



THE CHALLENGE OF UNIONISATION AND DEMOCRATISATION OF THE SOUTH AFRICAN NATIONAL DEFENCE FORCE

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In 1994 when the Republic of South Africa reverted to constitutional democracy with a Bill of Rights, the peaceful transition was universally praised as a model of political rapprochement. One of the significant gains of that transition was the inclusion of a very liberal Bill of Rights, going far beyond the traditional or classical civil liberties. In the sphere of employment relations, the Constitution enshrined, in very broad strokes, the right to freedom of association for “everyone” and the right of “every worker” to form and join trade unions and to participate in the activities and programmes of such unions.

Dr. Naison Ngoma opened the seminar with a general introduction on military unionisation policies, noting that such policies are diverse and radically different. He noted for instance that in the USA, the issue of military unions has disappeared, while in Europe, such policies are widespread and highly developed even though they follow no specific pattern on which to base an “ideal” model. He as such observed that there are no specific patterns on which to place an ideal model of what South Africa ought to do with regard to unionisation.

Dr. Ngoma noted that most literature indicates that European nations have not expressed concern regarding the effectiveness of their militaries as a result of unionisation, noting that the dissenting view has been that European Militaries are considerably smaller and more restricted in their strategic and global employment than the US military, and therefore, the effectiveness of unionised European militaries have no relevance to the military of the United States as has been argued by Sime&Cohen.

He echoed Lipow, Mealem and Tabol in their article “Should Military Uniforms carry the Union label?” who have argued that their analysis suggests that “military unionisation will unambiguously lead to larger, but less disciplined armed forces, leaving the overall impact of unionisation on defence capability ambiguous.” The authors further argue, “While America’s soldiers were (and are) sceptical with regard to unionisation, American lawmakers can only be described as intensely

hostile. Civilian union organisers who solicit soldiers to join unions may also be imprisoned for up to 5 year.

In closing, Dr. Ngoma cited Samuel Huntington, a renowned scholar in civil military relations who has written that “ the military with its top to bottom” control is viewed as anti-individualistic and in conflict with basic democratic principles”. Tailor has further amplified by stating that the military as an institution has always-required economic commitment and mission be given priority over oneself.

PROFESSOR LINDY HEINCKEN, UNIVERSITY OF STELLENBOSCH

Prof Heincken began by observing that there are different ways in which unionisation has developed worldwide. She observed that militaries form unions due to various reasons such as when there are differing democratic rights for the different groups in a population; when politicians have divested their political responsibilities; when there is a loss of social prestige and there is a feeling amongst soldiers that their status has declined – (and as such form unions to protect their profession); when there is declining standards of living for the military personnel – (particularly in the post cold war era when neo-liberal principles emerged in the labour service) and finally; some join the military not in service to their country but rather because it is just another job for them.

Prof Heincken added that there are four approaches to military unionisation:

- Unitarism for instance in the UK
- Neo-unitarist approach eg in Canada
- Confrontational pluralist for instance in South Africa
- Corporatist approach for instance in Germany

The Prof outlined the different approaches to military unions noting that the confrontational approach that is characteristic of trade unions in South Africa can be traced to the early 90s. This relationship between the military unions and the government is unfortunate and that the military must stop being used as scapegoats and a more cooperative relationship sought instead.

In conclusion, the Prof recommended some of the ways forward in addressing the challenges faced by soldiers. Some of the recommendations include:

- Improving the grievance procedures because unlike for other groups, there is no dispute resolution mechanism for soldiers
- Ensure collective mechanisms for representation or forums. There is need to have some form of mechanism that can address individual or collective grievance-perhaps a mediation resolution mechanism that can reduce tension between ranks in the military establishment
- The establishment of a military ombudsman

MAJ GEN (RTD) LEN LE ROUX

Maj Gen Len Le Roux's presentation was on **"Soldiers, labour rights and Defence transformation"** in which he addressed three questions: the challenges during transformation that led to unionization of the SANDF; the extent unionization affects defence management and how civil-military relations would be affected by unionisation- if at all.

Maj Gen Le Roux began his presentation with a brief background on defence transformation in South Africa, which resulted in the 1996 Defence White Paper of South Africa. He shared that the transformed SANDF sought following:

- Appropriate, Adequate, Affordable, Accountable Defence Capabilities
- Professional and disciplined defence force
- Align the SANDF with the principles of 'defence in a democracy'

He added that the overarching goal was to make the armed forces reflective of the character of our democratic society' [Modise WP 1996]

Professionalism in the military means that the military (Nathan L. The Changing of the Guard 1994) is characterised :

1. Primacy of civilian rule
2. Effectiveness and efficiency
3. Based on policy and law (including IHL)
4. Respect for human rights and cultural diversity
5. Commitment to service
6. Non-partisanship

