



BRIEFING BY THE SAPS ON POLICE INVOLVEMENT DURING STUDENT PROTEST 3 DECEMBER 2021



ON A JOURNEY TO A SAFER SOUTH AFRICA

Creating a safe and secure, crime free environment, that is conducive for social and economic stability, supporting a better life for all.

#PatrioticandSelflessService



Presentation Overview

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- Public Order Policing Mandate
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- SAPS Strategy 2020-2025 on Peaceful Conflict Mediation, Negotiation and Resolution Management.
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- Four pillar, integrated, interdepartmental intervention plan- SAPS Relationship with Universities/TVET Colleges
- SAPS accountability on police incidents during student protests.
- Conclusion



Purpose



To brief to the Joint Meeting of the Portfolio Committee on Higher Education, Science and Innovation and the Portfolio Committee on Police (PCoP), on the involvement of the South African Police Service (SAPS), during student protests.



Historical Background

- Following 2017 fees adjustment announcement, made by the Minister of Education, students, under the banner of #FeesmustfallReloaded, #Fees 2017, resumed protest actions at institutions of higher learning.
- Students went on the protracted violent protest action with demands for a no fee increase, for 2017, being the main demand.
- As a consequence of the protests, most higher learning institutions had to suspend their academic programmes.
- There was a requirement to stabilise the unrest situation and to avoid the negative impact on the next academic year.
- As a response to the situation, the Justice Crime Prevention & Security Cluster (JCPS) and affected departments, implemented a four pillar, integrated, interdepartmental intervention plan.



Public Order Policing Mandate

- The mandate of the SAPS Public Order Policing (POP) is obtained from Section 205(3) of the Constitution of the Republic of South Africa (RSA), 1996, which determines that the main functions of the SAPS are, *inter alia*, to prevent, combat and investigate crime, maintain public order, protect and secure the inhabitants of South Africa and their property and to uphold and enforce the law.
- POP is responsible for the maintenance of public order, firstly by ensuring public order during public gatherings and demonstrations and secondly, by intelligence driven crime combating and prevention operations.



Public Order Policing: Legislative and Policy Framework



- The Constitution of the RSA, 1996 (Bill of Rights)
- The South African Police Service (SAPS) Act, 1995 (Act No. 68 of 1995)
- The Regulations of Gatherings Act (RGA), 1993 (Act No. 205 of 1993)
- SAPS National Instruction, 4 of 2014: Public Order Policing: Crowd Management During Public Gatherings and Demonstrations.



SAPS Strategy 2020-2025 on Peaceful Conflict Mediation, Negotiation and Resolution Management



- The SAPS has made noteworthy strides in enhancing the POP capacity and capability, within the context of recommendations, emanating from the Panel of Experts, associated with the Farlam Commission.
- The SAPS introduced the District Development Model (DDM) that provided a platform for the improvement of levels of community safety plans (CSPs) and audit, supported by the Local Crime Prevention Framework. The effective implementation of the DDM will assist in the reduction of violent public protest incidents.
- The model assists with the resources being readily available for policing functions and ensures that critical infrastructure and property, are effectively policed.



SAPS Strategy 2020-2025 on Peaceful Conflict Mediation, Negotiation and Resolution Management (2)



- The finalisation of the implementation of all aspects of the optimisation of the POP capability, is addressed in the POP Strategy, 2019-2022, that indicates as follows:

Psychological Readiness

- Maintain a motivated and energetic POP personnel contingent.
- Ensure personal stability.
- Continuous emotional and psychological support, due to the strenuous work environment and long periods of deployment.
- Acknowledgement of high stress levels and psychological strain within this environment and the impact on the members personal life.

