Naicker that paved the way “for all racial groups to work together to end Apartheid” – the Collective stated that it is clear that the ideal of non-racialism has not been achieved as “racialised fault lines have carved

themselves into the fabric of our society”. There is, according to the Collective, much work to do and the organisations and individuals who are part of or support the Collective’s submission have undertaken several initiatives directed at “social cohesion and nation building”. The Collective has welcomed these initiatives but firmly believes that “these programs can no longer be ad hoc or fragmented. They have to be mainstreamed and be part of programmes at all three parts of government and even find expression in the school syllabus”.

The Collective also believes that essential to national building is the building of a culture of accountability and the need to extinguish South Africa’s current culture of impunity.

d. Sibusiso Zikode²⁰²



Abahlali baseMjondo put out a statement dated 13 July 2021,²⁰³ on its position on the Unrest and the fact that, as stated before, the inequality was going to bubble over in a negative manner in some way and that actions by poor people have little or nothing to do with former President Jacob Zuma’s arrest. However, the statement was

doctored to suggest that Abahlali baseMjondolo were angry with Muslim communities and accused them of being discriminatory, fuelling racial tensions, despite Abahlali baseMjondolo and the Muslim communities working well together.

Abahlali baseMjondolo submitted that they do not know who doctored the statement but know that it was shared on a WhatsApp Group by a former Deputy Mayor of Durban, Fawzia Peer. Due to the doctored of their statement, and the racial abused received by their members in amongst other areas, Overport and Stanger, Abahlali baseMjondolo issued a statement in response on 17 July 2021.²⁰⁴

e. Professor Paulus Zulu²⁰⁵



Professor Zulu opined on the organisation of the Unrest and the overall general, strategic erosion of democracy by the “architects” of the Unrest.

Professor Zulu added that the organisation of the Unrest lead to an “expression of ungovernability”. He stated that the Unrest showed us a distinction between how this country should be run and how

this country is deliberately being run (through factions within the “ruling party”). We even have a police force and SSA who act along factional lines. Professor Zulu stated that we have a morally decaying government which is promoting larger decay within society. There is no vision to end the causes of racism, economic inequality or to bring about social cohesion. We cannot have rule of law, where people are encouraged by politicians or supported by politicians when they contravene the rule of law, such as theft and malicious damage to property.

“Until we get a serious government with a vision followed with strategy with daily tactics that give effect to a strategy” there will not be an end to these divisive categories. Instead, they will continue to be used in future for further destruction of our decaying democracy. Professor Zulu believes that there is no “desire to make South Africa one nation”, given that we even have a police force and SSA who act along factional lines, who act in the same way these organisations did under Apartheid – to facilitate the will of those in power and not to protect the people they are intended to protect.

Professor Zulu suggested that while there are good people – it’s usually the good people who are unorganised, while the “sinister” groupings and those with power are well organised. In respect of the 12 “masterminds” or “instigators”, who were at the time of the Hearings arrested for instigation, Professor Zulu stated that, in his opinion, these instigators remain intermediaries and are not the true architects of the Unrest.

In respect of the racial profiling and racist attacks in various suburbs in KwaZulu-Natal, Professor Zulu advised that South Africa “does not have a nation”. South Africa is a state but “not a nation”. Within the state there are various groups that do not cohere, and this lack of cohesion has been a historical tool used by governments to create ungovernability or to cause Unrest. We have not done enough as a country to address the divisive issues of race, the economy and the social fabric. What we, or the government, have done is facilitate the privatisation of services for those who can buy out of the state – private healthcare, private education, private security.

While activities at some civilian roadblocks were violent, Professor Zulu did not experience any violence at the civilian roadblocks he encountered, and at which he was stopped, in Musgrave.

In respect of the “looting”, he proposed a differentiation between the participants. Professor Paulus Zulu suggested that there were three groups who opportunistically took part in the Unrest. Firstly, people who live from hand to mouth. Second, working class people who opportunistically would have wanted better items for their household. Thirdly, people who had cars, were mobile and more strategically opportunistic. He stated, therefore, that a “criminalist framework” is not sufficient for understanding the unrest. Rather, he proposed a more nuanced approach that appreciates the intersection and relationality between the stated three groups, and how they converged to result in the scale and impact of the unrest as experienced.

f. Crispin Hemson²⁰⁶ –

Mr Crispin Hemson's submission provided a mix of personal evidence as well as academic or professional insights from his work at the International Centre of Nonviolence, Durban University of Technology.

Mr Hemson foregrounded his submission in respect of the Unrest with challenges faced by people living in South Africans townships. He opened with the crises of:

- i. "unemployment and intense inequality", which was exacerbated both by Covid-19 restrictions and the ending of the Covid-19 Relief Grant. He made specific reference to residents of Lamontville Township who showed Mr Hemson "their completely empty fridges";
- ii. "the failure of service delivery", which has resulted in community members allegedly being under constant pressure to bribe officials to provide services; and
- iii. "chronic violence"²⁰⁷ in townships, which include vulnerabilities to violence in schools, exposure to drug abuse and drug-related-violence, gender-based violence, political killings, and community vigilantism.

According to Mr Hemson, all these challenges, or just everyday living conditions, which are endemic to townships in South Africa, communicate to poorer Black communities that

they are expendable and not taken seriously. For those not part of poorer Black communities, the term 'security' has come to be a means to distance themselves from people who are poor and, in effect, Black. Within these conditions, the "instigators" of the July unrest who called on people or notified people, via WhatsApp messages of the opportunity to loot "must have known that it would lead to violence and to the deaths of "the excluded and marginalised" Black poor.

Mr Hemson pointed to the extreme vulnerability of the poor and wrote about crowds from Lamontville who rushed to Mega City, using the very narrow pedestrian bridge over the Mlazi River, resulting in reports of at least 12 people being "crushed to death on the bridge" and three people who fell into the river below and drowned.

In respect of the provocation allegedly experienced by members of the South African Indian community, Mr Hemson found the use of existing neighbourhood watches or community policing forum groups to assert some degree of social control in the absence of any intervention by SAPS "fundamentally reasonable". However, Mr Hemson rejected the notion that the Indian people had no choice but to be violent in response as happened in some communities where the interventions took on "racial characteristics".

Mr Hemson recounted non-violent civilian roadblocks in other areas to illustrate that there was no evidence that community policing in this crisis had to take a racial basis. Mr Hemson reported that there were civilian roadblocks in

South Beach, who were not letting non-residents into the area on the possible threat of looting. Mr Hemson also recounted an experience of his Black adopted son who was stopped while trying to drive into Musgrave, Durban to try to obtain petrol. Mr Hemson's son reported that he was stopped at a barricade by men he describes as a few Whites and a majority of Muslims. He asked where he could get petrol. He was not harmed.

Despite these examples of non-violence, Mr Hemson stated that by 17 July 2021, he started to get news of the violence and killings in Phoenix, Chatsworth and the Bluff. Mr Hemson stated that,

"I ... read the reaction of Black friends on Facebook and began to understand just how painful these situations were. At that stage, [he] knew that there were at least 20 dead, and the overwhelming evidence was starting to emerge of racialised attacks on Black people. I posted my anger at the use of guns on Facebook and posted a description of the killings as both criminal and racist (without making any claim as to who had done this, or even of the race of victims). ... I was condemned for putting out hate speech and reminded of 1949 and 1985. I was told that what had happened was a racial attack on Indian people and was accused of stating that all Indians were racist and criminal. It was even alleged that killings were acts of self-defence".

Mr Hemson stated that he was present at meetings of civic leaders after the conflicts of 1985 in Phoenix. The reaction of the civic leaders revealed the extent to which the Inanda Riots of 1985 was seen through the lens of the Cato

Manor Riots of 1949. Mr Hemson got the impression that the trauma around the Cato Manor Riots was still present and that the narrative around these events had been communicated either directly or indirectly across generations and that this formed the basis for a distorted view of the reality of the present situation that led into a violent reaction, and that the narrative of both the Cato Manor and Inanda Riots distorted the views of Indians during the July Unrest. Mr Hemson stated:

"The looting in July was highly provocative, but it was not a racial attack [on Indians] and to see it in that light was a terrible mistake with appalling consequences that are likely to impair relationships in the area for a very long time".

Mr Hemson submitted that a key challenge was persistent narratives around historical events that are interpreted from the perspective of one's own group always being the victim, leading to casting others who were themselves victims, as the perpetrators. He further submitted that people are deeply ignorant of the histories of others and of their own histories, and this related to stereotyping and justifications for a form of 'cultural violence',²⁰⁸ which contributed to the direct violence during the Unrest.

2.1.10 FOLLOW UP ENGAGEMENTS WITH WITNESSES

In order to address the gaps in testimony before the release of the Report, the Commission engaged witnesses in July 2023 who provided oral and written testimony to the Commission during the Hearing.

For all the witnesses who provided testimony to the Commission, there had been no progress that they were aware of, in terms of the criminal cases involving either their own assaults, theft and damage of their cars or the killing of their relatives, as per the CAS numbers provided.

While some had attended bail hearings, for the majority, their matters had not proceeded to bail hearings and they had received no updates or any form of communication from investigating officers. Many witnesses were under the impression that the specialised Task Team put together by Minister Bheki Cele to investigate the assaults, attempted murders and murders that occurred in Phoenix no longer existed.

The Commission, however, visited the Verulam Magistrates' Court. According to prosecutors at the Verulam Magistrates' Court, the 31-officer Task Team was still in existence. Prosecutors advised that where matters had not proceeded to bail it meant that either the charge(s) was/were still being investigated by the Task Team or that there was not enough evidence to proceed with instituting prosecution. None of this information, however, had been communicated to the witnesses by the investigating officers from the Task Team.

Although none of the matters of the witnesses who testified before the Hearing had proceeded to or beyond bail, the prosecutors and staff at Verulam Magistrates' Court had provided the Commission with at least sixteen (16) matters in respect of the assaults, attempted murders, murders, malicious damage to property, defeating the ends of justice, possession of unlicensed firearms, and possession of stolen goods in respect of Phoenix, which had proceeded in the Verulam Magistrates Court. At least three murder matters were transferred to the KwaZulu-Natal High Court, Durban.

The prosecutors also advised the Commission, with reference to transcripts of bail hearings heard and decided during the time the Hearing took place, that in respect of assault, Grievous Bodily Harm, attempted murder and murder charges, bail was opposed, as per CPA requirements, and many cases were not granted by the Verulam Magistrates' Court but was instead granted on appeal by the KwaZulu-Natal High Court, Durban.

In respect of testimony provided by the DSD of offering psycho-social support and food parcels to the families of victims of the violence that occurred in Phoenix, the witnesses that testified informed the Commission that psycho-social support was offered in non-strategic venues such as Phoenix, where victims did not want to return to and it was offered in large groups with one witness alleging that they were not provided psycho-social support but rather talked at, which included accusing victims of "looting". None of

the witnesses received food parcels or vouchers from the any government department.

Many of the people who died in Phoenix were not able to be identified by their families at the Phoenix Mortuary. Due to not knowing where family members took their last breath and because of being afraid to return to Phoenix, families have not been able to practice Ukulandwa Kongasekho / ukulandwa komphfumulo or spiritual repatriation which would allow spirits of their family members to be at peace. This remains an additional significant indignity to people who continue to suffer greatly due to the loss of family members, and not having their cases properly investigated and prosecuted.

Engagement with witnesses in Phoenix provided confirmation of their statements as provided to the Hearing. Mr Duane Moodley and Ms Geshy Reddy remain the only witnesses who wholly accept the assaults, attempted murders and murders that occurred in Phoenix. The other witnesses engaged remain in disbelief, particularly in respect of the number of people killed in Phoenix, despite repeated explanations and confirmations that more than 36 bodies were collected in Phoenix by SAPS and Phoenix Mortuary officials, with others dying in hospital and, therefore, being able to confirm their assaults and the eventual deaths, occurring because of assaults in Phoenix.

2.1.11 PERSONS WHO WANTED TO PROVIDE ORAL SUBMISSIONS

The Commission received several requests from persons who wanted to provide oral testimony before the Panel, in respect of what occurred during the Unrest, particularly in Phoenix. Unfortunately, as stated in the introduction chapter of this Report, the Hearings could only accept a limited number of oral evidence, noting the large volume of submissions received. The Commission did, however, wish to acknowledge these requests, as listed below:

- Mr Buzani Gwala²⁰⁹ alleged that his car was also destroyed in Phoenix.
- Ms Nobuhle Zitha²¹⁰ was allegedly assaulted at Phoenix Unit 10 on 14 July 2021.
- Mr Ntokozo Sangweni,²¹¹ and his friends, at the time of the Unrest, lived in Phoenix and on their way back into Phoenix were chased by a white Ford Everest without a number plate. One of Mr Sangweni's friends was allegedly shot in the back.
- Mr Sakhile Innocent²¹² who works in Phoenix, was allegedly assaulted by a group of Indian men at a roadblock on 12 July 2021. The group also stole his mobile phone and torched his car with everything in it. He instituted a criminal case.
- Mr Sibongakonke Nala's²¹³ cousins were allegedly assaulted in Phoenix. They were travelling from Cornubia to

Claremont when they were stopped at the intersection of the R102 and Phoenix Highway. In addition to being assaulted, they had their possessions stolen and car torched. Mr Nala added that it took more than a week to open a case at Phoenix SAPS because “they all had this mindset that everyone who was injured had been looting or had deserved being injured”.

- Ms Devi Naidoo²¹⁴ requested to participate in the Hearings.
- Mr Sphelele Mdletshe²¹⁵ and his friend were in Phoenix on 14 July 2021 to find petrol. They were allegedly chased by a group of Indian men in a Ford Ranger and assaulted. Mr Mdletshe stated that even though he knew Indians did not like Black people the attacks suffered by him and his friend left them shocked and even more scared of Indian people. The attack made clear to Mr Mdletshe that there will never be harmony between a Black person and an Indian person.
- Anonymous²¹⁶ wanted to testify regarding the alleged racial profiling of residents in Phoenix, including himself, as well as the involvement of CPF members, private security companies and SAPS members

in the involvement in the racial profiling and attacks in Phoenix.

- Pat Marie²¹⁷ wanted to know why only the lives of the “36 Black people [was] so important what about [the] Indian lives”. She accused the justice system of being racist.
- Ms Unika Naidoo,²¹⁸ lost her brother, Mr Ashley Maharaj, during the Unrest and wanted his story to be heard. She was of the view that the Commission was only willing to hear those people whose submissions “neatly fit into the narrative [it] want[s] to publicise”.
- Mr Mlungisi Mthembu’s²¹⁹ brother was allegedly shot at in Phoenix, but very fortunately he survived. Unfortunately, Mr Mthembu’s Audi A3 was torched. He registered the theft and damage of his car with SAPS Phoenix.
- Mr Pundith Satish Maharaj,²²⁰ a SAP Chaplain who attended the CRL Commission Hearings, wanted to make submissions before the Hearing Panel.
- DA MP in Durban and Phoenix, Mr Hanif Hoosen, wanted to make submissions to the Hearing Panel.²²¹

2.2. ANALYSIS OF EVIDENCE

- 2.2.1. The July 2021 Unrest in South Africa left a trail of destruction and personal suffering in its wake, as countless individuals experienced the violation of their basic human rights. The testimonies of some of those directly affected by the violence shed light on the extensive damage inflicted upon individuals and communities, as well as the flagrant disregard for human rights throughout the Unrest.
- 2.2.2. The testimonies received from affected members of the public revealed the profound personal damage suffered by individuals during the Unrest. Families were torn apart as loved ones were injured or killed, homes and businesses were looted and destroyed, and livelihoods were shattered. The emotional toll on survivors was immense, with feelings of fear, grief, and trauma permeating their daily lives.
- 2.2.3. When William Golding published *Lord of the Flies* in 1954, he told the powerful narrative of how evil is always lurking within close reach of each/any person/community, including the most 'ordinary', 'civilised' amongst us. The submissions and testimonies presented to the Commission, together with photographic and video evidence of assaults and killings, particularly in Phoenix and surrounding areas, remind us of the message of the *Lord of the Flies*, in so far as it paints a worrisome picture of the violent anger that features in the nature of South African society, and of the palpability of tensions across our diverse subject categories. We are a nation on the edge.
- 2.2.4. The story of the events of the racialised violence that occurred during the July Unrest is not merely about the indiscriminate racism of a small deviant group within a larger Indian community. Neither is it only about a community rising to protect itself during a moment of national crisis, when the state security system has been outperformed by mass anarchy. The texture of the testimonies presented before the Hearing Panel suggest that the events raise much bigger questions about transformation and democracy.
- 2.2.5. The racialised violence of 2021 offers a barometer through which South African society can measure progress towards racial integration and social harmony. The apartheid system established a racial hierarchy which located white people above all, and African people below all – with Indian and Coloured people between them.
- 2.2.6. What the evidence before the Hearing Panel suggests, together with our lived experiences as South Africans, is that African and Indian people, particularly in KwaZulu-Natal coexist on a day-to-day basis, before and after the July Unrest, absent of popular racialised violences, in various forms of interpersonal relationships. The evidence also shows a familiarity with, and

contextual location of, racial tensions amongst members of both the African and Indian communities. The sense that the racial tensions pre-date the July Unrest – or at least is located in a historical context by those directly affected - permeates throughout the submissions where references to race are made.

Locating the African – Indian Racialised Tensions in Historical Context

- 2.2.7. The National Hearing received multiple testimonies that sought to connect the racialised violence that occurred in July 2021, especially between African and Indian persons and communities, to racialised events that occurred in Cato Manor in 1949 and in Inanda in 1985.
- 2.2.8. It does appear from the references made to 1949 and 1985, that the events have been communicated either directly or indirectly across generations, in ways that have the potential of influencing the views of present reality.
- 2.2.9. The references made to Cato Manor 1949 and Inanda 1985 in reflections about July 2021, especially racialised violence in Phoenix, suggest that the violence that ensued in Phoenix as part of the July Unrest enjoins a historical reference point which for some explains, justifies, or clarifies interracial violence between African and Indian persons.
- 2.2.10. Similarly, when Mr Crispin Hemson, as per his testimony, visited Inanda in the aftermath of racial riots in 1985, he observed that the 1985 events were viewed through the lens of racialised events in Cato Manor, in 1949, demonstrating the prevailing, yet unprocessed presence of the trauma.
- 2.2.11. Cato Manor is home to Durban's earliest informal settlement and is located seven kilometres from the City Centre. From around 1865, the area was a farm belonging to the first Mayor of Durban, George Christopher Cato. It was later subdivided and developed, as Indian market gardeners began to settle in the area. As Black Africans were prohibited from owning land in urban areas under the Apartheid law, many African residents rented land from Indian owners, on which they erected shacks.
- 2.2.12. The events that sparked the riots in Cato Manor are said to have occurred on 13 January 1949. Recalling the incident to the Riot Commission, Major George Bestford, then District Commandant of Durban, submitted that Harilal Basanth, a 40-year-old Indian shop-owner, had smashed 14 year old George Madondo's head into a shop window. A "minor disturbance" initially broke out.
- 2.2.13. What ensued thereafter, however, was mass destruction of private and public infrastructure. The 1949 riots "had the effect of radically transforming the social and psychological landscape

of space and race within Durban.” Indian shops and homes were destroyed. All Indian residents were evacuated. Africans gained de facto possession of the area.²²²

2.2.14. Violent events which included destruction of private and public property and looting occurred in Inanda in August 1985. The events were an outpouring of protests that followed the assassination of United Democratic Front leader Victoria Mxenge on 1 August 1985.

2.2.15. The protests were led mainly by youth known as ‘comrades’ / ‘amaqabane’ who were associated with the UDF, and who challenged the authority of the apartheid state, as well as the Inkatha Freedom Party (IFP) in all African townships, mainly Umlazi, KwaMashu, Clermont, Lamontville, and Inanda. The youth perceived the IFP to be a surrogate of the apartheid government.

2.2.16. By mid-August of 1985, tens of Indian owned shops, businesses, and homes were looted and burned. Indian families in their hundreds fled from Inanda to seek refuge in the adjoining Indian township of Phoenix.

2.2.17. The events of 1949 and 1985 became entrenched in the minds of many South Africans, particularly the affected communities in KwaZulu Natal. To some, the events were seen as a showpiece, or ‘convincing demonstration’ of the existence of rivalries between the Indian and African communities. Key questions invoked by the 1949 (and later the 1985) riots included whether the riots were ‘a symbol of African antagonism against Indians’ or whether they were ‘an abnormal eruption symbolic of a frustrated and abnormal society’.²²³ These questions appear to mark the 2021 July events.

The Social Construction and Reproduction of the Trope of Dangerous African People

2.2.18. Submissions received by the Hearing Panel suggest that the incidences that occurred in Phoenix and surrounding areas, were / are viewed by some in the Indian community as necessitated by a legitimate concern that African people would, once they had looted all the shops of their goods, descend upon Indian neighbourhoods and homes to rob and steal.

2.2.19. As the propaganda travelled through the social media channels, communities, some working with security companies, formed street committees to regulate movement and to protect their community. Yet amid the absence of evidence to legitimise the threat, what is left is a reconstruction of a historical trope: that of a fearsome African man, or a mob of fearsome African men.

2.2.20. The social construction of the possible, and imminent violence of African men in particular, has a significant historical origin and background. For example, in 1949, in particular, the

media played a significant role in the social construction and reproduction of tropes about African men. This is well captured by Narayanan, who draws out attention to an image published on the front page of the local newspapers a day after the Cato Manor riots:

“To begin to see how the rioters were constructed by the media (Indian as well as European) of the time and by the commission report, we might consider the famous photograph ..., which first appeared on the front page of the Natal Daily News on Friday 14th January 1949 and was then reprinted the following Friday in Indian Opinion. ...” This was supposed to be the “typical” rioter or, indeed, for some, the “typical” African. We are told that he is young, muscular and barefoot. As his left arm prepares to hurl a missile, there is a grin on his face and a strange, possessed light in his eyes. He is unpredictable, spontaneous, and gleefully violent. This was the mythical subject known widely to South Africans of all hues as “the tsotsi”. If that handful of European liberals and not-so-liberals who gained their cultural capital by promoting themselves as having “an intimate knowledge of native affairs and the native mind” were crucial in cultivating this mythical subject and distinguishing it from that of the “law-abiding Christian native”, they could also, when in a more generous mood, suggest the distant possibility of rehabilitation by using the term “loafer”. The tsotsi and the loafer were one, but while the tsotsi was beyond redemption, the loafer’s problem was more that he did not share the Protestant ethic, and consequently had not very much to do with his time but get drunk and look for trouble. Furthermore, if we look at verdicts in cases before the Durban Magistrate’s Court through the course of the 1930’s and 40’s, we find that “loafers” can be European, Indian or Coloured as well. Generally speaking, the tsotsi or loafer was also defined by the spaces that he was seen to inhabit-- the dangerously liminal and uncontrollable spaces of shack settlements in Cato Manor or Booth Road, or the inter-racial working class rooms and backyards of central Durban. In the testimonies to the Riot Commission of 1949, the riots are blamed --by Indian, European, and African witnesses as well-- on the unruly and spontaneous tsotsi or loafer.”

2.2.21. The consequence of the reproduction of such tropes is that we inadvertently support, defend, and advance a system to which we had long been condemned. We do so by reinforcing images and ideas about what or who certain people are based on their racial and class profile.

Legal Framework

2.2.22. Central to South Africa’s Constitution is the right to racial equality. Section 1 of the Constitution states that South Africa is founded on the values of

- “(a) Human dignity, the achievement of equality and the advancement of human rights and freedoms.
- (b) Nonracialism and nonsexism. ...”

2.2.23. Section 9(4) of the Constitution provides that “[n]o person may unfairly discriminate directly or indirectly against anyone” on the grounds of, amongst others, race and that “legislation should be enacted to prevent or prohibit unfair discrimination”. The legislation enacted to “prevent or prohibit unfair discrimination” is the Promotion of Equality and the Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA).²²⁴

2.2.24. The preamble to PEPUDA states that to strengthen democracy, an obligation which the Commission shares with other Chapter 9 institutions, our country requires—

“the eradication of social and economic inequalities, especially those that are systemic in nature, which were generated in our history by colonialism, apartheid and patriarchy, and which brought pain and suffering to the great majority of our people ... systemic inequalities and unfair discrimination remain deeply embedded in social structures, practices and attitudes, undermining the aspirations of our constitutional democracy”.

2.2.25. In terms of section 6 and 7 of PEPUDA no person may—

“unfairly discriminate against any person on the ground of race, including—

“(a) the dissemination of any propaganda or idea, which propounds the racial superiority or inferiority of any person, including incitement to, or participation in, any form of racial violence;

(b) the engagement in any activity which is intended to promote, or has the effect of promoting, exclusivity, based on race;

...

(e) the denial of access to opportunities, including access to services or contractual opportunities for rendering services ...”

PEPUDA has established Equality Courts in Magistrates and High Courts to determine whether acts are discriminatory.

2.2.26. In accordance with the Constitution, everyone has the right: “to inherent dignity ... and to have their dignity respected”;²²⁵ “to life”,²²⁶ to be free from all forms of violence from ... public or private sources ... to not be treated ... in a cruel, inhuman or degrading way”²²⁷

Where people's lives are threatened, they have the right to defend their property and their lives. A month after the Unrest and given the occurrences of interpersonal violence in KwaZulu-Natal LexisNexis posted an article on the right to self-defence which summarised the common law, criminal defence. Excerpts are quoted below.

"The devastating riots and widespread looting bore witness to many brave acts of private defence against unlawful attacks against persons, property and other legal interests. Unfortunately, neither rioting, looting and general lawlessness are going to go away, and with them, the issue of private defence.

According to the Law of South Africa ... the conditions necessary to justify private defence [known as self-defence] should first be analysed according to the nature of the attack and second, according to the nature of the defence. A brief analysis involves the following elements:

1. The Attack

The attack can consist in a voluntary act of commission, for instance, assault or threatened assault on a person, damage to or theft of property, search or entering of premises; or a voluntary act of omission, for example, refusing to leave premises.

It must be unlawful. A person can't defend themselves against, for example, a lawful arrest or search. That the attack is unlawful. ... Assessing whether it is unlawful must be an objective test, meaning it is irrelevant if the attacker believes the attack to be lawful. It must be an attack against a legal interest ... Life and limb from injury, Property from damage or theft ... Interest of the defender or another person

It must have commenced or be imminent. [Self-defence] must be aimed at an attack which has already begun or is imminent, taking into account all the surrounding circumstances. "Defences" against anticipated future attacks or completed attacks are not justified.

2. The Defence

It must be directed against the attacker. If a defender injures a third party or causes damage to property during the attack, they can't rely on private defence.

It must be necessary to protect an interest. It must be the only way available at the time to protect a threatened legal interest with no other legal alternatives available, or, where personal injury is

threatened, there must be no possibility for the person under attack to flee. The basis of the decision to act must be one of reasonableness under the circumstances. Reasonable means must be used in the defence. Excessive defence may result in criminal liability for assault, culpable homicide or even murder, for example, if the defender was negligent and should have realised that the defence was excessive (culpable homicide) or intentionally used more force than reasonably necessary to repel an attack and the attacker died (murder).”

The Causes of the Alleged Racially Motivated Attacks

- 2.2.27. The July Unrest created a climate of fear and tension, prompting many people of all races to take to the streets in an effort to protect their homes and neighbourhoods, particularly in the absence of visible policing. While it is understandable that a general sense of fear accompanied the July Unrest and that individuals felt the need to protect their families and properties, especially in the absence of sufficient police protection, it becomes evident that, for some, this fear was driven by racial motivations as well. This racial aspect is particularly evident in the circulation of social media messages during the unrest, which propagated threats of Black people attacking Indian people. Such messages also included content that celebrated and boasted about the violence inflicted upon Black individuals.
- 2.2.28. These events, combined with contemporary racial tensions, contributed to a toxic climate where fear, prejudice, and violence intersected. The aftermath of the unrest revealed the deep-rooted issues of systemic unfair discrimination and inequalities that continue to pervade South African society, as underscored in the preamble of the PEPUDA.
- 2.2.29. As we look to the past and history in understanding present events, the historical references, particularly to 1985 and 1949, are helpful in so far as they point to the intergenerationally of systems of race and racism. One cannot perceive the Inanda of 1985, and the Cato Manor of 1949, without a confrontation of the colonial system and its construction of the material and psychological conditions and frameworks from which African and Indian persons drew their sense of being.
- 2.2.30. The role of the media in aiding the construction is well captured. Yet the media system is not alone. Systemic racism and the socialisation of racist stereotypes, informed by material conditions, are in continuous reproduction of perceptions about the ‘other’ or persons from the out-group. Effectively, the tsotsi and/ or loafer sketched out by the media in January 1949, or the “imaginary black stranger” or “intruder” as described by Margie Orford during the Oscar Pistorius trial, resembles the same person imagined by some of the members of the

communities of Chatsworth, Phoenix and Shallcross, amongst others, would descend on their homes to loot and burn.

Social Media

2.2.31. Community members stated that their fears, which resulted in the attacks of Black people, were caused by messages being sent around on WhatsApp and Facebook regarding threats that Black people were going to attack Indian people.

2.2.32. Social media was also a useful tool in the hands of various social interests. For some, it was used to celebrate and brag about the violence inflicted on Black persons. For others, it was a tool to spread awareness and to call for assistance. Others learned of the demise of their loved ones through social media channels.

Absence of the Police

2.2.33. Both victims and defenders of the acts of violence expressed deep concern over the glaring absence of both SAPS and Metro Police in Phoenix during the unrest. During the Hearing Panel's inspection in loco, it became particularly perplexing to witness SAPS's non-intervention, as acts of violence and roadblock constructions occurred within a mere 100 meters from the SAPS Phoenix Police Station, yet no police intervention was observed. The lack of any efforts by SAPS to dispel misinformation and allay fears also contributed to the growing sense of insecurity and tension.

2.2.34. The submissions made it undeniably evident that, aside from sporadic attempts by Provincial Commissioner Makwanazi to dismantle civilian roadblocks, there was a marked absence of a visible police presence in Phoenix during the unrest. This conspicuous lack of intervention raised serious questions about law enforcement's willingness and ability to handle and contain the escalating situation effectively.

Breakdown in the Rule of Law

2.2.35. The attacks that occurred in KwaZulu-Natal can be seen as a culmination of a series of events that demonstrated a disregard for the Rule of Law, characterizing the Unrest. The SAPS's lack of intelligence on the alleged orchestration of the Unrest left them ill-prepared to address the widescale theft, arson, and malicious damage to property that ensued. Concurrently, the constitutional failure to fulfil socio-economic rights left the SAPS spread thin as they prioritised the protection of certain areas. Adding to the complexity, self-defined acts of alleged self-defence resulted in violent killings and assaults, further escalating tensions. This chain of events underscored significant deficiencies in law enforcement, intelligence, and the

protection of citizens' rights, ultimately culminating in the devastating attacks that unfolded in KwaZulu-Natal.

2.2.36. PEPUDA acknowledges that "systemic inequalities and unfair discrimination remain deeply embedded in social structures, practices, and attitudes, undermining the aspirations of our constitutional democracy." The enactment of PEPUDA was aimed at facilitating the transition to a democratic society, united in its diversity, marked by human relations that are caring and compassionate, and guided by the principles of equality, fairness, equity, social progress, justice, human dignity, and freedom.

2.2.37. Racial discrimination, like any form of discrimination - gender, sexual orientation, disability - cannot be effectively addressed solely as individual acts. The challenge lies in confronting the entire system that has been imposed on South Africans since the early 1900s, a system perpetuated through the distribution of economic and natural resources, through culture, language, storytelling, and actions.

2.2.38. As expressed by the following poignant statement of Ijeoma Oluo, "[s]ystemic racism is a machine that runs whether we pull the levers or not, and by just letting it be, we are responsible for what it produces. We have to actually dismantle the machine if we want to make change."²²⁸

Limitations of Criminal Justice Mechanisms

2.2.39. The report also highlights the limitations of the traditional criminal justice approach and explores issues such as over-criminalisation, vigilantism, ultra vires justice, and the need to address the justice gap through restorative justice and the right to reparations. It emphasises the importance of including communities in the justice process and the concept of ubuntu-botho, which promotes human interdependence and respect.

2.2.40. The report suggests that justice should address both the personal and collective harm caused by physical and psychological suffering. The National Implementation Plan for the Service for Victims of Crime ('Victims Charter') was approved by Cabinet in 2004, which provides minimum standards for the treatment of victim-centred justice and affirms the rights of all victims of crime.²²⁹ The Victim Charter provides victim-centred guiding principles to the NPA.

