

Submission by COSATU on the Border Management Authority Bill 2016

13 September 2016



Submitted to the
Portfolio Committee on Home Affairs
National Assembly
Parliament

1. Introduction

The Congress of South African Trade Unions (COSATU) welcomes the opportunity to make its submission on the Border Management Authority Bill to the Portfolio Committee.

COSATU agrees with government on the need for a single government organ in charge of and responsible for border management. COSATU further agrees with government that the management of border security, migration and customs and trade are critical and extremely sensitive functions of state that have a decisive impact upon society and the economy as a whole.

COSATU was deeply concerned with the 2015 draft of the Bill and the impact its provisions would have upon workers in the affected public service departments. COSATU and its affiliates have subsequently been engaged in detailed negotiations with the Department of Home Affairs on the BMA at Nedlac and in bilaterals with the intention of finding a consensus on this critical matter.

These engagements enabled COSATU and the government to resolve many areas of concern in the Bill. However two fundamentally critical areas of concern to COSATU remain in the Bill. These are locating the BMA outside the public service and the failure to ban outsourcing. COSATU remains fundamentally opposed to locating the BMA outside the public service and to any possible outsourcing of government functions.

2. Engagements with Government and Areas of Agreement

COSATU and its affiliate unions, including the National Health and Allied Workers Union (NEHAWU), the Police and Prisons Civil Rights Union (POPCRU) and the Southern African Clothing and Textiles Workers' Union (SACTWU) have held extensive engagements with the Ministry and Department of Home Affairs on the Border Management Authority Bill. These engagements have taken place since September 2015 under the auspices of Nedlac and in direct bilaterals.

COSATU's approach has been to strive towards maximum consensus with government on the BMA Bill and to ensure workers' deep concerns and fears are effectively addressed.

The key areas of disagreement COSATU had with the first draft of the BMA Bill were:

- Locating the BMA outside the public service. This would entail redeploying about 10 000 public servants from DHA, SARS, SAPS, DAFF and DOH to the BMA;
- Establishing new labour relations practices and procedures;
- Banning BMA staff from the right to strike or protest;
- Banning BMA staff from disclosing internal information to outside persons;
- Role of privatisation at the BMA; and
- Transferring all customs functions from SARS to the BMA.

COSATU has managed to achieve consensus with the Department of Home Affairs on the following:

- The BMA will be an authority inside the public sector. However this remains the key point of disagreement as it would still be outside the public service which we have indicated we cannot agree to.
- Locate the BMA under the Public Service Central Bargaining Council and be bound by all its policies, procedures and agreements;
- Locate the BMA under the Government Employees' Pension Fund;
- Provide that there will be no deterioration of conditions service for affected public servants moved to the BMA;
- The ban on the right to strike and protest on BMA staff is removed from the Bill. Any such limitation on the right to strike or protest cannot be applied to non-security staff. If the Minister wants to apply for security staff to be declared essential, he will have to follow the prescripts of the LRA and apply and motivate for this to the Essential Service Commission.
- No security functions can be outsourced. We have asked that this ban on outsourcing be extended to all functions of the BMA.
- The transfer of customs functions will be limited to front line functions at border posts only in a phased process. The department has committed itself to establish an ongoing working relationship with SACTWU to address customs concerns going forward.

- BMA staff members' right to disclosures will be linked to and protected by the Public Disclosures Act.
- Any change in BMA regulations or policies will have to be engaged with the affected unions.

3. Remaining Areas of Concern in the Bill

COSATU's remaining areas of concern are the location of the BMA and the call to ban all outsourcing. COSATU's position has been that the BMA must be located within the public service and that this is non-negotiable for unions.

Government has responded by renaming it from an Agency to an Authority and locating it within the broader public sector and the PFMA. Government's motivation is based upon wanting to exercise complete jurisdictional control over borders (e.g. to be exempt from Public Works and SITA) and to pay salaries higher than the public service, in particular for management.

It is impossible for COSATU to support removing the BMA from the public service to simply pay management exorbitant salaries far above the public service norm. More so when government pleads poverty and continuously blames the budget deficit on workers for wanting a living wages.