SAPS Strategy 2020-2025 on Peaceful Conflict Mediation, Negotiation and Resolution Management (3)





SAPS Strategy 2020-2025 on Peaceful Conflict Mediation, Negotiation and Resolution Management (4)



The SAPS Management took a decision, in 2016, to develop a course on Crowd Conflict Management, specifically for POP members. The course entails the following subject matter:

- Provides the regulatory framework governing Crowd Conflict Management.
- Prepares officers in the evaluation and monitoring of Crowd Conflict Management.
- Provides understanding on communication and problem solving, including groups and crowd behaviour during Crowd Conflict Management.
- The training programme provides critical value and management of information, during Crowd Conflict Management.



Types of Gatherings



Spontaneous gathering

Unplanned and not forecast (Proactive tactical measures: barriers, negotiation, cordon, block, isolate, patrol, escort, canalise).

- **Peaceful:** Non-violent demonstration; no notification, usually the police station members and the Metro Police are first responders, POP deployed, negotiate with conveners and monitor through visible presence, no intervention but may use defensive action modes and open criminal cases.
- **Unrest:** Violent, dissatisfied and agitated. No notification, usually the police station members and the Metro Police are first responders, POP deployed, start to contain, progressive use of force, if necessary and may use offensive action modes, such as dispersal, make arrests, case of public violence registered.



Types of Gatherings (2)