2.2.41. The VSS Bill is aimed at providing legal representation for a victim. It calls for the state to endure the legal costs for the victim in cases whereby victims wish to sue the accused for damages. It also encourages providers of services to victims to be accredited to ensure that their services comply with the norms and standards set by the Department of Social Development for all facilities.²³⁰

2.3. FINDINGS

In respect of the causes of the alleged racially motivated attacks and killings in the country, the Commission makes the following findings:

- 2.3.1. A significant portion of the violent attacks against Black African people in Phoenix, Khan Road Corner, Verulam, Chatsworth, and other areas was racially motivated. Black African people were targeted based on their race. They were victims of racially driven attacks perpetrated by members of other racial groups.
- 2.3.2. The July Unrest created a climate of fear and tension prompting many people to take to the streets in an effort to protect their homes and neighbourhoods, particularly in the absence of visible policing. In the midst of this climate, the generalising notion of 'swart gevaar' (the perceived threat of Black individuals) played a role in the violent attacks directed at Black African people solely due to their race and their purported intentions during the Unrest.
- 2.3.3. There was a significant number of racially motivated killings and assaults that occurred at numerous roadblocks throughout Phoenix. The level of organisation involved in these acts, coupled with the lack of intervention by the mainly Indian police officers stationed at the SAPS office, and, racist social media messages going around, points to a larger racial problem within the community. This also suggests the need for a thorough examination of systemic issues and potential biases within local law enforcement.
- 2.3.4. Racial socialisation played a crucial role in the perpetration of violence. It is likely that the socialisation process, which includes the transmission of harmful stereotypes and narratives, extends beyond the immediate perpetrators. This suggests a broader racial problem within the community.
- 2.3.5. While the extent of racism of some Indian people towards some Black African people in Phoenix and surrounding areas could not be definitively established, it is evident that there is a wider racial problem that goes to the actions of the immediate perpetrators. This indicates the presence of underlying racial tensions and divisions within the community.
- 2.3.6. The role of historical events, such as Cato Manor 1949 and Inanda 1985, in the racial socialisation of the perpetrators could not be definitively determined, their existence underscores the recurring pattern of racism in the area. These historical events, when considered alongside the racially motivated killings and assaults during the July unrest,

highlight the importance of addressing broader social harmony issues to prevent such incidents from recurring in the future.

- 2.3.7. The testimony of the victims of racist violent attacks makes it evident that there has been a loss to the victims in the form of loved ones, breadwinners, income, property, the ability by some to continue earning an income due to injuries sustained and emotional pain and suffering.

2.4. RECOMMENDATIONS

In respect of the causes of the alleged racially motivated attacks and killings in the country, the Commission makes the following recommendations:

- 2.4.1. The JSCP Cluster must be victim-centred in its approach to the Victims of the Unrest related inter-personal violence. Inclusive of the SAPS 'Phoenix Unrest Task Team,' the KwaZulu-Natal Provincial Commissioner, in collaboration with the NPA, and specifically the KwaZulu-Natal DPP, in the spirit of *ubuntu-botha* and in accordance with the Victim Charter, must advise victims of their rights and recourse, pertaining to their status as victims.²³¹
- 2.4.2. Mechanisms of victim support, in line with the Victim Charter, international principles and as envisioned by the tabled VSS Bill, should be considered by the NPA during the course of the criminal procedure and the DoJ, once matters have been finalised with the involvement of Legal Aid SA. Which may include *inter alia*, enduring legal costs for victims who wish to pursue litigation against the accused for damages, or through an inter-departmental partnership with DSD in prescribing psychosocial assistance.
- 2.4.3. In accordance with the SAHRC Act,²³² the Commission further recommends to Parliament, the adoption or further development of the VSS Bill or other law, which may fully support and achieve a victim-centred approach, which may assist victims towards restorative justice.
- 2.4.4. Victims of unfair discrimination utilise the Equality Courts and seek justice against their perpetrators. It is acknowledged that the lack of applications instituted in KwaZulu-Natal regarding the Unrest may be due to challenges in identifying perpetrators or awaiting the outcome of criminal trials.
- 2.4.5. A collaborative effort should be initiated between the Commission, government departments, sociologists, and psychologists to devise and test proposals that tackle systemic racism and cultivate a unified national identity. This identity should aim to explore innovative approaches

to address racism and prevent future racial violence as a response to the tragic killings of Black individuals that occurred during the Unrest.

CHAPTER 3: ISSUE THREE: THE CAUSES OF THE APPARENT LAPSES IN LAW ENFORCEMENT BY STATE SECURITY AGENCIES, PARTICULARLY THE SOUTH AFRICAN POLICE SERVICE AND THE ROLE OF PRIVATE SECURITY COMPANIES IN THE UNREST

3.1. EVIDENCE

INTRODUCTION

The Commission's investigation into the July Unrest in respect of the evidence and explanations tendered by the government, focused on four major themes:

- i. Intelligence gathering and products; state coordination and operations;
- ii. Human rights and transformation; and
- iii. The political discourse surrounding the State's response.

The investigation aimed to, amongst others, understand the State's intelligence function, particularly its early-warning systems; to examine government's appreciation the human rights implications associated with an event of the nature of the July Unrest; to gauge government's attitude towards the national transformation project; and to also assess the nature and tone of the political discourse related to the state's response.

3.1.1. JUSTICE, SECURITY AND CRIME PREVENTION CLUSTER

The Justice, Security and Crime Prevention (JSCP) Cluster was established by the government in accordance with Chapter 3 of the Constitution of the Republic of South Africa and the Intergovernmental Relations Framework Act (No. 13 of 2005). The purpose of the Cluster system is to co-ordinate the efforts of various Ministries and Departments within the government. There are five Clusters in total: the Economic Sectors, Employment and Infrastructure Development (ESEID) Cluster; the Social Protection, Community and Human Development (SPCHD) Cluster; the Governance and Administration (G&A) Cluster; the International Cooperation, Trade and Security (ICTS) Cluster; and the JCPS.

The JSCP Cluster comprises of several core Ministries and Departments, including Defence and Military Veterans, the South African Police Service, Justice and Correctional Services, Home Affairs, State Security, and Finance.

The JCPS is operationalised by a DG Cluster, which has seven Teams / Sub-Committees, namely: National Joint Operational & Intelligence Structure (NATJOINTS); National Intelligence Co-ordinating Committee (NICOC); National Development Committee; The

Integrated Justice System (IJS) Board; Border Control Co-Ordinating Committee (BCOCC); The Anti-Corruption Task Team (ACTT); and the Strategy Task Team.

The main roles of the JSCP Cluster include to fight crime and corruption; to provide strategic guidance and ensure monitoring and evaluation of implementation of policy decisions; entrenching a culture of accountability in JCPS departments, including instituting corrective measures for poor implementation; and ensuring adequate resourcing of Cluster priorities. The cluster works together to streamline resources to achieve its objectives of reducing crime, improving the efficiency of the criminal justice system, dealing with corruption, managing South Africa's borders, improving the national population registration system, and prioritising the fight against and prevention of cyber-crimes.

3.1.1.1. **The South African Police Service**

The objectives and core functions of SAPS are to prevent, investigate and combat crime; maintain public order; protect and secure the inhabitants of South Africa and their property; and uphold and enforce the law (Sec 205 (3) of the Constitution).

Entities reporting to the Minister of Police are the Civilian Secretariat for Police Service (CSPS), the Independent Police Investigative Directorate (IPID), and the Private Security Industry Regulatory Authority (PSIRA).

The National Hearing received written and oral testimony from members of SAPS, including the Minister of Police, the National Commissioner of Police, Provincial Commissioners, and officials from the Directorate for Priority Crimes Investigation.

a. Former National Commissioner of Police – General Khehla Sitole²³³



General Sitole submitted written and oral testimony before the Hearing Panel (in camera). He highlighted the major challenges facing the country in general and SAPS, the Police Service, in particular. Such challenges included a breakdown of communication between his office and the Ministry of Police; and an absence of effective Crime Intelligence within SAPS. General Sitole testified that budgetary constraints contributed significantly towards the absence of a strong Crime Intelligence function during the unrest.

The Delay in Budget Approval

According to General Sitole's evidence, the budget for Crime Intelligence was submitted to the Minister of Police on 28 February 2021, but the approval process faced delays. The Minister's Office had scheduled a meeting on 17 March 2021, but it was later cancelled. The budget approval was finally recommended by the Minister on 02 August 2021 and approved by the President on 23 August 2021.²³⁴ This delay meant that the necessary resources for Crime Intelligence were not available during the July Unrest when they were most needed.

Discrepancies in Communication

There appeared to have been a breakdown in communication between the Minister of Police and the (former) National Police Commissioner regarding the sharing of Crime Intelligence reports. While the Minister claimed not to have received any intelligence reports since December 2020, General Sitole mentioned that they shared information related to the "Court Order"²³⁵ and briefed each other until the execution of the arrest warrant of the former President

Insufficient Capacity and Inside Knowledge

General Sitole acknowledged that Crime Intelligence did not have the capacity to meet the policing demands created by the Unrest. He also mentioned that the organisers of the Unrest seemed to have insider knowledge of SAPS capacity and resources, and strategically targeted areas where the police presence would have the least impact.²³⁶

Police Resources and Constraints

Budgetary constraints have had a significant impact on SAPS resources. General Sitole highlighted a shortage of public order policing equipment and a deficit in the number of public order police members. The current unit has slightly more than 5,000 members, while the targeted number is 12,000. Plans to increase the number of officers to 7,000 in the future were underway. The matter of budget availability to both the CI and for the purpose of supplementing the number of POP personnel, as well as

general capacitation of the police service, should be closely monitored by Parliament and if necessary, budgets should be redirected toward this priority.

Assistance from Other Provinces

During the July Unrest, the seven other, less affected provinces were instructed to assist with the capacitation of Gauteng and Kwa-Zulu Natal. Provinces such as Mpumalanga, Limpopo, and Eastern Cape were requested to include, in their assistance, crowd-control equipment such as nyalas, water cannons, helicopters, and manpower, to support Kwa-Zulu Natal

Operations

During the Unrest, there were allegations of an uncoordinated response from the SAPS. General Sitole addressed these claims and provided insight into the possible causes. He stated that SAPS responded to the Unrest in two phases: stabilisation and normalisation. The stabilisation phase focused on deploying operational forces to "hot spot" areas identified through Crime Intelligence to stabilise the social unrest and mass chaos. However, the limited intelligence available only identified major National Key Points and affected malls, not areas where violence was most concentrated, such as Verulam and Phoenix. The second phase included bringing society back to order and normalising the situation on the ground.

Arrests were a crucial part of police operations during the stabilisation and normalisation phases, and over 3000 people were arrested during the Unrest.

Visibility of the National Police Commissioner:

General Sitole rejected allegations that he was not visible in the most affected communities during the period of the Unrest.

He stated that the Deputy National Commissioner and other senior officials were deployed on the ground in hot spot areas.

Whereas the Minister of Police had previously claimed that General Sitole was "nowhere to be found," General Sitole explained that he and the Minister had in fact held meetings regularly during the Unrest. General Sitole had also deployed the Provincial Commissioners and the Minister could liaise with them directly as well.

Intelligence Reports and Early Warning Signs:

The Commission put it to General Sitole that there was a "gross dereliction of duty" due to the lack of intelligence reports warning about the Unrest.

He cited capacity, resourcing, and the inability of Crime Intelligence to identify the shifting modus operandi as reasons for the absence of such reports.

General Sitole confirmed that he had received intelligence reports at the outbreak of the unrest, indicating the 'modus operandi' had originated in Mpumalanga.

General Sitole was questioned on whether he shared this information with the Minister of Police. Further, General Sitole testified that matters of 'operational' concern are not shared with the Minister of Police. Those which require 'policy direction and political direction' are then

escalated to the Minister. The Commission notes that it is not made clear as to what is meant by 'political direction' and whether this interpretation would limit or impede SAPS operational responses. General Sitole unequivocally confirms that he shared the "developments" with both the Minister and the Commander in Chief (the President). While the explicit details of the reports were not disclosed to the Commission.

Public Order Policing (POP) Capacity & Shortcomings:

Currently, there are 5005 active POP units nationwide, but SAPS aims to increase this number to 12,000. Budgetary constraints have affected the availability of POP units, leading to cuts in resources like Nyalas, helicopters, and POP itself.

The unrest aimed to stretch police resources by creating various hotspots, requiring the deployment of police members to different locations.

General Sitole agreed that public unrests should be dealt with by POP. He acknowledged that more could have been done and that they were not fully equal to the task.

General Sitole had not concluded an inquest into the number of deaths during the Unrest, but a final report would be provided.

Internal Communication & Employment:

General Sitole's communication was governed by the SAPS Act and prescribed by law. General Sitole would give instructions to Provincial

Commissioners and receive regular updates from them. Radio communication was a crucial system, but General Sitole acknowledged that it needed upgrades to improve effectiveness.

General Sitole and the Minister of Police had functional channels of communication, and they frequently spoke based on the context and operational needs.

Politicization and Discourse:

General Sitole believed the July Unrest was a planned gathering with an unpredictable modus operandi. He referred to the "planners" as having introduced a new modus operandi, which was the first of its kind.

The unrest started at a high level without grades or escalations, triggered by the Zuma judgment by the Constitutional Court. There was no initial operational plan for the Unrest due to the lack of insight into how it would unfold.

General Sitole issued an instruction for all SAPS members to be deployed and stated that no instruction to "stand down" (as claimed in testimony) was possible or in line with their function as police.

Damage to Infrastructure

General Sitole testified that warehouses, factories, banks, ATMs and even schools were targeted and destroyed during the Unrest. He, furthermore, testified that the SAPS needed to secure police stations because, according to information circulating online, there was a plan to attack police stations and steal police weapons.

b. Minister of Police – Mr Bheki Cele



Crime Intelligence

The Minister of Police expressed frustration over police complaints about resource shortages despite significant underspending of budgets and general fund allocations. He disputed General Sitole's claim of funding shortages for Crime Intelligence, and questioned why there was underspending of R138 million, with access to R129 million in May 2021. The delayed budget approval is argued to have had no impact on division operations.

The Minister was shocked by the extent of underspending and acknowledged his own responsibility in not ensuring more rigorous oversight to prevent it. He submitted that he had introduced regular meetings to address the issue and avoid future underspending.

The Minister testified that there are three main structures responsible for Intelligence in South Africa: Defence, Crime Intelligence (falling under SAPS), and State Security for national and international issues. He testified that in relation to the July Unrest, he did not receive any

intelligence reports from any of the structures but received information through his “own sources”.

The Minister further made mention of the suspension of the SAPS Head of Crime Intelligence, Lieutenant General Peter Jacobs and five fellow officers from the division, from December 2020, stating that their suspension was the last time he received any formal intelligence. This evidence is corroborated by an anonymous witness, whose evidence is analysed later in this report.

Crime Intelligence lacked a permanently appointed Divisional Commissioner, with a recurring reliance on acting appointments, according to the Minister.

Prior to the Unrest, only a general alert for readiness was received as intelligence, lacking specific information about the Unrest.

Intelligence on mobilisation by Umkhonto We Sizwe was shared, but it did not provide a comprehensive understanding of the Unrest's modus operandi or inform an operational plan. Without initial intelligence on the Unrest's modus operandi, an operational plan couldn't be formulated, hindering an effective response. The unrest's modus operandi, characterised as unprecedented, involved technology and immediate escalation, overwhelming public order policing capacity.

Bureaucratic steps hindered SAPS from accessing equipment worth R100 million for tracking social media, and the absence of the

Cybercrimes Bill impacted dealing with social media activity.

Intelligence generated during the Unrest was shared with the Minister and President as needed, indicating a good working relationship between them.

The SAPS operational plan was implemented nationwide, involving NATJOINTS, the Community Policing Strategy, and the deployment of reserve public order police units. Resources were reallocated from other provinces, though the Minister believes it should have been done earlier.

SAPS members deployed to hotspots had the necessary equipment and technology but faced a shortage of personnel.

Efforts were made to protect national assets and suburban areas, but it created the impression of greater protection for suburbs over townships.

General Sitole monitored operations from an operational room in Pretoria, while the Deputy National Commissioner was deployed to KwaZulu-Natal. The former National Commissioner only visited KwaZulu-Natal and Gauteng after the Unrest subsided and did not meet with victims.

Operations

The Minister, accompanied by the President, visited a number of areas where, at that stage, 15 people had died and others were missing with unknown whereabouts.

The day after the President's visits, the Minister addressed the community in various areas facilitated by community members, including Bhambayi, Mawoti, Zwelisha, and Phoenix.

Communication

During the Unrest, the Minister called all police authorities in all provinces to understand and receive updates on the unfolding situation.

The Minister of State Security claimed to have provided intelligence to the Minister of Police, while the latter publicly stated that this was not accurate, leading to a disagreement between them.

Opinions on the Unrest regarding politicisation and discourse.

The Minister believed that the motivation and strategy behind the Unrest were to "*get them angry and get them hungry*". He acknowledged that the police's failure to address and prevent incidents led to an escalation of anger and attempts to achieve ungovernability.

The Minister rejected the notion that people were solely driven by hunger and poverty, citing examples of individuals using vehicles to collect looted items. However, he did acknowledge that the situation was conducive to encourage looting.

Regarding the notion of a "Failed Insurrection"

The Minister stated that there was a significant campaign to delegitimise and intimidate police officers, with threats made to discourage their presence in certain areas. This created an

operational environment in which police officers were fearful.

Social Media Incitement

According to the Minister, if proper measures were in place, the SAPS would have been better prepared. The Crime Intelligence division had the necessary funding and equipment, including advanced systems to monitor social media, even before the Unrest. However, bureaucratic obstacles and burdensome administration created a stalemate in implementing these systems.

Cyber Crimes Act²³⁷

The Minister agrees with the Presidential Panel's report that if the Cybercrimes Act, 2020 (Act No. 19 of 2020) had been promulgated at the time of the Unrest, social media misconduct and online criminality during the Unrest would have been mitigated.

Instances of destruction of infrastructure (and plans for further destruction)

The Minister indicated knowledge that there was a plan to poison the water system and destroy the oil line from Durban to Johannesburg. A hospital was set on fire. There were calls for attacks on the SABC and police stations, leading to the deployment of the SANDF to high-risk stations.

Minister on Racial Motives

The Minister was not convinced that the violent crime that occurred in Phoenix during the unrest was racially motivated or linked to racial tension. Although he confirmed that discriminatory treatment in the provision of policing services

were faced by victims. The Minister testified that,²³⁸

“The issue of racism was already there but I was not convinced that this was just pure racism. Hence, I said in my first statement that this was criminality that has taken the posture of racism”.

Due to the pattern of non-assistance by local police and their involvement in crimes, a special detective team from outside Phoenix had to be formed. The Minister viewed this as an inadequate discharge of service by members of the Phoenix SAPS.

c. Gauteng Provincial Commissioner: General Elias Mawela



Intelligence

General Mawela submitted that intelligence products regarding the Constitutional Court judgment on the imprisonment of Former President Jacob Zuma, and the high public interest in it was directly received from DPIC (Directorate for Priority Crime Investigation) for contingency planning and deployment. Such

intelligence is usually communicated in writing or through WhatsApp group messages to ensure quick dissemination.

During a crisis situation like the Unrest, anyone with information, even if unverified, can share it with the police for further verification and follow-up (referred to as a tip-off). On-the-ground intelligence indicated that the Constitutional Court would be a potential site for unrest or activity.

Resources

Resources are severely constrained and limited, even when the police receive additional support from Public Order Policing (POP), it remains a challenge.

The lack of air support meant that the police on the ground did not have helicopters patrolling the hotspots. Many of the police helicopters, especially those capable of operating in Gauteng, were grounded due to mechanical difficulties.

The Commissioner acknowledged that the SAPS is disadvantaged due to a lack of modern technology compared to other police departments worldwide, such as drones, street/air cameras, etc.

Despite budget cuts and financial constraints, the Commissioner emphasised the need to increase Public Order Policing.

There is a significant exodus within the police force, with retirements and early retirements due to illness. The recruitment process also faces challenges, including the impact of Covid-19,

which resulted in a two-year absence of new intakes.

In Gauteng, there is an unrest team of detectives responsible for following up on cases, making arrests, and initiating court proceedings against individuals charged with incitement and malicious damage to property. They are overwhelmed due to the high number of cases.

Deployments were made to prevent specific isolated incidents, from occurring or escalating, such as the burning of malls. In the future, a mobilisation order will be implemented to ensure that the police force can mobilise officers, including those who are off duty, with the click of a button.

General Mawela admitted that communication with the media and engagement with communities to prevent the destruction of malls and property needs improvement. Influential community members can play a significant role in transmitting the police's communication strategy, as they are listened to and respected by the communities.

Information regarding the police's attempt to regulate inter-provincial movement during the Unrest (11 roadblocks) leaked, but the roadblocks were not intended to prevent people from showing support for former President Zuma, as discussed in the leaked plan. The roadblocks were implemented to enforce Covid-19 regulations and maintain order.

Provocation of police and police involvement in the Unrest

The Commissioner stated that there is a culture of provoking the police to elicit negative responses. However, he commended the police force for exercising maximum restraint during the Unrest, considering that women and children were among the demonstrators.

Police officers who were identified by communities as participants in the Unrest were discharged from service.

Politization and Discourse

The Commissioner testified that he was unaware of any instructions telling the police to stand down, as alleged in testimony before the Commission. Such instructions would be unlawful and violate the constitutional obligations of the police force.

d. KwaZulu-Natal Provincial Police Commissioner - General Nhlanhla Mkhwanazi



General Mkhwanazi testified that in KwaZulu-Natal, there were numerous crowd management incidents being dealt with even before the outbreak of unrest in June 2021. The

majority of the Police Public Order Policing (POP) unit was occupied with addressing these incidents. 89 malls were damaged, warehouses, banks, factories, ATMs, liquor outlets and there was even an attempted attack on a hospital and schools.

Timeline of Events

According to General Mkhwanazi, large crowds gathered at Nkandla until July 7th, and arrests were made mainly for violations of the Covid-19 restrictions on gatherings. The SAPS was cautious about launching an offensive to avoid violence and confrontation with the police. Communication and coordination between SAPS and the Presidential Protection Unit members of former President Zuma helped manage the situation during the President's arrival at the police station in Estcourt on 7 July 2021.

On July 8th, the province was peaceful, and the Minister of Police and the KwaZulu-Natal Commissioner expressed their gratitude to the members involved in the Nkandla episode.

On July 9th, blockades and disruptions to traffic started occurring unexpectedly, and more incidents followed, including attempts to block roads.

Additional police officers were deployed to KwaZulu-Natal on July 11th and July 13th. By July 15th, the situation had returned to normality, and operations focused on recovering stolen goods, investigations, and identifying bodies.

Intelligence Operations and Communication

According to Commissioner Mkhwanazi, the intelligence received was not helpful. Frequent meetings were held to discuss the situation and seek insights of police team. The Nkandla Operation involved various activities such as roadblocks, property and people searching, patrols, and arrests. There was constant communication with the SANDF, and meetings were held to discuss deployment and coordination. The Commissioner refuted claims of a lack of cooperation and communication breakdown with the SANDF, highlighting regular communication and good working relationships. Daily meetings were held with various role players, including the Minister of Defence and the Minister of State Security.

Resources

The KwaZulu-Natal police received support from communities, security services, and resource multipliers, including two helicopters, SANDF deployment, and security companies. There was also public support and goodwill from the private sector and community members.

Racial Tensions

Racial tensions escalated in areas like Phoenix, resulting in deaths and attacks on police officers based on racial hatred. Overall, the events were characterised by a lack of early warning and resource mobilisation, coordination challenges, and the impact of social media on the discourse surrounding the Unrest.

e. National Head of Priority Crimes (Hawks) – Directorate for Priority Crime Investigation (DPCI), Dr Lieutenant General Godfrey Lebeya



General Lebeya, as the National Head of the Directorate for Priority Crime Investigation (DPCI), assumed his position on 1 June 2018. Prior to this, he had retired from the South African Police Service (SAPS) in 2016 and had also practiced law as a member of the Bar in Johannesburg.

Working Relationship with the State Security Agency

The relationship between the DPCI and the State Security Agency (SSA) is governed by the South African Police Service Act. They are part of an Operational Committee, which also includes the National Prosecuting Authority, to facilitate coordination and cooperation in operational matters.

Priority Crimes and National Offenses related to the July Unrest

During the July Unrest, the DPCI registered 24 metrics of priority crimes and national offenses. Some of these cases were already being prosecuted, while others were still under investigation. The DPCI dealt with crimes such

as instigation, incitement, and offenses under the Riotous Assemblies Act. However, the investigations did not venture into the elements of high treason. No SAPS, SANDF, or SSA officers have been confirmed as suspects or accused persons at that time.

As of the hearing date, the cases related to priority crimes were distributed among different provinces, with two cases in the Free State, three cases in Gauteng, and three cases in KwaZulu-Natal.

Discipline and Reporting

Disciplinary matters of individual officers are handled by their respective institutional structures (SAPS or SANDF) through direct line management. General Lebeya reported directly to the Minister of Police and communicated the investigative data collected during the Unrest. Crime intelligence reports were not provided to the DPCI before or during the Unrest. The DPCI first received crime intelligence information from the SSA in a briefing held on 19 July 2021. Violations of the Intelligence Act fall under the jurisdiction of the Inspector General of Intelligence.

Challenges Faced by the DPCI

The DPCI faces various challenges, including being understaffed, with less than 3,000 personnel handling 20,000 cases. The recruitment process has also been impacted by COVID-19. The July unrest had a direct impact on the DPCI's priority management, as they were still dealing with COVID-related corruption cases. DPCI head office resources were

deployed to KwaZulu-Natal to address the situation.

Role of Social Media

The DPCI gathers information from social media platforms, particularly regarding organised crime and planned criminal activities. Some posts on social media have led to further investigative inquiries. However, gathering admissible evidence from platforms like *Facebook* and *Twitter* requires mutual legal assistance, which has been challenging during the Unrest investigations.

3.1.1.2. State Security Agency

f. Former Minister of State Security Ayanda Dlodlo



Former Minister of State Security, Ayanda Dlodlo's evidence highlighted the intelligence provided by the domestic branch of the State Security Agency (SSA) regarding the growing instability leading up to the July 2021 unrest. She emphasised that intelligence products and alerts were issued to various government and law enforcement agencies, including SAPS and the NATJOINTS committee. Minister Dlodlo clarified

that the intelligence reports are classified, and she lacks the authority to declassify them.

Regarding the role of national intelligence structures, Minister Dlodlo referred to the Constitutional provisions governing national security. Further, The South African intelligence dispensation is regulated by the National Strategic Intelligence Act, which outlines the objects, powers, and functions of the intelligence services. It also provides for the coordination of intelligence services and civilian monitoring of activities. Alerts are categorised into red, orange, and yellow, indicating varying levels of threat and risk. Communication channels include NATJOINTS, the Director of the Domestic Branch, and the Minister and Deputy Minister of State Security.

The SSA does not possess executive powers. The agency's main function is to provide recommendations to law enforcement

authorities and organs of state. Implementation of the SSA recommendations is ultimately the prerogative of the structures that are the recipients of SSA's intelligence products or services.

Intelligence Products and Alerts

Minister Dlodlo highlighted the intelligence products provided by the State Security Agency (SSA), including alerts, Daily Stability Reports (DSRs), and Intelligence Briefs. These products were shared with NATJOINTS and other stakeholders to inform operational activities during the July 2021 unrest. The briefs covered various aspects such as social media mobilisation, economic implications, and potential targets of violence.

Salient to the former Minister's testimony was the early warning and intervention timeline as set out and summarised in Figure 2 below:²³⁹

Timeline of Early Threat Warning System as submitted by (Former) Minister Ayanda Dlodlo²⁴⁰

Date:	Description:
Title: National Intelligence Estimate: 1 Dec 2020	
1 Dec 2020	The SSA presented the NIE to the NSC; the NIE adopted it the same day. The following threats are highlighted but are not limited to: 47.1 Covid-19 pandemic and the domestic national security environment. 47.2 Threats to the economy including: 47.2.1 The impact of corruption and infrastructure related crimes on the capacity of SOEs to perform. 47.2.2 Illicit money flows and money laundering. 47.33 Threats to the authority of the state, including violent protests.
Title: SSA Alerts – May 2019-Feb 2020/March-July 2021	
May 2019 to Feb 2020	SSA National Office produced 14 Alerts
22 January 2021	- A red alert was issued that Whatsapp Messages were circulating mobilising people to shut down KwaZulu-Natal and demand the removal of President Ramaphosa.

	<ul style="list-style-type: none"> - The SSA recommended that SAPS maintain a visible presence on major highways to prevent any violent disruptions.
Between March and July 2021 SSA issued 11 alerts:	
24 March 2021	<p>An orange alert was issued about a march to the Constitutional Court the following day in support of former President Zuma. Permission for the protest had not been granted by the Johannesburg Metropolitan Police Department (JMPD).²⁴¹</p> <ul style="list-style-type: none"> - The SSA recommended that law enforcement authorities should take note of these planned protests and institute measures to counter any form of disruptive actions.
29 April 2021	<p>A further 'orange alert' was issued on a planned national shutdown scheduled from 3-7 May 2021.</p>
	<p>SSA WARNING: The shut-down would target national highways (in Gauteng and KwaZulu-Natal Provinces) in particular the N3 and freight trucks belonging to companies that continued to employ foreign nationals.</p> <ul style="list-style-type: none"> - There were plans to torch trucks, identified as being driven by foreign drivers, along the N3.
	<ul style="list-style-type: none"> - SSA recommended police visibility along the N2, N3 and R23 routes and in the proximity of the identified truck companies to deter acts of criminality.
	<p>The above alert was issued to NATJOINTS, the Minister and Deputy Minister of the SSA and the Director: Domestic Branch.</p>
	<p>This shut down did not take place because SAPS acted on the SSA's recommendation.</p>
11 May 2021	<p>SSA issues an 'orange alert':</p>
	<ul style="list-style-type: none"> - On a protest march on 17 May 2021 at the Mary Fitzgerald Square in Newtown, Johannesburg; - Protest focussed on highlighting their "dissatisfaction with foreign nationals who allegedly hijacked numerous buildings in Gauteng"
	<ul style="list-style-type: none"> - SSA recommended SAPS visibility in Newtown and surrounding areas to deter criminality and 'looting'; - The alert was sent to NATJOINTS, the Minister and the Deputy Minister for SSA and the Director: Domestic Branch
3 June 2021	<p>SSA issues an 'orange alert' that communities across Soweto were being mobilised to take action against foreign nationals and the removal of drug dealers from townships.²⁴²</p>
	<p>[Again] SSA recommended law enforcement visibility to deter any forms of criminality and looting of shops. (Sent as indicated above)</p>
14 June 2021	<p>SSA issued an 'orange alert' that certain trade unions were mobilising communities against plans to evict foreign nationals from Soweto on 16 June 2021.</p>
	<p>SSA recommended that SAPS monitor the planned action to deter any act of criminality and 'looting' of shops.</p>
30 June 2021	<p>[Lead up to 'July Unrest'] SSA issued an 'orange alert' that:</p> <ul style="list-style-type: none"> - Planned protests within the 'taxi industry' in eThekweni Metro CBD and Richards Bay in the Umhlathuze LM on 1 July 2021. - The alerts were sent to NATJOINTS, the Minister and the Dep. Minister for SSA and the Director: Domestic Branch. - SSA recommended that SAPS in KwaZulu-Natal be alerted and that the SAPS District Commander be instructed to act against any gatherings that contravened the Disaster Management Act Level 4 Regulations.

	<ul style="list-style-type: none"> - Following the Constitutional Court judgment social media messages were circulating in support of former President Zuma: Supporters committing to protect the former president against the ruling and threatened to shut down city centres and strategic routes. - Supporters were asked to gather on 30 June 2021 and 4 July 2021 at the Durban City Hall to be transported to Nkandla. - SSA alerted: NATJOINTS, the Minister and the Deputy Minister for SSA and the Director: Domestic Branch - SSA recommended that law enforcement agencies implement the provisions of the Disaster Management Act to “quell” possible gatherings.
1 July 2021	<p>SSA issued an ‘orange alert’ that:</p> <ul style="list-style-type: none"> - Supporters of former President Zuma from the North-West intended to travel to Nkandla on 2 July 2021. - Mobilisation in support of former President Zuma was continuing to take place at hostels. - Protestors had mobilised at the Umvoti Toll in the KwaDukuza LM as part of the <i>#HandsOffZuma</i> campaign. - Certain groups had written to President Ramaphosa expressing their discontent at the Constitutional Court ruling. - Alerts were sent (as above) to NATJOINTS. - SSA recommended that law enforcement remain alert to ongoing mobilisation by supporters of former President Zuma and that the Disaster Management Regulations be enforced.
2 July 2021	<p>SSA issued an ‘orange alert’: <i>KwaZulu (KZN) Update: Mobilisation in support of the former president²⁴³</i></p> <ul style="list-style-type: none"> - Social media messages continued mobilising for gatherings and night vigils in support of the former president over the weekend 3 – 4 July 2021. - Travel arrangements were being made for supporters from the Free State and Gauteng Provinces to be ferried to Nkandla. - Supporters from other regions of KwaZulu-Natal, including Izinduna and Amakhosi, were mobilising to travel to Nkandla. - The alert was sent to NATJOINTS, the Minister and Deputy Minister for SSA and the Director: Domestic Branch. <p>The SSA recommended the following:</p> <ul style="list-style-type: none"> - Increased roadblocks at strategic locations traveling to KwaZulu-Natal to limit movement of unlicensed arms into Nkandla. - Roadblocks in the Gauteng Province to limit movement out of the province. - Enforcement of the Disaster Management Act regulations.
7 July 2021	<p>SSA issued an ‘orange alert’ that:</p> <ul style="list-style-type: none"> - Supporters of President Zuma threatened to blockade the Harry Gwala road to Westville Prison with burning tyres should SAPS enforce the warrant of arrest. - Supporters were also threatening to burn down the ANC Provincial Office in eThekweni Metro. - This alert was sent to NATJOINTS, the Minister and Deputy Minister for SSA and the Director: Domestic Branch. <p>SSA recommended SAPS deployment at the abovementioned roads and provincial office.</p>

<p>10 July 2021</p>	<p>SSA issued a 'red alert' that there was a threat to the life of the Deputy Chief Justice Raymond Zondo. SSA recommended that additional law enforcement capacity should be deployed to protect him and his property.</p> <ul style="list-style-type: none"> - The alert was sent to NATJOINTS, the Minister and Deputy Minister for SSA and the Director: Domestic Branch - Former Minister Ayanda-Dlodlo was advised that this recommendation was implemented and that SAPS increased personal protection for the Deputy Chief Justice. <p>NOTE: "All of the products that were delivered to NATJOINTS were delivered to the President. I took personal responsibility for doing this. I stopped because the Director: Domestic Branch told me that he was briefing the President."²⁴⁴</p> <p>"SSA management and I asked to brief the President about the KZN situation in July 2021. The President was both unavailable for both I and the SSA management to brief him."²⁴⁵</p>
<p>27 July 2021</p>	<p>According to the former Minister, SSA had produced 21 Daily Stability Reports</p>
<p>Title: Interventions by the former Minister</p>	
<p>6 July 2021</p>	<p>Beginning of July 2021, former Minister Dlodlo asked the SSA Senior Management to ensure that the President received an update on the security situation in KwaZulu-Natal. The former Minister raised a concern that she had not been briefed on the operational plans and scenario planning in response to the possible outcomes of President Zuma's application to the Constitutional Court.</p>
<p>16 July 2021</p>	<p>The Former Minister sent a memorandum to the Acting Director Gen. and the Head of the National Communications of SSA titled: <i>Leveraging Digital Technologies for an Enhanced Intelligence response</i>²⁴⁶</p> <ul style="list-style-type: none"> - This memorandum was sent following a lack of responsiveness from the SSA on adopting technological support in dealing with the Unrest. - The former Minister recommended that a Rapid Technology Task Team be assembled under the leadership of the National Communication service of the SSA which would be responsible for interacting with various stakeholders. The purpose of the RTTT would be to provide digital technology options (within the framework of the law) that the SSA could leverage on to support intelligence gathering in response to the unfolding crisis.