COSATU has indicated that all these issues could easily be dealt with in the public service. COSATU and its affiliates remain strongly opposed to the BMA being removed from the public service and created as a public sector entity. COSATU feels that this will fragment and weaken the state and encourage other departments to follow suit.

The BMA would be the only state security organ located outside the public service. The SAPS, SANDF, SSA and DCS are all public service departments. Shifting the BMA will set a dangerous precedent.

We believe that a public service department can fulfil the requirements of the BMA. COSATU's members remain adamant that they want to continue to fall under the Public Service Act with all its conditions of service and protections. COSATU remains hopeful that the Portfolio Committee will be able to assist in resolving our remaining issues of concern.

4. Conclusion

In conclusion, COSATU shares government's concerns on the state of our border, migration and customs management. COSATU agrees with government on the need for a single government department to take charge of these critical state functions.

COSATU appreciates the important progress our engagements with government yielded on many of our areas of concern. However COSATU remains deeply opposed to locating the BMA outside the public service. It needs to remain within the public service.

Government needs to be bold and ban the outsourcing of permanent state functions as committed to by the President in January 2015.

Failure to resolve these fundamental areas of concern will see workers in the affected departments and the broader public service and economy mobilise against their forced relocation from the public service.

COSATU strongly urges the Committee to consider and adopt its proposals on the locating the BMA inside the public service and banning the outsourcing of BMA functions. COSATU believes that this critical Bill will be invaluable strengthened if these three important areas of concern are addressed.

Thank you.

Kind regards,

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Attachment: NEHAWU Press Release on BMA Bill



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MEDIA STATEMENT-FOR IMMEDIATE RELEASE

Monday, 29 August 2016

NEHAWU STATEMENT ON THE BORDER MANAGEMENT AUTHORITY BILL

The National Health and Allied Workers' Union (NEHAWU) notes the tabling of the Border Management Authority Bill by the Department of Home Affairs in Parliament. As a progressive trade union in the public sector that is committed in the building of a developmental state and a strong public service, in principle we support the objectives of the Bill in so far as it seeks to achieve;

- (a) Integrated border law enforcement within the border law enforcement area and at ports of entry; and
- (b) Co-operation on and co-ordination of border management matters in general.

NEHAWU has taken an active interest in the bill from the day it was published, and fully participated in most of the forums wherein the bill was being engaged including at NEDLAC.

During this process we were engaging in good faith, contributing positively in what seemed to be a genuine attempt to build, strengthen government capacity and coordination.

However, in all our engagements with government officials and in bilateral meetings with Minister Malusi Gigaba, we have made it clear that we are opposed to the hollowing of the state capacity through the creation of unaccountable agencies and the outsourcing of government functions. Throughout this process, government failed to present a sound rationale as to why this can only be created through a stand-alone agency. To our dismay, though having made progress on other areas of mutual interest, and NEHAWU suspending national protest against some sections of the bill, government seems to be arrogantly not prepared to compromise on one section of the bill which reads as follows:

"The Border Management Authority is hereby established as a national public entity, as contemplated in Part A of Schedule 3 of the Public Finance Management Act, outside of the public service, and is an armed service established in terms of section 199(3) of the Constitution. The border law enforcement functions within the border law enforcement area and at ports of entry must be performed exclusively by the officers of the Authority".

There is absolutely no reason why the integrated and coordinated management of the ports of entry and enforcement of border law cannot be established within the public service. As NEHAWU we are suspicious of the arrogant push displayed by Minister Malusi Gigaba and his officials even amidst a broad opposition that comes from within government departments such as Treasury and SAPS. Given the intransigent and arrogant attitude of the Department of Home Affairs, NEHAWU and other aligned Public Sector unions will now be gearing for the mobilization of our members in the public service, including SARS. If needs be, we shall mobilise our members to prepare for a wider public service strike if the Department of Home Affairs remains intransigent - in defense of a strong public sector based, National Border Management Authority.

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