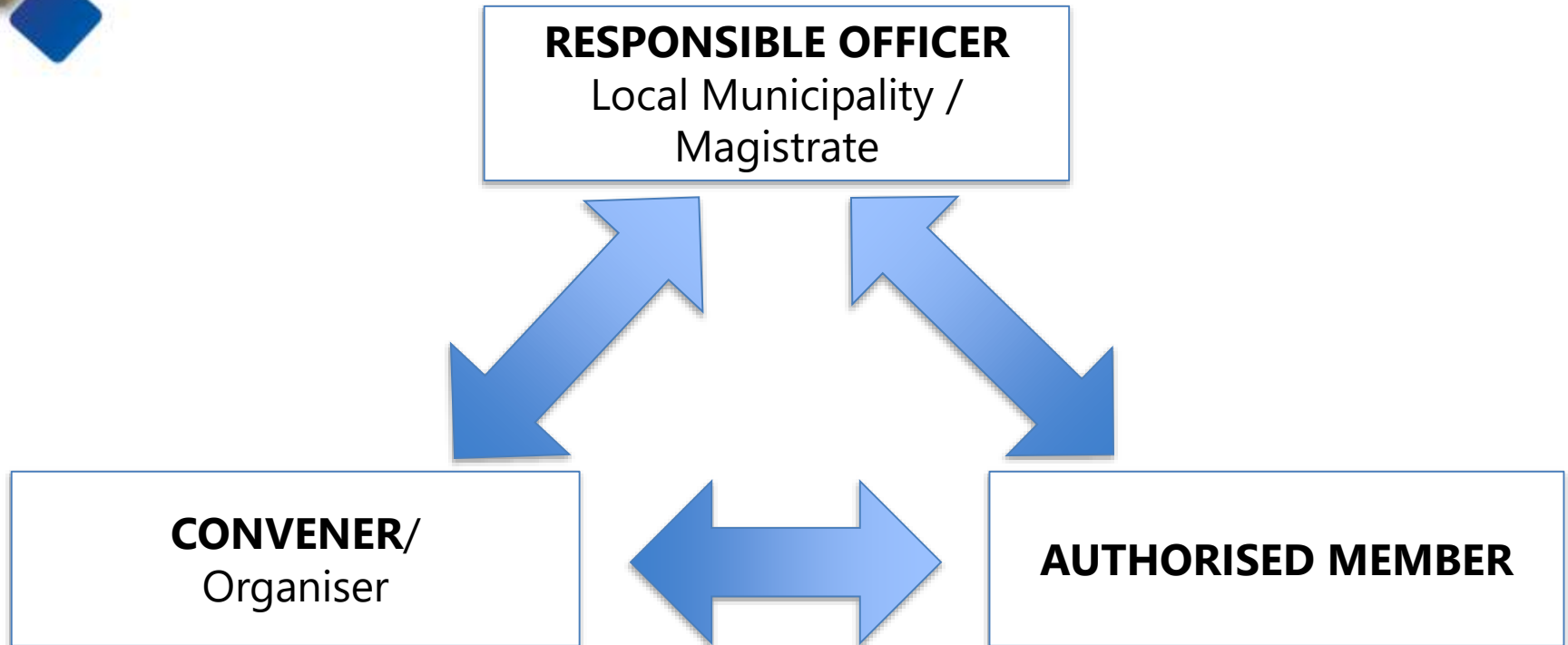
Planned: Notification within seven days

- **Peaceful:** Role of authorised member or responsible officer and convener, Section 4 meeting, (Golden triangle), compliance to agreement execution through shared responsibilities by roleplayers, i.e. marshals, may use defensive action modes.
- **Unrest:** Role of authorised member or responsible officer and convener, Section 4 meeting, non-compliance to agreement or incident triggers violence, progressive use of force, use of offensive action modes such as arrests, case of public violence.



The Golden Triangle

Section 4 meeting: (RGA)





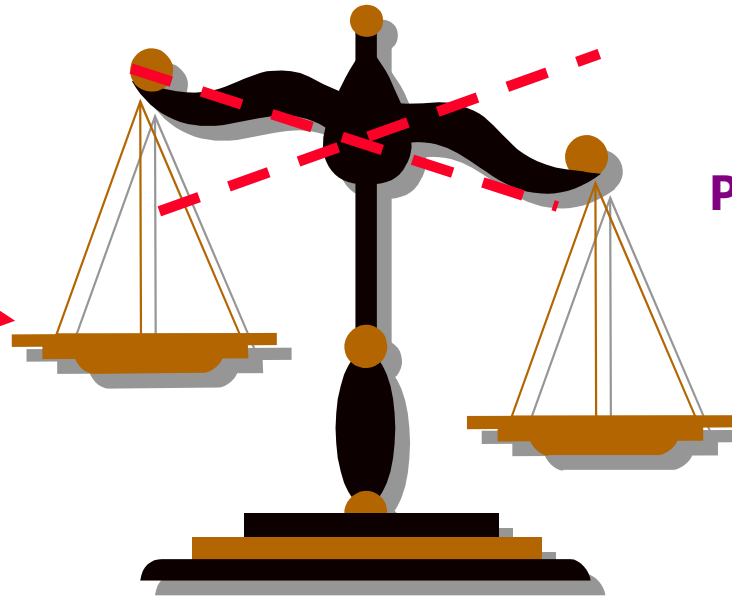
Doctrine



Negotiated management of public space, whereby the approach is the objective of SAPS action, to de-escalate conflict.



Democratic Balance



**Level of Tolerance
(Danger to Persons,
Property, institutions)**

Individual - groups interests
Evolutionary perspective
Right to assemble and give protest
Tolerance

Collective interests
Traditional perspective
Right to order and security
Effectiveness



Principles



- Legality
- Situational Appropriateness
- Proportionality
- Optimisation



Principles (2)



Legality:

- Are participants actions legal?
- Can participants actions be tolerated?
- Will the SAPS/Public Order Policing (POP) actions fall within the legal framework?
- Which Acts/Regulations/National Instructions etc. justifies my actions?
- Right to assemble and give protest.
- Planned intervention falls within the legal framework.



Principles (3)

Situational Appropriateness:

- My intervention has to solve a problem of public order and not create a bigger one.
- The actual situation before and during an event, will make it necessary to make a decision, which is appropriate to take action.
- The purpose of POP operations is to prevent unrest and criminal behaviour and, if necessary, to restore public order, in terms of the law.



Principles (4)

Situational Appropriateness:

The boundaries between the economic, social and political fields become more and more blurred, with day-to-day policing, thus forcing decisions to:

- Either stand back and do nothing, or
- negotiate and enter into dialogue with the parties concerned, or
- postpone the planned operation.
 - Rule 1: Knowledge of the demonstrators and of the circumstances, in general.
 - Rule 2: Dialogue (consultation) with the local authorities.
 - Rule 3: Entering into Dialogue with the parties concerned.
 - Rule 4: Dissuasion.
 - Rule 5: Minimisation.



