Introduction

Distinguished participants and colleagues it gives me great pleasure to represent my office, the office of the Western Cape Police Ombudsman in this important colloquium. My office is directly traceable to chapter 11 of our Constitution, more specifically sections 206(3) and (5)(a) and (b) on what provinces are entitled to do and how they are empowered to perform their functions. These functions and powers of provinces must be read with schedule 4 of the Constitution on functional areas of concurrent national and provincial legislative competence, hence the Western Cape Community Safety Act 3 of 2013.

This office is established by section 10 of the Western Cape Community Safety Act and the functions are outlined in section 15(a) which are “to receive and may investigate complaints submitted in terms of section 16, regarding inefficiency of the police or a breakdown in relations between the police and any community.”

My presentation will be within the context of the work I do as enjoined by the Constitution of the Republic of South Africa.

When I received the invitation to participate in this colloquium, I asked myself as to what my contribution should be. After a long and careful consideration I came to the conclusion that it should just be a one liner, “let us do what we have been researching and talking about since 1994!” I have been involved with the criminal justice system for 23 years now and we seem to be marking time. The more we speak integration, the more fragmentation I see. We have spent so much money on research we now need a return on our investment. South Africans want to be “free from fear and want” as promised by section 198 of our Constitution.
The dawn of freedom and democracy on 27 April 1994 also ushered in unintended consequences of rising levels of organised crimes and international crime syndicates. When the drafters of our Constitution stated that the Constitution was adopted as the supreme law of the Republic so as to “Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights,” they must have had amongst others crime in mind. Far-fetched? Let me explain.

Under apartheid the South African society was a society divided along racial, ethnic, cultural, religious and class lines. These divisions were legislated by an all-white Parliament. The South African Police were used as an instrument of enforcing these unjust laws. It was therefore an institution of oppression and repression of struggles for freedom and democracy. SAP was a force aimed at suppressing political dissent hence its militarisation.

The Khayelitsha Commission of Inquiry into allegations of police inefficiency and a breakdown in relations between SAPS and the community of Khayelitsha states “Given that SAPS’s institutional predecessor was complicit in the enforcement of unjust apartheid laws on a daily basis, SAPS must define itself in contradistinction to its predecessor. The relationship between the apartheid police and the black communities they policed was often hostile and fraught. When the Constitution emphasises the importance of ‘promoting good relations between the police and the community, as it does in sections 206(3)(a) and 206(5)(a), it does so mindful of this history. It is one of the many provisions in the Constitution that is best understood as an avowal of “never again.” Never again shall we allow communities to be oppressed unjustly by state law enforcement agencies. Never again shall we tolerate a relationship of hostility and hatred between the institutions of the state and the people of our country”.

My starting point is therefore, the Constitution and the relationship/partnership between the communities and the Police. It is important to note that section 219(1)(b) of the 1993 Interim Constitution states that it is one of the responsibilities of Provincial Commissioners to develop community policing services. Section 221 of the 1993 Constitution provides for the establishment of the community police forums in respect of police stations through the legislation envisaged in section 214(1) of the 1993 Interim Constitution. The functions of the community police forums are outlined in section 221(2).

These provisions are however catered for or were supposed to be catered for in section 18 of the SAPS Act of 1995 prior to the final Constitution of 1996. In terms of section 18(1) the
service shall liaise with the community through community police forums and area and provincial community police boards

to:

a) Establish and maintain a partnership between the community and the Service.

b) Promote communication between the Service and the community.

c) Promote co-operation between the Service and the community in fulfilling the needs of the community regarding policing.

d) Improving the rendering of police services to the community at national, provincial, area and local levels.

e) Improving transparency in the Service and accountability of the Service to the community.

f) Promoting joint problem identification and problem solving by the Service to the community.

Section 22 (2) requires the Minister, (it uses the language shall and not may) to issue regulations to ensure the proper functioning of Community Police Forums and Community Police Boards.

Section 221 of the 1993 Interim constitution marks a radical if not a revolutionary shift in policing. This was carried over in sections 18 to 23 of the South African Police Service Act 68 of 1995. The 1996 Constitution outlines four (4) principles that govern the national security; I will only mention three (3) of these principles.

a) National security must reflect the resolve of South Africans as individuals and as a nation, to live as equals, to live in peace and harmony, to be free from fear and want and to seek a better life.

b) ......

c) National Security must be pursued in compliance with the law including international law.

d) National security is subject to the authority or Parliament and the national executive.