Assessment of Possible Violence

The intelligence assessment revealed concerns about the re-ignition of violence during the court appearance of the former President. It emphasised the impact on Pietermaritzburg, the targeting of foreign nationals, and the likelihood of subversion and sabotage directed at the judiciary. Social media messages calling for arrests, infrastructure destruction, and targeting of minorities were also identified.

Challenges Raised by the Former Minister

Minister Dlodlo raises several challenges to operations, including the misalignment of NIPS (National Intelligence Priorities) with departmental performance plans, the extensive use of social media for planning and instigating violence, and the need to harness social media as an intelligence collection tool.

Communication and Operations

The SSA had regular communications with senior management but limited interaction with the Minister of Police. The SSA's function is to

provide intelligence recommendations, while NATJOINTS serves as the law enforcement arm. The policing sector did not receive intelligence directly from the SSA.

Intelligence Recommendations and Implementation

The SSA's recommendations depended on the implementation by SAPS and SANDF. They included effective roadblocks, enforcement of the Disaster Management Act, engagement with leaders, and tracking of social media messages. The intelligence information flowed through NICOC (National Intelligence Coordinating Committee) rather than directly between ministers.

Operational Failings

Directors in the respective security sectors bear ultimate responsibility for the operational failings during the July 2021 unrest. The SSA sent security briefs to the President, but they did not have specific information about an impending insurrection. Minister Dlodlo emphasised the need to balance excessive secrecy with the right to information and calls for a comprehensive National Security Strategy (NSS).²⁴⁷

Cooperative Governance & Accountability

Some SOEs and SOPS (State-Owned Enterprises and Public Sector) were not subjected to vetting by the SSA. The SSA warned about growing instability undermining the authority of the state. Regulations regarding national security were submitted to the President, aiming to manage accountability for disregarded or unactioned alerts. During

meetings in KwaZulu-Natal, Minister Dlodlo did not discuss alerts, but Minister Cele briefed the SSA on reports in Phoenix.

3.1.1.3. **South African National Defence Force**

Introduction

Operation Prosper

On 12 July 2021, the President of South Africa invoked Section 201(2)(a) of the Constitution, by deploying the South African National Defence Force (SANDF) to support the South African Police Service (SAPS) in addressing the unrest and violence.

Internal deployments of this nature must be aimed at 'the prevention and combating of crime and maintenance and preservation of law and order within the Republic'.

On Tuesday, the 13th of July 2021, a request for the increase of SANDF units to 10,000 was issued by the President (Commander in Chief).²⁴⁸ Initially, 2,500 SANDF members were deployed, but the force was later expanded to 10 000, and thereafter 25,000, in reaction to the levels of social insecurity. The deployment period was initially set for three months but was later extended for one month, at an estimated cost of R615,665,000.

At the time of the hearing, several concerns arose in public regarding the SANDF's deployment during Operation Prosper. The first

concern related to the decision to deploy the SANDF, with questions raised about whether the requirement for the President to inform Parliament about the reasons, location, number of personnel, and expected period of deployment had been complied with. The second concern focused on the coordination between the SANDF and SAPS at the provincial and national levels, particularly the lack of coordination in KwaZulu-Natal. The third concern involved the conduct of the SANDF during the operation, including compliance with the code of conduct for SANDF members, their powers, and the rules of engagement. Questions were also raised about whether the code of conduct complied with existing legislation. Additionally, concerns were raised about the SANDF's seeming lack of training in crowd control.

g. Former Minister of Defence and Military Veterans, Hon. National Speaker Ms Nosiviwe Mapisa-Nqakula²⁴⁹



The former Minister of Defence and Military Veterans and current Speaker of Parliament, Ms

Nosiviwe Mapisa-Nqakula, provided testimony regarding the SANDF's role in the deployment, emphasising that the SANDF's primary role is to protect the sovereignty of South Africa and not to act as a law enforcement agency. The former Minister highlighted the need for proper analysis and coordination between the SANDF and SAPS before deployment. She also addressed the lack of intelligence and coordination between the two entities during Operation Prosper, as well as the challenges related to SANDF's limited mandate to collect national intelligence internally, in South Africa.

Overall, the SANDF's deployment shifted from protecting national key points to being deployed in communities affected by looting and violence, such as Umlazi and Phoenix. The former Minister expressed frustration with the lack of coordination and communication between the SANDF and SAPS during the operation.

Cooperation

The former Minister stated that there was a lack of cooperation and communication between the South African Police Service (SAPS) and the South African National Defence Force (SANDF) during the deployment. The SAPS Provincial Commissioner in KwaZulu-Natal was uncooperative, and there were issues of rank hierarchy between SAPS and SANDF officers.

Deployment of the SANDF

The former Minister stated that there was no report drafted by the SANDF regarding the deployment, except for one addressed to the President's Expert Panel on the July Unrest (discussed further during the President's

evidence below). The former Minister believed that the deployment was successful. The main point of deployment was the oil refineries in Richards Bay and the trade route between Gauteng (Johannesburg) and KwaZulu-Natal, in order to ensure trade continues. The Chief of the SANDF is responsible for the actual deployment of troops. SANDF deployment shifted from protecting National Key Points to deployment in and among communities, which were mainly affected by looting such as Umlazi and the Phoenix communities.²⁵⁰

Killings in Phoenix

The SANDF provided support to the SAPS in Phoenix but did not have an accurate account of the killings that occurred there. The former Minister said that the SANDF was responsible for the security of an oil refinery but not the malls, as they were not categorised as National Key Points.

Public Discourse

The former Minister felt demonised and undermined, as her statement on the events was met with negativity and contradiction to the President's statement of a "failed insurrection". The former Minister defined an insurrection as the mobilisation of civil society against the government with support from the armed forces.

Human Rights and Policy

The former Minister highlighted the need for a standard protocol for employment in the SANDF to guard against issues of power, masculinities, and egos.

The former Minister highlighted the challenge in the current policy of equipment preservation. Heavy Military Equipment is stored in Northern Cape, and during deployment, the equipment has to be fetched and transported by road, towards the targeted destination. This can at times take days, which can lead to a crucial loss of time in emergencies. The former Minister recommended preserving equipment differently as a means to contribute to effective protection of human rights in times of crisis.

h. Minister of Defence: Minister Thandi Modise

The current Minister of Defence, Minister Thandi Modise, was sworn into office on the 17th August 2021, following a Cabinet reshuffle announced by the President on 5 August 2021. Minister Modise, therefore, was not the Executive Authority for Defence during the events of the July Unrest 2021.

Minister Modise submitted a written statement to the National Hearing outlining mainly the structural configuration of the SANDF, and its role and cooperation within the Security Cluster, namely SAPS and the SSA.²⁵¹

State Discourse on Human Security

Minister Modise did respond to allegations of human rights violations of communities by members of the SANDF. She states that to her knowledge, there were no human rights violations that occurred, and if there had been any, then it would have been the first report on her desk when she took office.

National Security

The current Minister claims that South Africa had “never been forewarned” of the July Unrest and, therefore, there was no adequate preparation for the events which unfolded.

Minister Modise’s testimony painted a scenario of internal national insecurity in which individuals feel that their internal territorial integrity is threatened. The SANDF, according to the Minister, was working on a Defence Review Process. At the same time, members of the SANDF are currently being trained to be deployed internally.

i. Lieutenant General Rudzani Maphwanya: Chief of the SANDF



The Chief of the SANDF explained the reporting structure of the SANDF and stated that the President, as the Commander in Chief, authorises the deployment of the SANDF based on ministerial directives. The Chief of the SANDF reports to the Minister of Defence and the President regularly.

The SANDF was deployed in response to a call from the Minister of Police and the Commander

in Chief, President Ramaphosa. The deployment request was made to support the police.

The coordination between SAPS and SANDF is facilitated through the National Joint Operations and Intelligence Firm, with the police as the chair and the SANDF as co-chair.

The operational planning and coordination are done at headquarter level, with engagement between the police and SANDF commissioners.

There are concerns about the adequacy of the state's intelligence apparatus and its methods of gathering, disseminating, and collaborating on intelligence.

The culture of hierarchy and rank, as well as political interference, have compromised the state intelligence structures. Further, there is a lack of accountability procedures and excessive secrecy in the intelligence agencies.

The Chief of the SANDF confirmed that the SANDF's armoured vehicles were, when the July Unrest began, all being preserved (stored) in the Northern Cape. This meant that the SANDF was unable to respond timeously to the Unrest, as the armoured vehicles (which travel slowly) needed to drive across the country to reach areas affected by the Unrest. The Chief confirmed, however, that the SANDF is taking steps to prevent a reoccurrence of this challenge by placing additional armoured vehicle-storage facilities in other parts of the country.

3.1.1.4. **Private Security Industry Regulatory Authority**

number of personnel of the SAPS”.

Introduction

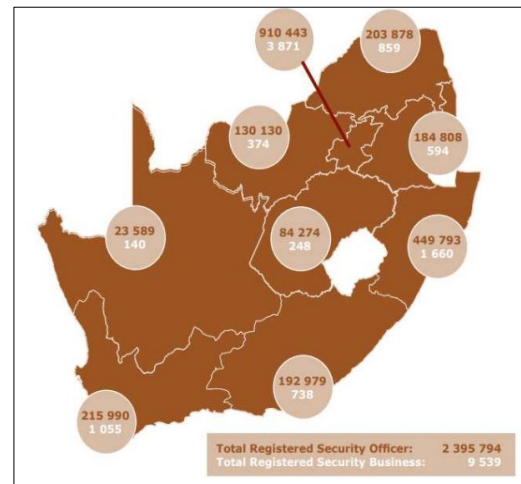
The Hearing Panel heard from multiple witnesses that the Private Security Companies (psc’s) capacitated saps by providing “boots on the ground” support; protected private and public property; and were employed to assist at lawful and unlawful roadblocks during the Unrest.

The Private Security Industry Regulatory Act 56 of 2001 regulates the private security industry in South Africa and established the private Security Regulatory Authority (PSiRA). PSiRA is statutorily mandated to exercise effective control over private security companies (“PSC’s”), in the interest of the private security industry and the public; to maintain trust and legitimacy in terms of Constitutional principles and applicable laws; and to ensure safety and security in the country.²⁵²

In 2021, the total number of registered private security officers (“PSO’s”) totalled 557,277, split between the nine provinces as shown in the figure below. Gauteng has the highest number of security officers (37%), followed by KwaZulu-Natal (18%) and the Western Cape (12%). By comparison, the SAPS had 182,126 police officers in its employ nationally at the end of the 2020/2021 financial year, and is further supported by the evidence that,²⁵³

“... [SAPS] 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

Geographic Spread of Total Registered



PSC's (March 2021)²⁵⁴

Following the Unrest, PSiRA released a media statement concerning the involvement of PSCs and PSO’s in acts of violence during the July Unrest. PSiRA expressed intentions to investigate and take disciplinary action.²⁵⁵ The statement, and allegations, occurred amidst growing concerns in the sector and society at large over the under-regulation of PSCs, and their non-compliance with existing legislation.²⁵⁶

The Commission, therefore, examined the role and responsibilities of the private security sector, focusing on assistance rendered to SAPS units during and after the Unrest. PSiRA representatives Mr. Nekiwe Jan Sambo, Acting Deputy Director Law Enforcement and Mr. Ntokozo Ngcobo, the Senior Inspector for Kwa-Zulu Natal (Durban) testified before the Hearing Panel.

j. PSiRA

Statutory Mandate, Role and Responsibilities

PSiRA representatives explained the relationship between PSCs, Specialised Protection Officers (SPOs), and the South African Police Service (SAPS). PSCs and SPOs share operational intelligence information and have the authority to make arrests within the limits of the law. PSiRA is mandated to regulate and advise the public on security regulations and consumer protection. PSCs do not have the mandate to respond to public incidents or engage in crowd-management operations, unless they are related to special events or the protection of private property. PSiRA is statutorily responsible for registration, training, and law enforcement related to private security. The authority works with SAPS in sharing information and conducting investigations.

Security Response to the 'July Unrest'

Human resources and equipment were flown in to assist in the affected provinces. PSiRA representatives met with service providers from Gauteng but did not provide further evidence or pursue related questions.

Unlike SAPS, private security is not restricted by posting regulations but is required to keep a client list. As such, services of PSCs and SPOs were requested by multiple clients in the affected regions.

PSiRA receives complaints and investigates alleged violations of the PSiRA Act, such as non-compliance with training requirements and

violations of the Code of Conduct. PSiRA did not have publicly available data on these complaints.

Complaints were received regarding private security officers' misconduct during the Unrest. PSiRA shared information with SAPS for investigations.

PSiRA relies on whistle-blowers, investigations, and information sharing with SAPS to track down unregistered businesses and ensure compliance with regulations. PSiRA representatives stated that they did not meet victims personally but engaged with community leaders.

Private security officers are required to wear uniforms, carry identification, and be identifiable by their serial numbers. PSiRA conducts inspections of formal businesses and checks firearms in cases where there are issues related to armed response.

PSiRA issues charge sheets for improper conduct and conducts hearings to determine penalties, which can include fines, warnings, or suspensions of registration.

PSiRA representatives did not address the involvement of private security in privately owned prisons.

The Commission made a further written request to PSiRA for updates, reports or findings in respect of the private security firms or private security officers that PSiRA was investigating for involvement in, or for unlawful acts related to, the July Unrest. The Commission is appreciative of PSiRA's response to the aforementioned request, which is summarised below:

Internal Investigations and Disciplinary Action

PSiRA conducted investigations into various complaints related to the July 2021 Unrest in KwaZulu Natal and Gauteng provinces. The cases involved violations of the Code of Conduct, human rights violations, and criminal matters. PSiRA issued a media statement condemning the alleged involvement of private security service providers in acts of violence during the Unrest and urged the public to report any violations. No complaints were received regarding security service providers' involvement in violence in Gauteng.

The following is a summary of the cases handled by PSiRA:

- 16 cases were investigated, involving allegations of security service providers' involvement in violence, firearms handling, and human rights violations. Code of conduct dockets were compiled and handed to the prosecution team for non-compliance with the Code of Conduct.
 - 4 cases were received from the SAPS KwaZulu-Natal Task Team regarding security service providers allegedly involved in acts of violence. SAPS's investigation was ongoing, and no suspects were identified.
 - 3 cases were received from the SAPS KwaZulu-Natal Task Team based on information from informers, but no substantiated evidence was available to take action against the security service providers.
- 11 criminal cases were registered against security officers/officials for alleged criminality and misconduct related to the KwaZulu-Natal violence incidents. Some officers were granted bail, while others remain in custody. Intention to suspend letters were issued under Section 26 of the PSiRA Act.

PSiRA received and investigated 27 matters/cases as follows:

- 11 Code of Conduct cases were investigated and concluded with guilty findings and fines imposed on the security companies.
- 3 cases were postponed indefinitely.
- 1 case was withdrawn pending the SAPS investigation outcome.
- 6 matters are still pending.
- 3 security companies were found not implicated in the Unrest in KwaZulu-Natal.
- 2 matters were written off.
- 1 case was referred to SAPS for further investigation.

Criminal cases registered with SAPS:

- 13 criminal cases were opened against SPO's, including 1 security company and 12 security officers.
- 12 criminal cases were registered against individual security officers with SAPS. These officers were also suspended by PSiRA under Section 26 of the Code of Conduct. PSiRA does not have a

compensation fund for victims but suggests civil proceedings as a remedy.

3.1.1.5. **Department of Justice & Constitutional Development and the National Prosecuting Authority**

Introduction

The Commission called representatives from the Justice Sector regarding the criminal justice and justice sector response to the widespread, collective, and in some cases, organised crime and high levels of either direct or indirect violence. It was not within the Hearing Panel's mandate to delve into the merits of each individual case, nor was it within the Hearing Panel's purview to investigate, analyse or make findings, on criminality. The Commission instead focused on establishing evidence on the respective and independent roles of the DoJ and the NPA, in its criminal justice approach to the widespread alleged crime, high levels of violence, and public disruption during the Unrest.

k. **Minister Ronald Lamola**²⁵⁷



Minister Ronald Lamola collectively represented the DoJ,²⁵⁸ and affirmed the DoJ's mandate to "facilitate access to justice" and to support "stakeholders within [South Africa's] criminal justice system".²⁵⁹ Minister Lamola defined crime in South Africa as, "a particularly difficult and pervasive social and complex problem ... in South Africa".²⁶⁰ According to Minister Lamola, the DoJ facilitates crime prevention and criminal justice, primarily through working in close cooperation and coordination with other departments that make up the JSCP Cluster, and secondarily by playing a supportive role in the National Security Council. 261

The DoJ was informed by the NATJOINTS updates, that the Unrest was "triggered" by the "arrest of the former President or the impending arrest that was looming".²⁶² Minister Lamola was, in terms of his affidavit and in his oral testimony, at pains to clarify that the roll of the DoJ was to ensure that the expected increase in arrests were properly processed through the court systems.

The DoJ was not at "the coalface", and in order to respond to the criminal consequences of the Unrest, the NATJOINTS met daily or multiple times a day, and a Case Management Task Team (CMTT)²⁶³ of which the DoJ was a "key member", was formed to monitor and track criminal cases arising from the Unrest, from 7 July 2021 until 14 August 2021.²⁶⁴

As a member of the CMTT it was the DoJ's responsibility to ensure that courts were functioning efficiently and were able to deal with the increase in criminal cases being processed during the Unrest. To this end, Minister Lamola, in

consultation with the Heads of the Lower Courts issued Directions on 17 July 2021, providing for priority rolls in respective lower courts to hear cases arising from the Unrest. Where the CMTT considered it necessary, retired magistrates and prosecutors were called upon to assist with the increased case load brought about by the Unrest.²⁶⁵ Minister Lamola refers to a draft Framework on the Management of Case Backlogs and Priority Matters.²⁶⁶

Minister Lamola identified a gap in the CMTT. Unrest matters were not distinctly categorised or labelled in the Integrated Criminal Justice System²⁶⁷, which would have allowed for rapid Unrest data gathering, as opposed to the manual capture undertaken by SAPS and NPA staff. Greater technological deficiencies in the JCPS Cluster were, as noted by the Minister, pointed out in the Expert Panel Report with the recommendation being made to modernise the system, to be able to monitor and prevent crimes allegedly instigated via social media. The Minister stated that at least, "*R1 billion for forensic investigation, digital investigation and accounting*,"²⁶⁸ is needed to improve the sector.

The Minister stated in oral testimony that there is a need for an increase in constitutional education or literacy and social cohesion to tackle unemployment, poverty and inequality, from the DoJ's part, but that improvements in socio-

economic rights required stability, safety and security, thus SAPS needs to be capacitated. He added that the increasing numbers in juvenile detention facilities indicated a "collapse of the social system in our country.". He pointed out that where accused persons were charged with less serious offences, admissions of guilt fines or fines were imposed, either by law enforcement or by courts.²⁶⁹ In addition, to minimise further overcrowding in correctional centres, the Directions allowed for non-custodial sentences as a form of restorative justice. He also added that, outside of the Unrest, the DoJ had been piloting Community Courts in the Western Cape.²⁷⁰

Minister Lamola attested that the "Phoenix incident" had "racial undertones" and that social cohesion is important and that the DoJ may contribute to cohesion through the "National Action Plan Against Racism; Xenophobia and Racial Intolerance".²⁷¹ The Acting Chief Magistrate for Durban Region 6 informed the Commission that no Equality Court complaints were lodged in respect of activities relating to the Unrest in the Umlazi Cluster, which includes Durban Central, Chatsworth, Phumelela and Umbubulu as well as the eThekweni North or Inanda Cluster which includes Verulam, Ntuzuma, Pinetown, Hammarsdale, New Hanover and Camperdown.

*I. Representatives of the National Prosecuting Authority*²⁷²



Representing the NPA in KwaZulu-Natal, Advocate Noxolo Dube (DDPP General Prosecutions High Court, Durban) and Advocate Kwena Gideon Mashamaite (DDPP Organised Crime, KwaZulu-Natal), and Advocate Val Mellis (SPP, Durban Mag Court & Acting Chief Prosecutor Pinetown Cluster – Phoenix, Ntuzuma, Verulam, Inanda) submitted oral testimony to the Commission. In accordance with the NPA's mandate, a prosecutor will prosecute a matter where there is a reasonable prospect of successful prosecution.²⁷³ The National Prosecuting Authority Act ('NPA Act')²⁷⁴ and the Criminal Procedure Act ('CPA')²⁷⁵ provides a legislative framework from which prosecutors derive their code of conduct, prosecutorial authority, and powers to deliver justice. In analysing the docket and evidence, a prosecutor must approach it objectively. Should a prosecutor decline to prosecute, the SAPS investigating officer generally provides a complainant with feedback.

The NPA, together with SAPS, put together a task team to investigate the Phoenix murders. The DPP appointed prosecutors to be a part of that task team to meet every week with SAPS and the heads of different sections of SAPS. The evidence is to the effect that one state advocate and one SAPS investigator is assigned per case within the special task team. The NPA thus responded by using NPA special prosecutorial powers to develop special programmes. The investigations were directed by the SPP in Verulam. The National Director sits in the head office in Pretoria, nine (9) Provinces are led by the DPP, and each office will have assistant managers.

Adv. Melis confirmed that a human rights framework is taken into account in terms of the rights of witnesses and the rights of the accused. It is the duty of the prosecutor to place all the available evidence before the court.²⁷⁶ With respect to these rights, the evidence must meet the “standard of reasonable prospects of prosecution” as failure to do so could risk the procedure being ‘malicious’. The NPA is thus confined to prosecutorial functions, the docket and the evidence brought before it.

High-Level/Organised Crime & Intelligence

While the NPA works closely with state security and crime intelligence for investigative purposes, their processes differ substantially. The Priority Crimes Litigation Unit (PCLU)²⁷⁷, looks at the more complex and serious matters; the Organised Crime Unit of a particular province will communicate or liaise with the PCLU on a daily basis. The organised crime unit deals with the complex structures and networks of crime. In relation to the organisational elements of alleged crimes²⁷⁸, the advocates testified that the so-called “instigators” were dealt with in the higher courts and the lower courts would deal with lesser offences.

According to, Adv. Mashamaite, these criminal groups are syndicated, financed, coordinated and have a planned structure which indicates that they are a high level organised criminal group.²⁷⁹ He provided examples of criminal typologies, where a combination of organised and opportunistic or group behaviour, at *Jubalani Mall* and *Kloof Square*, hijacking of pickup trucks breaking barriers, in Alexandra petrol bombs were used to break into shops.

The NPA was at the time of the Hearing still investigating whether the looting and related crimes were of an *organised* nature and, therefore, did not disclose any details which could have compromised investigations. He testified that the first matter to be prosecuted for incitement of public violence, would commence on the 13th December 2021.²⁸⁰ Further testimony revealed two police reservists in uniform to have participated in the looting, were arrested and dismissed from SAPS as reported by the community and one other police officer was dismissed for a similar offence. IPID is however, mandated to deal with these matters and accounts for this process, where disciplinary action has been imposed, prosecutions do not necessarily follow. Accordingly, the NPA does not have the authority to request an IPID investigation.²⁸¹

July Unrest Case Management and Data²⁸²

Adv. Melis further testified that court backlogs were managed through a priority court unit; the NPA and SAPS locally had communicated constantly and that the arrests were processed, “*as quickly as possible despite the overcrowding in cells*”.²⁸³ The DPP Gauteng Division, Pretoria, dealt with the bulk of the Unrest matters as they fell within this court’s jurisdiction; no complex or high-profile matters arose here.²⁸⁴ While prosecutors do have a duty to keep complainants informed of matters, the National

DPP indicated that the amount of cases made it difficult to provide, “frequent” updates to complainants.

Subsequent to the National Hearings, the National and relevant Provincial DPP’s have furnished the Commission with details of all criminal matters relating to the July Unrest in their response to the Provincial Report (‘NPA Response’) which were enrolled at the KwaZulu-Natal Division of the High Court, the Verulam Magistrate’s Court (Regional and District), the Gauteng Local Division (Johannesburg), lower court matters of three clusters namely Johannesburg, East Rand and West Rand of the Gauteng Provincial Division (Pretoria).²⁸⁵

General Criminal Cases

Thousands of case dockets were registered in respect of “looting” associated cases and acts which constituted public violence offences in terms of the law (see Figure 3, below). These acts and associated offences (see Figure 4, below) consisted of public violence or conspiracy to commit public violence or the contravention of Section 18(2)(a) and 18(2)(b) of the Riotous Assemblies Act 17 of 1956, contravention of Section 36, possession of stolen property and Section 37 possession of suspected stolen property of Act 51 of 1977 charges, MITP and theft and dealt with at District and Regional level.²⁸⁶ The Commission was not furnished with the KwaZulu-Natal Lower Court Matters due to the “huge volume” of these cases. The NPA’s Asset Forfeiture Unit (AFU) was able to, in some cases, obtain confiscation orders.²⁸⁷

Figure 3: Public Violence Enrolled in the Local Division (per province) over the period of the July 2021 Unrest period.

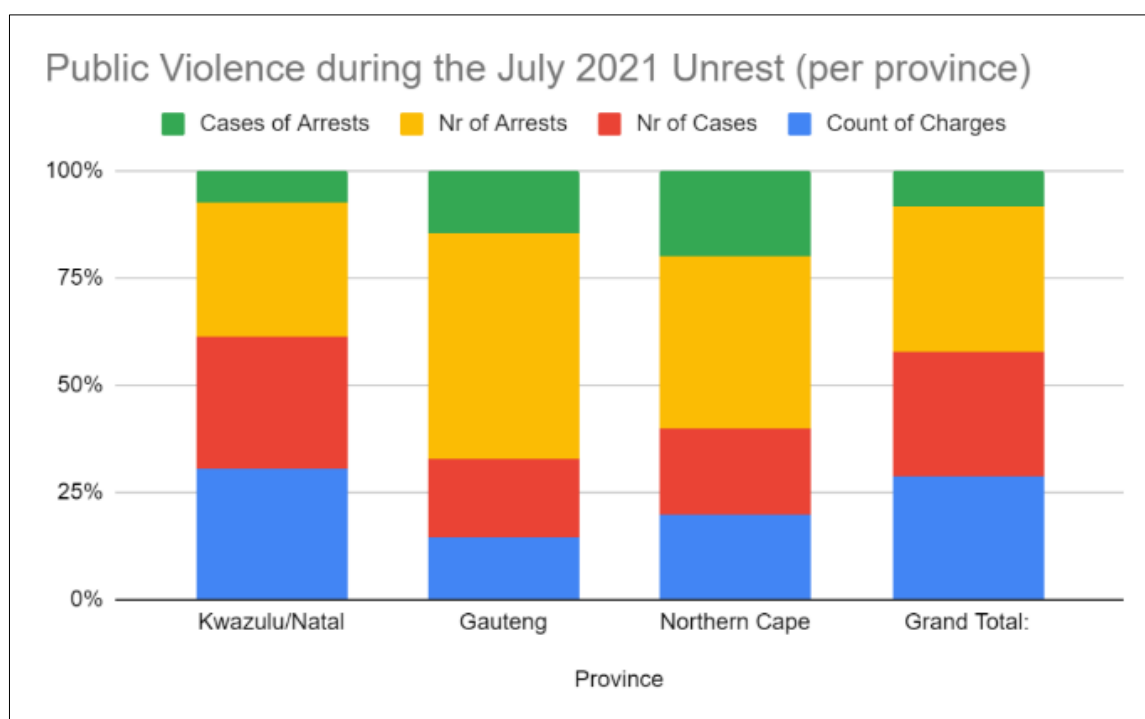
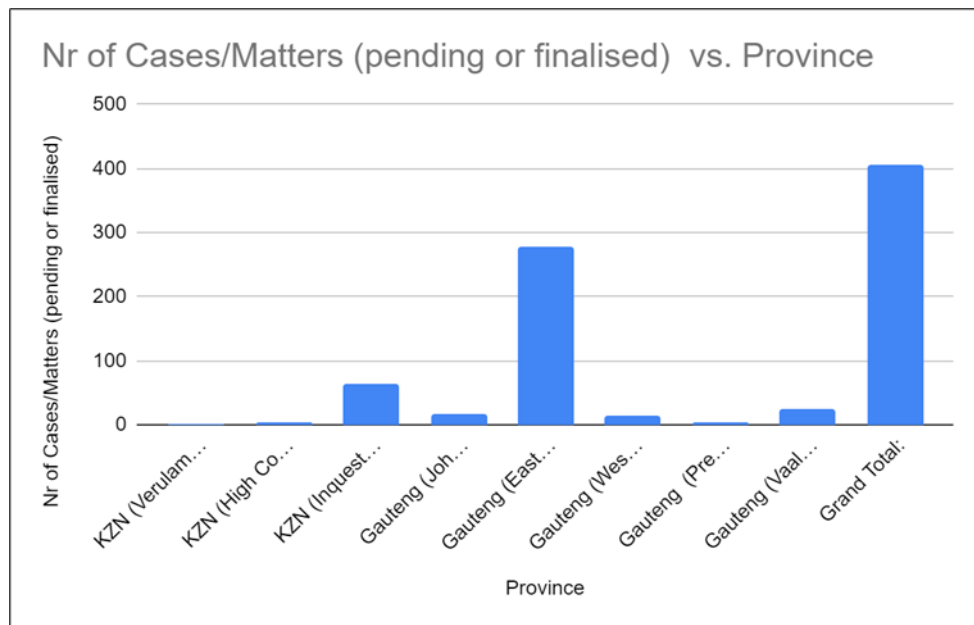


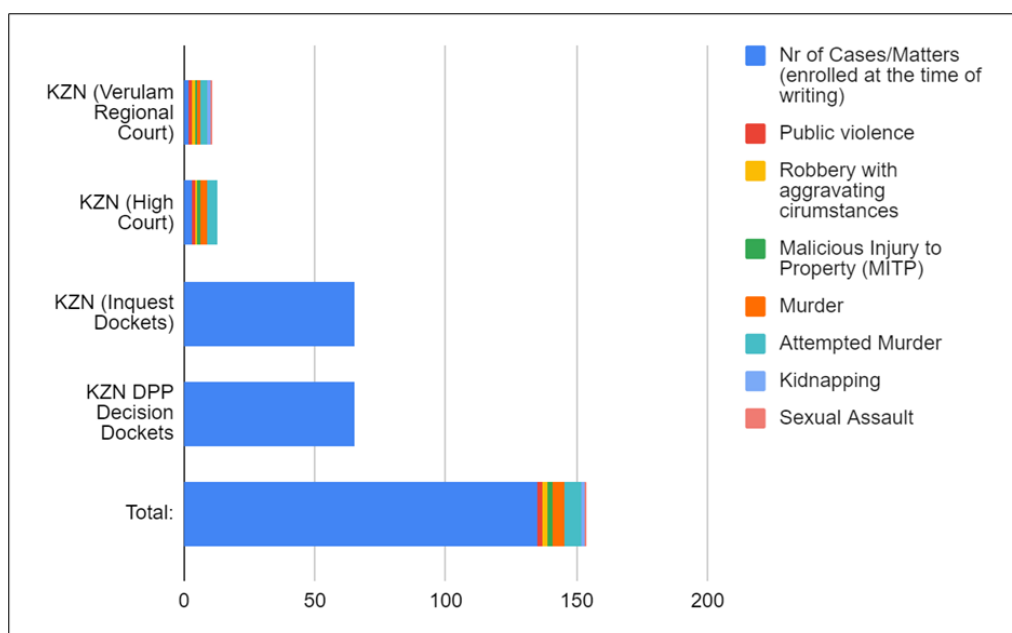
Figure 4: Lower and Regional Criminal Court Matters (Gauteng and KZN) over the July 2021 Unrest period.