Principles (5)



Proportionality:

Is the balance reasonable between what I want to achieve and the means I need to do it?

The means which have to be used, in order to reach the aimed goal, are still reasonable. If they are not, then two solutions remain:

- Either adapt the goal; or
- find another way to achieve it.
 - Rule 1: Knowledge of the demonstrators and of the circumstances, within the framework of intervention.
 - Knowledge of one's own means.



Principles (6)



Optimisation:

Can I get the maximum output of my means?

This principle means that the operational commander has to use his/her means optimally, which means:

- Either adapt his goals to the means he/she has; or
- ask for reinforcements for the goals he/she wants to reach.

In order to respect the principle of optimisation, the operational commanders must apply the following rules:

- Freedom of action.
- Optimal effect of means.



Police Gradual Response and Force Continuum



Phase 1: Physical presence

- Image of uniformity and professionalism.
- Equipment on scene; helmet, gas mask, coverall, shield, gloves, body protection system; and
- Visible presence of personnel carriers and armoured vehicles (Nyala and Water Canon).



Police Gradual Response and Force Continuum (2)



Phase 2: Soft skills

- Opening a channel for communication between role players.
- Enhance cooperation to find a mutual resolution to potential conflict and confrontation.



Police Gradual Response and Force Continuum (3)



Phase 3: None to less lethal force

- Tonfa and shield.
- Physical hand-to-hand contact.
- Stun grenades/Smoke grenades.
- CS gas grenades, hand held and launched from shotgun, as well as 40mm, both CS short and long range rounds.
- Water Canon (water, foam, dye, pepper and CS options) effective, from 10 to 50 metres, on congregated groups of participants.



Police Gradual Response and Force Continuum (4)



Phase 4: Less to more lethal force

- Use of shotgun rubber rounds, 12 Bore double ball, blue M9A1.

Police Gradual Response and Force Continuum (5)



Phase 5: Deadly force

- This refers to instances where deadly force can be used, such as in cases of necessity, self or private defence and includes;
 - 9mm firearms
 - R5 rifles

Consideration must also be given to section 49(1) and (2) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).



Four Pillar, Integrated, Interdepartmental Intervention Plan



- Pillar 1 - Legal and Regulatory Framework
- Pillar 2 - Operational Plan
- Pillar 3 - Multidisciplinary Approach
- Pillar 4- Mass Communication Community and Stakeholder Engagement



Pillar 1: Legal and Regulatory Framework



The Constitution allows for peaceful protests, but not the violation of the rights of other people.

Constitutionality

Section 16(1) of the Constitution of the Republic of South Africa (RSA), 1996, protects the fundamental right to freedom of expression, by stating that:

Everyone has the right to freedom of expression, which includes-

- (a) freedom of the press and other media;
- (b) freedom to receive or impart information or ideas;
- (c) freedom of artistic creativity; and
- (d) academic freedom and freedom of scientific research.

Section 16(2) of the Constitution, however, makes it clear that the above right does not extend to-

- (a) propaganda for war;
- (b) incitement of imminent violence or advocacy of hatred that is based on race, ethnicity, gender or religion and that constitutes incitement to cause harm.



Pillar 1: Legal and Regulatory Framework (2)



Crime Forms to be Focused on by Law Enforcement **Public Violence:**

Public violence is a common law crime.

The elements of public violence are:

- An act;
- By a number of persons;
- Which assumes serious dimensions;
- Which is unlawful; and
- Intentional, specifically to (forcibly) disturb public peace and tranquillity or to infringe the rights of others.



Pillar 1: Legal and Regulatory Framework (3)



Protests and violence

The Regulation of Gatherings Act, 1993, is of utmost importance to address gatherings, as well as violence, during such gatherings.

