



**MINISTRY OF JUSTICE AND CORRECTIONAL SERVICES**

**REPUBLIC OF SOUTH AFRICA**

**Briefing by the Minister of Justice and Correctional services on processes to be followed following  
the arrest / prosecution of people involved in the recent acts of violence that took place in South  
Africa**

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Deputy Minister responsible for the Department of Correctional Services: iNkosi Phatekile Holomisa

Chairperson of the Portfolio Committee: Honourable Bulelani Magwanishe

Director General of the Department of Justice and Constitutional Development: Advocate Mashabane and  
team

National Director of Public Prosecutions: Advocate Shamila Bathoi and team

National Commissioner of Correctional Services: Mr. Arthur Fraser and team

Honourable Members the recent eruptions of violence and looting in South Africa are an unprecedented assault on our democracy, social contract and rule of law

In the past week, we all saw that the foundations of our Constitutional democracy were tested, and still, many citizens in our communities stood firm and showed our country's unwavering commitment to the rule of law.

Honourable Members; without doubt, our country has come to witness what was said in the matter of Rex v Wilke in 1768, Presiding over this matter in England, the Chief Justice in that court said:

***“ We must not regard political consequences, however formidable they might be; if rebellion was the certain consequence, we are bound to say, Justitia fiat, ruat coelum—Let justice be done, though the heavens fall.”***

This principle has subsequently been further codified in our Constitution in Section 9 which states the following: **“Everyone is equal before the law and has the right to equal protection and benefit of the law.”**

Our analysis reveals that the unrests and incidents of violence we witnessed in the past week were occasioned by a confluence of issues. The violent acts of burning of national key installations, disruptions of economic activities, blockade of national roads, leading to disruptions of key supplies such as food, medicine,

etc, with dire consequences for thousand of people, falls squarely within the parameters of the POCDATARA Act. This Act of Parliament is one of the critical pieces of legislation designed for the protection of our constitutional democracy. Law enforcement agencies have to investigate all those who violated the spirt and letter of the POCDATARA Act and the other laws of the republic.

I personally walked in the streets of Soweto in Gauteng and Gamalakhe in KwaZulu- Natal respectively.

I saw and witnessed very disturbing scenes.

Our old scars as nation were re-opened.

Racial tensions which simmered in our communities really boiled over to a point where the ethos of the National Democratic Revolution got derailed significantly.

Now more than ever, we should not question whether we are United in our Diversity, we now need to show it.

Now more than ever, we should not theorize about Ubuntu, we need to show it.

Our heroes and heroines are not those who destroy, but those who build.

As Former President Nelson Mandela once said, it is easy to destroy, but difficult to build.

Honourable Chairperson, from our perspective, we need to ensure by all means that our Criminal Justice System remains firm.

In order for us to ensure that the wheels of justice continue to turn exceedingly fine, we have issued directions which will amongst other things have the following effect:

Manage cases backlogs arising from backlogs as well as cases emanating from the public violence and public disorder that erupted in KwaZulu Natal and spread to Gauteng and other parts of the country;

The backlogs will be managed by ensuring that:

We have The Priority Rolls for cases such as:

- (a) Gender based violence and femicide
- (b) Sexual Offences
- (c) Corruption cases
- (d) Partly-heard cases & trial-ready
- (e) Cases where the Presiding Officers decide they be include

Furthermore, the directions provide opportunities to implement special measures to address the spiraling case backlog occasioned by the hard lockdown.

Honourable Members;

Our directions also provide for Alternative Dispute Resolution Mechanism:

In terms of the Directions, the National Prosecuting Authority may, where the accused is charged with a less serious offence in respect of which an admission of guilt is permissible and justified, fix an appropriate amount as an admission of guilt in respect of the accused person concerned.

This creates an opportunity for Diversion in respect of children.

It facilitates the involvement of other community structures to facilitate restorative justice.

And it creates a mechanism for non-custodial sentences as a form of restorative justice to minimise overcrowding.

### **Integrated Management and Coordination**

Honourable Members, we have also re-worked our operating model.

In a period like this, we cannot afford to work in silos.

We have an integrated task team on the management of unrest and related cases.

The task team convened by the Department of Justice and Constitutional Development comprises of the National Prosecuting Authority, Legal Aid SA, South African Police Services, and the Department of Correctional Services.

It has specific terms of reference, it must:

1. Receive and validate reports and statistics from KZN & Gauteng provinces
2. Attend to blockages across the criminal justice value chain
3. Address escalated matters for decisions and escalate where necessary
4. Facilitate resource allocation where necessary
5. Adopt a Project Management Approach to resolving operational challenges
6. Consider and address concerns and views raised by Magistrates in their interface with Ministry / DOJ&CD.

#### Prosecution Policy

The National Prosecuting Authority has considered the operational impact of the unrests.

KwaZulu- Natal and Gauteng Provinces bear most of the challenges.

Chief amongst those challenges is the limited staff at offices due to COVID related reasons as well as transport problems occasioned by the unrest.

Another challenge is overcrowding of South African Police Services cells, as a result quick processing of detainees will be required when large numbers of arrest are made.

The operational plan will address:

Collaboration between NPA and SAPS, many of these cases would likely amount to theft than mere possession of stolen property.

In collaboration with SAPS, emerging cases will be divided into 4 categories:

- i) Actual looters and persons participating in stealing from shops and outlets
- ii) Persons found in possession of stolen properties
- iii) Groups and individuals stealing property in big quantities, organised or planned action
- iv) Enticement or inciting public violence

Experienced prosecutors have been assigned from Organised Crime and Priority Crime Litigation Unit.

Crime heads in the provinces under the direction of the Directors Public Prosecutions are assigned to deal with more complicated and serious matters.

Honourable Members, in terms of the NPA policies, where it is justifiable, cases which relate to people in possession of stolen goods or people who participated in looting may result in restorative justice or alternative measures such as admission of guilt, diversion and plea agreements as means of finalising them.

Honourable Members:

From a Correctional Services perspective, we are required to reconfigure remand detention system that is already overburdened. We have received a high number of remand detainees in Kwa-Zulu Natal and Gauteng

regions, as a result of arrests made for recent criminal acts and violence. To date, a total of one thousand four hundred ninety eight (1 498) remand detainees have been admitted in our facilities.

Our facilities are stretched due to overcrowding, our challenges are also exacerbated by the COVID-19 pandemic. However, we continue to mitigate against challenges through various measures. Both regions of Gauteng and Kwa-Zulu Natal, are coping and they continue to admit new inmates. We ensure that new detainees are isolated for COVID-19 screening and observation, before they interact with the general inmate population.

So Honourable Members, rest assured that no one who took part in acts of criminality would evade justice. Our institutions are working together to expedite all matters before them, justice will take its course and the rule of law will reign supreme.

I thank you and would want to ask the chairperson to allow the Director General of the Department of Justice and Constitutional Development, National Director of Public Prosecutions and National Commissioner of Correctional Services to present before the committee detailed plans around matters under discussion.