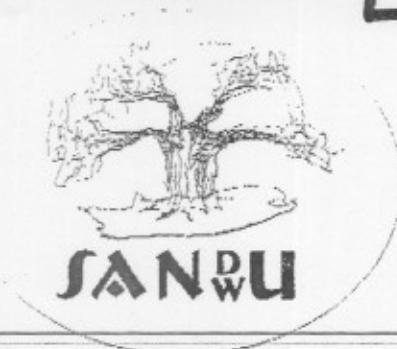


[5]



SUID AFRIKAANSE NASIONALE WEERMAG UNIE

BUREAU FORUM BUILDING /GEBOU 4TH FLOOR / 4DE VLOER
 BUREAU AVENUE /LAAN CHURCH SQUARE / KERKPLEIN PRETORIA
 P BAG / P SAK X 902 PRETORIA 0001
 TEL: (012) 323-6465/6 FAX: (012) 323-7767
 323-7788/9

SOUTH AFRICAN NATIONAL DEFENCE UNION

URGENT

Enquiries: Mr. J.G. Greeff

14 April 2008

For Attention: Ms. Mandy Balie
 The Committee Secretary
 Portfolio Committee on Defence
 (National Assembly)
 P.O. Box 15
 CAPE TOWN
 8000

=By Fax: (021) 403-2808=

Dear Madam,

Re: SUBMISSIONS ON THE DEFENCE AMENDMENT BILL NO B6-2008

1. The South African National Defence Union (SANDU) appreciates the opportunity to provide comments the Defence Amendment Bill No B6-2008.
2. We studied the said Amendment Bill and include our comments herein.
3. Regarding Section 2 of the Amendments Bill (Inclusions of Sections 10A, 10B and 10C into the Defence Act):
 - a. Section 10B(4) determines that the Inspector General reports to the Secretary of Defence and the Chief of the Defence Force.
 - b. In its ordinary meaning "report to" means "is accountable to" and "is subject to the control of".
 - c. Considering the functions of the Inspector General, as provided for in section 10B(3) of the Amendment Bill, it is clear that the Inspector General has a monitoring, investigative and reporting role to play.
 - d. The Secretary of Defence and the Chief of the Defence Force are not only the authors of certain policy within the Department of Defence and the SA National

Defence Force, but they are also the executors of such and other policy. This creates, at the very least, the potential for abuse of power by the Secretary of Defence and the Chief of the Defence Force.

- e. It would therefore serve no purpose to have the Inspector General report to these incumbents. The Inspector General should be independent and should only report to the Minister of Defence.
-
- f. It is therefore the recommendation of SANDU that section 10B(4) determines that: *"The Inspector General shall, in the execution of his or her functions, be independent from the Department and shall report only to the Minister;"*
4. Regarding Section 3 of the Amendments Bill (Amendment of Section 55 Defence Act):
- a. Section 23 of the Constitution of South Africa, 1996, determines amongst others that **everyone** has the right to fair labour practices and also that **every worker** has the right to join a trade union. Senior management is not excluded from this right. Senior management are generally allowed to join a trade union as they have freedom of choice, the same as any other employee. This was confirmed in *IMATU & Others v Rustenburg Transitional Council* (1999) 12 BLLR 1299 (LC), case number J1543/98, heard in the Labour Court on 17th September 1999.
 - b. Nothing in the General Regulations Chapter XX, by virtue of which military unions are established, excludes the Senior Management Service (SMS) of the Defence Force from being members of a military trade union.
 - c. However, the distinction between SMS members and other members of the Defence Force in the proposed sub-sections 55(1) and (3) excludes the members of the SMS from negotiating pay, salaries and allowances in the Military Bargaining Council (MBC) and seeking relief with the Military Arbitration Board (MAB) in the event of no agreement being reached in the MBC in this regard.
 - d. The proposed section 55 therefore excludes the effective enforcement of the labour rights of members of the SMS of the Defence Force as envisaged in the Constitution, 1996.
 - e. However, not only does the proposed section 55 exclude the effective enforcement of the of the constitutional rights of SMS members of the Defence Force, it also excludes the powers of Parliament in this regard:
 - i. Part 5 of the General Regulations Chapter XX deals with the Military Arbitration Board. Paragraph 78 thereof, which falls under Part 5, determines the following:
 - "78. (1) *The (Military Arbitration) Board shall not make an arbitration award that has financial implications for the State as employer that falls outside the mandated position of the employer in the Council.*
 - (2) *If an award cannot be made as a result of a limitation contemplated in sub-regulation (1), the Board shall submit a*



confidential advisory report to the Minister and inform each party that such submission has been made.