Section 8 of the Regulation of Gatherings Act, 1993, provides that:

- (5) No person present at or participating in a gathering or demonstration shall by way of a banner, placard, speech or singing or in any other manner incite hatred of other persons or any group of other persons on account of differences in culture, race, sex, language or religion.
- (6) No person present at or participating in a gathering or demonstration shall perform any act or utter any words, which are calculated or likely to cause or encourage violence against any person or group of persons.



Pillar 1: Legal and Regulatory Framework (4)



- (9) The marshals at a gathering shall take all reasonable steps to ensure that-
- no entrance to any building or premises is so barred by participants that reasonable access to the said building or premises is denied to any person;
 - no entrance to a building or premises in or on which is situated any hospital, fire or ambulance station or any other emergency services, is barred by the participants.
- (10) No person shall, in any manner whatsoever, either before or during a gathering or demonstration, compel or attempt to compel any person to attend, join or participate in the gathering or demonstration, and the convener and marshals, if any, shall take all reasonable steps to prevent any person from being so compelled.



Pillar 1: Legal and Regulatory Framework (5)



Incitement

General offence of incitement to commit a crime:

- Incitement to commit a crime is punishable, in terms of Section 18(2) of the Riotous Assemblies Act, which reads as follows:

“Any person who incites, instigates, commands or procures any other person to commit any offence, whether at common law or against a statute or statutory regulation, shall be guilty of an offence and liable on conviction to the punishment to which a person convicted of actually committing that offence would be liable.”

Reason for crime of incitement:

- To enable the authorities who have to enforce the law to thwart crime at an early stage, before any real damage has been done.
- The law tries to discourage people who incite others to commit crimes by threatening them with punishment.



Pillar 1: Legal and Regulatory Framework (6)



Incitement to public violence

Section 17 of the Riotous Assemblies Act, 1956, provides that:

“A person shall be deemed to have committed the common law offence of incitement to public violence if, in any place whatever, he/she has acted or conducted him/herself in such a manner, or has spoken or published such words, that it might reasonably be expected that the natural and probable consequences of his/her act, conduct, speech or publication would, under the circumstances, be the commission of public violence, by members of the public generally or by persons in whose presence the act or conduct took place or to whom the speech or publication was addressed”.



Pillar 1: Legal and Regulatory Framework (7)



Incitement to Commit Crimes in General is a Crime

This includes incitement, in relation to -

- Assault
- Arson
- Murder and attempted murder
- Malicious injury to property
- Intimidation Act

The Intimidation Act, 1982, specifically prohibits intimidation, or a threat thereto, which is often used on a broad basis as an instrument, to instigate strikes and other protest actions. It provides for stiff penalties.



Pillar 1: Legal and Regulatory Framework (8)



Other Crimes:

Protests and dangerous weapons: In terms of Section 8(4) of the Regulation of Gatherings Act, 1993: "No participant at a gathering or demonstration may have in his or her possession-

- (a) any airgun, firearm, imitation firearm or any muzzle loading firearm, as defined in Section 1 of the Firearms Control Act, 2000 (Act 60 of 2000), or any object, which resembles a firearm and that is likely to be mistaken for a firearm; or
- (b) any dangerous weapon, as defined in the Dangerous Weapons Act, 2013 and the convener and marshals, if any, shall take all reasonable steps to ensure that this Section is complied with.

The definition of a dangerous weapons is wide and no firearm or imitation thereof (including licensed firearms) may be carried at a gathering.



Pillar 1: Legal and Regulatory Framework (9)



Violence, assault, damage to property and other transgressions of the law, are to be addressed, within the law.

Use all possible legal avenues:

- Interdicts (assist Higher Education Institutions where required).
- Criminal actions to be prosecuted in normal courts but in a prioritised manner; bail to be opposed while investigation is underway; prosecution-guided investigation; focus on evidence gathering, in addition to POP actions.