Phoenix Murder Cases

SAPS Minister Bheki Cele, in response to the Phoenix Massacres, appointed a team of detectives to investigate the 'killings'.²⁸⁸ Initially, sixty-five (65) dockets were referred to the State Advocates. Once the State Advocates perused the dockets, sixteen (16) matters were sent for SAPS queries,²⁸⁹ fifty (50) matters were declined to prosecute and proceeded with informal inquests²⁹⁰ and five (5) matters were enrolled by State Advocates in the High and Regional Courts.²⁹¹

Figure 5: KZN Regional and High Court Matters (a focus on KZN) for the July 2021 Unrest period.

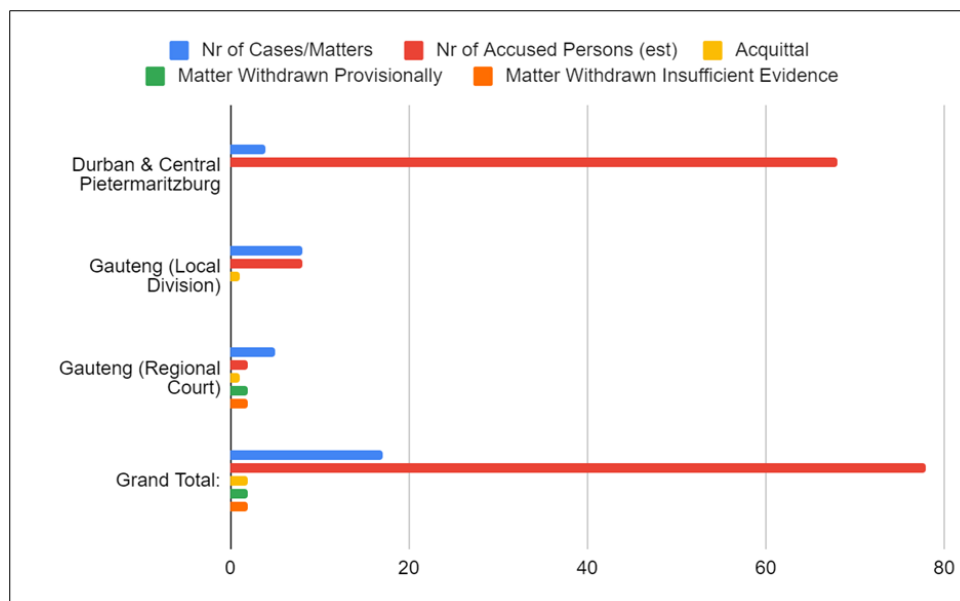


High Profile Matters: Organised Crime and Orchestration

These matters and the UPL Cornubia Fire matter, were believed to have been caused mainly through social media. All matters referred to the KwaZulu-Natal Organised Crime Component in the NPA ('OCC') were investigated by the DPCI; these charges included conspiracy and incitement to commit public violence. The OCC received a total of thirteen (13) matters.²⁹² According to the NDPP,

"...It is believed that those who are appearing in court at present presumably received instructions from a certain person(s)...the NPA does not have dockets with evidence who the planners and organisers of the unrest are".²⁹³

Figure 6: High Profile and Organised Crime Matters Office (per office of the DPP) on counts of count of conspiracy to commit public violence or the contravention of Section 18(2)(a) of the Riotous Assemblies Act 17 of 1956, one (1) count of incitement to commit public violence or contravention of Section 18(2)(b) of the Riotous Assemblies Act 17 of 1956



Criminal Justice Challenges

The NPA Response set out several challenges presented to prosecutors in dealing with Unrest related matters, *inter alia* Covid-19 staff constraints, insufficient evidence, expertise, enforcement of the Cyber Crimes Act and absent witnesses. At the time of the Unrest, prosecutors lacked the expertise and capacity to prosecute cyber-crimes, notably the Cyber Crimes Act²⁹⁴ was not enacted at this time.²⁹⁵ SAPS and the NPA, therefore, could not rely on the provisions of the Act to effect investigation or prosecution.²⁹⁶ The Act *inter alia* criminalises acts such as –

“The disclosure of data messages which are harmful and to provide for interim protection orders; to further regulate jurisdiction in respect of cybercrimes; to further regulate the powers to investigate cybercrimes and to regulate aspects of mutual assistance in respect of the investigation of cybercrimes”.²⁹⁷

The Prevention and Combating of Hate Crimes and Hate Speech Bill²⁹⁸ had yet to be passed and could not comment further on how this impacted the investigations on the Unrest related crimes. Other challenges such as delays in securing mutual legal assistance, involves cooperation between several actors including the Central Authority (under the DoJ), and Central Authorities of the requested country or countries. Courts are often overburdened and the NPA does not have control over absent witnesses.

General Criminal Cases

In many of the public violence matters, the evidence in the case docket must show the causal link between the accused and the related criminal action of the actual public violence. Many Unrest matters were not enrolled due to a lack of necessary causal evidence. Often where there is protest action there are no recordings of what transpired at the crime scene. As a result, the evidence does not pass the evidentiary threshold.²⁹⁹

Due to the high volume, management of these matters was challenging. The DPP personally assisted with some cases; in other cases there was, “*no interpreter or stenographer to assist...there was total chaos and destruction*”.³⁰⁰ Other challenges included “people being afraid” to attend court. the DPP was transported by SAPS for safety.

Phoenix Cases

Challenges dealing with the “Phoenix Massacre” cases included –

“Unavailable post-mortem reports,³⁰¹ incorrectly completed post-mortem reports,³⁰² eyewitnesses were not willing to give statements or affidavits as they were afraid for their lives,³⁰³ bodies were found and there was no evidence to link any person to the commission of the offence. Poor video footage recovered from petrol garages or houses which had security cameras installed and difficulty in obtaining the video recordings for evidence purposes”.³⁰⁴

Organised Crime Cases

The retrieval of social media evidence has been the main challenge in prosecuting these matters. Even where evidence has been retrieved, language barriers have been an issue, or

code words in the form of *emojis* have been used. SAPS has a limited capacity to decode this evidence and in instances where information is deleted, it requires successful MLA.³⁰⁵ The OCC is also experiencing staffing challenges, “*due to government-wide austerity measures,*” and other high-profile “*terrorism*” and “*political*” matters.³⁰⁶

Accountability

In the delivery of the Annual Judiciary Report 2021/2022, Chief Justice Raymond Zondo emphasised the judiciary's accountability to the people of South Africa based on Section 165(2) of the Constitution. The report aimed to enhance transparency and public confidence by providing a comprehensive report on prosecutions. However, the Commission lacked direct evidence from IPID and relied on reports from IPID delivered to the NCOP. According to the IPID reports, a total of 74 cases related to the July Unrest were received, including cases of death, assault, discharge of official firearms, death in police custody, and torture. According to DPP reports, one matter was received from IPID as a decision docket, where the accused person, a member of SAPS, allegedly fired indiscriminately into a crowd of people with an R5 rifle and has been charged with the murder of a 15-year-old boy.³⁰⁷ The matter is currently pending in the regional court and will be transferred to the High Court for trial.

Limitations of Criminal Justice Mechanisms

The report also highlights limitations of the traditional criminal justice approach and explores issues such as over-criminalisation, vigilantism, *ultra vires* justice, and the need to address the justice gap through restorative justice and the right to reparations. It emphasises the importance of including communities in the justice process and the concept of ubuntu-botho, which promotes human interdependence and respect. The report suggests that justice should address both the personal and collective harm caused by physical and psychological suffering.

m. Mayor of eThekweni Municipality



Mr Thomas Mxolisi Kaunda, the Executive Mayor of eThekweni Metropolitan Municipality, testified before the Commission regarding the actions taken by the municipality during the July Unrest. He provided a sworn statement due to his limited involvement during that period as he was on medical leave after testing positive for Covid-19.

Prior to and during the Unrest, Mr Kaunda has posted messages on his social media account (Facebook) which purported to support former President Jacob Zuma. The posts also urged the society to refrain from violence and racial tensions. The Commission posed questions about the inferences from media reports linking the posts to the Unrest. Mr Kaunda acknowledged these inferences, but however, denied a link between his support for President Jacob Zuma as a member of the African National Congress on the one hand, and the unrest on the other. He further pointed to the statements he posted on social media, which urged society against violence and racial tension.

He also described his engagements with various community representatives and stakeholders to address racial tensions and assess the damage caused by the Unrest. Mr Kaunda emphasised the socio-economic and political factors in affected areas, highlighting the divide between impoverished African communities and affluent non-African neighbourhoods, which contributed to racial profiling and tensions.

n. Anonymous Witness³⁰⁸

Introduction

Anonymous Witness, who is a cyber security expert and whose identity is protected by law, voluntarily came forward and presented evidence to the Commission.³⁰⁹ The Commission is obligated to maintain strict confidentiality to safeguard the Anonymous Witness's identity. The anonymous witness provided written submissions and in-camera oral evidence highlighting lapses in state security intelligence, early warning systems, and breakdowns in law enforcement communication.

Alert Safe Analytics System

The Anonymous Witness gave evidence regarding the Alert Safe Analytics System (ASAS), which the anonymous witness used to monitor activity related to the Unrest. ASAS is a system created to monitor various data points and provide insights into potential security risks. ASAS collects and analyses 7.5

million data points, including flight traffic, port traffic, viral chatter from social media, open-source intelligence, human intelligence, and information from South African Police Precincts.

One of the key functions of the ASAS system is to identify elements of unrest that may be funded or organised, such as through the distribution of food parcels or e-wallets. It also detects factionalism within the ruling party and provides a 360-degree live line of sight on security risks. In September 2019, the ASAS system detected a significant number of xenophobic attacks and police killings, indicating a growing risk of unrest in KwaZulu-Natal and Gauteng specifically.

The ASAS uses signal peaks to identify critical periods of information disorder and potential violence. Signal peaks in ASAS refer to instances when there is a significant surge in the volume and intensity of monitored data related to security risks. During these signal peaks, the ASAS system detects and analyses the spread of disinformation, coordinated activities, and other relevant factors that may indicate an increased likelihood of unrest or violence. By closely monitoring these signal peaks, ASAS aims to provide early warnings and valuable insights to support proactive measures in maintaining safety and security.

In January 2021, the ASAS system observed a drastic increase in its monitoring coverage (signal peaks), with a rise from 84% in December 2019 to 90% in January 2021. The content vectors of this increase were primarily

focused on xenophobia. The Anonymous Witness, concerned about these developments, wrote to the Presidency in January 2021, specifically highlighting the intelligence, as set out above, gathered by the ASAS. However, the Anonymous Witness did not receive a response from the Presidency.

The Anonymous Witness flagged a list of individuals, including Donne Nicole, who were directly informed about the intelligence findings. Despite reaching out to various other individuals, including the (former) Minister of the SSA Ayanda-Dlodlo, who were contacted to communicate the potential risks, the Anonymous Witness did not receive any response. This lack of attention and action raised concerns about the potential for serious issues within the next 60 days.

According to the Anonymous Witness, two weeks before the unrest occurred, the cell phone towers went offline at 7:45 PM. On 12 July 2021, a clip was released referring to "weapons of mass destruction" that would be used if former President Zuma was not released. Prior to the Zuma gathering, an unnamed individual with deep links to the SSA and the Presidency appeared on the radar. This individual had access to confidential information, including residential addresses of judges. Notably, this information was also shared on Twitter.

The ASAS system picked up the publication of the blueprint for the Transnet pipeline online, indicating a potential threat to two institutions: the Transnet pipeline and SAB Brewery. This

raised concerns due to the highly flammable and explosive material present at the brewery.

The data collected by ASAS suggested a highly coordinated effort to destabilise the provinces of KwaZulu-Natal and Gauteng. There was evidence of inside information regarding former President Zuma, including the fabrication of a document resembling a CIA-style planned assassination plot against him while in prison. This fabricated document was released, triggering a Twitter storm that gained traction among certain factions and individuals.³¹⁰

Loadshedding, the rolling blackouts implemented to manage electricity supply, directly impacted security. During a signal peak, certain blocks that were not supposed to experience power outages were affected. For example, eight police stations formed a cluster to mitigate the risks of planned loadshedding by ensuring that at least one cluster had power. However, there appeared to be sabotage of the loadshedding plan, with transformers being set alight to cause a Tetra fail and incapacitate the police clusters. The target was consistently moving to avoid capture or harm.

Disinformation was spread extensively on social media platforms, including fabricated videos depicting the storming, petrol bombing, and shooting of children at schools. These false narratives aimed to escalate tensions and fuel further unrest.

State Security Risk Analysis

The Anonymous Witness's evidence sheds light on the state's security risk analysis, revealing vulnerabilities in intelligence systems and early warning mechanisms. The anonymous witness identifies significant gaps and shortcomings in the state's ability to assess and address security risks effectively.

Organised Criminal Networks Online

The Anonymous Witness's evidence points to the presence of organised criminal networks on social media, specifically Twitter, highlighting the weaponisation of information and the emergence of non-linear information warfare. The Anonymous Witness's findings reveal the utilisation of social media platforms to coordinate and orchestrate disruptive activities, including incitement of violence and dissemination of disinformation.

Weaponisation of Information Disorder

The weaponisation of information disorder aims to achieve information dominance and is considered a form of non-kinetic warfare. The Anonymous Witness references the existence of a manual by the US intelligence policy on this subject. This manual serves as a guide for adversaries seeking to manipulate and exploit information ecosystems to their advantage.

Twitter Activity and Targeting of Zuma

According to the Anonymous Witness, between the 9th and 2nd of August 2020, the account "African Soil" a Radical Economic Transformation ("RET") associated account posted 22,000 tweets which translates to 7 tweets per hour (containing the same

elements of content as the 2019 “Signal Peak”).

Notable Twitter activity involving an unnamed individual with links to the South African State Security Agency (SSA) and the Presidency was observed. This individual shared confidential information, including the residential addresses of judges. The Anonymous Witness points out the presence of such information on Twitter, highlighting the potential risks associated with the misuse of social media platforms.

Risk to Transnet Pipeline and SAB Brewery

The Anonymous Witness discovered that the blueprint of the Transnet pipeline was published online, potentially endangering the pipeline and the SAB Brewery. The Anonymous Witness’s intelligence picked up on this threat, emphasising the significance of early detection and intervention in safeguarding critical infrastructure.³¹¹

Warnings to the Presidency

The Anonymous Witness attempted to communicate all these concerns to the Presidency numerous times and through multiple channels, providing specific details and intelligence. However, there was no response or action taken, indicating a breakdown in communication and a failure to address the identified risks promptly.

The Anonymous Witness reached out to Donne Nicol (a special advisor to the President) in January 2021 with a desperate plea to share the intelligence in question. Ms

Nicol responded acknowledging receipt and undertaking to revert. Ms Nicol did not revert to the Anonymous Witness.

The Anonymous Witness reached out to Minister Dlodlo via WhatsApp on 4 April 2021, asking the Minister to assist bring the intelligence to the attention of the President. Minister Dlodlo allegedly responded that the “President does not deal with intelligence matters. He will ask why SSA does not meet with you”.

The Anonymous Witness also reached out to Dr Gerhardus Willem Koornhof, the National Assembly Parliamentary Counsellor to the President (as a means of reaching the president directly) who advised the Anonymous Witness to rather forward all information to the Anonymous Witness’s contacts in SAPS or intelligence.

Coordinated Unrest

The collected data indicates a highly coordinated effort to destabilise KwaZulu-Natal and Gauteng. Fabricated documents and disinformation campaigns were used to incite unrest, leading to widespread violence, looting, and damage. The Anonymous Witness mentions the involvement of factions supporting former President Zuma and an individual named "ElChapo," highlighting the complex network behind the coordinated unrest.

Chaos Caused by Information Disorder

Information disorder, initiated by certain actors, quickly spread through various

channels, including the EFF party. The spread of false information, particularly regarding attacks on schools during the 2019 xenophobic riots, prompted the creation of an algorithm to monitor these risks. The Anonymous Witness underscores the destabilising effect of information disorder on society and the challenges it poses to security and governance.

Lack of Response from Intelligence Agencies:

Despite the Anonymous Witness's efforts to provide intelligence to intelligence agencies and the Presidency, there was minimal follow-up or action taken. The Anonymous Witness specifically mentions DG Loyisa Jafta and Minister Ayanda-Dlodlo as being aware of the information but failing to act upon it, exposing the lack of coordination and response within the intelligence community.

The Anonymous Witness alleges that in the end, it was necessary to directly approach Minister Cele with the intelligence, after which the Minister began to act.

The Minister's testimony before the Commission corroborates the Anonymous Witness in this respect, and vice-versa, as the Minister claims not to have received any formal intelligence during the Unrest, relying on social media and other sources. The Commission reasonably expects the Minister here to be referring to the Anonymous Witness in question as one of these sources.

Impact of Social Media Account Changes

As arrests of individuals spreading disinformation increased, changes in social media account profiles were observed, indicating a degree of disruption. This signifies that law enforcement agencies were making progress in identifying and apprehending those responsible for spreading false information and inciting violence.

Lack of POP Training & Capacity

The Anonymous Witness emphasised the lack of training in intelligence services and the police as a hindrance to swift response and effective management during crises. The importance of providing comprehensive training and resources to intelligence officers and law enforcement agencies is highlighted to enhance their ability to counteract and mitigate threats.

Economic Sabotage

The unrest followed a similar pattern to events in 2019, with small teams instigating violence and looting, resulting in significant economic sabotage. The destruction of infrastructure, and businesses, and the disruption of supply chains adversely affected the economy, further exacerbating the impact on the population.

o. Institute for Security Studies

The Institute for Security Studies was represented by David Bruce.³¹² The ISS is a Pan African Non-Profit Organisation that works on enhancing human security and achieving sustainable peace and prosperity. Mr Bruce's testimony written submissions highlighted that while the violence could be considered unique, and the security forces were overextended, the scale of damage and violence also reflected the limitations of the response by security services to the unrest. This was linked to weaknesses in security governance, shortcomings in intelligence, as well as the static and formulaic approach applied by the SAPS to crowd management.³¹³³¹⁴

Regarding the response by security agencies to the violence, Mr. Bruce underscored the need to distinguish between different elements of the violence including those elements that were planned and those which took place often opportunistically, such as "looting" and the reactive violence in some communities, that in some cases took on the form of "racially inspired vigilantism".³¹⁵

Regarding intelligence agencies, Mr. Bruce's testimony highlighted the problems of divided loyalty related to politicization of the security services. In so far as members of the intelligence agencies may operate in a politically non-partisan way, the threat of violence related to conflict within the ruling party creates a dilemma for them, as, for the purpose of protecting national security they are required to carry out activities that would target members of certain factions in the ANC which would then open them to accusations of acting politically by those who may come under surveillance for illegal activities.

Mr Bruce discussed the classification of the Unrest, emphasising that while it may be considered unique, the scale of damage and violence could have been foreseen and prevented through early warning mechanisms, ruling the Unrest as neither "unique" nor "unprecedented".³¹⁶ He pointed out that the Unrest emerged from within the ranks of the ruling party, raising concerns about the politicisation of security services:

"...we have a situation here where an assault against the state was emerged from within the ranks of the ruling party or of people associated with the ruling party".³¹⁷

Mr Bruce suggested that the SAPS should adopt more tactically innovative approaches, such as implementing recommendations from previous reports like the Marikana Commission report and engaging with social media monitoring and public communication. He criticised the reliance on extra-judicial measures as a response to prosecutorial system failures.

Regarding intelligence agencies, Mr Bruce expressed concerns about their misuse for political purposes and highlighted the potential benefits of intelligence monitoring to pre-empt unrest and respond more effectively.

Mr Bruce acknowledged the limitations in SAPS's reliable information on the scale of violent protests and stressed the importance of avoiding unjustified police action that risks violating human rights. He also mentioned community attitudes towards the police in Phoenix and their association with torture, based on IPID data.

Regarding the police response, Mr Bruce indicated that SAPS's crowd management approach relies extensively on the use of rubber bullets to disperse crowds and restore 'stability'. In so far as they were directed at participants in the looting or in forms of violence, the use of rubber bullets could be regarded as justifiable. The use of live ammunition by the police against looters would not have been legally defensible and would have resulted in a much higher death toll. However, reliance on rubber bullets to disperse crowds involved in mass looting may displace the problem and is not likely to be an effective means for containing or reducing it. Though over 3000 people were arrested, the police could potentially have used targeted arrests in a manner that may have been more effective in reducing the looting. Mr Bruce suggested that the SAPS should adopt more tactically innovative approaches, which are possible if the recommendations from relevant reports, like the 2018 Report of the Panel of Experts on Policing and Crowd Management, were implemented.

Mr Bruce noted that the powers of private security industry personnel are no different to that of other civilians. The involvement of civilians in policing in South Africa is much broader than the phenomenon of private security, he said. The involvement of community members in activities orientated towards promoting local safety is not something that only manifested during the July unrest but is a general feature of the public safety environment in South Africa.

The ISS argued that careful consideration needed to be given to how to balance the need to optimise the SAPS capacity to respond to crime with the need to maintain an optimal public order policing capacity. These are separate functions that require different approaches. This motivated against using recruitment of additional public order police as the solution to the shortcomings highlighted by the July 2021 Unrest and motivated for more innovate approaches to resolving the problem.

Mr. Bruce connected the socio-economic and political climate in KwaZulu-Natal to broader issues of insecurity in South Africa, noting the association between the political culture in KwaZulu-Natal and the use of violence. Mr Bruce mentioned the use of private security companies by municipalities and the government, stating that private security's powers are limited to those of civilians.

Figure 7 below: Incidents of public violence in eThekweni Metro for the period of 7 to 16 July 202, provided by David Bruce sourced from ISS 2020/03.

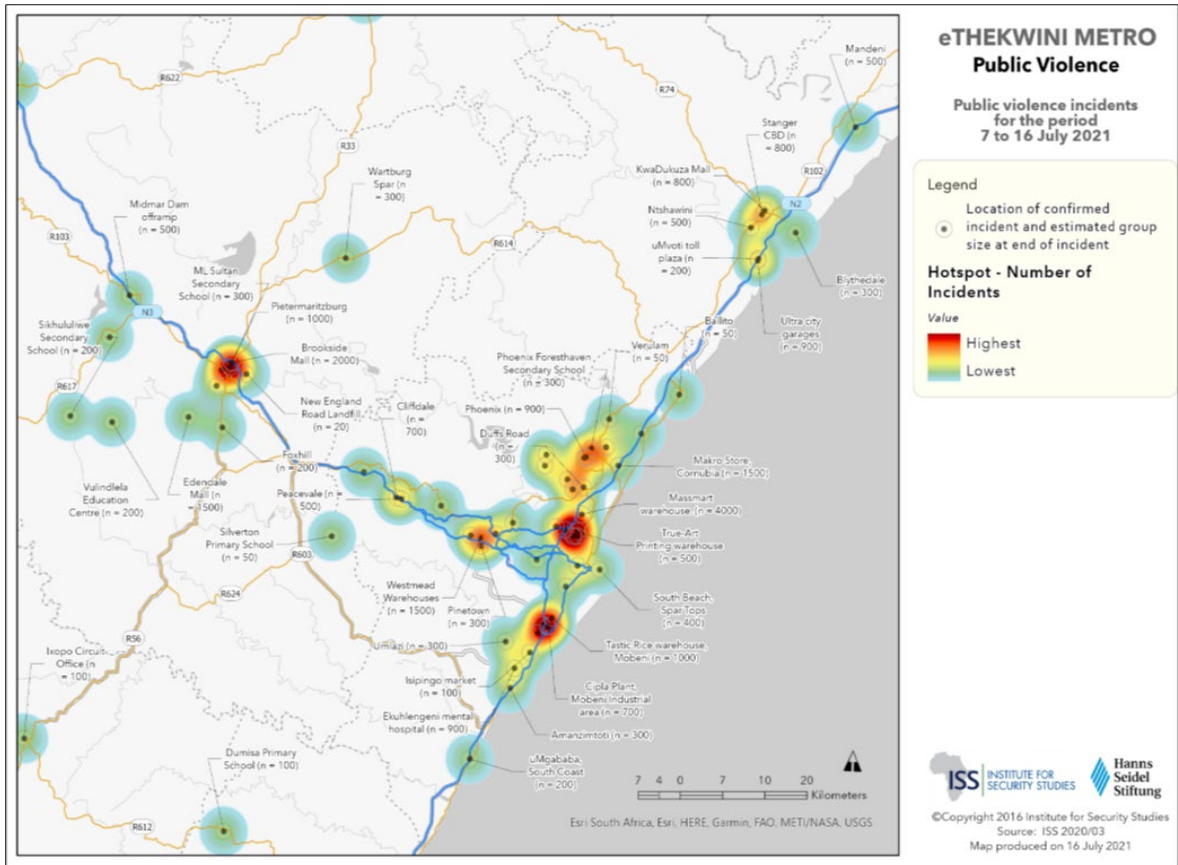
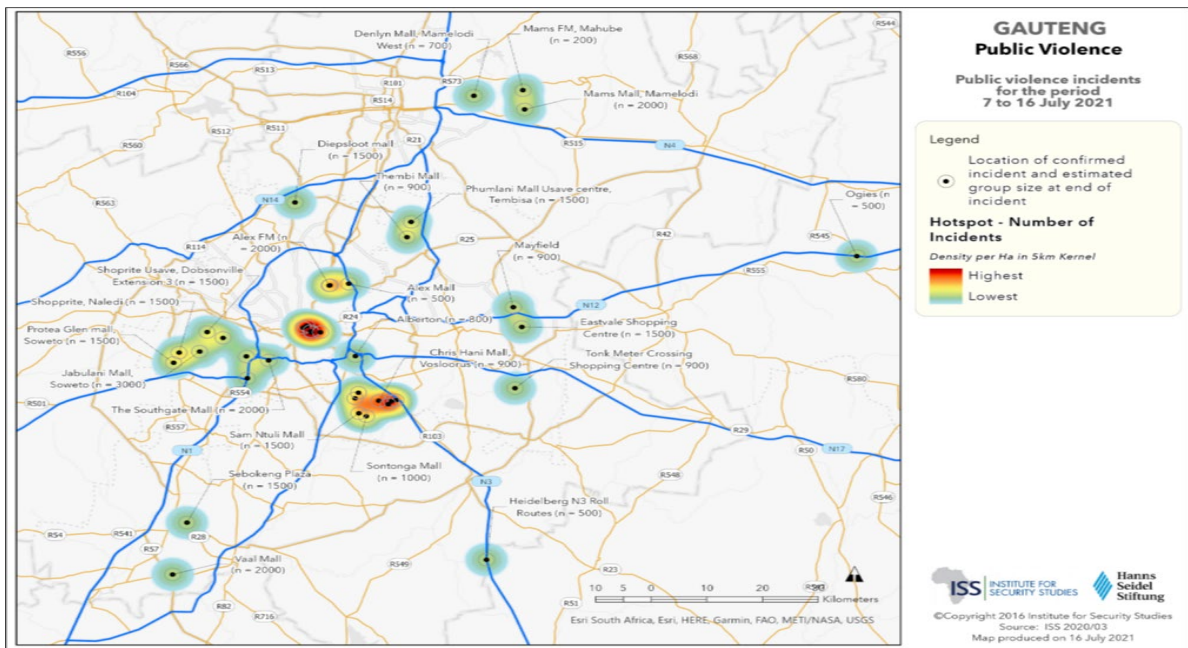


Figure 8 below : Incidents of public violence in Gauteng for the period of 7 to 16 July 2021, provided by David Bruce sourced from ISS 2020/03



p. The President of the Republic of South Africa



Introduction

His Excellency Mr Matemela Cyril Ramaphosa is the President of South Africa, the Head of State, President of the African National Congress, Commander in Chief of SANDF and Head of the National Executive.³¹⁸ He appeared before the Hearing Panel on 1 April 2023.³¹⁹

The President, as the Executive Authority of the Republic, holds various Constitutional and statutory decision-making powers and duties, which amongst others obligate the President to promote unity of the nation to advance the Republic.³²⁰

According to evidence which had been received by the Hearing Panel prior to the President's testimony, together with prevailing public discourse, the scale of the event of the July Unrest was not fully anticipated by the State. Evidence also suggested that SSA intelligence reports issued as early as December 2020 had pointed to potential instability. This evidence was available to the President, who on different platforms had acknowledged the institutional failures of the State in responding effectively to the July Unrest.

The President had also, on 5 August 2021, appointed an expert panel to review the nation's preparedness for an event such as the July Unrest, and to identify shortcomings in its

response. The panel, chaired by Professor Sandy Africa and consisting of Advocate Mojankunyane Gumbi and Mr. Silumko Sokupa, submitted their report (“the Africa Report”) on 29 November 2021. The Africa Report highlights weaknesses and shortcomings in the state’s response to the July Unrest and provides specific recommendations for remedial action to ensure the country’s integrity, security, and stability.³²¹

This section presents a summary of the President’s account, including his oral and sworn written statement.

Nature and Characterisation of the Unrest

On 11 July 2021, amidst the July Unrest, the President described the events as an “attempted insurrection” and further, as a “deliberate, coordinated, and well-planned attack on democracy, aiming to cripple the economy, cause social instability, and weaken the democratic state”.

In his testimony on 1 April 2022 at the Unrest Hearing, the President further emphasised that the events of July 2021 should be viewed as originating from coordinated individuals and organised criminal groups which exploited the existing social and economic conditions, such as unemployment, poverty, and inequality worsened by the COVID-19 pandemic. He strongly refuted that the Unrest could have been characterised as a popular uprising of the poor.

The President characterised the public as being ‘determined and resilient’ in resisting the incitement towards violence and ‘looting’ while simultaneously acknowledging communities as being particularly vulnerable to social media influence and mobilisation.

The Use of the Term “Ethnic Mobilisation”

The President’s sworn statement addressed the public’s concerns which were brought to the attention of the Commission over the use of the term “ethnic mobilisation” in his official statement to the nation on the evening of 11 July 2021. Specifically, his statement read as such:

“It is a matter of concern to all South Africans that some of these acts of violence are based on ethnic mobilisation. This must be condemnedat all costs as we are a nation committed to non-racialism and non-tribalism that is underpinned by the diversity and unity of all the people of South Africa, whatever their language, culture, religious beliefs and race”.

Having met with various community and religious leaders on site, the President made it clear that he no longer held that view. The President’s second statement on 12 July 2021 and follow-up interviews on 16 and 18 July 2021, confirm that the President acknowledged that the term was contentious and retracted his statement.

The President acknowledged that South Africa has a history of ethnic violence, and he conveyed the personal sense of betrayal felt over the derogatory comments on social media published during the Unrest.

Allegations of Incitement to Commit Violence

The President addressed public allegations that claimed his statements incited and exacerbated further violence and ‘looting’. He was unequivocally resolute that he would never call for “unlawful action” as it would be inimical to his values, principles, and oath of office. The President stated he was unaware of any evidence that supports the view that his statement led to the escalation of violence. He further pointed to a statement he had made on 16 July 2021, in which he asserted that,

“no person should take the law into their own hands. We must guard against vigilantism and anything that could inflame tensions further”.³²²

National Security Establishment and State Capture

He testified that the National Security Council (“NSC”), the previously non-functioning body of which he oversaw its reinstatement, was dormant during the period of Covid-19.

The President spoke about the weakening of the security establishment due to the years of state capture, and made substantial reference to the, “hollowing out of state institutions,” referring both to the Zondo Commission’s findings, the Presidential High-Level Review Panel or also known as the Mufamadi Report (“the HLRP”) and the Africa Report. The President admits that the NSC’s shift of focus from matters of national security to centralising the government’s Pandemic response, was possibly an error of judgement in the context of the Unrest. The NSC met almost every day during the course of the Unrest and has resolved to meet every two months since the date of the Unrest.

The implementation of the HLPR, which investigated malfeasance in the State Security Agency (SSA), has been delayed. The President acknowledges the need to expedite the implementation process and address the issues within the SSA.

The President testified that although there were reports pointing to the possibility of social-political instability leading up to and after the incarceration of former President Zuma, neither the security officials nor government were forewarned as to the “scale, scope [and] nature” and he testified that none of the intelligence the Presidency or government received contained “a warning that captures what would transpire as the Unrest [sic]”.

The President stated that remedial measures will be taken because the people of South Africa rely on the government and the security services to safeguard them, protect the country, and

maintain the safety of their homes and democracy. In the President's address to the nation on 26 July 2021, it was emphasised that the architects of the democracy were diverse, representing various racial backgrounds and genders, who displayed great courage by choosing reconciliation and peace over retribution and war.

Notwithstanding, the lapses in law enforcement and state security preparedness, the President however, remains resolute that the Unrest would have remained a challenge for SAPS and the government to handle.

Government's Response and Operation

The government was poorly prepared for the coordinated and orchestrated campaign of violence.

When confronted with the statements from the Minister of State Security Agency that intelligence was provided to both SAPS and the President's Office, the Minister of Police Bheki Cele denied receiving the intelligence. The President in response spoke at length about the need for various mediums and appears to suggest that it was incumbent that multiple modes of communication be utilised – pointing to the fact that it was not anomalous for plans to communicate in a specific way falling through and then requiring the exploration of multiple modes of communication.

Deployment of the SANDF

Initially, it was thought that the capacity of the police would sufficiently manage the policing needs of the July Unrest. However, it became apparent that this was not to be the case, as a well-coordinated action plan that clearly understood the capacity constraints of the SAPS was unfolding.

On the morning of Monday, 12 July 2021, the South African National Defence Force (SANDF) was deployed in Gauteng and KwaZulu-Natal, as part of Operation Prosper.

Structural failings and institutional weaknesses in Police and State Security

The President recognises the deficiencies in the South African Police Service (SAPS), which include unfilled vacancies, failures in crime intelligence, centralisation of public order policing, gaps in training and coordination, and the impact of state capture on capable personnel.