Another fundamental shift is the one introduced by sections 206, 207 and 208 of the Constitution. If we are to discuss “reconsidering the fundamentals” then my focus or point of departure has to be the fundamental law of the land which is the Constitution. The sad state of affairs is that as we speak, in so far as CPF’s are concerned we are still operating in terms of interim regulations that were passed in 2001. This obviously causes uncertainty at best and confusion at worst. 22 years after the passing of the SAPS Act we are still sitting with interim regulations that were promulgated 6 (six) years after the Act was passed. We therefore, as a matter of urgency need to work towards the finalisation of the regulations for the CPF’s.
I am deliberately putting the CPF’s at the centre of this discourse because of the policing history of South Africa and our adoption of new constitutional values that attach value to a civilian oversight of security services. The current resource constraint of the CPF’s is directly traceable to interim regulations 11 under “Logistical Support”.

The assistance and support given to CPF’s is discretionary and at the whim of the Station Commander. This becomes a source of tension and frustration on all sides, this we can ill afford because this is one relationship/partnership that requires to be carefully nurtured if we are to win the fight against crime.

Communities play a critical role in both crime combatting strategies which re.act after the act as well as in crime prevention which is a more pro-active approach which is controllable and manageable. All of us need to make this community-policing partnership work because it constitutes the fulcrum around which the entire criminal justice system rotates. I opine that we need not spend much time examining the adequacy or otherwise of our legislative and administrative framework, it is sound, I assure you. From our:

1. Interim Constitution 1993
2. SAPS Act 1995


This period from 1994 to date has been peppered by lots of research and annual budget speeches which are annual policy statements. Why then are we still talking about “Reconsidering the fundamentals, outlining the challenges and proposing solutions”, what is it that we are not doing right? In my home language we say “Makuyiwe apho ithole lifele khona” meaning we need to be direct in our approach and not take a detour when we can take a straight route.

Does the SAPS leadership have a deep understanding of what policing in a constitutional democracy means?

This understanding and appreciation of a constitutional democracy has to find roots from the National Commissioner down to the student constable at the Police Academy including the PSA members. The starting point will be understanding the evolution of the South
African Constitution from pre-democracy to the democratic era. Do we have a sufficient understanding of S 198(a) when it says “National security must reflect the resolve of South Africans, as individuals and as a nation to live as equals, to live in peace and harmony to be free from fear and want and to seek a better life and how this correlates with page 386 of the National Development Plan (NDP) when it says safety and security apart from being a fundamental human right is also “a necessary condition for human development improved quality of life and enhanced productivity”. For us to win the struggle against crime, we need to deepen our understanding of the aforesaid. Every SAPS member from the National Commissioner to the student constable.

The NDP clearly states that our vision is that of “people living in South Africa feel safe and have no fear of crime. They are safe at home, at school, at work and they enjoy an active community life free of fear. Woman can walk freely in the streets and children can play safely outside. The police service is a well-resourced professional institution staffed by highly skilled officers who value their work, serve the community, safeguard lives and property without discrimination, protect the peaceful against violence and respect the rights of all to equality and justice”

This vision is crystal clear, it does not require any second guessing, so where does the problem lie? Why should the achievement of this vision be complicated? The devil lies in breaking it down and identifying the critical role players and ensuring the availability of resources. This can be broken down to:

1. Safe public and private spaces.
2. Professional policing.
3. Skilling
4. Resources
5. Partnerships – communities and other government departments
6. Respect for the Constitution and the rule of law

In 2007 there was a review of the criminal justice system by Advocate Johny de Lange who was at the time the Deputy Minister of Justice. Out of this review a seven point plan emerged. The problem we have is a plan which is not being implemented by the relevant departments. This Colloquium needs to ensure that the relevant departments implement this plan not in a piece meal fashion but in an integrated way that is coherent. In this regard I want to refer Conference to Chapter 12 of the NDP under the heading: Building Safer Communities.
Conclusion

The image of the South African Police Service is of utmost importance. The police must consistently portray and project a clean image of the service and the tone must be set from the top. Reports and allegations of police abuses and torture hurt the image of the police and tarnish the esteem with which South Africa is held internationally. Torture is a no goal area, there must be serious consequences for transgressions. South Africa has signed and ratified the UN Convention Against Torture, we have an international legal obligation to uphold it in compliance with domestic and international law in terms of section 198 (c) of our Constitution.

Corruption within the police service must be rooted out ruthlessly and relentlessly. The senior police management must take the lead in this regard.

The SAPS leadership must embrace civilian oversight and not see it as an obstacle or as intrusion that seeks to control the Police. The control and management of the police is firmly under the National Commissioner of Police in terms of Section 207 (1) and (2). Civilian oversight is an accountability mechanism which if properly managed will enhance public confidence in the police.

A country of 55 million people, with police numbering about 200 000 officers requires a strong relationship between the police and the communities they are policing and also requires the policed to give consent to their being policed. The police alone cannot “protect and secure the inhabitants of the Republic and their property,” as required by section 205 (3)

What is more, the police must uphold the law they are required to enforce.