(3) Any arbitration award in terms of sub-regulation (2) becomes binding-

(a) 30 calendar days after the date of the award if the Minister has not tabled the award in Parliament within that period; or

(b) 30 calendar days after the date of tabling the award, unless Parliament has passed a resolution that the award is not binding, which decision shall be final. (Own emphasis.)

(4) If Parliament is not in session on the expiry of-

(a) the period referred to in sub-regulation (3)(a), that period shall run from the beginning of the next session of Parliament;

(b) the period referred to in sub-regulation (3)(b), that period shall run from the beginning from the next session of Parliament.

(5) The Board shall not be obliged to disclose the contents of a report to any party to the arbitration proceedings.

(6) The Board may make any appropriate award including, but not limited to, an award -

(a) that gives effect to a collective agreement; or

(b) that includes, or is in the form of, a declaratory order."

f. In view of the above, it is our recommendation that no distinction be made in section 55 of the Defence Act between SMS members and other members of the Defence Force, alternatively that the constitutional labour rights and that the role of Parliament also be provided for with regard to SMS members of the Defence Force, just as it is provided for with regard to other members of the Defence Force.

5. Regarding Section 3 of the Amendments Bill (Inclusion of Section 55A of the Defence Act):

a. Section 55A should provide for and include at least one representative (official) of the duly accredited military trade unions on the Personnel Pay Review Board.

b. The decision by the Minister following the recommendations of the Personnel Pay Review Board should not provide for an alternative procedure to replace the role of

the Military Bargaining Council and the Military Arbitration Board as provided for in section 55.

- c. The decision by the Minister regarding pay, salaries and entitlements including allowances, disbursements and other benefits in the Defence Force in respect of service of members of the Defence Force other than the SMS members (and in consideration of what was said above regarding section 55 also including SMS members) should, ~~in spite of the recommendations by the Personnel Pay Review Board, still be negotiated in the Military Bargaining Council and, if necessary, ruled on by the Military Arbitration Board.~~
- d. In view of the above, it is recommended that section 55A specifies that the recommendations to the Minister shall be to inform and advise the Minister prior to the negotiation of pay, salaries and entitlements including allowances, disbursements and other benefits in the Defence Force in the MBC as provided for in section 55 Defence Act.


6. Regarding paragraph 3 of the Memorandum on the Objects of the Defence Amendment Bill, 2008:

- a. Regulation 36 of Chapter XX of the General Regulations for the South African National Defence Force and Reserve, determines that military trade unions may engage in collective bargaining, and may negotiate on behalf of their members, only in respect of;
- (a) the pay, salaries and allowances of members, including the pay structure;
 - (b) general service benefits;
 - (c) general conditions of service;
 - (d) labour practices; and
 - (e) procedures for engaging in union activities within units and bases of the Defence Force.
- b. In his letter to SANDU dated 18 August 2000, even before the Military Bargaining Council had been established, the Secretary of Defence stated the following:

*"The Department of Defence is well aware of the fact that your registration affords your organisation certain organisational rights. As far as collective bargaining rights are concerned, your organisation **will be consulted on matters of mutual interest** (own emphasis), but bargaining can only commence once you are admitted to the Military Bargaining Council (MBC).*

and

"The Department of Defence is obliged by law to consult with registered military trade unions on all policy matters that would affect their members."

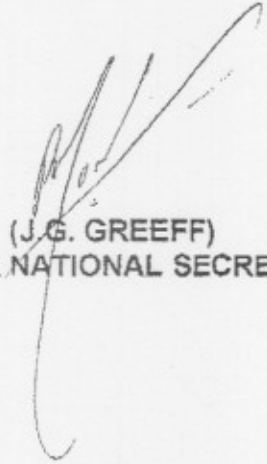


- c. SANDU has been duly admitted to the MBC.
- d. In view of the above, it is clear that SANDU is more than an "interested party". SANDU is a stakeholder regarding the contents of the Amendment Bill. However, we place on record that no consultation has taken place with SANDU in this regard.

~~7. Kindly take note that SANDU shall be available to make verbal representations to the Committee, should it be required.~~

8. We trust that the above may be in order and look forward to hearing from you.

Yours faithfully



(J.G. GREEFF)
NATIONAL SECRETARY: SANDU