The President emphasised the need for a well-structured relationship between the National Commissioner of Police and the Minister of Police. He called for a clear national security strategy that is approved through consultative process at the NSC, emphasising the importance of departmental coordination. The President further indicated that these issues

may be remedied by the new appointments, namely that of appointing the new National Police Commissioner upon the resignation of the (former) Commissioner General Sitole.

Policing Capacity and Public Confidence

The police response to the Unrest was hindered by a lack of resources, poor organisation, and centralisation. The weak system and inadequate public order policing capabilities contributed to the challenges faced by the police.

The President emphasised the importance of civic engagement and rebuilding trust between the police and the people. The President highlighted the importance of adequately equipping and training police officers and addressing resource shortcomings to enhance the security of South Africans. He emphasised the need to rebuild trust and reinvigorate the relationship between the police and the community, with a focus on CPFs and community support.

The President acknowledged budgetary constraints affecting the police, leading to poorly equipped police stations and an inability to deploy sufficient and trained officers. He emphasised that private security played a supportive role, however, their cooperation with the National Security Strategy needs improvement. He pledged to provide further funding and resources to address these shortcomings.

Destruction of Food and Perishable Items

The Commission questioned the President on public concerns about the actions of the South African Police Service (SAPS) who were recorded publicly destroying food and perishable items. The condemnations of the SAPS were heightened by the reality of significant food shortages and malnutrition which reportedly affect a quarter of the country's population.

In response, the President acknowledged that he discussed this matter with the Minister of Police, during which discussion, he emphasised the importance of carefully considering the objectives of their actions. For example, the President and the Minister, during their discussion, asked if the focus should be primarily on apprehending the instigators or on those who opportunistically joined in the Unrest. Furthermore, the President questioned whether it was justifiable to enter the homes of impoverished individuals and confiscate items they had either received or collected, regardless of the presence of poverty. He nevertheless emphasised that poverty should not be used as a justification for participating in looting activities.

Systemic Inequality and Socio-Spatial Apartheid

The President referred to the compartmentalisation of South African society by colonialism, and its impact on the national consciousness. He commented on the responsibility of the state

to create conditions that move away from coloniality and discussed the need for accountability and a streamlined government to address the people's conditions effectively.

The President acknowledged the spatial and social challenges inherited from apartheid, which influence police decisions on protecting certain areas during moments and/or occasions of unrest. He highlighted the need to bridge the gap between different areas and to improve the relationship between the police and the private sector.

The President stated that the events in the Phoenix area in KwaZulu-Natal during the Unrest in South Africa were marked by vigilantism and racial tensions. Private citizens or individuals protecting their property engaged in actions that resulted in the loss of many lives. The government regrets and condemns these actions fuelled by racial tensions and emphasises the importance of maintaining a non-racial and non-tribal society.

The President noted that factionalism within the ruling party has influenced government functionality, including the State Security Agency. The President acknowledged the challenges and problems within the ANC and emphasised the need to renew the party, and to prevent the misuse of state resources for internal battles.

The deployment of the South African National Defence Force (SANDF) internally is a political decision made by the President as the commander in chief. SANDF's role is to support other elements of the state, particularly the police, in exceptional circumstances. The deployment of the SANDF during the Unrest was influenced by the information and assessments provided by those on the ground.

The private sector played a supportive role in assisting both SANDF and SAPS during the Unrest. The government recognises the need to strengthen cooperation between the police and the private security establishment.

Socio-economic challenges, such as unemployment and economic inequality, pose threats to national security. The President indicated that government is working on addressing these challenges through the Economic Reconstruction and Recovery plan and various ideas proposed by the economic cluster and advisory council. Efforts are being made to create jobs, strengthen state-owned enterprises, and create a conducive environment for private sector investment.

Allegations of Coordinated, High-Level Crime

The President declined to comment on judicial proceedings and emphasised the separation of powers between the judiciary and the executive. He assured that the National Prosecuting

Authority (NPA) operated independently, with the executive only overseeing budgetary needs. He acknowledged the NPA's need for independence and highlighted that cases were not discussed at a high level. He characterised the July Unrest as an attempted assault on democracy and stated that the Africa Report confirmed the organised nature of the events.

The President confirmed that his analysis of the July Unrest being planned and orchestrated was based on information, knowledge, and reports. He acknowledged the NPA's need for capacity-building in various areas, including forensic investigation.

The President expressed full support for the South African Human Rights Commission (SAHRC) and commended its work in response to the July Unrest. He explained that the SAHRC would complement the outcomes of the expert panel report, which did not extensively address human rights issues.

Scale of Loss of Life and Livelihood

The President acknowledged the significant loss of life and emphasised the importance of recognising the human impact and human rights in investigations. He mentioned the number of lives lost during the Unrest and expressed the need for public recognition and memorialisation.

Humiliation of the Nation

The President referred to the symbolic significance of the Heart of Darkness novella and drew parallels between the impact of Western imperialism and the events of July. He discussed the humiliation experienced by the colonised and expressed his perspective on the relationship between the pre- and post-1994 South African society structures.

Evidence on the Current Economic Situation in SA

The President highlighted the structural issues inherited from colonialism and apartheid that contributed to the current economic situation. He acknowledged the high levels of unemployment and the spatial inequality that persist in the country.

State Responsibility

According to the Africa Report, it was stated that the cabinet must assume overall responsibility for the July unrest and hold former public office bearers accountable for their failure to fulfil their duties. The President and the cabinet accepted collective responsibility, while recognising the President's role as the head of the national executive. As per the Constitution, the President exercises executive authority in conjunction with other cabinet members, appoints the Deputy President and Ministers, assigns their powers and functions, and appoints the military command.

When asked about accepting responsibility as the Commander in Chief of the SANDF, the President responded by saying, "Yes, I do take responsibility because it is important that as we move forward and implement reforms and changes, we acknowledge the horrendous period we have been through. This will enable us to prevent such incidents from occurring again by addressing the weaknesses and gaps that existed. That's why we take responsibility for what happened". The President has acknowledged that the state's response was "found wanting in several aspects".³²³

The events of July were not only an assault on democracy but also infringed upon the people's rights to freedom, security, movement, association, trade, and property. In some cases, people's rights to health and food were also violated. Most importantly, it was a humiliating moment for many citizens. The President deeply regrets these circumstances, and the loss of hundreds of lives is the most significant indictment of all. The July 2021 events should never have occurred, and efforts will be made to ensure they never happen again. As a nation, mourning is extended to those who lost their lives.

Conceptions of Justice & Transformative Justice

The President emphasised the need for justice and for holding those responsible for instigating, planning, and directing the Unrest accountable, through the prosecutorial process. Assurances were made that no effort will be spared in holding the instigators and perpetrators of violence accountable.

The President perceives justice as a healing process, drawing on the example of the Truth and Reconciliation Commission (TRC). The President firmly believes that there can be no healing without justice. To recover from this collective national trauma and humiliation, it is crucial for the nation to stand together as one. The focus is not only on rebuilding physical structures but also on mending the fragile relationships between communities, as several parts of the country still face such challenges. The President considered these National Hearings as an essential part of providing catharsis for the nation.

The President supports the SAHRC's work and expects the investigation to shed light on human rights violations.

These hearings will contribute to the historical record and help the nation to come to terms with a painful chapter in its history. Drawing from the words of the late Archbishop Desmond Tutu, the President believes that giving emotions a name is how the impact of what happened can be understood. However, it is crucial to ensure that hurt and humiliation do not divide the nation or turn its people against each other.

Conclusion

The President expressed hope that the National Hearings would contribute to the healing process for those who testified, as well as for those who followed the proceedings, and for the families who lost their loved ones. Amidst the trauma, the restoration of faith in humanity was witnessed through those who stood against looting, guarded shops, and delivered food. The President envisions that in the future, it will be acknowledged that the determination to rebuild and unity transcended the divisions of race and class, leading the nation to pursue the common good.

3.2. ANALYSIS OF EVIDENCE

This section analyses the lapses in security and crime governance, against the Constitutional obligations under Section 11, the right to life and Section 12, security of person, statutory duties which arose during the Unrest. the precepts of “national security” and the Presidential obligations, as envisioned.

The Constitution

Governing Principles of Private and National Security

The Unrest presented threats to national and individual or private security, threatening indirectly or directly, the right to life and security of a person.³²⁴ Sections 11 and 12 of the Constitution read as follows:

- “11. *Life.— Everyone has the right to life.*
- 12. *Freedom and security of the person.— (1) Everyone has the right to freedom and security of the person, which includes the right—*
 - (a) *not to be deprived of freedom arbitrarily or without just cause;*
 - ...
 - (c) *to be free from all forms of violence from either public or private sources;*

- (d) *not to be tortured in any way; and*
- (e) *not to be treated or punished in a cruel, inhuman or degrading way.”*

To maintain national peace and ensure domestic security, Section 198 of the Constitution with some exceptions³²⁵, precludes South African citizens from participating in national armed conflict.³²⁶ Read with the Constitutional precepts of the “national security” order³²⁷ the President, SAPS,³²⁸ SANDF and the security organs of state have reciprocal duties to uphold Section 198. Subject to Parliamentary authority and the National Executive, “national security” must -

- “(a) *... 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 to build better lives.”*
- (b) *...be pursued in compliance with the law, including international law.”*

South Africa is a democratic state founded on, amongst others, the values of human dignity, the achievement of equality and the advancement of human rights and freedoms, and supremacy of the Constitution and the rule of law.³²⁹

Obligations imposed by the Constitution “must be fulfilled” and any conduct inconsistent with the Constitution is invalid.³³⁰ The obligations for national, provincial and local government, more generally, include the obligations (within its jurisdiction) to:

- “(b) *secure the well-being of the people of the Republic;*
- (c) *provide effective, transparent, accountable and coherent government for the Republic as a whole;*
- (d) *be loyal to the Constitution, the Republic and its people”.*³³¹

In addition to setting out these obligations, the Constitution requires Members of Cabinet (‘Ministers’) (National government) and Members of the Executive Council (‘MECs’) (provincial government), through the taking of an oath or making of an affirmation, to confirm their loyalty to the Constitution and the people of South Africa and to confirm their undertaking to “perform the functions of [their respective] offices conscientiously and the best of their abilit[ies].”³³²

The Constitutional provisions apply with equal force to local government. In respect of local government, the Constitution requires that a municipality “strive, within its financial and administrative capacity to achieve its objectives set out in the Constitution.”³³³ These objectives are:

- “(a) *to provide democratic and accountable government for local communities;*
- (b) *to ensure the provision of services to communities in a sustainable manner;*
- (c) *to promote social and economic development;*
- (d) *to promote a safe and healthy environment; and*
- (e) *to encourage the involvement of communities and community organisations in the matters of local government.”*³³⁴

In addition to the above, section 195 prescribes basic values and principles applicable, including but not limited to, ‘professional ethics,’ ‘accountability and transparency,’ and ‘effective resource management’ to all tiers of public bodies and states.”³³⁵

The Public Service Act (‘PSA’)³³⁶ and the Public Service Regulations (‘PSA Regs’)³³⁷ provide the statutory regulatory frameworks for the administration, organisation and conditions of service for the public service of South Africa³³⁸.

3.2.1. National Security Constitutional Mandate and Statutory Duties

SAPS: Intelligence Legal Framework

- 3.2.1.1. The evidence heard before the Panel bears to the intelligence gathering and production obligations which SAPS and the SSA are respectively mandated to provide.³³⁹ The National Intelligence Act³⁴⁰ (‘**NSI Act**’) defines national security intelligence: Section 1.

“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.”

- 3.2.1.2. Section 11(1) of the South African Police Service Act³⁴¹ (‘**SAPS Act**’) read with Section 207 (2),³⁴² places an obligation on the National Police Commissioner to exercise control and manage police services.

- 3.2.1.3. Crime and state security intelligence is necessary to fulfil SAPS’ Constitutional duties in the prevention, combatting, protection and investigation of crime, safely and security, Section 2(3) of the National Intelligence Act (‘**NSI**’) obligates SAPS to:

*“gather, correlate, evaluate, co-ordinate and use crime intelligence in support of the objects of the SAPS;
institute counter-intelligence measures within [SAPS]; and “supply crime intelligence relating to national strategic intelligence to NICOC.”*³⁴³

- 3.2.1.4. The Head of the CID must supply high-level, national interest, crime intelligence to the DPCI when requested.³⁴⁴ Which includes the gathering, correlation, evaluation, coordination, and the use of crime intelligence, in the performance of the DPCI's functions.

SSA and SANDF: Intelligence Framework

- 3.2.1.5. SANDF's primary objective is to defend and protect the country's territorial integrity and its people in accordance with Constitutional principles and international law regulating the use of force.³⁴⁵ The Defence Act 42 of 2002 ('**Defence Act**') governs the functioning of SANDF of which the highest decision-making body is the Council of Defence, chaired by the Minister of Defence and a Defence Staff Council.³⁴⁶ Military response is informed by national security intelligence as defined in the NSI Act. SANDF has an obligation, subject to the NSI Act, to "gather, correlate, evaluate and use," national strategic intelligence and supply this intelligence to NICOC.³⁴⁷ Section 2 (4) specifically excludes SANDF from covertly gathering intelligence of a "non-military nature," except where the President on the advice of the Minister of Defence, employs the SANDF in co-operation with SAPS,³⁴⁸ with the authorisation of NICOC in accord with Cabinet.³⁴⁹

SAPS Operational Framework

- 3.2.1.6. Section 205 of the Constitution governs the objectives and functions of SAPS, delineating prevention, combatting, and investigations of crime, at a national and provincial level. The National Commissioner, appointed by the President, accordingly, exercises operational control on a national level, allocating resources provincially and in accordance with the directives of the Minister of Police and national policing policy.³⁵⁰
- 3.2.1.7. The Provincial Executive is responsible for policing at a provincial level,³⁵¹ therefore the Provincial Commissioners are in control of distributing police capacity and strength to the stations, offices and units of their respective province.³⁵² When it is necessary to restore and maintain public order, such as under the circumstances of the Unrest, a request for national POP Units to be employed is made by the Provincial Commissioner to the National Commissioner.³⁵³ The national POP Units are deployed in two ways: either by and subject to the directions of the Provincial Commissioner or by the President, who may in consultation with Cabinet, direct the National Commissioner to deploy the national POP Unit, where the Provincial Commissioner is unable to maintain public order.³⁵⁴

- 3.2.1.8. The Provincial Commissioner has a specific responsibility where the community is concerned, ensuring that Community Police Forums (**CPFs**) are established at police stations in the province and which promote the co-operation with communities.³⁵⁵

SANDF Operational Framework

- 3.2.1.9. Only the President is empowered to authorise the deployment of SANDF units nationally, in terms of Section 201(1) in cooperation with SAPS to prevent and combat crime and to maintain and preserve law and order within the Republic.³⁵⁶ The Minister of Defence is required to give notice in the Government Gazette within 24 hours of commencement of employment. Service may only be performed in the area and place as determined by the President at the request of the Minister of Defence and the Minister of Safety and Security, as gazetted.³⁵⁷ SANDF units employed nationally must adhere to the Code of Conduct and Operational Procedures approved by the Minister. The Chief of the Defence Force and the National Commissioner of the South African Police Service may issue specific guidelines regarding co-operation between the SANDF and the SAPS when employed, which also govern the co-ordination of command over and control of members of the SANDF and the SAPS.³⁵⁸

Presidential Mandate: Section 85 (2)(b)- (c), read with Section 198:

- 3.2.1.10. The President as head of state, head of the national executive and Commander in Chief of the national defence force, bears the following Constitutional mandate in fulfilling Section 198, as contemplated in Section 85 -

“(2) *The President exercises the executive authority, together with the other members of the Cabinet, by –*

...

(b) *developing and implementing national policy;*

(c) *co-ordinating the functions of state departments and administrations”.*

- 3.2.1.11. Further, Section 92 and Section 96 provide that Ministers are individually accountability to the President, and collectively to the National Assembly in the exercise of their duties and powers.³⁵⁹ Section 92 requires Members of Cabinet to “act in accordance with the Constitution,” and regularly report to Parliament.³⁶⁰

National Security Council (NSC)

3.2.1.12. In terms of Section 101(1) of the Constitution, the President established the National Security Council (NSC).³⁶¹ Section 209(2) places a duty on the President to either appoint a head of the intelligence service or designate a member of Cabinet or take up the role himself in terms of Section 209(1). Read with Section 210, the NSC's "objects, powers and functions" should be regulated by national legislation. The NSC is comprised of Ministers in security service departments.³⁶² The NSC's mandate is to "ensure the national security" of South Africa and under paragraph 4.2:

"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 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."

3.2.2. National Prosecuting Authority

3.2.2.1. The NPA derives its mandate from Section 179 of the Constitution and is ratified by the National Prosecuting Authority Act ("the NPA Act"), set out in Section 20(1).³⁶³ The NPA has no investigative powers with the exception of the Investigating Directorate.³⁶⁴ In accordance with the NPA Act, criminal investigations are instituted by a division of SAPS (including the DPCI), a docket is prepared and the matter referred to the NPA (for DPP) decision.³⁶⁵ In accordance with its mandate, the NPA will either proceed or decline to prosecute where insufficient evidence is available. A prosecutor may instruct SAPS, where evidence is outstanding, to further investigate. In its evidence the NPA has expressly directed that the NPA is dependent on SAPS to conduct a thorough investigation, as is their purview, the NPA's role in criminal investigations is merely to provide guidance.

3.2.2.2. The NPA's Prosecution Policy sets out the criteria which govern prosecutorial decisions:³⁶⁶

"1. A case must only be placed on the roll if there is evidence under oath or affirmation that establishes the elements of an offence and links the identified suspect to it ...this applies equally [to] a [decision docket] without any arrest

2. No final decision to proceed with the prosecution should be taken unless, [thorough] assessment of all available facts, evidence and circumstances, there is reasonable prospect of a successful prosecution.

3. *Sufficient facts and details must be obtained to draft a charge sheet or indictment...*
4. *Considerations [may] militate against the institution of prosecution...[including] –*
 - a) *diversion;*
 - b) *...de minimus principle;*
 - c) *prosecutor's [discretion] ... ; and*
 - d) *using the alleged offender as [witness] against another offender and the application of section 204(2) of the [CPA]"*

3.2.3. Private Security Industry Regulatory Authority (PSiRA)

- 3.2.3.1. PSiRA's was established by the Private Security Industry Regulatory Act, 56 of 2001 and is mandated to regulate and exercise effective control over the practice of the occupation of a security service provider in the public and national interest and the interest of the private security industry itself.³⁶⁷ Section 28 of the Act places a duty on the Minister for Safety and Security to prescribe a 'code of conduct' that must meet the requirements of Section 28 and must be legally binding on all security service providers, irrespective of whether they are registered with PSiRA or not, as well as on certain other persons.³⁶⁸ PSiRA provides that no individual except for a registered 'Security Service,' as contemplated in the Act, may render security services for *remuneration, fee or reward*.³⁶⁹
- 3.2.3.2. In 2021 South Africa was ranked among the 35 most dangerous countries in the world in terms of safety and security.³⁷⁰ The events of the July Unrest took place in this context of high-levels of organised crime,³⁷¹ coupled with South Africa's long-standing history of racially motivated violence, as canvassed elsewhere in this Report, growing public-service delivery protests violent xenophobic attacks, gender-based violence, murder³⁷² and frequent police brutality.³⁷³ Crime and violence in South Africa are, therefore, understood to be divisive³⁷⁴ and structural.³⁷⁵
- 3.2.3.3. The Commission recognises that the evidence presented before the Hearing Panel is also shadowed by a record of historical institutional failures within the security and crime state institutions, namely the SSA, Crime Intelligence and SAPS. Which includes allegations of corruption involving high-ranking members and the CID.³⁷⁶ While the Commission notes that several improvements have been made post-Unrest, to remedy these failures, including advancements in security and crime response training.³⁷⁷ Despite this progress, the evidence tendered to the Hearing Panel illustrates a crucial turning point for

government response to address the rise in polycrises framed against the polyvalent nature of South Africa's security-crime architecture.

3.2.3.4. Central to the examination of government's security-crime response, is the adherence to the rule of law. As is its mandate, the government was tasked to respond to the wide-scale violence and destruction of property which ensued. By the 10th of July 2021, approximately 89 malls were already damaged, including warehouses, banks, factories, ATMs and liquor outlets. While it was reported in General Sitole's evidence that 281 lives had been lost, the official count had been higher than 300.³⁷⁸, an official government account has yet to be published. Rule of law principles read alongside the Constitutional mandate of government stakeholders to protect national peace and security, place a concomitant positive duty on law enforcement bodies to also protect the right to life, livelihood and security of individuals. The principles of legal certainty, accountability, rationality, and fairness are those which protect against the abuse of power and arbitrariness.

3.2.4. Intelligence Gathering and Products:

3.2.4.1. The Crime Intelligence Division of SAPS had a duty to detect the unfolding unrest, which falls within its mandate. Conflicting evidence exists regarding the cause of these shortcomings.

3.2.4.2. On the one hand, the former National Commissioner of Police attributes the shortcomings to under-resourcing and a general lack of capacity. On the other hand, Minister Bheki Cele disagrees that there are budgetary constraints. Minister Bheki Cele further denies that he received intelligence reports detailing and warning of the Unrest and ensuing violence. Minister Cele's reliance on third-party intelligence which was obtained outside of the statutory security structures, indicates a failure to deliver intelligence to the Minister. The National Commissioner indicates that intelligence reports were received by his office prior to the Unrest, however, the modus operandi and details of how the Unrest would unfold were not indicated in these reports.

3.2.4.3. Contrary to Section 17F(6) of the SAPS Act³⁷⁹, as per Lieutenant. General Lebeya's evidence, crime intelligence appears to not have been supplied to the Hawks.

3.2.4.4. The Anonymous Witness's intelligence contributions may have been instrumental in gathering information and predicting the Unrest, which according to the Anonymous

Witness's testimony was supplied to Minister Cele. The Minister conducted his own operations, without General Sitole.

- 3.2.4.5. Additionally, the Anonymous Witness attempted to contact numerous individuals close to the Presidency. It appears that these early warnings had not been taken up by the Presidency or the SSA.
- 3.2.4.6. While the legal framework is not specific on governing the intelligence communication relationship between the National Police Commissioner and the Minister of Police, there appears to have been a breakdown in communication between Cele and Sitole during the Unrest. This may have further exacerbated the ineffectiveness of the SAPS response. The Commission notes that the incumbent National Police Commissioner, General Masemola indicates that steps have been taken to strengthen this relationship.³⁸⁰
- 3.2.4.7. According to former Minister Ayanda Dlodlo, the DG of SSA was conducting briefs as early as December 2020 with the Presidency. Former Minister Ayanda-Dlodlo indicated that the acting DG³⁸¹ at the time had taken over briefings with the President. As recorded in the "Africa Report" there are various administrative gaps in the gathering and coordination of crime and security intelligence which impacts the quality of intelligence, such as the lapse in early intelligence detection due to NIPS and NIE under-preparedness.
- 3.2.4.8. The intelligence reports submitted by the (former) Minister to the Commission include early warnings of an unrest as early as December 2020. The Commission notes that it is not clear whether SSA has been able to identify the following: firstly, the "shifting modus operandi" as described by Gen. Sitole, secondly, the highly organised and sophisticated nature of the security threat, thirdly the extent of influence of online mobilisation and 'weaponisation of the poor',³⁸² fourthly the susceptibility of KwaZulu-Natal and Gauteng, predisposed to political violence and factionalism. The poor quality and insufficient quantity of intelligence prior to the Unrest is, therefore, evident to the Commission.

3.2.5. State Coordination and Operations

Lapses in Coordination and Operations

- 3.2.5.1. Effective coordination among intelligence agencies, government entities, and law enforcement is vital to address security threats and protect critical infrastructure. Evidently, there is a breakdown in communication coherence between the following departments within the security intelligence agencies including the intelligence coordinative structures, namely PROVJOINTS and NATJOINTS.

- 3.2.5.2. The Commission noted that due to long-standing governance issues in the national security sector and SAPS, the government's intelligence and operational mechanisms failed to adequately identify and equally respond to the orchestrated and spontaneous elements of the Unrest. The Africa Report found the national security legal framework fails to set out "clear steps and protocols that the various players in intelligence...ought to follow in order to get information to decision-makers."³⁸³ The Africa Report also found that while the Presidential powers are clearly Constitutionally and statutorily defined, the mechanisms with which to employ intelligence and operations are "opaque."³⁸⁴ Further, the Africa Report opines that this may "limit the ability of the public and Parliament to hold the President accountable."³⁸⁵
- 3.2.5.3. The failure of the President to hold accountable all relevant individual Ministers and specific HOD's for their role in these lapses, has contributed to the absence of a comprehensive understanding of the degree to which the Unrest was orchestrated and coordinated.
- 3.2.5.4. The Commission noted that the private security sector units were more capacitated than SAPS and consequently SAPS relied heavily on SPOs. The Commission further noted that the crowd-management response administered by SAPS and PSiRA, which entailed the use of water cannons, tear gas and rubber bullets were not only ineffective crowd-dispersal measures, moreover they facilitated the violation of Section 11 (the right to life) and Section 12 (the right to freedom and security of the person) of the Constitution. The ill-handling of crowd-management response resulting in several deaths, significantly contributed to the overall impact on lives and livelihoods affected by the Unrest.

Public Order Policing and PSIRA

- 3.2.5.5. The development of policing, in particular public order policing (**POP**), in line with human rights norms is a symbolic reflection of transitioning public institutions which formerly propped up the pre-1994 apartheid public order. For example, the development of rights protections during detention, such as prevention of 'detention without trial,' read with Section 12(1)(b), 'symbolises a constitutional commitment that the abuses of past regimes will not be repeated.'³⁸⁶
- 3.2.5.6. Budgetary and resource constraints are often cited as the main concerns by law enforcement representatives, disregarding the issue of excessive force itself. The lack of suitable equipment and resources for handling public disorder has been a persistent problem, as highlighted in previous reports from the Commission.

- 3.2.5.7. The tendency of police to respond with the use of excessive force, such as firing rubber bullets or teargas to disperse crowds, is widely understood to escalate instead of “quell” violence during protest action.³⁸⁷ The evidence has clearly indicated that excessive use of force is not seen as an issue by representatives of law enforcement but instead that budgetary and resource constraints are the main areas of SAPS concern. In 2012, the SAHRC’s report on police brutality, which was released following the assault and death of Andries Tatane during a service delivery protest march in Ficksburg in the Free State, asserted that the SAPS was “not suitably equipped to quell public disorder...”³⁸⁸ It is evident that this is an issue that continues to prevail in the context of escalated ‘protest action’.
- 3.2.5.8. Concerning evidence indicated private security officers (PSOs) abuse of roles and powers.³⁸⁹ Among these irregular private security practices, include irregularly usurping the role of POP units without appropriate crowd management training (which training PSiRA admits to not providing despite the clear need therefore). In crisis situations like the July Unrest, PSCs take on roles that should be handled by the SAPS due to SAPS capacity limitations. This reliance on under-regulated private security further erodes public confidence in SAPS. PSiRA, however, should be aware of the danger of PSC’s becoming de facto law enforcers who lack the training and expertise to properly fill those roles, and act accordingly. PSiRA gave evidence to the effect that it conducted post-Unrest investigations into various complaints arising out of PSCs’ and PSOs’ conduct during the Unrest. While this response was indeed necessary under PSiRA’s mandate, it was also wholly reactive. Evidence presented that the necessary regulations were not adequately enforced, proving a failure on PSiRA’s part to regulate the private security sector in the lead-up to the Unrest. PSCs operated with an unregulated and unchecked policing power of PSCs during the security crisis which unfolded.

Rule of Law and Human Rights

- 3.2.5.9. It is clear from the evidence gathered that the government was tasked to respond to wide-scale violence and destruction of property. By the 10th of July 2021, approximately 89 malls were already damaged, including warehouses, banks, factories, ATMs and liquor outlets. While it was reported in General Sitole’s evidence that 281 lives had been lost, the official count had been higher than 300. The government has as yet not provided an accurate and official accounting of the lives lost and those missing during the Unrest.

- 3.2.5.10. For a nation to maintain the rule of law its citizens must respect the rule of law, yet this respect is contingent on the strength of public trust and confidence and inextricable to the social compact. By analysing the classic notion of state authority and the enforcement of the rule of law presented in the evidence, the following groups 1) those who hold power, 'office bearers', 2) security and the JSCP Cluster (i.e.. civil servants) have failed to uphold what is required for the rule of law to work in relation to the third and important category 3) the public.
- 3.2.5.11. The NPA's evidence presented a plethora of criminal justice challenges, which limited the NPA's capacity to deal with criminal matters arising out of the Unrest, especially organised crime and high-profile matters. In some cases, it was recorded that dockets were not before the court, witnesses were absent, and matters were discharged or withdrawn by the DPP for lack of evidence. The Commission acknowledges that it is common cause for the NPA in its ordinary course of business to experience these challenges. However, the testimony of the NPA representatives coupled with the statistical data on the criminal matters, illustrate that at the time of the Unrest the NPA and the courts, including DoJ stakeholders, were overwhelmed by the adverse effects of Covid-19, the inability to secure MLA or lack of expertise in cyber-crime offences, over-burdened court rolls, prolonged investigations and absent or uncooperative witnesses.
- 3.2.5.12. Such are the limitations of traditional criminal justice approaches, concepts of 'vigilantism or *ultra vires* justice,' and the need for restorative justice processes. It emphasises the importance of including communities in the justice process which promotes human interdependence and respect. The report suggests that justice should address both the personal and collective harm caused by physical and psychological suffering. The National Implementation Plan for the Service for Victims of Crime ('Victims Charter') was approved by Cabinet in 2004, which provides minimum standards for the treatment of victim-centred justice and affirms the rights of all victims of crime.³⁹⁰ The Victim Charter provides victim-centred guiding principles to the NPA.
- 3.2.5.13. The National Implementation Plan for the Service for Victims of Crime ('Victims Charter') was approved by Cabinet in 2004, which provides minimum standards for the treatment of victim-centred justice and affirms the rights of all victims of crime.³⁹¹ The Victim Charter provides victim-centred guiding principles to the NPA. Additionally, the VSS Bill advocates specifically for the legal representation of a victim. It calls for the State to endure the legal costs for the victim in cases whereby victims wish to sue the accused for damages. It also encourages providers of services to victims to be **accredited** to ensure that their services

comply with the norms and standards set by the Department of Social Development for all facilities.

3.2.5.14. Read with the Constitutional mandate and statutory duties related to peace and security, there is a positive duty on each government stakeholder to protect the right to life, livelihood and security.³⁹² Concurrently, there is a negative state duty to restrain from such violence. The right not to be subjected to violence by private or state actors could apply in circumstances of protest, 'terrorism'³⁹³ and a 'state of disaster.'³⁹⁴ Testimonies from the community and Business Sector during the hearing indicated that it represents public dissatisfaction with issues such as high unemployment, poverty, inequality, unaccountable governance, and intra-party tensions. The President's Expert Panel Report and experts elsewhere concur that criminality is not only a "reflection" of broader social discontent but also a political expression of this frustration.³⁹⁵

3.2.6. Political Discourse, Organisation and Orchestration

Politicisation and State Discourse

3.2.6.1. Crime related to protest action and civil unrest plays a significant role in understanding the causes and consequences of the Unrest. However, it must be understood in the context of symptomatic governance issues such as the breakdown in the social contract, the principles of the rule of law and growing public discontent.

3.2.6.2. The prevailing narrative presented by the government's response however relies on two themes:

- i. That the central cause of the Unrest was an organised attack on the current democratic dispensation; and
- ii. the opportunistic exploitation of pre-existing socio-economic vulnerabilities.

3.2.6.3. The convergence of the #FreeZuma campaigns and protests on the one hand, with the civil unrest that ensued following former President Zuma's incarceration, on the other, requires further examination. As detailed earlier in this report, by 1 July 2021, and in direct response to the ruling of the Constitutional Court a day prior, supporters of former president Jacob Zuma gathered at his Nkandla homestead. War cries were the order of the day, represented mainly in three categories: 1) those in the regalia of the African National Congress (ANC), 2) those in army fatigues and apparatus representing uMkhonto

weSizwe, and 3) Amabutho: the Zulu Traditional Army. Many weapons were on display and sounds of live ammunition featured prominently in media reports of the events as they unfolded. Former President Jacob Zuma's son, Mr Edward Zuma, was reported to have threatened bloodshed if his father was incarcerated. Further, and indeed, the presence of messages favouring former President Jacob Zuma and calling for the removal of President Cyril Ramaphosa at sites of destruction and looting further support the view that the Unrest was directly linked to the #FreeZuma campaigns and the political conflict surrounding them.

- 3.2.6.4. During the July Unrest, information dissemination went beyond traditional media and official government statements. Government officials' statements were widely published, but not all Ministerial evidence supported claims of a coordinated insurrection. Security experts referred to it as a "semi-insurrection" with chaotic elements and some coordination.
- 3.2.6.5. The absence of a clear state narrative or counter-narrative was noted, emphasising the need for accurate information and fact-checking. Social media platforms played a significant role in shaping public perception, with testimonies indicating encouragement of criminal behaviour. The report highlights three dimensions of social media: atmosphere, masterminds, and cybercrime networks. Misinformation and disinformation pose a national security concern, and state departments need better communication strategies. The NCI and SSA lacked expertise compared to independent monitoring bodies, such as the Anonymous Witness, to monitor social media activity, which would have forewarned the government about the looming Unrest. Fake accounts complicate the measurement of false information's impact.