Civil remedies to be followed:

- Claims against organisers and those who cause damage individually.
- National and Provincial JCPS Structures, National Joint Operational and Intelligence Structure (NATJOINTS), Provincial Joint Operational Centres (PROVJOC), Joint Operational Committee (JOCOM) and the Divisional Commissioners, to deal with the situation.

The Minister of Justice and Correctional Services, to brief the Heads of Courts, of situations and cases to be dealt with.



Pillar 1: Legal and Regulatory Framework (10)



- A National Prosecution Authority (NPA) Coordinator, is appointed in every Director of Public Prosecution's (DPP'S) office: A Deputy Director of Public Prosecutions is appointed, in bigger offices and Chief Prosecutors, in smaller offices. Therefore a structure is now in place, in all DPP offices, to handle cases of unrest at learning institutions.
- Cases to be handled by specific prosecutors in the ordinary courts.
- Priority given to unrest cases and no cases will be withdrawn, if any violence was an element of the offence.
- Cases to be monitored in all instances and reported to head office that coordinates and collates all information. Widespread and systematic tendencies will be monitored.



Pillar 1: Legal and Regulatory Framework (11)



- If evidence is obtained of organised widescale unrest, a charge of sedition would be preferred against the people involved.
- The obtaining and preservation of sufficient evidence is of paramount importance and specific persons and technical equipment (e.g. video recording) must be allocated for this task and not just POP.
- Members of NPA are always available to manage, guide and assist with training, where required of members of the SAPS/Directorate for Priority Crime Investigation (DPCI), in the execution of duties, in this regard.



Pillar 2: Operational Plan

SAPS Relations with Universities/TVET Colleges, during Student Protest Action.

- This Operational Directive is premised on Section 16 of the Constitution of the RSA, 1996 “to protect the fundamental rights to freedom of expression” by ensuring that a conducive platform is created.
- The following operational directives are provided as a framework for a standardised multidisciplinary policing approach, in addressing public order and crime, during student protests.



Pillar 2: Operational Plan (2)

National Level:

- Activation of the NATJOC – with the following roleplayers:
- SAPS (POP, Visible Policing, Detective Service, the DPCI, the Local Criminal Record Centre (LCRC), Crime Intelligence, Explosive Section, etc.)
- Department of Education (Higher Learning)
- Department of Justice and Constitutional Development (NPA)
- Intelligence Community



Pillar 2: Operational Plan (3)

Provincial Level:

The SAPS will fulfil its Constitutional mandate, by maintaining public order and addressing crime, at all learning institutions, by doing the following:

- Activation of the PROVJOC.
- Activation of intelligence gathering network.
- Conduct analysis and risk assessment.
- Preparation of early warnings.
- Manage and coordinate safety and security, inside the learning institution.
- Appointment of liaison officers at institution level, to engage with relevant stakeholders.
- Ensuring that a VOC is established at each learning institution.



Pillar 2: Operational Plan (4)

Policing Approach to Law Enforcement

- Police must act decisively.
- Deal with the problem whilst it is still manageable.
- Enforce Regulation of Gatherings Act, Riotous Assemblies Act, Trespass Act, Dangerous Weapons Act, Intimidation Act and the common law crimes such as arson, damage to property, etc.
- Evidence collection to be enhanced, videos, still photos.
- Dedicated investigative team to facilitate the processing of offenders.
- Integrated criminal justice processes from arrest and bail issues to prosecution.
- Learning institution community must be encouraged to cooperate with police investigation.



Pillar 3 - Multidisciplinary Approach



The Department of Higher Education and Training has agreed on the following, with the institutions that were represented in its meeting with the learning institutions representative managers, responsible for risk management:

- The learning institutions will provide the Department with security updates, every Thursday and, if needs be, also every Monday. The Department will share this information with the NATJOC and indeed act on it where necessary.
- The learning institutions must create close working relations with the station commanders of the local police stations.