Citing Clingendael 2003 on 'Enhancing democratic government of the security sector', the presenter noted that professionalism of the defence forces includes internal democratization and sound management of human resources and that it is important that a professional ethos be characterised by a willing compliance and not by forced compliance only. Also according to DCAF professionalism on the part of soldiers requires professionalism in management and good communication and inter-personal relations

Maj Gen Le Roux also spoke about defence management, which refers to the internal processes within the DOD and includes all managerial processes including HR management, command-and-control and military discipline as well as grievance procedures [MDC]. Unionization on the other hand refers to the 'right to (collectively) consult the minister, negotiate terms of employment, promote health and safety conditions, support to individual members etc' and not interference in military command-and-control or the military disciplinary process. He added that unions are representative bodies representing the collective interests of soldiers

before their employer [the DOD and Government (MOD)] and not their military commanders. He added that salary issues, conditions of employment etc are not military issues but departmental issues and should be addressed by the civilian HOD and the Ministry and that it presents no threat to military command-and-control or military discipline if correctly managed .

The presenter also spoke about civil-military relations noting that the concept refers to the relations between the civic (elected civil authority) and the military. This relation must be based on mutual understanding, trust and respect and is a two-way street. On the one hand, civil control of the military (which ought to be accountable and transparent) should be balanced on the other hand with respect for the legitimate needs of military professionals to be heard, to receive appropriate training and education, to be properly equipped, and to receive remuneration commensurate with skills and sacrifices demanded [Clingendael 2003, White Paper on Defence (1996).

Military professionalism (demands) recognition by the military of civil supremacy, effectiveness and efficient personnel, strict adherence to the Constitution and ac commitment to public service, non-partisanship and loyalty to the country etc.

Maj Le Roux also outlined the responsibilities of government to the defence force as spelt out in the White Paper on Defence as follows noting that government:

- Will request from Parliament sufficient funds to enable the SANDF to perform its tasks effectively and efficiently

- Ensure that military personnel are adequately remunerated

Will not endanger the lives of military personnel through improper deployment or the provision of inadequate or inferior weapons and equipment

Some of the rights and duties of military personnel state that:

- Members of the SANDF are citizens and therefore enjoy the same fundamental rights as civilians

- Exceptions are allowed but will be will be limited and specific and will be covered in defence legislation

- Limitations will be reasonable and justifiable

Drawing his first conclusions, the presenter noted that soldiers have the same rights as others, but as the military is a special case due to considerations of national security and the requirements for discipline and professionalism, some rights, such as right to strike, should be limited. Also, given the sacrifices demanded of the

military, both in training and operations) government and society should ensure that soldiers are adequately compensated. Furthermore, in order to look after their own interests, soldiers should be allowed to form representative associations and that soldiers have the right to be heard

The presenter also cited some countries that do have military representative associations and unions such as Austria, Belgium, Czech Republic, Denmark, Finland, Germany, Hungary, Ireland, Luxembourg, the Netherlands, Norway, Portugal, Russia, Slovenia, Slovak Republic, Sweden and Switzerland. The right to consult the minister, negotiate terms of employment, promote health and safety conditions, support to individual members is also allowed [DCAF and IPU 2003].

The presenter then recapped events around unions as follows:

- The DOD/SANDF has been opposed to collective bargaining and unions since 1994
- Anticipating movement towards unionization SANDF created 'forum structures'. These were more 'window dressing' than serious
- On 26 August 1994, the South African National Defence Union (SANDU) was established
- On 26 May 1999 the Constitutional Court (CC) confirmed that Section 126B of the Defence Act 44 of 1957, prohibiting military personnel from joining trade unions, participating in strikes and acts of public protest, was indeed unconstitutional (Boshoff H @ Heineken L: ISS Today 4 Sept 2009; Heineken L: African Security Review Vol 4 No 5, 1995)

According to the Defence Act of 2002 Section 50 "In the interest of National Security and Military Discipline – right to unarmed assembly, demonstration, picketing and petition – join trade unions – may be subjected to such restrictions as may be prescribed". In his opinion in the South African situation, the DOD/SANDF has paid much more attention to the fighting the unions in court on technicalities than to addressing the real grievances of the soldiers. He also recalled that the Parliamentary Portfolio Committee on Defence has repeatedly expressed its 'grave concern' about the adversarial relationship between the DOD and the Unions, the non-functioning of the Military Bargaining Council (MBC) and the Military Arbitration Board (MAB). [PMG minutes of PCD meetings 18/03/08, 10/06/08, 18/11/08].

Expressing his concerns, Maj Gen Le Roux noted that government since 1994 – expectations, has underfunded the DOD and demands exceed budgetary provisions and SANDF is not in a state of good repair and facilities and equipment is deteriorating rapidly and finally that few efficiency improvements have been effected in the DOD. In particular the tooth-to-tail ratio is extreme. Offering a way

forward, the presenter argued that these concerns are what led to the protests by some frustrated and undisciplined of 26 August 2009 in front of the Union Buildings.