Orchestrated and Organised Elements

- 3.2.6.6. Testimonies from witnesses in the business sector, along with the evidence from the Anonymous Witness, Gen. Sitole, Minister Bheki Cele, and former Minister of Defence, Nosiviwe Mapisa-Nqakula, highlight the orchestrated and organised nature of the unrest. The damage caused included the razing, destruction, and damage to warehouses, factories, banks, ATMs, and schools. Critical infrastructure such as police stations, ports, airports, schools, hospitals, and large malls were specifically targeted using petrol bombs and sophisticated equipment. This provides strong evidence that groups and individuals had access to resources enabling high-level crime. Along with social media evidence, it is

evident that mobilisation resources were delivered to less sophisticated groups on an ad hoc basis.

Role of Social Media in Facilitating Unrest

- 3.2.6.7. The evidence also indicates the significant role of social media in coordinating and spreading the actions of looting, arson, and roadblocks during the unrest. This highlights its importance in mobilisation and movement, suggesting that the unrest involved organised efforts beyond opportunistic looting. The Commission found sufficient evidence throughout the investigation indicating that corrupt elite networks played a significant role in exacerbating the level of violence during the unrest.
- 3.2.6.8. The socio-economic challenges in South Africa, such as high unemployment rates, poverty, and spatial inequality, provided fertile ground for the unrest to escalate. The unrest became a clear target for organised political or criminal groups seeking to destabilise the rule of law and governance. Addressing these underlying socio-economic issues is crucial to prevent similar incidents in the future and foster a more stable and equitable society.
- 3.2.6.9. The SSA has acknowledged the shortcomings of online intelligence information systems and has focused on developing the I²MS.

Corruption and Factionalism in State Security Structures

- 3.2.6.10. Although specific or substantial evidence of corruption within state security structures was not presented by the Ministers of SAPS, SANDF, and the SSA, evidence from the President, PSiRA representatives, and the Business Sector indicates that corruption and political factionalism corrode the functioning of the state. Multiple reports, including the 'Africa Report' and the findings of the Zondo Commission, have indicated state security erosion due to corruption and maladministration. The Commission acknowledges that the government institutions before the Hearing Panel were not forthcoming with these details and makes inferences based on the probative evidence presented.
- 3.2.6.11. The Commission further notes that Cabinet approved the Draft General Intelligence Laws Amendment Bill (GILAB) for submission to Parliament.³⁹⁶ GILAB seeks to give effect to the recommendations of the HLRP on the SSA as well as the implementation plan of the recommendations of the Zondo Commission.
- 3.2.6.12. GILAB seeks to provide for the following:³⁹⁷

- “a restructure the intelligence services to provide an institutional architecture that enables effectiveness and efficiency by establishing the domestic intelligence agency and the foreign intelligence service;*
- b remedy the defects in the functioning of the Signals Intelligence Capacity as confirmed by the Constitutional Court³⁹⁸;*
- c address the weaknesses identified through the Financial Action Task Force (FATF) process, including measures to combat money laundering and terrorist financing by empowering the national security structures to investigate and conduct security assessment if a person or institution is of national security interest;*
- d Strengthen measures to regulate and coordinate the private security industry as part of a broader national security approach; and*
- e put in place measures to regulate the conduct of former members of the service and others with access to intelligence information.”*

3.2.6.13. The amendments are envisaged to strengthen the oversight of the intelligence agencies by bodies such as the Inspector-General of Intelligence, the JSC on Intelligence and the Auditor-General of South Africa.

3.2.6.14. Additionally, GILAB provides for two intelligence agencies instead of one centralised agency. If passed, the SSA would comprise two separate intelligence branches, one foreign and one domestic. Rendering the national intelligence authority subject to two directors-general heading two separate departments.

3.2.6.15. The Commission notes several issues which have been raised by NGOs during the public consultation process. These include concerns raised over the expansion of the SSA's vetting powers; expansion of mass surveillance capabilities through the National Communications Centre (“NCC”), whose decision in *Amabhungane* declared that the NCC's bulk surveillance operations were unlawful³⁹⁹; inadequate delivery on oversight and accountability; expanding the definitions of national security which are vague and not clearly defined.⁴⁰⁰

3.2.6.16. The Commission recommends full public consultation with the Commission, NGO's and civic stakeholders on how these developments may directly affect and improve the realisation of national security as enshrined in Section 198 of the Constitution while balancing the right to privacy and security.

3.2.6.17. The Commission notes that the Investigating Directorate Against Corruption (IDAC) is envisioned by the NPA Bill for Anti-Corruption Efforts, now tabled before Parliament. Which envisages the extension of NPA powers through IDAC, to⁴⁰¹ -

“... prioritise and to investigate particularly serious criminal or unlawful conduct committed in serious, high-profile, or complex corruption, commercial or financial crime; and

The necessary infrastructure and resources to perform these functions.”

- 3.2.6.18. While strengthening the fight against corruption through legislative development is welcomed, the NPA Bill does not specifically draw out or delineate the separation of roles and functions between IDAC and the DPCI or the Hawks.⁴⁰² In light of the consistent coordination and communication challenges faced by security and crime intelligence structures as outlined in this Report, the role of IDAC in conjunction with the joint operational structures for national security should be seriously reflected on before its establishment.

Polycrisis, Protest Action and Organised Crime

- 3.2.6.19. Illegal protest action is often characterised by violence, vandalism, and destruction. These actions, including urban riots, social discord, and civil unrest, exacerbate state security weaknesses. Organised criminal groups take advantage of these security lapses to engage in profit or politically-driven criminal activities. These groups may have political affiliations and links, as evidenced by the Anonymous Witness and social media connecting criminal activity to networks like the RET and Twitter vectors such as 'African Soil. ' Analysing organised crime involves identifying its origin, nature, key role players, and the extent of its modus operandi. These groups may be structured hierarchically based on social, familial, or ethnic ties, or political affiliation, or may be more informally or loosely structured around traditional common crimes.
- 3.2.6.20. Evidence presented that the spread of misinformation and disinformation has the potential to be weaponised through open and closed-sourced media. The nature of the 'criminal complex' during the Unrest, as best described by the SAPS witnesses, in that criminality during the Unrest was an "evolving nexus" It is understood that the the *modus operandi* kept developing rapidly in a matter of hours or days, as expressed by witnesses. At a more sophisticated level, organised criminal networks, including primary actors⁴⁰³, had proven to take advantage of the rapidly evolving disorder and mayhem which ensued, as a result, it proved technically challenging for law enforcement to respond adequately.
- 3.2.6.21. Despite the technical challenges presented to the state security apparatus, clearly state security intelligence provides valuable insight into the "organised" and "orchestrated," elements within the unrest.

- 3.2.6.22. South Africa's history of violent protest action indicates recurring patterns of associated criminality. Testimony from David Bruce revealed that the SAPS's Iris System is outdated and that processes for recording protest incidents on the system fail to clearly differentiate between protest action that is peaceful and protest action that has a violent element.⁴⁰⁴
- 3.2.6.23. Testimonies from the community and Business Sector during the hearing indicated that it represents public dissatisfaction with issues such as high unemployment, poverty, inequality, unaccountable governance, and intra-party tensions. And while it is also agreed in The President's Expert Panel Report and other expert sources that criminality is a reflection of broader social discontent. The evident lack of preparedness to detect and combat sophisticated mobilisation of various degrees of crime.
- 3.2.6.24. Testimonies from witnesses in the business sector, along with the evidence from the Anonymous Witness, Gen. Sitole, Minister Bheki Cele, and former Minister of Defence, Nosiviwe Mapisa-Nqakula, highlight the orchestrated and organised nature of the unrest. The damage caused included the razing, destruction, and damage to warehouses, factories, banks, ATMs, and schools. Critical infrastructure such as police stations, ports, airports, schools, hospitals, and large malls were specifically targeted using petrol bombs and sophisticated equipment. This provides strong evidence that groups and individuals had access to resources enabling high-level crime. Along with social media evidence, it is evident that mobilisation resources were delivered to less sophisticated groups on an ad hoc basis.
- 3.2.6.25. The socio-economic challenges in South Africa, such as high unemployment rates, poverty, and spatial inequality, provided fertile ground for the unrest to escalate. The unrest became a clear target for organised political or criminal groups seeking to destabilise the rule of law and governance. Addressing these underlying socio-economic issues is crucial to prevent similar incidents in the future and foster a more stable and equitable society.

3.3. FINDINGS

In respect of the Causes of the apparent lapses in law enforcement by state security agencies, particularly the South African Police Service and the role of Private Security Companies in the Unrest, the Commission makes the following findings:

3.3.1. Lapses in Intelligence Coordination and Communication

- 3.3.1.1. SAPS failed to detect the planning and execution of the unrest, which falls within its mandate. A combination of factors appeared to have caused these shortcomings. Evidence tabled before the panel points to the lapses in under-resourcing and the consequent lack of capacity within Crime Intelligence. Evidently, there has also been a breakdown in coherent communication within the SAPS between Crime Intelligence, the National Commissioner of Police, relevant operational divisions and the Minister of Police.
- 3.3.1.2. The state's intelligence apparatus and approach to the Unrest have self-evidently proven to be ineffective. Excessive secrecy, insufficient resources and a lack of technological capability appear to have been the cause of the failure to detect and respond effectively to the planned Unrest as well as contribute effectively to stabilisation efforts.
- 3.3.1.3. The evidence points to a need for urgent and comprehensive improvement within SAPS and the crime intelligence structures in order to address systemic issues and ensure accountability to restore public trust, and confidence and prevent future instances similar to the unrest.

3.3.2. Inadequate Preparedness and Response of the National Security Council

- 3.3.2.1. National security as envisioned in Section 198 and Section 199 of the Constitution, would require the prioritisation and effective coordination of the national security apparatus through the NSC. The President, in his testimony, reflected that not focusing on the NSC was *“a great mistake on our part but at the same time, without putting it forward[s] as an excuse, we were called upon to focus more on the pandemic.”*
- 3.3.2.2. While the Commission acknowledges that the pandemic demanded immediate attention and resources, it could not have come at the expense of national security. The government had to strike a delicate balance between addressing public health concerns and upholding the fundamental principles of human rights. Even in times of external challenges, the protection and respect for human rights should have been maintained. By ensuring that the NSC responded to its proclaimed mandate, the government could have effectively responded to the pandemic while safeguarding the rights and liberties of its citizens.
- 3.3.2.3. The Commission therefore finds that despite the challenges caused by the pandemic, the President should have taken steps to ensure that the NSC was convened, that national

security was prioritised and an effective and transparent National Security Strategy was in place.

3.3.3. Insufficient Security Expertise and Resource Management

The state's response to the Unrest in the Provinces of KwaZulu-Natal and Gauteng was hindered by poor communication, coordination, planning, and high-level management. There was a delayed response and inadequate resource management, leading to an ineffective response to the crisis. Early warning signs were disregarded, and intelligence gathering and sharing were ineffective. There was a total breakdown in law and order in the affected areas for at least five days. The President, as the head of the executive, Ministers for Intelligence, Police Services and their Director's General committed to ensuring a timeous and effectively coordinated response to the unfolding crisis and omitted to prevent the breakdown in law and order in the affected areas.

3.3.4. Failure of Joint Security Intelligence and Operations Bodies

The National Joint Operational and Intelligence Structure (NATJOINTS) failed to promptly respond to the security risks information and early warning mechanisms provided by NICOC and this lead to the escalation of the violence.

3.3.5. Absence of Community Engagement in Case Reporting and Access to Justice

During the investigation, it became apparent that the victims of violence were not being adequately engaged with by SAPS or the NPA nor kept informed of their rights and the processes of the criminal justice system.

3.3.6. Lack of Accountability and Impunity within Justice Institutions

Despite probative evidence suggesting the involvement of former or current members of the security and law enforcement sectors in criminal activities during the unrest, neither the NPA nor the DoJCD could confirm any ongoing investigations or prosecutions against such individuals. The perceived lack of action, disciplinary measures, or prosecutions against such persons over the past two years are of concern.

3.3.7. PSiRA Findings: Poor Regulation and Abuse of Power

- 3.3.7.1. Evidence obtained during the investigation makes it apparent, that many private security companies failed to comply with regulations and operated without effective oversight. This is further apparent from the evidence of inadequate vetting of private security officers and the indiscriminate distribution of firearms to officers without firearm licences. PSCs thus largely operated during the Unrest, without proper and effective regulation. The PSiRA has failed in its mandate to report and address these contraventions of the law.
- 3.3.7.2. The evidence indicates that PSCs operated with an unregulated and unchecked policing power, including irregularly acting as Public Order Policing units without appropriate crowd management training (which training PSiRA admits to not providing despite the clear need therefore). In crisis situations like the July Unrest, PSCs appeared to have usurped the roles of the South African Police Service due to the capacity limitations within SAPS. This eroded public confidence in SAPS. These PSC's became *de facto* law enforcers who lacked the required training and expertise.
- 3.3.7.3. While the Commission commends PSiRA for taking action against PSCs found to have violated the law during the Unrest (as communicated by PSiRA in its letter of 23 May 2023), it finds that it failed to fulfil its duty to regulate the private security sector which resulted in the widespread violation of human rights during the Unrest.
- 3.3.7.4. PSiRA's code of conduct does not sufficiently incorporate human rights values, such as community engagement and compensation for victims in case of violations.

3.3.8. Government Accountability:

The Commission found that since the July Unrest, there have been several structural changes and shifts within the security cluster. In particular, the former Ministers of Defence and the SSA, the DG of the SSA and the National Commissioner of SAPS, have respectively either resigned or been removed from Cabinet and their positions.

3.4. RECOMMENDATIONS

In respect of the Causes of the apparent lapses in law enforcement by state security agencies, particularly the South African Police Service and the role of Private Security Companies in the Unrest, the Commission makes the following recommendations:

Absence of Community Engagement in Case Reporting and Access to Justice

- 3.4.1. The Commission recommends that the DoJCD, the NPA, the SAPS and Treasury must make capacity available for regular communication with victims and victim's families. An understanding that SAPS officials and the NPA are acting within the confines of the law may assist in the reduction of criticism of SAPS and NPA officials as well as reduce vigilante justice.

Comprehensive Database of Deaths

- 3.4.2. *The Commission recommends that* SAPS compile a full and comprehensive report on all unrest-related deaths and submit same to the Commission. A clear explanation of the circumstances in which these occurred must be included.
- 3.4.3. The Commission recommends that SAPS examines the high number of deaths as a result of police action during the unrest and implements measures to reduce the risk of such deaths in future, SAPS is required to provide the Commission with a report in this regard.

Develop a National Security Strategy

- 3.4.4. The Security Sector, which includes the State Security Agency, South African National Defence Force, and relevant stakeholders, must urgently develop a national security strategy and provide an assurance to the Commission and the public, that this plan has been developed and must take steps to implement it.⁴⁰⁵ This plan should aim to achieve, *inter alia* the following:

- v. strengthen cooperative governance within the security sector and promote government preparedness by establishing a clear and comprehensive NSS;⁴⁰⁶
- vi. strengthen intergovernmental coordination between national, provincial, and local authorities for a comprehensive and cohesive response to crises;
- vii. establish a multi-stakeholder task force for ongoing dialogue, collaboration, and monitoring of progress in addressing underlying causes of unrest; and
- viii. establish a specialised national disaster and crisis management unit within SANDF structures with specific training in early disaster management relief.

Improve Delivery of Security Information & National Security Intelligence

- 3.4.5. The Commission recommends that the Joint Standing Committee on Intelligence oversees the enhancement of the regular and consistent delivery of quality safety, security and emergency services to the public while combating information disorder.⁴⁰⁷
- 3.4.6. The Commission recommends that the Office of the President determines a framework for the escalation protocols within the Presidency to address and respond to information provided by anonymous witnesses and members of the public which prima facie are in the interests of national security in line with the precepts of Section 198 of the Constitution.
- 3.4.7. The Joint Standing Committee on Intelligence and the Inspector General of Intelligence (IGI)⁴⁰⁸ should take accountability for oversight over both the SSA and the Division of Crime Intelligence and the following proposed improvements, *inter alia* regularly vetting security access and intelligence, the development of a centralised data security system, which both the SSA and SAPS can share, could potentially offer a self-correcting solution to the breakdown in intelligence information sharing.

Improve Security Establishment and Rebuild Trust and CPFs

- 3.4.8. The Commission recommends that the Presidency, Cabinet and the respective Ministers and Departments which fall within the JCPS Cluster ensure that CPF's become more effective in order to build trust within the Communities and in doing so take note of the following:
- 3.4.9. Prioritise reform and capacitation of the SAPS to address deficiencies in personnel, training, and public order policing.⁴⁰⁹
- 3.4.10. Refer to both the 'Africa Report' and the HLRP which intimate the risks of politicisation of police and security functions. Meaningful community engagement with CPFs and a definitive consultative process with the Provincial and National Commissioner could potentially depoliticise the complex bureaucratic arrangements which appear to create operative lag-times, with devastating consequences.
- 3.4.11. The CPF reports should be regularly reviewed and allegations of CPF's being infiltrated by criminal elements should be taken seriously by SAPS.
- 3.4.12. Integration of neighbourhood watches and CPF's should be facilitated by local SAPS precincts, as it appears that neighbourhood watches operate parallel and at times collaborate with local CPFs, Metro Units and other law enforcement agencies. The public is therefore an invaluable resource and stakeholder for SAPS to invest in.

- 3.4.13. Fostering procedural justice, the capacity and ability for SAPS to carry out its functions in a procedurally correct manner without fear or favour: delivering intelligence on time, informing communities of growing instability, employing rights-sensitive POP methods, effecting arrests with the minimum force method and rooting out institutional corruption, are all areas where public confidence could be restored through proper procedural mechanisms.
- 3.4.14. Considering the consistent use by the SAPS of rubber bullets in crowd management.
- 3.4.15. Introduce a clear national instruction regulating the use of rubber bullets by SAPS members.
- 3.4.16. Routinely report on the use of rubber bullets including providing details of the use of rubber bullets by each unit involved in their use.

Regulating the National Security Council:

- 3.4.17. The Commission recommends that the President must take steps to ensure that regular meetings of the NSC are convened, ensuring it effectively and efficiently meets its mandate in terms of the presidential Proclamation No 13 of 2020. and that a public indication is given of the date/s of each NSC meeting once they have taken place.

Transparent Sharing of Judicial Proceedings

- 3.4.18. The Department of Justice and Office of the National Director of Public Prosecutions must engage directly with affected communities and provide transparent and comprehensive accounts of prosecutions and inquests conducted following the July Unrest. The SAPS must also be present at these engagements and give account of any pending investigations. These engagements should be convened at least twice a year until the investigations, inquest and prosecutions have been finalised.
- 3.4.19. This includes sharing a post-unrest report on the NDPP's assessment of access to justice in Gauteng and KwaZulu-Natal areas while ensuring a transformative and restorative justice approach. The information shared should strike a balance between the rights of the accused and the victims.

Improving Cyber-Crime Prosecution

- 3.4.20. The Commission recommends that the NDPP outlines the NPA's strategic response to cyber-crime, especially the crime of incitement to commit violence. The evidence furnished by law

enforcement, the national security sector, media and security experts has highlighted the rapidly developing threat of social media-mobilised violence. The Commission notes that several prosecutions of incitement to commit public violence resulted in the withdrawal of cases due to technical challenges presented by the complex nature of MLA proceedings.⁴¹⁰ The Commission encourages the NDPP to strengthen MLA practices between South Africa and other countries within the global community to safeguard the right to safety and security and to ensure successful prosecution of cyber-crime.

Private Security Sector

3.4.21. Implementation of Internal Human Rights Policy for Private Security Officers should be implemented with the following considerations in compiling a regulatory framework:

- vi. That all law enforcement and security sectors establish and enforce an internal human rights policy during the training of private security officers.
- vii. This policy should ensure that private security officers understand their roles exclusively under the law and are strictly prohibited from assuming the responsibilities of the SAPS during unrest, and protest actions.
- viii. In instances of unrest where the SAPS lacks the capacity with crowd management and where it may require the support and the assistance of PSOs, this must be done with the following proviso, the consent from the National Commissioner of Police is obtained and their assistance is supervised by SAPs.
- ix. The training of private security officers must align with Constitutional values, particularly in relation to the regulation of excessive use of force.
- x. Reports of disciplinary processes involving private security officers relating to the Unrest must be disclosed to the public, promoting transparency and accountability, with consideration being made of the provisions of POPIA, PAIA and other relevant statutory provisions.

Standardise the Use of 'Less-Lethal' Weapons in Crowd Management:

3.4.22. The Commission recommends that the Minister of Police, through written direction to the National Commissioner or by Regulation, impose a standard regarding the use of 'less-lethal' weapons in crowd management. This standard should align with international policing and crowd management standards, with a strong emphasis on minimizing the risk of human rights

violations and excessive use of force. Training programs should be updated to ensure that SAPS officers are adequately trained in the proper use of 'less-lethal' weapons, emphasising de-escalation techniques and the proportional use of force.

3.4.23. With regards to the limited personnel strength in the Public Order Policing (POP) units, the Commission recommends, that SAPS must provide a report to the Commission on steps taken to address, *inter alia*, capacity constraints, financial constraints, recruitment and training.

3.4.24. SAPS must ensure regular engagements, such as national symposiums, should be organised to promote solutions-based outcomes and foster professionalism and constructive dialogue on enhancing the protection of human rights during protests.

3.4.25. It is essential for SAPS and POP to prioritise de-escalation techniques, proportional use of force, and the safeguarding of human rights while effectively managing crowds and maintaining public order.

THE CONCLUSION - ISSUE 4: THE CAUSES OF THE JULY UNREST, WITH PARTICULAR FOCUS ON GAUTENG PROVINCE AND KWAZULU NATAL PROVINCE

- 4.1. The July Unrest is characterised as a violent culmination of deep-rooted political and social challenges the country continues to grapple with. However, it is largely attributed to typologies of organisation and orchestration of public discord, crime and protest. In this section, the Commission addresses Issue Four as a conclusion to this Report. While issues one, two and three were a breakdown of the overarching question, the cause(s) of the July Unrest, this section incorporates issues one, two and three as contextual and exacerbating factors of the Unrest and encapsulates the conclusion to this Report.
- 4.2. Evidence shows that acts which occurred during the Unrest were well orchestrated. The blocking of the N3, the calculated destruction of factories and warehouses (disconnection of security and fire alarm systems), the attack on government communication facilities at the Durban Port, and the bombing and theft of ATMs in multiple locations – together cannot be viewed as mutually distinct, neither could they have occurred without significant investment in resources.
- 4.3. Evidence further points to two types of actors in and during the July unrest. Primary actors led and executed the widespread destruction of property, and perpetrated arson attacks. They mobilised secondary actors, who participated in acts of theft at malls and other business premises.
- 4.4. The timing of the events of the July Unrest coincided with the incarceration of former President Jacob Zuma. This caused an intertwining that blurred the lines between where one ended, and when the other started. This intersection of events has led many to conclude that the two are related.
- 4.5. The intelligence reports of the period are helpful in so far as they reveal a picture of a fragile social fabric. For example, and according to the testimony of the former Minister of State Security, there were various security threats detected from December 2020, leading to the occurrence of the July Unrest – which revealed heightened and widespread social and political unease. In January 2021, a red alert was issued on threats to shut down KwaZulu-Natal and to demand the removal of President Cyril Ramaphosa. In April 2021 a warning was issued on a threat to target national highways in Gauteng and KwaZulu-Natal Provinces (in particular the N3 and the N2), and to torch freight trucks belonging to companies that employed foreign nationals. In June 2021, communities across Soweto

were being mobilised to take action against foreign nationals and to rally for the removal of drug dealers from townships. During the same month, there were planned protests within the taxi industry in eThekweni Metro CBD and in Richards Bay, which is located in the Umhlathuze Local Municipality. The protests were scheduled to occur on 1 July 2021 – a few days before the July Unrest took place.

- 4.6. The roles, resources, and opportunities of the various groupings detected by the State Security Agency as posing serious threats are critical in weaving the narrative of the July 2021 Unrest.
- 4.7. Evidently, and for a sustained period between December 2020 to July 2021, a diverse range of sectors and actors, related and/or unrelated, and with varying agendas, were simultaneously mobilising against the security of the state. The red and orange alerts issued by the State Security Agency on the threats posed demonstrate high levels of resourcefulness. Within this context, the historically dramatic moment of the unprecedented incarceration of a former President was occurring.
- 4.8. On 29 June 2021, the Constitutional Court found President Jacob Zuma guilty of the crime of contempt of court. He was sentenced to undergo 15 months' imprisonment and to submit himself to the South African Police Service within five calendar days from the date of the order. Subsequently, public discourse, social commentary, and media attention were largely invested in the tense historical moment. The mobilisation of protest actions, and population of the #FreeZuma / #HandsOffZuma campaign on social media and other platforms, occurred against this backdrop.
- 4.9. In light of the overarching state of concurrent unrests, the Commission has not been provided with clear evidence naming specific identifiable groups or individuals who were primary actors in the Unrest. While the evidence points to high-level orchestration in the modus operandi of the July Unrest, an overarching common purpose or intention could not be established. It is unclear whether the intention was to facilitate profit-driven crime, or whether it was to use the conditions of instability as a vector to achieve a specific political agenda such as 'insurrection,' or the measure of both as inter-related goals. Therefore, while the evidence presented to the Commission points decidedly to these unspecified goals playing a significant role in driving the July unrest, it was not possible to determine exactly to what extent each goal influenced the overall outcome.
- 4.10. The scale and degree to which the violence and destruction were exacerbated, is symptomatic of the unresolved and underlying national systemic conditions that created

the “fertile ground” in which the July Unrest took place. These exacerbating factors include an economy undergoing post-Covid-19 recovery, high rates of unemployment, high levels of lawlessness and criminality in the country, systemic unfair discrimination, deep socio-economic divides, and the politicisation or hollowing out of the security sector. The Commission therefore finds that the causal nexus of the widespread violence, destruction and overall instability, is the coordinated effort of organised groups and individuals, or groups of individuals who opportunistically exploited this “fertile ground” in an attempt to usurp the rule of law and prevailing system of governance.

- 4.11. As we move forward, we must learn from the events of the Unrest and take decisive actions to address the grievances and frustrations that led to such violence. This report serves as a vital resource, offering valuable insights and recommendations that, if heeded, can guide South Africa towards a more prosperous and stable future.
- 4.12. The journey to a truly democratic and equitable South Africa may be challenging, but it is a journey that must be undertaken with determination and resolve. By confronting our past honestly, acknowledging present challenges, and working together to effect positive change, we can build a nation where all its people feel valued, protected, and empowered. The Unrest serves as a wake-up call, urging us to redouble our efforts to build a united, inclusive, and prosperous South Africa for generations to come.

In accordance with section 18(4) of the South African Human Rights Commission Act—

“If the Commission makes any finding or recommendation in respect of a matter investigated by it known to the head of the organisation or institution or the executive authority of any national or provincial department concerned, the head of the organisation or institution or the executive authority of any national or provincial department concerned must within 60 days after becoming aware of such finding or recommendation respond in writing to the Commission, indicating whether his or her organisation, institution or department intends taking any steps to give effect to such finding or recommendation, if any such steps are required.”

¹ SAPS is not the “custodian of the strategy.” NICOC is responsible for the NSS and the (current) National Commissioner indicates that the strategy is in an advanced stage of development SAPS Response (12 September 2023) at 2.

² Recommendations have been noted and welcomed by the SSA. The SAHRC is invited as a stakeholder to be consulted in the process of a national security review, see further *SSA Response*, at 4.

³ The (current) National Police Commissioner Gen. SF Masemola has noted the recommendations in the “Africa Report” and are in the process of implementing a coordinated approach and regular monitoring by the Strategic Management Component of the SAPS. A progress report and implementation plan has been compiled in the “Africa Report,” which recommendations are soon to be presented to the Portfolio Committee on Police.

⁴ See further evidence under the NPA, challenges to prosecuting online crime.

⁵ The oral testimony of the President of the Republic of South Africa, when appearing before the Panel on 1 April 2022. The testimony can be accessed at: <https://www.youtube.com/watch?v=bjv8pU9RmEw>.

⁶ In accordance with Regulations issued in terms of section 27(2) of the Disaster Management Act, as gazetted.

⁷ IMF ‘IMF Country Report No. 20/33 2019 Article IV Consultation – Press Release; Staff Report; and Statement by the Executive Director for South Africa’ January 2020. Accessed at: <https://www.imf.org/en/News/Articles/2020/01/29/na012820six-charts-on-south-africas-persistent-and-multi-faceted-inequality>.

⁸ Statistics South Africa ‘Quarterly Labour Force Survey (QLFS) Q2: 2021’ Risenga Maluleke, Slide 7. Accessed at: https://www.statssa.gov.za/publications/P0211/Presentation%20QLFS%20Q2_2021.pdf.

⁹ *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma (Council for the Advancement of the South African Constitution, Ngalwana SC, the Helen Suzman Foundation Amicus Curiae)* [2021] ZACC 2.

¹⁰ *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others* [2021] ZACC 18 at paras 1, 2 & 142.

¹¹ *Ibid* at para 142.

¹² Kesa, D, ‘WATCH: “We are not scared”: Gunshots and protest on the way to Zuma’s Nkandla’, Times Live, 2 July 2021. Accessed at: <https://www.timeslive.co.za/news/south-africa/2021-07-02-watch--we-are-not-scared-gunshots-and-protest-on-the-way-to-zumas-nkandla/>; and Malinga, G ‘MK Vets vow to form “human shield” around Nkandla to protect Zuma’. East Coast Radio, 30 June 2021. Accessed at: <https://www.ecr.co.za/news/news/mk-vets-vow-form-human-shield-around-nkandla-protect-zuma/>.

¹³ AmaShabalala, M ‘Jacob Zuma makes first public appearance in Nkandla as his son vows there will be bloodshed’ Times Live, 3 July 2021. Accessed at: <https://www.timeslive.co.za/politics/2021-07-03-jacob-zuma-makes-first-public-appearance-in-nkandla-as-his-son-vows-there-will-be-bloodshed/>; and Malinga, G ‘MK Vets vow to form “human shield” around Nkandla to protect Zuma’. East Coast Radio, 30 June 2021. Accessed at: <https://www.ecr.co.za/news/news/mk-vets-vow-form-human-shield-around-nkandla-protect-zuma/>.

¹⁴ Malinga, G ‘MK Vets vow to form “human shield” around Nkandla to protect Zuma’. East Coast Radio, 30 June 2021. Accessed at: <https://www.ecr.co.za/news/news/mk-vets-vow-form-human-shield-around-nkandla-protect-zuma/>

¹⁵ AmaShabalala, M ‘Jacob Zuma makes first public appearance in Nkandla as his son vows there will be bloodshed’ Times Live, 3 July 2021. Accessed at: <https://www.timeslive.co.za/politics/2021-07-03-jacob-zuma-makes-first-public-appearance-in-nkandla-as-his-son-vows-there-will-be-bloodshed/>.

¹⁶ Moneyweb, 'Scale of SA looting destruction: the numbers are huge', the Citizen, 19 July 2021. Accessed at: <https://www.citizen.co.za/business/scale-of-the-destruction-the-numbers-are-huge/>.

¹⁷ Statistics on deaths were provided by the Gauteng and KwaZulu-Natal Department of Health.

¹⁸ 'Media Statement: SAHRC to Launch a National Investigative Hearing into the July 2021 Unrest in Kwa-Zulu Natal and Gauteng', 6 August 2021. It can be accessed at: <https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/2759-media-statement-sahrc-to-launch-a-national-investigative-hearing-into-the-july-2021-unrest-in-kwa-zulu-natal-and-gauteng>.

¹⁹ The ToRs can be accessed at: <https://www.sahrc.org.za/home/21/files/Final%20TOR%20Unrest%20Hearing.docx>.

²⁰ The Hearing Panel was Commissioners André Gaum, Chris Nissen and Philile Ntuli.

²¹ 'MEDIA STATEMENT: SAHRC to Hold a National Investigative Hearing into the July 2021 Unrest', 20 September 2021. It can be accessed at: <https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/2794-media-statement-sahrc-to-hold-a-national-investigative-hearing-into-the-july-2021-unrest>. A second invitation for submissions was published by the Commission on 21 September 'SAHRC to probe causes of July unrest and its impact on human rights' and can be accessed at: <https://www.sahrc.org.za/index.php/sahrc-media/news/item/2815-sahrc-to-probe-causes-of-july-unrest-and-its-impact-on-human-rights>. A third invitation for submissions, again setting out the ToRs and the information about the Hearing Panel was published on 11 October 2021, 'Media Statement: SAHRC to hold media briefing on the Launch of the National Investigative Hearing into the July 2021 Unrest, to Commence on Monday the 15th November 2021' and can be accessed at: <https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/2872-media-statement-sahrc-to-hold-media-briefing-on-the-launch-of-the-national-investigative-hearing-into-the-july-2021-unrest-to-commence-on-monday-the-15th-november-2021>.

²² <https://www.sahrc.org.za/home/21/files/Draft%20Rules%20-%20SAHRC%20Hearing%20Into%20the%20July%20Unrest%2020221014.docx>. The Rules were later amended in February 2022. The amended rules can be accessed at: https://sahrcorgza-my.sharepoint.com/:b/g/personal/mhunter-parsonage_sahrc_org_za/EYyMZk7PgZ1ChhYQMiskEK4BCFbFkBHhU_R3CyZwN4PMZA?e=0L8Vhy.

²³ The Evidence Team, was made up of Mr Buang Jones and Advocates Lloyd Lotz, Rantsho Moraka, Smanga Sethene, Kekeletso Motshabi, Yanela Ntloko, Ofentse Mthlabane, and Karabo van Heerden.

