ANALYSIS OF POLICING – RELATED REGULATORY FRAMEWORK: IDENTIFIED GAPS AND POSSIBLE SOLUTIONS

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#CrimeMustFall
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PREAMBLE
The analysis of policing has to include all dimensions of Police Science that define Police as a state institution, while on the other side has to seriously reflect on community perceptions that influence Police activities.

According to Van Heerden, TJ, it is necessary to have a good policing agent to deal with issues that address social disorder.

On the 29th September 1829 Sir Robert Peel, the founder of the Metropolitan Police in the UK looked at the needs of communities and introduced the concept “Bobbies on the beat” which were commonly known as the “Peelers”
Sir, Robert Peel on his analysis for policing – related matters considered amongst other things that basic community safety can only be guaranteed through omnipresence by engaging all police recruits on street patrols.

- Peel’s idea of policing influenced the rest of the world which traces to the establishment of the Durban Metropolitan Police in South Africa by the year 1854.

- The development of the South African Police between 1901 and 1903, emergency of the TBVC police agencies (Transkei, Bophuthatswana, Venda and Ciskei with subsidiaries such as Gazankulu, kwaNdebele, Giyani and Ulundi of kwaZulu Natal.

- All these police agencies had statutory provisions which directed the nature of policing in their respective avenues based on tradition, diversity and cultures.
DEFINITION OF CONCEPTS
The notion that policing is an exercise by an organ of state to protect its citizen and property has to be clearly defined to fully identify its mandate based on mandatory legislative framework.

- **Mirriam Webster** defines Police as a “department of Government concerned primarily with maintenance of Public Order, safety and health and enforcement of laws.” Webster maintains further that Police “is a department of government charged with prevention, detection, and prosecution of Public nuisances and crimes.

- One would come up with a definition: “Police are also as a Public Force, an organized Civil Force for the maintaining order, preventing and detecting crime and enforcing the laws.” (Dictionary.com)

- **Oxford Dictionary** also finds Police as an official organization that is responsible for protecting people and property.
Definition of concept contd …

- **Wikipedia** – a Police Force is *constituted body of persons empowered by the State to enforce law.*

- **Free Dictionary**: a body of government employees trained in methods of law enforcement, crime prevention, detection and authorised to maintain the peace, safety and security.

- Policing therefore talks to supervision and enforcement of legal rules and legislation. (Your Dictionary)

- Collin Dictionary defines Policing as activities carried out by Police officers in order to preserve law and order.

- The way that the Police are used to keep control over a particular area and to protect people and property. (Longman – Dictionary). The argument goes on to say that the community is demanding for a less aggressive style of Policing in order to make sure that people obey the rules.
PART A

Section 3

REGULATORY FRAMEWORK
The **Police** as an official department responsible for **policing** in the country has to ensure that all its activities are confined within the prescripts of the law. First of all the Police department in South Africa has to make sure that all directives, instructions, orders and or regulations seek to recognise and uphold the supreme law.

- **The Constitution of the Republic of South Africa** (Act N0.108 of 1996)
- **South African Police Service Act**, (Act 68 of 1995)
- **Labour Relations Act, 1995** (Act 66 of 1995)
- **Equity Act, 2010**
- **Criminal Procedure Act, 1977** (Act 51 of 1977)
- **National Strategic Intelligence Act,**
- **Independent Police Investigative Directorate Act, 2011** (Act N0. 1 of 2011)
- **Civil Secretariat for Police Service Act, 2011** (Act N0.2 of 2011)
SECTION 4

ANALYSIS OF POLICING REGULATORY FRAMEWORK
The spectrum of Policing in South Africa has to cover all the areas that ensure the Protection of the inhabitants and the citizens in diversity as enshrined in the Constitution. In realization of this statement, one has to consider the following:-
Chapter 11 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) stipulates that the South African Police Service has a responsibility:

- Prevent, combat and investigating crime;
- Maintain Public Order;
- Protect and secure the inhabitants of the Republic and their property and uphold and enforce the Law;
- Create a safe and secure environment for all people in South Africa;
- Prevent anything that may threaten the safety or security of any community;
- Investigate any crimes that threaten the safety or security of any community;
- Ensure criminals are brought to Justice and
- Participation in efforts to address cases of crime.
Section 207(1) of the Constitution of the Republic of South Africa reflects on the establishment of the South African Police Service, appointment of the National and Provincial Commissioner. The Minister of Police then has to direct the National Commissioner to realise this provision in that:

- The South African Police Service Act, 68 of 1995; To provide for the establishment; organization; regulation and control of the South African Police Service and to promote matters in connection thereof.

The establishment of the Directorate for Priority Crimes Investigative has been catered for in the SAPS Act Amendment Act, 2008 (Act57 of 2008 with specific reference to 6A 17©.

The National Commissioner has to enforce all the Laws of the country inclusive amongst others:

- Criminal Procedure Act, Act 51 of 1977;
- Child Justice Act, Act 75 of 2008;
- Read with the National Instruction 2/2010 children in conflict with the Law;
- Second Hand Goods Act, Act 6 of 2009;
- Section 27 of The Constitution is enforced by Labour Relations Act, Act 66 of 1995 which entrenches the rights of workers and employers to form organisations for collective bargaining;
- Together with the Basic Conditions of Employment Act which also ensures Social Justice by establishing the rights and duties of employers and employees.
- The Equity Act of 2010

The National Commissioner has therefore to have strategies and plans to consider what is entrenched in the Constitution to expose his or her mandate and issue such order and directives in the form of:

- Standing Orders
- National Instructions
- Regulations
- Policies
- Delegations (since 1998, for example on the use of force
- Consolidation Notices (1/2/2017 payment of civil claims
- Special Force Orders
- Regulations for SAPS Reservist
- SAPS Discipline Regulations (2006) and 2016
- SAPS employment Regulations 2008
INSTRUMENTS WITH OTHER COUNTRIES ON MATTERS OF COMMON INTERESTS
The South African Government has engaged and signed agreements, standing Operating Procedures, Protocols, Memoranda of understanding and other instruments that guarantee mutual relations pertaining to crime fighting across the borders.