In closing, Maj Gen Le Roux provided the following ways forward for the government in regard to the SANDF:

1. Fund the balanced modern and disciplined defence force that the South African Constitution demands
2. Equip and train soldiers equivalent to the demands of their tasks
3. Accept the constitution in regard to the rights of the defence force

HON SHEDRACK BOOI - CHAIRMAN OF THE PARLIAMENTARY PORTFOLIO COMMITTEE ON DEFENCE

Hon Booi began by observing that the protests by the SANDF soldiers on the 26th of August 2009 were due to miscommunication between soldiers and their military command structure, noting that the protests took place amidst negotiations between SANDF and government and in particular the parliamentary committee on defence and SANDU 1.

Hon Booi pointed out that the Minister for Defence and Military Veterans, Hon Lindiwe Sisulu had acted within the constitution and had observed the necessary legalities in response to the soldiers' protest. Hon Booi agreed that every South African has a right to be a member of a union as provided for by the SA constitution and welcomed the right of soldiers to be represented, but he however expressed concern on how the ordinary soldiers concerns are addressed citing the different examples of military unions such as (South African National Defence Union) SANDU I, SANDU II and the (South African Security Forces Union) SASFU, all claiming to represent the interests of SA soldiers.

Hon Booi indicated that the SANDF comprises many elements such as the navy and others and not just the army and that soldiers have different skills sets and cannot therefore be portrayed as one embodiment.

The presenter acknowledged the legitimate concerns and grievances of soldiers and pointed out there are different challenges faced by government for instance: in the integration processes or programs of former soldiers who worked under the apartheid government; delays in the remuneration of peace-keepers and discipline of the soldiers.

Hon Booi remarked on the approved proposal to establish a National Defence Force Service Commission that will advise Minister Sisulu on service conditions in the SA military and which will consist of experts from civil society, academia and business. The Commission will address issues such as retention of staff, the threat of poverty,

issues of human trafficking, how to establish a balance between the police and soldiers and their duties for instance on border security etc. Hon Booi also revealed that approximately 10 Million Rands has been set aside to improve SANDF' s military equipment.

In conclusion, Hon Booi observed that if unionisation is approached from the perspective of the different challenges facing the country, then it is possible to address and respond to the issue of military unionisation in differently.

Plenary Discussions

Comments and questions

Comment: The national secretary of SANDU remarked that the military union SANDU has been there for the past 14 years and that soldiers choose to belong to unions and that it is impossible to find solutions to soldiers' problems without a union. He was of the opinion that every time something happens, people look for legal loopholes in the constitution rather than addressing the grievances the soldiers wish to be addressed. He wondered why soldiers perceive their commanders as the ones to blame for their grievances and pointed out that it is only when the union takes the government to court that the government listens to their concerns. He said that soldiers that misbehaved during the protests should be subjected to the due legal processes but to punish over 1000 soldiers for the actions of a few is not right.

In response to the comment, Hon Booi remarked that the issue of military bargaining is one that should be addressed appropriately reiterating that parliament does engage with the union and as a matter of fact had regularly been engaging with the different unions (SANDU I, SANDU II and SASFU prior to the protests and even afterwards. He added that parliament is still engaging with SANDU and has made a commitment to engage on their conditions but that it is important to find legal solutions to the challenges.

One of the participants sought to know what would happen should the constitutional court nullify soldiers' right to form a union. In response, Hon Booi acknowledged that the issue of the constitution with regard to military unions is an ongoing challenge. He remarked that the work of parliament is to pass legislation and that it only gives its own interpretation and views in this regard, adding that the proposed commission will assist in addressing such concerns.

Another participants observed that the right of soldiers to join a union is enshrined in the SA constitution. He however pointed out that this particular law has a general application in that the right applies as long as it also applies to the general population. In the same vein, he added that the limitations to this right also applies as long as it also applies to the general population in that if this right is removed, then it has to apply to everyone.

Prof Heincken noted that it is actually not the right of the soldiers to be members of a union or to associate that is the challenge but rather what the union does, observing that all rights have limitations including the right to associate. She noted that unions cannot represent the rights of soldiers directly to their civilian superiors but rather through the command structure. She also pointed out that another challenge for soldiers is that they cannot join other unions because doing so can compromise their neutrality.

Maj Le Roux observed that 'no structure will work if the commitment to make it work is not there'.

Another participant also wanted to find out why soldiers are given the mandate to guard borders, if indeed the greater challenge to security is poverty and syndicated trafficking networks. Hon Booï responded by saying that the challenge is to protect the border and the police should be able to assist with this..