²⁴ For the full ToRs see footnote 19 above. While the issues listed in the ToRS appear in a different order in the attachment, we have set the issues out in this order because they are dealt with in this Report in this order.

²⁵ Section 182(1)(a) of the Constitution.

²⁶ Section 15(1)-(8) of the SAHRC Act.

²⁷ In the making of findings and making recommendations, section 13(1)(a) empowers the Commission to:

“(i) make recommendations to organs of state at all levels of government where it considers such action advisable for the adoption of progressive measures for the promotion of human rights within the framework of the Constitution and the law, as well as appropriate measures for the further observance of such rights;

...

(iii) request any organ of state to supply it with information on any legislative or executive measures adopted by it relating to human rights”

Section 13(4) also requires that all organs of state “afford the Commission such assistance as may be reasonably required for the effective exercising of its powers and performance of its functions.

²⁸ Section 18(3) of the SAHRC Act.

²⁹ Section 1 of the CHP.

³⁰ A “complex legal investigation” is defined in the CHP as:

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- “(i) has a national and/or systemic impact or otherwise affects a disproportionate number of people and or reflects a systemic issue or a human rights violation frequently complained of to the Commission;*
 - (ii) is the subject of wide public debate or media attention or potential public debate or media attention;*
 - (iii) presents a complex legal question or an area of law that requires development; or*
 - (iv) represents a particular level of reputational, institutional or operational risk to the Commission.”*

³¹ Section 3(1) of the CHP.

³² “(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.”

³³ Mr Sanjay Sewmungal made written submissions to the Panel on 16 and 18 November 2021.

³⁴ Mr Yogi Govender made written submissions to the Panel on 26 November 2021.

³⁵ Mr Sthembiso Jele made written submissions to the Panel on 19 November 2021.

³⁶ Mr Abdul Kader Lockhat made written submissions to the Commission on 26 November 2021.

³⁷ Hunter, Q “SEE| #ZumaUnrest: Durban mosque set alight by looters”, News24, 12 July 2021, accessed at: <https://www.news24.com/news24/southafrica/news/see-zuma-unrest-durban-mosque-set-alight-by-looters-20210712>.

³⁸ The CEO of the Pietermaritzburg & Midlands Chamber of Business, Ms Melanie Veness appeared before the Panel on 18 November 2021. The testimony can be accessed at: <https://www.youtube.com/watch?v=39aMYE2--1s>.

³⁹ <http://pmcb.org.za/about-us/>.

⁴⁰ The Durban Chamber of Commerce, represented by its CEO Ms Palesa Phili and Head of Policy & Advocacy, Mr Yolán Nagoor appeared before the Panel on 18 November 2021. The testimony can be accessed at: <https://www.youtube.com/watch?v=39aMYE2--1s>.

⁴¹ This Unrest Map can be accessed at: <https://appengine.policylab.app/UnrestTracker/>.

⁴² Business Unity South Africa, represented by Mr Cas Coovadia appeared before the Panel on 28 February 2023. The testimony can be accessed at: <https://www.youtube.com/watch?v=gWMyupjn2os>.

⁴³ Mr Sibusiso Zikode provided oral testimony on 29 November 2021. His testimony can be accessed at: https://www.youtube.com/watch?v=R_9UJZ60YCaI.

⁴⁴ Mr Makhubela testified before the Commission on 24 February 2022. Testimony can be accessed at <https://www.youtube.com/watch?v=LKDe1LKMItY>.

⁴⁵ Ms Madibakwana testified before the Commission on 24 February 2022. Her testimony can be accessed at <https://www.youtube.com/watch?v=LKDe1LKMItY>.

⁴⁶ She emphasised that WhatsApp is cheaper. You can buy a 30-day package. It is much cheaper than Facebook. Ms Madibakwana no longer has these WhatsApp messages.

⁴⁷ Mr Chisari testified before the Commission on 24 February 2022. The testimony can be accessed at: <https://www.youtube.com/watch?v=LKDe1LKMItY>.

⁴⁸ The Department of Trade, Industry & Competition, represented by Minister Ebrahim Patel and Acting Director-General Ms Malebo Mabitjie-Thompson, appeared before the Panel on 25 February 2022. The testimony can be accessed at: <https://www.youtube.com/watch?v=XXjc-7XrA-Y>.

⁴⁹ According to the International Monetary Fund, it “predicts that South Africa will retain its position as the second-largest economy in sub-Saharan Africa, with a GDP of \$422 billion this year [of 2023]”. See <https://www.africanews.com/2023/02/02/top-5-economies-in-sub-saharan-africa-to-watch-out-for-in-2023-according-to-imf/#:~:text=Nigeria%20%2D%20As%20the%20largest%20economy,hit%20%24574%20billion%20this%20year>.

⁵⁰ The Department of Small Business Development, represented by Minister Stella Ndabeni-Abrahams, appeared before the Panel on 3 December 2021. Her testimony can be accessed at: <https://www.youtube.com/watch?v=ofZ9hkkIvIw>.

⁵¹ The Department of Social Development, represented by Minister Lindiwe Zulu, appeared before the Panel on 1 December 2021. Her testimony can be accessed at https://www.youtube.com/watch?v=n_km06kYopQ.

⁵² Statistics South Africa made written submissions to the Commission on 1 April 2022.

⁵³ SASRIA made written submissions to the Commission on 3 March 2022. Following the 1976 Soweto Uprisings, the Short-Term Insurance Industry realised that it could “no longer underwrite losses arising from politically motivated acts of civil disobedience and unrest of the time” as the risk was too high, making it very difficult to purchase reinsurance cover. This resulted in the incorporation of Sasria SOC Ltd to insure against “perils”. Sasria, is now a public enterprise listed under schedule 3B of the Public Finance Management Act 1 of 1999.

⁵⁴ See <https://www.sasria.co.za/about-us/who-we-are/sasria-overview/>.

⁵⁵ See <https://www.sasria.co.za/about-us/who-we-are/sasria-overview/>.

⁵⁶ Representatives of the Gauteng City Regional Observatory testified before the Panel on 2 March 2022. The testimony can be accessed at: <https://www.youtube.com/watch?v=0VqIa-Nagw8>.

⁵⁷ GCRO's Quality of Life Survey 6 (2020/21) can be accessed at: <https://www.gcro.ac.za/research/project/detail/quality-life-survey-vi-202021/>.

⁵⁸ UPL Limited, formerly United Phosphorus Limited, is an Indian multinational company that manufactures and markets agrochemicals, industrial chemicals, chemical intermediates, and specialty chemicals, and also offers pesticides. Its Cornubia-based warehouse facility is leased from a real estate investment company, Fortress REIT and is located in Cornubia City, which forms part of a ‘mixed-use development project, by the eThekweni Metropolitan Municipality in joint venture with ‘Tongaat Hulett’. Cornubia City is gazetted as a special human settlements Strategic Integrated Project 24 by the Presidential Infrastructure Coordinating Commission. (information obtained from the submissions of Professor Patrick Bond and the UPL Cornubia Civil Society Action Group).

⁵⁹ Comrie, S and van Rensburg D “UPL fire: here’s the full inventory of chemicals in the destroyed Cornubia warehouse” Daily Maverick 18 August 2022 Accessed at: <https://www.dailymaverick.co.za/article/2021-08-18-upl-fire-heres-the-full-inventory-of-chemicals-in-the-destroyed-cornubia-warehouse/>; Comrie, S, “UPL chemical disaster: Toxic smoke inhaled by Durban residents finally identified” amaBhungane in News24, 14 February 2022. Accessed at: <https://www.news24.com/news24/southafrica/news/upl-chemical-disaster-toxic-smoke-inhaled-by-durban-residents-finally-identified-20220214>.

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⁶¹ Comrie, S, “UPL chemical disaster: Toxic smoke inhaled by Durban residents finally identified” amaBhungane in News24, 14 February 2022. Accessed at: <https://www.news24.com/news24/southafrica/news/upl-chemical-disaster-toxic-smoke-inhaled-by-durban-residents-finally-identified-20220214>.

⁶² Comrie, S, “UPL chemical disaster: Toxic smoke inhaled by Durban residents finally identified” amaBhungane in News24, 14 February 2022. Accessed at: <https://www.news24.com/news24/southafrica/news/upl-chemical-disaster-toxic-smoke-inhaled-by-durban-residents-finally-identified-20220214>

⁶³ A drone image showing the extent of the damages caused to the UPL warehouse north of Durban, 21 July 2021. Photo / Shiraaz Mohamed, Daily Maverick, 18 August 2021.

⁶⁴ Mr Kwanele Msizazwe, representative and community leader from Blackburn Village, member of the UPL Cornubia Civil Society Action Group, and the steering committee of the multi-stakeholder forum into the UPL chemical spill formed by former KwaZulu-Natal MEC for Economic Development, Tourism and Environmental Affairs, Mr Ravi Pillay, on 2 December 2021. His testimony can be accessed at: <https://www.youtube.com/watch?v=HHx9INuSkck>.

⁶⁵ This is corroborated by the written submission of the Cornubia Civil Society Action Group which can be accessed at: https://sahrcorgza-my.sharepoint.com/:b/g/personal/mhunter-parsonage_sahrc_org_za/EUnebPQeP4ZIkWz6weANDNUBM8UTOBkBiJl8wBPqxBfMMA?e=82dfVv.

⁶⁶ There is no verification that these deaths were directly or indirectly attributable to the UPL Fire.

⁶⁷ Professor Rajen Naidoo, an occupational health physician whose research interests include research interests include occupational and environmental respiratory diseases and dose response models, appeared as a representative of the UPL Cornubia Civil Society Action Group, and a member of the steering committee of the multi-stakeholder forum into the UPL chemical spill formed by former KwaZulu-Natal MEC for Economic Development, Tourism and Environmental Affairs, Mr Ravi Pillay, on 2 December 2021. His testimony can be accessed at: <https://www.youtube.com/watch?v=HHx9INuSkck>. The Action Group also provided written submissions which can be accessed at: https://sahrcorgza-my.sharepoint.com/:b:/g/personal/mhunter-parsonage_sahrc_org_za/EUnebpQeP4Zikwz6weANDNUBM8UTOObKBiJl8wBPqxBfMMA?e=82dfVv.

⁶⁸ Comrie, S and van Rensburg D “UPL fire: here’s the full inventory of chemicals in the destroyed Cornubia warehouse” Daily Maverick 18 August 2022 Accessed at: <https://www.dailymaverick.co.za/article/2021-08-18-upl-fire-heres-the-full-inventory-of-chemicals-in-the-destroyed-cornubia-warehouse/>; Comrie, S, “UPL chemical disaster: Toxic smoke inhaled by Durban residents finally identified” amaBhungane in News24, 14 February 2022. Accessed at: <https://www.news24.com/news24/southafrica/news/upl-chemical-disaster-toxic-smoke-inhaled-by-durban-residents-finally-identified-20220214>.

⁶⁹ “Airborne particulate matter (PM) is not a single pollutant, but rather is a mixture of many chemical species. It is a complex mixture of solids and aerosols composed of small droplets of liquid, dry solid fragments, and solid cores with liquid coatings. Particles vary widely in size, shape and chemical composition, and may contain inorganic ions, metallic compounds, elemental carbon, organic compounds, and compounds from the earth’s crust. Particles are defined by their diameter for air quality regulatory purposes. Those with a diameter of 10 microns or less (PM10) are inhalable into the lungs and can induce adverse health effects. Fine particulate matter is defined as particles that are 2.5 microns or less in diameter (PM2.5). Therefore, PM2.5 comprises a portion of PM10 ... PM may be either directly emitted from sources (primary particles) or formed in the atmosphere through chemical reactions of gases (secondary particles) such as sul[ph]ur dioxide (SO₂), nitrogen oxides (NO_x), and certain organic compounds. These organic compounds can be emitted by both natural sources, such as trees and vegetation, as well as from man-made (anthropogenic) sources, such as industrial processes and motor vehicle exhaust. The relative sizes of PM10 and PM2.5 particles are compared in the figure below.” See California Air Resources Board, “Inhalable Particulate Matter and Health (PM2.5 and PM10)”, accessed at: <https://ww2.arb.ca.gov/resources/inhalable-particulate-matter-and-health>.

⁷⁰ “PM10 and PM2.5 often derive from different emissions sources, and also have different chemical compositions. Emissions from combustion of gasoline, oil, diesel fuel or wood produce much of the PM2.5 pollution found in outdoor air, as well as a significant proportion of PM10. PM10 also includes dust from construction sites, landfills and agriculture, wildfires and brush/waste burning, industrial sources, wind-blown dust from open lands, pollen and fragments of bacteria.” See California Air Resources Board, “Inhalable Particulate Matter and Health (PM2.5 and PM10)”, accessed at: <https://ww2.arb.ca.gov/resources/inhalable-particulate-matter-and-health>.

⁷¹ In terms of section 30(3) of NEMA “[t]he responsible person ... must ... after knowledge of the incident, report through the most effective means ... available ... (d) any risks posed by the incident to public health, safety and property ... [and] (d) any steps that should be taken in order to avoid or minimise the effects of the incident on public health and environment to- ... (iv) all persons whose health may be affected by the incident”.

⁷² South Africa acceded to the Convention on 4 September 2002 and have membership on the Convention’s Chemical Review Committee.

⁷³ Professor Patrick Bond, Distinguished Professor of Sociology, political economist, political ecologist and scholar of social mobilisation, made written submissions to Commission on 26 November 2021.

⁷⁴ Carnie, T “United Phosphorous Limited: Toxic warehouse in Durban part of special ‘fast-track’ state investment scheme; firm fined millions in India”, Daily Maverick, 25 July 2021, accessed at: <https://www.dailymaverick.co.za/article/2021-07-25-united-phosphorus-limited-toxic-warehouse-in-durban-part-of-special-fast-track-state-investment-scheme-firm-fined-millions-in-india/>.

⁷⁵ www.cornubiaenviroinfo.co.za/CornubiaEnviro

⁷⁶ Executive Summary to the Preliminary Report at page 4.

⁷⁷ “environment” means the surroundings within which humans exist and that are made up of--

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- (i) the land, water and atmosphere of the earth;
 - (ii) micro-organisms, plant and animal life;
 - (iii) any part or combination of (i) and (ii) and the inter-relationships among and between them; and
 - (iv) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being;”

⁷⁸ EDTEA believes that UPL has undertaken activities that fall within Activity 14 of Listing Notice 1 regulated under GNR 327 in GG 40772 published on 7 April 2017, alternatively Activity 4 of Listing Notice 2 regulated under GNR 325 in GG 40772 published on 7 April 2017.

⁷⁹ Executive Summary at page 5.

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⁸¹ South African Government, “MEC Ravi Pillay launches multi-stakeholder forum in relation to UPL chemical spill”, 24 October 2021, accessed at: <https://www.gov.za/news/media-statements/mec-ravi-pillay-launches-multi-stakeholder-forum-relation-upl-chemical-spill>.

⁸² Red Alert published on 10 July 2021, see further Annexure B of Submissions to the ‘Africa Report’, Written Submissions of Former Minister Ayanda-Dlodlo.

⁸³ Submissions to the ‘Africa Report’, Written Submissions of Former Minister Ayanda-Dlodlo.

⁸⁴ See sections on the SSA and Crime Intelligence within SAPS for further information on the lack of their intelligence and online digital forensic services abilities.

⁸⁵ See for information on instigators of the Unrest and “primary looters”.

⁸⁶ <https://www.iol.co.za/mercury/news/forfeiture-order-granted-for-r500-000-mercedes-used-in-woolworths-looting-case-9e65c1f3-fe68-4117-9925-8c83a9a1f647>; <https://www.timeslive.co.za/news/south-africa/2022-05-19-woolworths-mercedes-looter-says-hes-broke-and-needs-legal-aid/>

⁸⁷ Breuer, J., & Elson, M. (2017). Frustration-Aggression Theory. In P. Sturmey (Ed.), *The Wiley Handbook of Violence and Aggression* (pp. 1-12). Chichester: Wiley Blackwell. <https://doi.org/10.1002/9781119057574.whbva040>.

⁸⁸ *Social Justice Coalition and Others v Minister of Police and Others* [2018] ZAWCHC 181; 2019 (4) SA 82 (WCC)

⁸⁹ Mutual legal assistance is any assistance given by the Requested State in respect of investigations, prosecutions or proceedings in the Requesting State in a criminal matter, irrespective of whether the assistance is sought or is to be provided by a court or some other competent authority.

⁹⁰ See SAPS evidence for more information on the orchestration of the Unrest.

⁹¹ Public/private partnership under the Gauteng Township Economy Development Act, No. 2 of 2022 (‘TEDA’) includes the consolidation of large groups of township-based firms to government and private sector value chains, including manufactured goods, Office of the Premier (OOP) Gauteng Provincial Government (GPG) ‘Response to Provisional Report’ (30 August 2023) at 4.

⁹² SAHRC Social Media Charter (2022), accessed on <<https://www.sahrc.org.za/home/21/files/SAHRC%20Social%20Media%20Charter%20FINAL.pdf>>

⁹³ Interpersonal violence is defined as “the intentional use of physical force or power against other persons by an individual or small group of individuals. Interpersonal violence may be physical, sexual, or psychological (also called emotional violence), and it may involve deprivation and neglect. Acts of interpersonal violence can be further divided into family or partner violence and community violence.” James A. Mercy, Susan D. Hillis, Alexander Butchart, Mark A. Bellis, Catherine L. Ward, Xiangming Fang, and Mark L. Rosenberg ‘Chapter 5 Interpersonal Violence: Global Impact and Paths to Prevention’ in *Injury Prevention and Environmental Health*. 3rd edition (2017), accessed at: <https://www.ncbi.nlm.nih.gov/books/NBK525208/#:~:text=Interpersonal%20violence%20involves%20the%20intentional,may%20involve%20deprivation%20and%20neglect.>

⁹⁴ Warning: the following footage may be harmful or traumatising to viewers: https://sahrcorgza-my.sharepoint.com/:f/g/personal/mhunter-parsonage_sahrc_org_za/EsS9kOttwQZKpnGoReErUfwBKthGfRzeuKqHJuWVEALwmQ?e=2EzBA0.

⁹⁵ Ms Zama Nguse provided oral testimony on 15 November 2022. The testimony can be accessed at: <https://www.youtube.com/watch?v=ZAXkfYK-E4c>.

⁹⁶ RZS Protection is a private security company who provides, amongst other services, “crowd control and strike management” as well as “investigations and crime scene” management – services that are the purview of the SAPS. See their Facebook page: <https://www.facebook.com/RZSPROTECTION/>.

⁹⁷ Mi7 National Group is a private security company who provides, amongst other services, “crowd control and strike management” as well as “investigations and crime scene” management – services that are the purview of the SAPS. See their website: <https://mi7national.co.za/>.

⁹⁸ Mr Thobani Nguse provided oral testimony on 15 November 2021. The testimony can be accessed at: <https://www.youtube.com/watch?v=ZAXkfYK-E4c>.

⁹⁹ Mr Lwandile Gumede provided oral testimony on 15 November 2021. The testimony can be accessed at: <https://www.youtube.com/watch?v=ZAXkfYK-E4c>.

¹⁰⁰ Mr Siphosethu Msiya provided oral testimony on 15 November 2021. The testimony can be accessed at: <https://www.youtube.com/watch?v=ZAXkfYK-E4c>.

¹⁰¹ Mr Roshan Jainath provided oral testimony on 15 November 2021. The testimony can be accessed at: <https://www.youtube.com/watch?v=ZAXkfYK-E4c>.

¹⁰² Examples of these expressions in respect of Khan Road Corner informal settlement can be garnered from these Facebook comments:
<https://www.facebook.com/100020668185632/posts/873803133318618/?sfnsn=scwspmq>.

¹⁰³ Mr Yunus Carrim, MP made written submissions by affidavit, dated 3 December 2021.

¹⁰⁴ Paragraph 1.3 of Yunus Carrim’s affidavit.

¹⁰⁵ Paragraph 1.3 of Yunus Carrim’s affidavit.

¹⁰⁶ Paragraph 2.1 of Yunus Carrim’s affidavit.

¹⁰⁷ Paragraph 3.2 of Yunus Carrim’s affidavit.

¹⁰⁸ Paragraph 3.4 of Yunus Carrim’s affidavit.

¹⁰⁹ Paragraph 3.4 of Yunus Carrim’s affidavit.

¹¹⁰ Paragraph 3.5 of Yunus Carrim’s affidavit.

¹¹¹ Paragraph 3.5. of Yunus Carrim’s affidavit.

¹¹² Paragraph 3.8 of Yunus Carrim’s affidavit.

¹¹³ Mr Krishnan submitted a recording of oral submissions made to a meeting with Minister Gwede Mantashe on 18 July 2021. The submission was made to the Commission on 19 November 2021.

¹¹⁴ Ms Sharlene Naidoo made written submissions to the Commission on 16 November 2021.

¹¹⁵ Bennie, S. “He died defending his community” Capital Newspapers, 15 July 2022. Article can be accessed at: <https://capitalnewspapers.co.za/141402/he-died-defending-his-community/>.

¹¹⁷ Based on information from Census 2011 - <https://census2011.adrianfrith.com/place/563003>.

¹¹⁸ Mr Tiballo Reginald Khami made written submissions by affidavit to the Commission in November 2021.

¹¹⁹ Mr Steven Sello made written submissions by affidavit to the Commission in November 2021.

¹²⁰ Mr Thulebona Ngubo made written submissions to the Commission on 26 November 2021.

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- ¹²¹ *The Post*, 'Living in harmony in Shallcross', 22 February 2017 <https://www.pressreader.com/south-africa/post-south-africa/20170222/281689729579487>
- ¹²² Based on information from Census 2011 - <https://census2011.adrianfrith.com/place/599160004>
- ¹²³ Based on information from Census 2011 - <https://census2011.adrianfrith.com/place/599160004>
- ¹²⁴ Mr Temo Mokoysa made written submissions to the Commission on 19 November 2021.
- ¹²⁵ Mr Previn Vedan's affidavit was attested to on 10 December 2021, but was submitted to the Commission as Annexure VII to the written submission of the Towards Nation Building Collective's written submission was submitted to the Commission on 29 and 31 January 2022.
- ¹²⁶ See Collective Submission at 2.11.3
- ¹²⁷ Mr Bongani Mkhize provided oral testimony on 23 November 2021. The testimony can be accessed at <https://www.youtube.com/watch?v=BIRohMjEzog>.
- ¹²⁸ Mr Mbongeni Ngcobo made written submissions to the Commission 26 November 2021 and 15 January 2022. His submissions were translated from Zulu to English.
- ¹²⁹ Mr Nkanyiso Buthelezi made written submissions by affidavit to the Commission in November 2021.
- ¹³⁰ Mr Bo Dayal made written submissions to the Commission on 26 November 2021.
- ¹³¹ Mr Vee Yesudas made written submissions to the Commission on 4 December 2021.
- ¹³² Mr Maharaj provided oral testimony on 17 November 2021. The testimony can be accessed at: https://www.youtube.com/watch?v=OGqzCR_iUcU.
- ¹³³ The Phoenix Ubuntu Forum is a coalition of NPOs, religious groups and community-based organisations.
- ¹³⁴ Trigger warning: The footage may be traumatising: <https://www.youtube.com/watch?v=i9X8HjWnP0A>.
- ¹³⁵ Warning – the footage contains graphic imagery: https://sahrcorgza-my.sharepoint.com/:v/g/personal/mhunter-parsonage_sahrc_org_za/EUGwxJpZZLRBofY8ITWInW0Bk6jKly_RdmWC9vpS5ME8ig?e=19IWUg; and https://sahrcorgza-my.sharepoint.com/:v/g/personal/mhunter-parsonage_sahrc_org_za/EdqvhjitrnVlpGCOSgrezyUBj02V-PD-zTokEmL6HDEkow?e=IKsCJ8.
- ¹³⁶ In respect of the deaths and violent assaults in Phoenix, approximately 28 (twenty-eight) men were arrested, all of them of Indian descent.
- ¹³⁷ Mr Biyela provided oral testimony on 16 November 2021. His testimony can be accessed at: <https://www.youtube.com/watch?v=oX18XUrqxBQ>.
- ¹³⁸ Trigger warning: The images may be traumatising. A link to images of Mr Mokubung's injuries: https://sahrcorgza-my.sharepoint.com/:f/g/personal/mhunter-parsonage_sahrc_org_za/EnHzCGcQIGNPiaOxfFlim1QB6LyB_OMoMw8eO41S-H2Q9Q?e=Dur5Tt.
- ¹³⁹ Mr Mseleku provided oral testimony on 16 November 2021. His testimony can be accessed at: <https://www.youtube.com/watch?v=oX18XUrqxBQ>.
- ¹⁴⁰ Mr Chamane provided oral testimony on 16 November 2021. His testimony can be accessed at: <https://www.youtube.com/watch?v=oX18XUrqxBQ>.
- ¹⁴¹ Mr Mhize provided oral testimony on 17 November 2022. His testimony can be accessed at: https://www.youtube.com/watch?v=OGqzCR_iUcU.
- ¹⁴² Trigger warning: The images may be traumatising. A link to images of Mr Mkhize's injuries: https://sahrcorgza-my.sharepoint.com/:b/g/personal/mhunter-parsonage_sahrc_org_za/ESclJGGkSC9NtETEnoRWSbQBpQcLhZ9SNF03T7Wjlc-rZg?e=QJtiOS
- ¹⁴³ Mr Magwaza provided oral testimony on 17 November 2022. His testimony can be accessed at: https://www.youtube.com/watch?v=OGqzCR_iUcU.
- ¹⁴⁴ Reaction Unit South Africa is another private security company that also provides crowd control services. See its website: <https://reactionunitsa.co.za/response/>.

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- ¹⁴⁵ Crossroads in an area or “node” on Mandela Road/MR93 between Phoenix and KwaMashu. See: <https://www.google.com/maps/@-29.7332654,31.0040322,16z?hl=en-GB>.
- ¹⁴⁶ SAPS KwaMashu Police Station
- ¹⁴⁷ Ms Phumzile Mzimela made written submissions to the Commission on 18 November 2021.
- ¹⁴⁸ Translation: “...The Indians took away our father, husband and the breadwinner at home and it is very difficult because sometimes we don't even have anything to eat and can't sleep”.
- ¹⁴⁹ Mr Xaba provided oral testimony on 23 November 2022. His testimony can be accessed at: <https://www.youtube.com/watch?v=BiRohMjEzog>.
- ¹⁵⁰ Ms Dlamini made written submissions to the Commission on 26 November 2021. The Newzroom Afrika video which shows footage from Mr Dlamini's funeral can be accessed at: https://sahrcorgza-my.sharepoint.com/:v/g/personal/mhunter-parsonage_sahrc_org_za/EQWEzyl0x1pBiZt0RsrcLfoBglM6S_y2CPHt4Wm_Zm3C2w?e=ZafreP
- ¹⁵¹ See Newzroom Afrika link in 150 above; as well as this M&G article published on 1 July 2022: <https://mg.co.za/news/2022-07-01-phoenix-murder-trials-still-to-start/>; an IOL article published on 23 May 2022: <https://www.iol.co.za/dailynews/news/kwazulu-natal/july-unrest-phoenix-murder-accused-back-in-court-cf4e2c03-da75-478e-8ff3-da57c624db63>; and a South African Lawyer article published on 26 May 2022: <https://www.southafricanlawyer.co.za/article/2022/05/indictment-details-july-unrest-attack/>.
- ¹⁵² Trigger Warning: The footage may be traumatising: See video footage published on YouTube: <https://www.youtube.com/watch?v=i9X8HjWnP0A>.
- ¹⁵³ Ms Tshewwa made written submissions to the Commission on 19 November 2021.
- ¹⁵⁴ Mr Philani Zondo made written submissions to the Commission on 17 November 2021. Translated from Zulu to English.
- ¹⁵⁵ Mr Thuto Sandile Shwaka made written submissions to the Commission on 20 November 2021. Translated from Zulu to English.
- ¹⁵⁶ Mr Sibahle Bhengu made written submissions to the Commission on 18 November 2021. Statement translated from Zulu to English.
- ¹⁵⁷ Mr Mthokozisi Ndlovu made written submissions to the Commission on 14 November 2021. Translated from Zulu.
- ¹⁵⁸ Mr Siyabonga Gumede made written submissions to the Commission on 17 November 2021.
- ¹⁵⁹ Mr Siyabonga Ncobela made written submissions to the Commission on 16 November 2021. The submission was translated from Zulu to English.
- ¹⁶⁰ Ms Spongile Innocentia Mthiya made written submissions to the Commission on 3 March 2022. Her submissions were translated from English to Zulu.
- ¹⁶¹ Mr Ziphathlele Majola made written submissions to the Commission on 14 November 2021.
- ¹⁶² Mr Eric Khethukuthula made written submission to the Commission on 18 November 2021. His statement was translated from Zulu to English.
- ¹⁶³ Mr Lungisani Cele made written submission to the Commission on 22 November 2022.
- ¹⁶⁴ Ms Nombuso Portia Majola made written submissions to the Commission on 16 November 2021.
- ¹⁶⁵ Mr Chagi made written submissions to the Commission on 26 November 2021.
- ¹⁶⁶ Ms Nozipho Vilakazi made written submissions to the Commission on 26 November 2021.
- ¹⁶⁷ Ms Pinky Makalina made written submissions to the Commission on 18 November 2021.
- ¹⁶⁸ Mr Witness Makalima made written submissions to the Commission on 18 November 2021.
- ¹⁶⁹ Mr Wonderboy Bhojie Caluza made written submissions to the Commission on 16 November 2021.
- ¹⁷⁰ Mr Thami Cele made written submissions to the Commission on 19 November 2021.

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- ¹⁷¹ Ms Thandi Ngcobo made written submissions to the Commission on 17 November 2021.
- ¹⁷² Ms Mdunge Khumalo submitted a statement to the Commission on 19 November 2021.
- ¹⁷³ Trigger Warning: These videos are extremely violent and disturbing: [Khumalo Brother 1.mov](#); [Khumalo Brother 2.mov](#); [Khumalo Brother 3.mov](#).
- ¹⁷⁴ The Cutting Edge interview can be accessed at: <https://www.youtube.com/watch?v=sfVPTG91Os8>. The interview of the Khumalo brothers' sisters' interview can be accessed at: <https://www.youtube.com/watch?v=OidHuNhdSrs>.
- ¹⁷⁵ Mr Zakheleni Sibisi made written submissions to the Commission on 15 November 2021.
- ¹⁷⁶ Mr Krishna Glen Naidoo testified before the Commission on 25 November 2022. Mr Naidoo's testimony can be accessed at: <https://www.youtube.com/watch?v=geKYdWcOPR0>. Because of a video he posted on Facebook on 12 July 2021. Which commentators alleged may have incited the actions taken by the Indian community in Phoenix which lead to the killing, attempted killings, and assaults of tens of Black people, Mr Krishna Naidoo was offered the opportunity to provide testimony in-camera but chose to provide oral testimony in public. Mr Krishna Glen Naidoo testified before the Commission on 25 November 2022.
- ¹⁷⁷ A push-to-talk walkie-talkie app.
- ¹⁷⁸ The video can be accessed at: https://sahrcorgza-my.sharepoint.com/:v/g/person/mhunter-parsonage_sahrc_org_za/ESPDAdNyH41DnXn2DZJLRroBqyap3EbLHH3Z4Cmk81_R1A?e=uDJKji.
- ¹⁷⁹ Ms Taliyah Chetty made written submissions to the Commission on 19 November 2021.
- ¹⁸⁰ Mr Jayshree Raghubeer made written submissions to the Commission on 12 and 14 November 2021
- ¹⁸¹ Mr Aniruth Ramcharither made written submissions to the Commission on 25 November 2021.
- ¹⁸² Ms Nadine Naidoo made written submissions to the Commission on 25 November 2021.
- ¹⁸³ Ms Shanice Singh made written submissions to the Commission on 16 November 2021.
- ¹⁸⁴ Ms Brenda Chetty made written submissions on 29 November 2021.
- ¹⁸⁵ Mr Danny Thesan made written submissions to the Commission on 29 November 2021.
- ¹⁸⁶ Ms Fathima Ismail made written submissions to the Commission on 26 November 2021.
- ¹⁸⁷ Ms Raeesa Ismail made written submission to the Commission on 30 November 2021.
- ¹⁸⁸ Reverend John James made written submission to the Commission on behalf of the Woodview Ratepayers Association, on 26 November 2021.s
- ¹⁸⁹ Mr Shabir Nazeer made written submissions on 3 November 2021.
- ¹⁹⁰ Mr Jayson Govender made written submissions to the Commission on 19 November 2021.
- ¹⁹¹ Mr Vijay Ramlal made written submissions to the Commission on 26 November 2021.
- ¹⁹² Mr Lee Chetty made written submissions to the KZN PO on 3 November 2021. These submissions were sent to the Hearing Panel on 29 November 2021.
- ¹⁹³ Mr Narendh Ganesh made submissions to the Commission on 21 November 2021.
- ¹⁹⁴ Ms Natalie Naidoo made written submissions to the Commission on 19 November 2021.
- ¹⁹⁵ Mr Duane Moodley made written submissions to the Commission on 25 January 2022.
- ¹⁹⁶ Mr Geshy Reddy made written submissions to the Commission on 20 November 2021.
- ¹⁹⁷ Written submissions were made to the Commission on 24 November 2021.
- ¹⁹⁸ CAOSA, represented by Mr Seth Mnguni, made oral submissions to the Panel on 3 March 2022.
- ¹⁹⁹ CAOSA – KZN made written submissions to the Commission on 19 November 2021.