Pillar 3 - Multidisciplinary Approach (2)



- The Department must secure contact names and numbers of all the PROVJOCS and share them with all the learning institutions.
- The purpose will also be for the learning institutions to participate in the meetings of the PROVJOCS, with whom they also need to create working relationships.
- All the learning institutions should apply for court orders/interdicts against protests.
- In developing the court orders/interdicts, the learning institutions must consult with the legal services of the SAPS.
- The presence of court orders/interdicts would facilitate ease of interventions, by the SAPS, whenever there are illegal protest actions at the learning institutions or within areas restricted by the court orders.



Pillar 3 - Multidisciplinary Approach (3)



- Learning institutions must ensure that contracted private securities are all registered with the Private Security Industry Regulatory Authority (PSIRA). The private security companies, contracted by learning institutions, must make sure they protect lives and the property of learning institutions, first and foremost.
- Learning institutions must not withdraw charges against students, who have been arrested and charged.
- PSIRA should ensure that private security companies, together with campus control officers, contain protesters while waiting for the POP to arrive.



Pillar 4 - Mass Communication Community and Stakeholder Engagement



The Government Communication and Information System (GCIS) goal:

The goal of this strategy is to create dialogue and mobilise all sectors of South African society, to support government interventions, as well as to ensure the return of stability to Institutions of Higher Learning.

- A task team, comprising the Department of Higher Education and Training, Universities South Africa and the NATJOC was developed.



Pillar 4 - Mass Communication Community and Stakeholder Engagement (2)



Communication Objectives:

- To restore public confidence in government efforts, to assist poor and working class families.
- To breakdown the government intervention, to demonstrate the meaningful and substantial impact it brings to the lives of poor students.
- To obtain third party support.
- To minimise and balance criticism.
- Ensure sustained and coordinated public engagement, whilst demonstrating commitment, to resolving key issues.
- To project state authority and commitment, to deal with lawbreakers.



Pillar 4 - Mass Communication Community and Stakeholder Engagement (3)



Communication Coordination

The GCIS set up a communication operations room that coordinates government communication. The operations room is responsible for the following:

- Provide communication support to principals.
- Coordination of government communicators.
- Media monitoring and analysis.
- Content development (Key Messages, Op-Ed Pieces, rebuttals).
- Media engagement (interview schedules, media briefings, statements).
- Implementation of the social media plan.
- Liaison with the NATJOINTS.
- Coordination of Outreach Events.
- Product Development (Pamphlets, Audio-Visual products).



Pillar 4 - Mass Communication Community and Stakeholder Engagement (4)



Key messages will be narrowed for each key audience with direct and specific approaches. The target audiences are:

- Students
- Institutions of Higher Learning
- SA general public
- Third party endorsers (eminent persons)
- NGOs, CBOs
- Academics
- Media (local and international)
- Business
- Other opinion makers
- Youth



SAPS accountability on Police Incidents during student protests



- After police operations, non-commissioned officers should not be encouraged to protect each other, by dishonest conduct and withholding information.
- Police directives and procedures must be in place, to ensure that they are properly recorded and saved for all operations, e.g. ensuring that there is video recordings, as well as proper radio communication.
- The Independent Police Investigative Directorate (IPID) must be informed of every time when an incident of brutality takes place, either as part of police action or not, for further investigation and proper accountability.
- When SAPS officials make statements to the IPID, they must be legally protected, even though they may say something that incriminates themselves. This means they can speak freely, without getting themselves into trouble.



SAPS accountability on Police Incidents during student protests (2)



- They must avoid being defensive, stick to facts and be objective.
- Police officers must tell the truth and where necessary disciplinary measures be taken against them, to address their wrongdoing.



Conclusion



- This serves as a commitment, dedication and support, from all affected departments, in order for it to be effective.
- Emphasis to be placed on Pillar 1 and 4, with regard to stakeholder, community engagement and mass communication, regarding government responsibilities in order to, ensure effective proactive measures.



Questions and Answers



Thank You