- A sampling of these instruments indicates that the main intent is to explore further mechanisms to: -
- Co-operate and assist each other in the field of combating crime in accordance with domestic Law of their countries as well as their international obligations;
- Exchange working experiences and information necessary to combat crime;
- Co-operate in the investigation of crime as far as it is within their competency;
- Finalize their co-operation in regard to the agreement that will be developed and assigned in accordance with their respective Constitutional procedures.
Hereunder is the list of instruments signed by various countries between South Africa since the inauguration of President Nelson R. Mandela, Thabo Mbeki and the current President Honourable J.G. Zuma:

- Arab Republic of Egypt – dated 20/07/2000;
- Argentine Republic - dated 23/07/1998;
- Austrian Federal Government – 26/05/2003
- Republic of Cyprus - dated 14/07/2010;
- Federal Republic of Nigeria, 14/03/2001;
- Italy dated 17/04/2012;
- France dated 26/06/1998;
- People’s Republic of China dated 25/04/2000;
- Republic of Malta dated 4/04/2007;
- Democratic Republic of Congo dated 29/04/2005;
- Federative Republic of Brazil dated 26/11/2006;
Instruments with other countries in matters of common interests contd…….

- Islamic Republic of Iran dated 22/07/2003;
- Kingdom of Netherlands dated 6/02/2008;
- Russian Federation dated 12/03/1998;
- Republic of Chile dated 12/11/1998;
- Republic of Hungary dated 3/05/1999;
- Republic of Portugal dated 22/04.2002;
- Republic of Rwanda dated 5/12/2002;
- Republic of Uganda dated 12/12/2005;
- United Arab Emirates dated 25/04/2006;
- Republic of Turkey dated 14/10/2003;
- Taipei dated 21/02/2003;
- Darfur Region of the Republic of the Sudan 9/03/2005;
- USA dated 23/07/1996;
The National Commissioner of the South African Police Service has signed with the following countries:

- Australian Federal Police dated 5/10/2014;
- Zimbabwe Republic Police dated 22/10/2014;
- Namibian Police Force dated 23/05/2014;
- Federal Drug Control Services of the Russian Federation (National Head DPCI) dated 9/03/2016;
DEVELOPMENT OF OTHER STAKEHOLDERS WITH THE POLICE ON POLICING
The notion that crime cannot be the sole responsibility of the Police even before democracy has been supported by the proponents of Policing such as Van Heerden, Peel, Locard and many other authors and researchers of the concept.

Since democracy, it has been very clear that policing has adopted a joint venture in addressing social ills.

In 1854 as part of the developmental phase of structures in policing, Metropolitan Police in Durban was introduced.

The communities thereafter adopted perception on crime which necessitated for local and communal structures to wedge in the gap where Policing is lacking.

All other departments were engaged in crime prevention programs included DCS, DSD, NPA, Education, DoJ, Home Affairs.

The Police have also formed ventures with NGOs in the fight against crime, to mention but few, BAC, SABRIC etc.

The role of the Community Police forums as a buffer in the delivery of services by the Police to the communities in the fight against cannot be over emphasize in this venture of policing.
The South African Government has encouraged each and every citizen and any inhabitant in the country to behave in a fashion that would ensure that guarantees the safety of people living within the boundaries of its borders while on the other hand emphasizes on the Police in making sure that people in South Africa are and feel safe.

The state of affairs has found some quarters, organisations and institutions taking over policing for profit.

In this study it was established that in South Africa it has been recorded that there are more private security guards than the Police.

South Africa is rated as the fourth largest private security industry in the world with 2.57 private guard to Police with over 9000 registered companies having 450 000 registered active guards and 1.5 million qualified in-active guards due unemployment. (World Barometer)

The research further indicates that number one is

- Guatemala with 944 – 100 000;
- Panama with 928 - 100 000;
- Honduras with 870 – 100 000;
- South Africa 806 – 100 000.

It is clear that if this situation is not managed, the private security will take over policing with a price to our communities.
The Department of Police is the sole provider of policing activities as entrenched in the Constitution and therefore retain responsibility of guaranteeing all the rights and protection thereof by having plans and strategies that expose these avenues as reflected on the vision and the mission of SAPS.

The SAPS model that is understood by our communities we serve and which is practical and implementable.

Legal framework that is systematic in polarity with each other and that can be assessed timeously and easy to manage.

Policies, Notices, standing Orders that are fluid according to development of modern policing and that old outdated systems and orders be repealed to avoid confusion with recent or current National Instructions.

Constant monitoring and registration of all companies or institutions dealing policing or private security.

Continuous training of old and newly recruited Police members in Legislative prescripts and in discharging of duties on day to day operations.

Orientation of Police personnel in dealing with community related issues in a democratic country.

The understanding of demographics and the nature or scope in terms of diversity in South Africa.

To mould our work force to forge forward for the job (commitment) and building of confidence and trust for professional service to the people.
Thank you