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- ²⁰⁰ The Collective, represented by Ms Ela Ghandi and Mr Ravigasen Pillay provided oral testimony on 21 June 2022. It can be accessed at: <https://www.youtube.com/watch?v=3jJtdG3dYo4>. The Collective made written submissions to the Commission on 29 and 31 January 2022.
- ²⁰¹ Defined as “the act or an instance of killing a number of usually helpless or unresisting human beings under circumstances of atrocity or cruelty” or “a cruel or wanton murder” – Merriam-Webster, accessed at: <https://www.merriam-webster.com/dictionary/massacre>; and defined as “an act of killing a lot of people” – Cambridge Dictionary, accessed at <https://dictionary.cambridge.org/dictionary/english/massacre>.
- ²⁰² Mr Sibusiso Zikode provided oral testimony before the Commission on 29 November 2021. His testimony can be accessed at: https://www.youtube.com/watch?v=R_9UZ60YCaI.
- ²⁰³ The statement can be accessed at: <https://abahlali.org/node/17320/#more-17320>.
- ²⁰⁴ The statement can be accessed at: <https://abahlali.org/node/17323/#more-17323>.
- ²⁰⁵ Professor Paulus Zulu is an emeritus professor of sociology and politics. He provided oral testimony on 29 November 2021. The testimony can be accessed at: https://www.youtube.com/watch?v=R_9UZ60YCaI from 3:21:20.
- ²⁰⁶ Mr Crispin Hemson is the Director of the International Centre of Nonviolence, Durban University of Technology. He submitted written submissions to the Commission on 25 September 2021.
- ²⁰⁷ Adams, T., 2012. Chronic violence: Toward a new approach to 21st century violence, NOREF policy brief. Norwegian Peacebuilding Resource Centre, 2012, www.peacebuilding.no
- ²⁰⁸ Galtung, J., 1990, Cultural violence, in *Journal of Peace Research*, 27(3): 291-305
- ²⁰⁹ Mr Buzani Gwala submitted a short statement to the Commission on 29 November 2021, requesting to appear before the Commission.
- ²¹⁰ Ms Zitha submitted a short statement to the Commission 14 November 2021.
- ²¹¹ Mr Ntokozo Sangweni submitted a short submission to the Commission on 19 November 2021.
- ²¹² Mr Sakhile Innocent made written submissions to the Commission on 18 November 2021.
- ²¹³ Mr Sibongakonke Nala made written submissions to the Commission on 23 November 2021.
- ²¹⁴ Ms Devi Naidoo made a written request on 14 November 2021.
- ²¹⁵ Mr Sphelele Mdletshe made written submissions to the Commission on 13 November 2021.
- ²¹⁶ A person who wishes to remain anonymous made written submissions on 19 November 2021.
- ²¹⁷ Pat Marie made written submission on 16 November 2021.
- ²¹⁸ Ms Unika Naidoo made written submission to the Commission on 18 November and 8 December 2021. A link to an article about Ms Naidoo’s brother Mr Ashley Maharaj can be accessed at: <https://www.pressreader.com/south-africa/post-south-africa/20211110/281543704161314>
- ²¹⁹ Mr Mlungisi Mthembu made written submissions to the Commission on 20 November 2021.
- ²²⁰ Mr Pundith Satish Maharaj made a request to appear before the Panel on 19 November 2021.
- ²²¹ Mr Hanif Hoosen MP, made a request to appear before the Panel on 27 February 2022.
- ²²² Robinson, P. 1997. *Cato manor: a legacy of South Africa’s past or a model for reconstruction?* Department of Town and Regional Planning University of Natal, Durban, South Africa. *South African Planning Journal* 42 June 1997, pp. 5-17.
- ²²³ Ramamurthi, T. G. Lessons of Durban Riots. *Economic and Political Weekly*. Vol. 29, No. 10 (Mar. 5, 1994), pp. 543-546
- ²²⁴ The Commission has been described as a custodian of PEPUDA, as it is empowered to make findings of unfair discrimination, hate speech and/or harassment under PEPUDA, which can be confirmed or rejected by Equality Courts
- ²²⁵ Section 10 of the Constitution.

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- ²²⁶ Section 11 of the Constitution.
- ²²⁷ Section 12(1) of the Constitution.
- ²²⁸ Oluo, I. (2019). *So, you want to talk about race*. Seal Press.
- ²²⁹ The Service Charter for Victims of Crime, (1 December 2004), contains seven rights enshrined elsewhere in the Constitution, the CPA, and the Witness Protection and Services Act, Act 112 of 1998, the Domestic Violence Act 116 of 1998 – *inter alia*, “*the right to be treated with fairness and with respect for dignity and privacy, the right to offer information, the right to receive information, the right to protection, the right to assistance, the right to compensation, the right to restitution.*”
- ²³⁰ Victim Support Service Bill, 2019 (‘VSS Bill’) *Government Gazette* 43528:791 of 17 July 2020.
- ²³¹ Service Charter for Victims of Crime, (1 December 2004), contains seven rights enshrined elsewhere in the Constitution, the CPA, and the Witness Protection and Services Act, Act 112 of 1998
- ²³² Section 13(1)(a) and Section 13(2)(a) of the SAHRC Act.
- ²³³ Oral Testimony (in camera) (former) National Police Commissioner (Day 6, 22 November 2021), the National Commissioner had served as National Police Commissioner from November 2017 to 31 March 2022 accessed at < <https://www.youtube.com/live/BIrohMjEzog?feature=share> >
- ²³⁴ Sworn Affidavit of (former) National Commissioner, Gen. Sitole, The documents referred to and submitted to Minister of Police, Bheki Cele are marked *classified* and can only be made available for perusal by the Chair, (**Annexure B**), Gen Sitole Written Statement Ref 13/8/2/1/1 at 3.
- ²³⁵ The Commission understood this to mean the Court Order as it related to the (former) President’s matter.
- ²³⁶ The Commission did not have access to the crime intelligence alerts and products prior to and during the Unrest to verify this claim. The Commission, however, following the hearing, wrote to SAPS requesting access to the aforementioned crime intelligence information but at the time of writing, this has not been provided.
- ²³⁷ Cybercrimes Act 19 of 2020.
- ²³⁸ See further SAHRC Media Statement(3 December 2021) accessed at <<https://www.sahrc.org.za/index.php/sahrc-media/news/item/2928-cele-i-was-not-convinced-phoenix-violence-could-be-linked-to-racial-tension>>
- ²³⁹ Written submissions of former Minister of State Security Agency, Ayanda-Dlodlo.
- ²⁴⁰ Drafted by SAHRC Research Team with reference to Written Submissions of (Former) Minister Ayanda Dlodlo
- ²⁴¹ See further Riotous Assemblies Act on issues of illegal/legal protests, failure to obtain permission does not make a protest illegal.
- ²⁴² The Commission notes and understands these actions and planned actions as accounts of ‘xenophobia’.
- ²⁴³ The Commission has not been furnished with this document as it has been marked ‘classified’ by the SSA.
- ²⁴⁴ Written submissions of former Minister of State Security Agency, Ayanda-Dlodlo, para 58 at 20.
- ²⁴⁵ Written submissions of former Minister of State Security Agency, Ayanda-Dlodlo, para 59 at 20.
- ²⁴⁶ The Commission was not furnished with this document due to its ‘classified’ nature.
- ²⁴⁷ See further,
- ²⁴⁸ Written Submissions of the Former Minister Nosiviwe Mapisa Nqakula, para 6.6 -6.8
- ²⁴⁹ Nosiviwe-Mapisa-Nqakula, (current) Hon. National Speaker, (former) Minister of Defence and Military Veterans, 22 November 2021, Day 6 of the Hearings, accessed at <https://www.youtube.com/watch?v=BIrohMjEzog>
- ²⁵⁰ A comprehensive list of deployment was not furnished to the Commission. See further Written Submissions of the former Minister of Defence, page 5.
- ²⁵¹ Written Statement Thandi Modise (former) Speaker and current Minister of SANDF.

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- ²⁵² Section 2, Act 56 of 2001.
- ²⁵³ S. Africa *et al.* 'the Africa Report,' (29 November 2021) at 28. p
- ²⁵⁴ 'Big Shift for Private Security in South Africa' *Business Tech* (26 April 2022) < <https://businesstech.co.za/news/business/580502/big-shift-for-private-security-in-south-africa/> >
- ²⁵⁵ Private Security Industry Regulatory Authority (22 July 2021) 'Private Security Companies Involved in the Unrest,' accessed at <<https://www.bing.com/ck/a?!&&p=66aad6fq=PSiRA+media+statement+pdf+on+the+July+Unrest&u=>>
- ²⁵⁶ Goodwin *et al.* 'Strategic Organised Crime Risk Assessment: South Africa,' *Global Initiative Against Transnational Organised Crime* (2020) at 18.
- ²⁵⁷ The Commission was also provided with written submissions by the Acting Chief Magistrate for the Durban Administrative Region, Ms Brenda Sibiyi in respect of Equality Court matters. Mr Lamola his testimony can be accessed at: <https://www.youtube.com/watch?v=YksQ37ms20A>
- ²⁵⁸ Minister Lamola's oral testimony can be accessed at: <https://www.youtube.com/watch?v=YksQ37ms20A>.
- ²⁵⁹ Minister Lamola's oral testimony can be accessed at: <https://www.youtube.com/watch?v=YksQ37ms20A>.
- ²⁶⁰ Minister Lamola's oral testimony, *ibid*
- ²⁶¹ Section 41(2) of the Constitution and Intergovernmental Relations Framework Act, 13 of 2005 introduced interdepartmental coordination and practically: clusters. The core JCPS is cluster is made up of the DoJ (Correctional Services and Constitutional Development), SAPS, Crime Intelligence (Hawks), DCS, NPA (including DPCI), SSA, SANDF, DHA, Treasury and SARS with support from respective departments such as DSD, DoH and DIRCO.
- ²⁶² The NATJOINTS is "the operational arm of the JCPS Cluster, tasked with developing and coordinating measures to deal with any situation requiring focussed actions by the JCPS Cluster".
- ²⁶³ The CMTT was a subcommittee of the NATJOINTS for the Unrest made up of the DoJ, SAPS and the NPA.
- ²⁶⁴ Minister Lamola's oral and written testimony, *ibid*.
- ²⁶⁵ In addition, to avoid a possible spread of Covid-19 in court cells postponements were heard via video link.
- ²⁶⁶ Written submission (sworn affidavit) of Minister Lamola at para 6.4.
- ²⁶⁷ "...[IJS] programme is a government initiative that strives to improve the efficiency and effectiveness of the South African criminal justice process. It is driving a multidepartment effort to increase the probability of successful investigation, prosecution, punishment, and ultimately the rehabilitation of offenders and their restoration back into society to realise a national objective that all South Africans are and feel safe." Progress Report: IJS Programme, Select Committee on Security and Justice (31 May 2017) accessed at <https://static.pmg.org.za/170531IJSReport.pdf>
- ²⁶⁸ Minister Lamola's oral testimony can be accessed at: <https://www.youtube.com/watch?v=YksQ37ms20A>.
- ²⁶⁹ Admission of guilt (AoG) fines are always monetary penalties (imposed by courts), and fines, issued by police (where magistrates had determined amounts for AoG's) or by prosecutors (also have powers to determine amounts for AoG in the absence of a determination by a magistrate) see also, As at 1 June 2023, National Prosecutions Service Letter addressed to the SAHRC Ref 10/2/12/3-296/2023 ('DPP Correspondence 2023').
- ²⁷⁰ Community Courts allow for community driven mediated or alternative dispute resolution.
- ²⁷¹ National Action Plan Against Racism; Xenophobia and Racial Intolerance, (DoJ) accessed at, <https://www.justice.gov.za/nap/index.html>
- ²⁷² NPA oral testimony KZN leg of the Hearing (Day 8, 25 November 2021) accessed at <https://www.youtube.com/watch?v=YksQ37ms20A>.
- ²⁷³ Section 179 of the Constitution and Section 20(1) of the National Prosecuting Authority Act 32 ("NPA Act").
- ²⁷⁴ National Prosecuting Authority Act, No. 32 of 1998
- ²⁷⁵ Criminal Procedure Act, No. 51 of 1977

²⁷⁶ Adv. Melis adds, “there is no written human rights policy as such however, the values which underpin the NPA’s conduct is guided by the Constitution,” oral testimony, *ibid*.

²⁷⁷ The Priority Crimes Litigation Unit (PCLU) was created by Presidential proclamation on 23 March 2003 and is located in the office of the National Director of Public Prosecutions. This unit has no investigative capacity and is reliant on SAPS and the DSO in this regard.

²⁷⁸ Adv Mashamate Oral Submission, *ibid*.

²⁷⁹ Adv. Mashamate indicates that the investigations for organised crime committed during the unrest took approximately 4-5 months at the time of the Hearing, oral submission, *ibid*.

²⁸⁰ Postponed for copies of the docket and further investigation (Bail R5000.00), the second case 26 January 2022 (Bail denied, accused brought a bail application before the High Court), the third case is brought before the court on the 14th-18th February 2022 for trial.

²⁸¹ The DPP for KZN has requested the IPID Provincial Head to submit all outstanding case dockets from KZN for DPP decision. IPD has not responded to this request, NPA Response to the Provisional Report (3 November 2023).

²⁸² NPA Response to the Provisional Report (3 November 2023), in its response to the Provisional Report the NPA has noted the evidence as set out in ‘Chapter Two: Evidence,’ of this Report, and has indicated that in the absence of specific identifying information contained in this Report, the NPA would conduct follow ups.

²⁸³ Adv. Melis further testified that legal aid provided to accused persons oral testimony, (Day 8, 25 November 2021) accessed at <https://www.youtube.com/watch?v=YksQ37ms20A>.

²⁸⁴ NPA Response, para 92 at 21.

²⁸⁵ “A proper and accurate data count of all cases registered can be obtained from SAPS on the SAPS CAS System,” (the JCPS Cluster agreed that SAPS would be the source of statistics), NPA Response, *ibid* para 73 at 17.

²⁸⁶ NPA Response, para 92 at 21.

²⁸⁷ NPA Response (‘Annexure A’) The list contains a total of 29 matters.

²⁸⁸ The ‘Phoenix Task Team,’ the Commission had conducted follow ups in December 2023, see also. NPA Response, *ibid* (‘Annexure B’).

²⁸⁹ *Ibid*, (‘Annexure C’).

²⁹⁰ *Ibid*, (‘Annexure D’).

²⁹¹ *Ibid*, (‘Annexure E’).

²⁹² See ‘July Unrest Case Data,’ “Three (3) of these matters were joined together to be prosecuted into one, thirteen (13) cases, four(4) matters have been enrolled. Of the four (4)matters enrolled, one (1) has been finalised (Carl Niehaus matter) (see also).” Five (5) matters declined for prosecution and two (2) still being investigated. NPA Response, *ibid* (‘Annexure F’) a memorandum has been submitted to the NDPP for authorisation certificate so that prosecutors may proceed on Terrorism charges. One matter, in which the accused has been successfully convicted of contravening Sections 17 and 18 of the Riotous Assemblies Act and handed a sentence of “12 years imprisonment,” the details of which are not disclosed here.

²⁹³ NPA Response, *ibid* para 87 at 23.

²⁹⁴ Cybercrimes Act, 19 of 2020.

²⁹⁵ <https://www.enca.com/news/livestream-mpa-head-shamila-batochi-briefs-media> NDPP briefing.

²⁹⁶ Combatting cybercrime is a collective responsibility of the JCPS Cluster, NPA Response, *ibid* para 69 at 16.

²⁹⁷ NPA Response, *ibid* para 69 at 16.

²⁹⁸ Prevention and Combating of Hate Crimes and Hate Speech Bill (as introduced to the National Assembly proposed section 75); explanatory summary of Bill published in GG No. 41543 of 29 March 2018)

²⁹⁹ NPA Response, *ibid* para 52 at 12.

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- ³⁰⁰ NPA Response, *ibid* para 76 at 17.
- ³⁰¹ Still currently an issue, *ibid* para 83 at 19.
- ³⁰² The Acting Chief/Senior Pathologist was engaged on several occasions to assist and provided assistance, *ibid* para 83.2.
- ³⁰³ Despite witness protection being provided and explained to the witnesses *ibid*, para 83.3.
- ³⁰⁴ Matters which were referred for inquest *ibid*, para 83.4.
- ³⁰⁵ Service providers retain information for a limited time, this poses an additional challenge *ibid* para 88 at 21.
- ³⁰⁶ *Ibid*, para 89 at 21.
- ³⁰⁷ Identity of the victim is known and not disclosed here for privacy reasons.
- ³⁰⁸ Oral Testimony 'Jane Doe' *in camera* (21 June 2022, Gauteng).
- ³⁰⁹ Preamble and Section 1, read with Section 9, of Act 26 of 2000, "Anonymous witness" – meaning, any public or private sector employee or worker who discloses information, "who has reason to believe that the information concerned shows or tends to show ...disclosure or reporting of wrongdoing [including but not limited to] corruption; criminal offences; breaches of legal obligation; miscarriages of justice; specific dangers to public health, safety or the environment; abuse of authority."
- ³¹⁰ Document accessed at
- ³¹¹ Legislation governing the protection of national key points and critical infrastructure has been passed since the Unrest, the Critical Infrastructure Protect Act (30 April 2022) see further, President's Provisional Report Response, para 43.8 at 14.
- ³¹² The ISS's work covers transnational crimes, migration, peacekeeping, crime prevention and criminal justice, peacebuilding, and the analysis of conflict and governance accessed at <https://issafrica.org/> .
- ³¹³ David Bruce's testimony on the 2nd December 2021, Day 13 accessed at < https://www.youtube.com/watch?v=nYam_VSEjDI >
- ³¹⁴ David Bruce's testimony on the 2nd December 2021, Day 13 accessed at < https://www.youtube.com/watch?v=nYam_VSEjDI >
- ³¹⁵ A term used by Mr. Bruce.
- ³¹⁶ ISS Written Submissions, Police Response to the July Unrest, Submission to South African Human Rights Commission national investigative hearings into the July unrest (30 November 2021) para 13.
- ³¹⁷ Evidence revealed during the Marikana Commission proved that a month or two prior to the event at Marikana, there had been similar events of a similar scale taking place in the platinum fields in Northwest see further David Bruce's testimony on the 2nd December 2021, Day 13 accessed at < https://www.youtube.com/watch?v=nYam_VSEjDI >
- ³¹⁸ Section 84(1)(a) Act 108 of 1996.
- ³¹⁹ Oral Testimony President Cyril Ramaphosa (1 April 2022) accessed on <<https://www.youtube.com/watch?v=1VhoEIMZrF0>>
- ³²⁰ Section 83(1) of Act 108 of 1996.
- ³²¹ S. Africa *et al.* 'the Africa Report,' (29 November 2021)
- ³²² Oral Testimony President Cyril Ramaphosa (1 April 2022) accessed on <<https://www.youtube.com/watch?v=1VhoEIMZrF0>> .
- ³²³ Sworn Affidavit President Cyril Ramaphosa, ("MCR A"), the Africa Report (Preface), at 3.
- ³²⁴ Section 11 and Section 12(1)(a), (1)(c) and (1)(d)(e) of the Constitution.
- ³²⁵ Section 198 (b) of the Constitution, except for where Constitutionally provided or in terms of national legislation.
- ³²⁶ Section 198 (a)-(b).

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- ³²⁷ National security,” includes the protection of civilians in the Republic; and territorial integrity against sabotage and serious violence directed at overthrowing the constitutional order” Section 1 of National Intelligence Act 39 of 1994.
- ³²⁸ Section 205(2), read with Sections 205(3) and 206(4) of the Constitution.
- ³²⁹ Section 1(a) and (c).
- ³³⁰ Section 2.
- ³³¹ Section 41(1).
- ³³² Schedule 2, section 3 and 5, respectively.
- ³³³ Section 152(2).
- ³³⁴ Section 151(1).
- ³³⁵ Section 195(1)(a)-(h).
- ³³⁶ Act 103 of 1994.
- ³³⁷ Published under Government Notice R877 in *Government Gazette* 40167 of 29 July 2016
- ³³⁸ In terms of the PSA and the PSA Regs and Public Service Charter³³⁸, (a) – (e) an employee in the public service is obligated to, *inter alia*, abide by the Constitution, *put the public interest first* central to the evidence contained in this Report is, the “*cooperation with public institutions established under the Constitution and legislation in promoting the interest of the public, serve the public in an unbiased and impartial manner in order to create confidence in the public service.*” Where a head of department or other employee fails to comply with the requirements of the PSA and PSA Regulations provision is made for the executive authority (Premier) in the case of a province, or head of department, respectively, to take disciplinary action against the head or employee.
- ³³⁹ Section 2 of Act 39 of 1994.
- ³⁴⁰ Section 1 of the National Strategic Intelligence Act 39 of 1994.
- ³⁴¹ Section 11(1) Act 88 of 1995.
- ³⁴² Act 108 of 1996 the Constitution.
- ³⁴³ Section 2(3) Act 88 of 1995.
- ³⁴⁴ Section 17F (6) and Section 17F(6A) of Act 88 of 1995.
- ³⁴⁵ Section 200(1) of the Constitution.
- ³⁴⁶ Section 4A of Act 42 of 2002.
- ³⁴⁷ Section 33 and 34(1)(a)(i) Act 42 of 2002.
- ³⁴⁸ Section 201(2)(a) of the Constitution.
- ³⁴⁹ Section 3(2) Act 39 of 1994.
- ³⁵⁰ Section 207(1) and (2) of the Constitution.
- ³⁵¹ Section 207(3).
- ³⁵² Section 13(3) Act 88 of 1995.
- ³⁵³ Section 17(5).
- ³⁵⁴ Section 17(3) Act 88 of 1995.
- ³⁵⁵ Section 18 and 19.
- ³⁵⁶ Section 201(1) of the Constitution, read with Section 19(1) of Act 42 of 2002.
- ³⁵⁷ Section 19(2) Act 42 of 2002.
- ³⁵⁸ Section 19(3)(c) (2) Act 42 of 2002.

³⁵⁹ Section 92(1)

³⁶⁰ Section 92 (2) and (3)(a)-(b).

³⁶¹ Proclamation 13 of 2020 (10 March 2020) GG.43083

³⁶² Proclamation 13 of 2020 (10 March 2020) GG.43083, 2.1 The NSC is made up of the following: “The President (Chairperson); b) The Deputy President; c) Minister of Defence and Military Veterans; d) Minister of State Security; e) Minister of Police; f) Minister of International Relations and Cooperation; g) Minister of Home Affairs; h) Minister of Finance; i) Minister of Justice and Correctional Services; and j) Minister of Cooperative Governance and Traditional Affairs.”

³⁶³ Section 20(1) of the National Prosecuting Authority Act 32 of 1998 –

“(1) *The power, as contemplated in section 179(2) and all relevant sections of the Constitution to –*

(a) institute and conduct criminal proceedings on behalf of the State;

(b) carry out any necessary functions incidental to instituting and conducting such criminal proceedings; and

(c) discontinue criminal proceedings,

vests in the prosecuting authority and shall, for all purposes, be exercised on behalf of the Republic.”

³⁶⁴ The NPA cannot institute any matter *mero motu* (of its own accord).

³⁶⁵ Section 24 (1) read with Section 20(3) of the NPA Act, sets out the powers, duties and functions of the DPP, the DPP’s jurisdictional limitation.

³⁶⁶ Part 4, Section A of the Prosecution Policy accessed at (see also, NPA Response to the Provisional Report

³⁶⁷ Sections 2(1) and Section 3 Private Security Industry Regulatory Act 56 of 2001 (‘PSIRA’).

³⁶⁸ Section 44 (8) “*The provisions of section 20 of the repealed legislation and the regulations made in relation thereto remain in force, with the necessary changes, as if the legislation had not been repealed, until a code of conduct for security service providers and provisions providing for the enforcement thereof come into operation.*” “*...the Minister for Safety and Security the rules contained in this Schedule that embody the minimum standards of conduct with which every security service provider and employer of in-house security officers must comply.*”

³⁶⁹ Section 20(1)(a) and (1)(b) of PSIRA

³⁷⁰ Institute for Economics and Peace (2021) ‘Global Peace Index 2021: Measuring Peace in a Complex World’, Sydney, June, accessed at Global Peace Index.

³⁷¹ “Organised Crime,” is defined as, “a continuing criminal enterprise that rationally works to profit from illicit activities that are often in great public demand.” United Nations Office on Drugs and Crime. (n.d.). Defining Organized Crime. <https://www.unodc.org/e4j/en/organized-crime/module-1/key-issues/defining-organized-crime.html>

³⁷² D Bruce, ‘Murder Trends in South Africa’s deadliest provinces,’ *ISS Policy Brief* 183) 2023 (accessed at <https://issafrica.s3.amazonaws.com/site/uploads/PB-183.pdf>)

³⁷³ Police brutality has risen since the COVID-19 pandemic, IPID reported, “376 cases and 10 deaths linked to lockdown enforcement,” during this period in “Spotlight on South Africa’s police brutality problem,” ISS. (See also) D Bruce, “How to reduce police brutality in South Africa,” ISS, South Africa Report (40) 2020.

³⁷⁴ B. Roberts, S Gordon, ‘Pulling us apart? The association between fear of crime and social cohesion in South Africa,’ (2016) *SA Crime Quarterly* 55, 49–60.

³⁷⁵ “Structural Violence,” First theorised by sociologist Johan Galtung, a form of indirect violence, includes the, “use of political or economic power to commit violent acts or constrain/restrict an individual or specific group of people,” it includes acts of “racism, elitism, sexism, xenophobia,” see further, E. Povinelli, ‘Economies of abandonment: Social belonging and endurance in late liberalism,’ (2011) Durham, NC: Duke University Press, G van Riet, ‘Safety and Security Society: Security Infrastructures and Democracy in a Context of Negative

Peace,' Chapter 9 in D. Silander *et al.* (ed) South Africa's Democracy at a Crossroads, Emerald Publishing Limited 127-140.

376 The Expert High-Level Panel Report (2018), the HLRP Report 'accessed at < Mufamadi Report 2018>.

377 The Commission has not been furnished with a detailed account of these improvements, see further Proposed Response to Provisional Findings and Directives, para. 1 at 1.

³⁷⁹ Section 17F (6) Act 88 of 1995.

³⁸⁰ General Masemola submits that the working relationship with the Minister of Police is, "*in good standing based on trust and cooperation.... meeting with the Ministry on a weekly basis.*" SAPS Official Response (12 September 2023).

³⁸¹ During the Unrest Ambassador Gab Msimanga served as Acting SSA Director-General after, Mr. Loyiso Jafta who ended his term on 27 March 2021 <<https://www.thepresidency.gov.za/press-statements/statement-appointment-state-security-agency-director-general>>.

³⁸² The term 'weaponisation' is used to illustrate the typology or *modus* of organised criminal groups; and is not intended to negate the agency of individuals who face poverty and socio-economic challenges, neither does it obfuscate the socio-political dynamics of 'protest action,' in South Africa which has been widely discussed elsewhere "*We can identify, [however], that the prevalence of protest is a response to various experiences related to a lack of freedom: poverty and inequality; disempowerment; lack of dignity; and failures of governance and democracy result in [what is] for many South Africans a limited experience of meaningful citizenship,*" H Brooks , S Mottaar and R Chikane (ed) *Rejection, reassertion, reclamation: The underpinnings of protest in South Africa* (2023)MISTRA: 354-369.

³⁸³ S. Africa *et al.* 'the Africa Report' (2021) par 5.50 at 109.

³⁸⁴ *Ibid*, par 5.51 at 109.

³⁸⁵ Par 5.51 at 109.

³⁸⁶ I. Currie and J de Waal, (ed) *The Bill of Rights Handbook* (6th), 12.1, 280.

³⁸⁷ H Siddique and M Wolfe-Robinson, (The Guardian, 1 August 2021) accessed at https://www.theguardian.com/uk-news/2021/aug/01/courts-failed-people-caught-up-in-uk-riots-in-2011-says-ex-chief-prosecutor?CMP=Share_iOS%E2%80%A6 (see further)

³⁸⁸ South African Human Rights Commission's Report, FS/2011/0009, accessed at <https://www.sahrc.org.za/home/21/files/Report%20Comm%20%20SA%20Police%20Service%20301012.pdf> ; (see further) L Lancaster, *ibid* (2016).

³⁸⁹ See further within the report, accounts from the business and community sectors in Issue One and Issue Two.

³⁹⁰ The Service Charter for Victims of Crime, (1 December 2004), contains seven rights enshrined elsewhere in the Constitution, the CPA, and the Witness Protection and Services Act, Act 112 of 1998, the Domestic Violence Act 116 of 1998 – *inter alia*, "*the right to be treated with fairness and with respect for dignity and privacy, the right to offer information, the right to receive information, the right to protection, the right to assistance, the right to compensation, the right to restitution.*"

³⁹¹ The Service Charter for Victims of Crime, (1 December 2004), contains seven rights enshrined elsewhere in the Constitution, the CPA, and the Witness Protection and Services Act, Act 112 of 1998, the Domestic Violence Act 116 of 1998 – *inter alia*, "*the right to be treated with fairness and with respect for dignity and privacy, the right to offer information, the right to receive information, the right to protection, the right to assistance, the right to compensation, the right to restitution.*"

³⁹² See further, *Christian Education South Africa v Minister of Education* 2000 (4) SA 757 (CC) [47], *Carmichele v Minister of Safety and Security* 2001 (4) SA 938 (CC).

³⁹³ See further, I. Currie and J de Waal, (ed) *The Bill of Rights Handbook* (6th), (n 61) 12.1, ,282.

³⁹⁴ The court instructed the defence force to initiate disciplinary procedures against soldiers implicated in the shooting of the unarmed civilian and to suspend them immediately, "...and underscored the standards for the promulgation, administration and enforcement of emergency regulations under section 27(3) of the Disaster Management Act." *Khosa v Minister of Defence* [2020] JOL 47,215 (GP) [7].

³⁹⁵ "Ethnocultural groups that perceive themselves as having been marginalised and pushed to the economic and political margins by state capture may resort to violent and destructive mobilisation to minimise their further exclusion and marginalisation,"

J Mbaku "Rule of Law, State Capture, and Human Development in Africa," 33 (4) 780.

³⁹⁶ Statement on the Cabinet Meeting (24 May 2023) accessed at < <https://www.thepresidency.gov.za/cabinet-statements/statement-cabinet-meeting-24-may-2023>>

³⁹⁷ Draft General Intelligence Laws Amendment Bill (GILAB) of 2023

³⁹⁸ *Amabhungane Centre for Investigative Journalism NPC and Another v Minister of Justice and Correctional Services and Others* (CCT 278/19; CCT 279/19) [2021] ZACC 3; 2021 (4) BCLR 349 (CC); 2021 (3) SA 246 (CC) (4 February 2021) accessed at <<http://www.saflii.org.za/za/cases/ZAGPPHC/2019/384.pdf>>

³⁹⁹ *Ibid*, *Amabhungane Centre for Investigative Journalism NPC and Another v Minister of Justice and Correctional Services and Others*

⁴⁰⁰ The SSA has a historically poor track-record of security vetting given several security risks posed by security backlogs and the revocation of the Inspector-General's security clearance. Intel Watch Briefing Note: The General Intelligence Laws Amendment Bill (GILAB) 230828 accessed at <<https://intelwatch.org.za/wp-content/uploads/2023/08/230828-GILAB-Briefing-Note.pdf>>

⁴⁰¹ National Prosecuting Authority Amendment Bill (GG) [B-2023], Amendment of Preamble Act 32 of 1998, as substituted by section 1 of Act 61 of 2000 and amended by section 14 of Act 56 of 2008.

⁴⁰² *Ibid*, Preamble.

⁴⁰³ See further evidence relating to "primary actors" and "primary looters," as described under Issue One and Issue Two.

⁴⁰⁴ David Bruce's testimony on the 2nd December 2021, Day 13 accessed at < https://www.youtube.com/watch?v=nYam_VSEjDI >

⁴⁰⁵ SAPS is not the "custodian of the strategy." NICOC is responsible for the NSS and the (current) National Commissioner indicates that the strategy is in an advanced stage of development SAPS Response (12 September 2023) at 2.

⁴⁰⁶ Recommendations have been noted and welcomed by the SSA. The SAHRC is invited as a stakeholder to be consulted in the process of a national security review, see further *SSA Response*, at 4.

⁴⁰⁷ These could include but are not limited to i) Public-Safe Products for Security Alerts, ii) accurate information on emergency service access iii) Establish Counter-Narratives and Fact-Checking Systems, iv) Develop security system intelligence to adequately identify PSYOPS; v) Develop systems for countering and combating widespread misinformation and disinformation by creating counter-narratives, fact-checking mechanisms, and safety analytics systems; vi) Use various platforms to engage with the community and provide advance public safety warnings. This includes sharing key information to help people avoid high-risk areas, unlawful roadblocks, and National Key Points

⁴⁰⁸ Appointed by the President in terms of Section 210(b) of the Constitution read with Section 7(1) of the Intelligence Services Oversight Act 40 of 1994. The IGI is empowered to receive and investigate complaints from members of the Intelligence Services and the public in terms of section 7(7) (cA) of the Act.

⁴⁰⁹ The (current) National Police Commissioner Gen. SF Masemola has noted the recommendations in the "Africa Report" and are in the process of implementing a coordinated approach and regular monitoring by the Strategic Management Component of the SAPS. A progress report and implementation plan has been compiled in the "Africa Report," which recommendations are soon to be presented to the Portfolio Committee on Police.

⁴¹⁰ See further evidence under the NPA, challenges to prosecuting online crime.

