

July 21, 2021

## **When political and social unrest come to work: Guidelines for South African business**

Dentons has mobilised a dedicated response team to answer any questions you may have and provide real-time support. You will find us via email [here](#).

## **Social media has the power to dominate people's thoughts, words and deeds.**

Protests that started in support of former President Zuma have morphed into looting, violence, destruction of property and chaos. We've all watched it on our phones or the tv or some other device.

The use of social media to begin, grow and fuel the anarchy – for that is what it is – has been a very frightening example of how the right to protest and freedom of expression, when untrammelled, can go horribly wrong. Within a few minutes, messages can have circulated to a group far bigger than the initial sender could have imagined. This is the multiplier effect.

News articles have noted that Twitter, Facebook, Instagram and TikTok have apparently been used to co-ordinate and trigger the protests particularly in KwaZulu-Natal and Gauteng – videos, images, texts and voice messages have been used to inform and mobilise people to participate in looting sprees, while others have opted to use it to spread misinformation, to exploit politically sensitive events, or further inflame the situation in real time – at the same time as increasing anxiety and panic for the vast majority of South Africans.

Some messages also obviously helped to alert people to areas to avoid, and to dangerous situations and we all have a right to send messages, to make observations, to draw conclusions and to share all of them online, or on any platform, because we have the right to freedom of expression. This right is not, however, without exception, it is not in fact, untrammelled.

## **So if the South African government were to take steps to curb the right to use social media, wouldn't this infringe on a fundamental freedom?**

The Cybercrimes Act which was passed in 2020, applies to anyone who, "unlawfully makes available, broadcasts or

distributes, by means of a computer system, a data message to a specific person, group of persons or the general public **with the intention to incite violence, or call people to be involved in the destruction of any property belonging to people**” and it makes these acts an offence.

**Critical to note is that this Act also makes it an offence for any person who “unlawfully and intentionally:**

- attempts;
- conspires with any other person; or
- **aids, abets, induces, incites, instigates, instructs, commands or procures another person, to commit an offence...**”

The actor can be liable for the same punishment that a person convicted of actually committing that offence would be liable.

Under this Act, telecoms operators and financial institutions must help in the investigation of cybercrimes, for example by furnishing a court with certain particulars which may involve the handing over or disclosure of data (defined as “electronic representations of information in any form”) or even hardware, on application by persons authorized in the Act. They must also report on cyber offences committed using, in the case of telecoms operators, their networks, within 72 hours of becoming aware of them. Telecoms operators are required to respond in real time and to provide real-time communication-related information in respect of a customer on an ongoing basis as it becomes available, and as has always been the case, under the Act known colloquially as “RICA” , operators may be directed to intercept communications.

**Offenders may face fines and up to 15 years in jail under the Cybercrimes Act.**

So that’s the one side of things. The other side is how government actually does enforce other rights – the right to privacy, to enjoy one’s property and the environment, to trade, and to live without fear.

The so-called Justice Cluster comprising Ministers of Justice, Crime Prevention, and Security claim, through police Minister Cele, to be monitoring all social media platforms and tracking those who are sharing false information and calling for civil disobedience.

The right to privacy, recently underscored by the commencement of the Protection of Personal Information Act, 2013, would seem to have gone out the window as Minister Cele says he is monitoring “all” social media platforms. But at some point, a line must be drawn between the rights we have and how we exercise them.

Government is the only entity that can do that, but how Government balances our rights with the need to protect citizens and property, seems to put us in a position where social media (and the platforms that carry it) are the only winner.

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