The Ambiguities of Dependence in South Africa Class, Nationalism and the State in Twentieth Century Natal

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In her *The Ambiguities of Dependence in South Africa*, Shula Marks has yet again produced a piece of historical scholarship that is interesting, stimulating and significant. Her scholarly aims are modest enough contained as they are in just over a hundred jampacked pages. Modest they may well be but Shula Marks's historical and by the same token human concerns in this little book are wide ranging.

There is a disarming sense in which *The Ambiguities of Dependence in South Africa* is not only a book about the nature of the emerging South African State, nationalism, class and class consciousness in early twentieth century Natal. It is also a consummate achievement which reveals how the past is in the present and the present in historical terms was initiated and formed in the past. What is probably most seminal about this work is that without consciously setting out to do so, Shula Marks has placed the sign posts for any future significant African historical biography.

She achieved this feat without undue fan-fare and extravagance. The interplay between "actors" and historical events is handled in an even-handed and parsimonious fashion and the narrative is unfettered. The historical figures: Solomon Ka Dinizulu, John Dube and George Champion are handled compassionately and with a delicacy of touch that makes them come to life. Yet one is privileged to feel that not far from these historical figures and the economic and political terrain in which they lived out their lives is the lively intellect of the writer.

The book is a timely corrective of what the author describes as the "heavy structuralism" of the historiography of race and class in Southern Africa. She has provided ample room for the individual historical actors who are the main concern of the narrative without neglecting objective material and historical conditions.

Although the main part of the book was conceived as three separate essays, a remarkable degree of narrative continuity and cohesion is achieved and enhanced in the concluding chapter which conflates past and present. Without doubt, this superb little book would have been more remarkable if Shula Marks had taken the intellectual trouble to articulate more clearly rather than insinuate the nature and meanings of dependence.

With its well annotated and useful notes, index and photographs, *The Ambiguities of Dependence in South Africa* will remain of immense interest and value to both scholars and general readers alike. After reading it, one is left with the distinct impression that the book could have been longer — an inspiring beginning to a future historical trilogy.

N. Chabani Manganyi

Mabangalala: The rise of Right wing vigilantes in South Africa

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Mabangalala is essentially a report that was drawn up in response to an urgent request from the National Committee against Removals, the Transvaal Rural Action Committee (TRAC) and the Black Sash. The report is based on affidavits and statements, reports and interviews.

The report traces the rapid escalation of violence that began in South Africa in September 1984 and culminated in the declaration of a state of emergency in August 1985. During this time and subsequently, the official and other media have given a great deal of attention to what is described as 'black-on-black' violence which is a convenient label that is often used to obscure the emergence of extra-legal violence by right-wing vigilantes. As the author points out:

> By referring to all conflict in which both parties are black, as black-on-black conflict, the links and relationships between conflicting parties and apartheid structures were buried.

The book sets out to describe and document the emergence of vigilante groups in 1985. Its primary purpose being to expose the nature of this form of terror. *Mabangalala* is essential reading for anyone who is genuinely interested in the nature of the violent struggle in South Africa. The first edition has already been sold out and a second, updated edition will now have to be prepared.

Michael Rice

Conscientious Objectors under Renewed Attack

Peter Moll

Plans are under way to further tighten the already stringent rules governing conscientious objection. A Defence standing committee has been asked to deliberate:

* redefining "religious convictions" as (basically) theistic convictions so as to exclude people like Buddhists.
* making the length of community service a *mandatory* six years, i.e. take away the discretion of a judge to award a period shorter than six years,
* similarly making the length of a prison sentence for military refusal a mandatory six years, and
* making these mandatory rules retroactive thereby considerably lengthening the periods of service or sentences several men are currently doing. In the "Memorandum on the Objects of the Defence Amendment Bill, 1986" it is stated that the Board for Religious Objection "supports the amendments contemplated because of the necessity thereof".

These legislative plans emerged after three court cases. The first was that of one Hartmann, a Buddhist, who applied to the Board of Religious Objection on grounds of being a religious pacifist. Buddhists do not believe in the existence of a supreme being, viz. they are

not theistic in the Western Judaeo-Christian-Islamic sense. Nevertheless the Board referred his case to the Supreme Court which accepted his petition that he was religious and pacifist, and allowed him to do alternative service. In response the legislators set about to tighten the law so as to exclude people like Hartmann.

> "... the problem that to convince narrow-minded people that you adhere to a set of beliefs that they have defined narrowly, one has to become (or convey the impression of being) as narrow-minded as one's interlocutors"

In another court case, a Jehovah's Witness who had been sentenced to a period of six years' imprisonment for disobeying a call-up had his sentence reduced to three years by a judge. In the third court case, a Jehovah's Witness had his period of community service reduced from six years to four years. The argument of the Transvaal judge was that the law requires a man to do 1½ times the normal period of military service. If the period of military service is two years' basic plus two years' camps, then the community service period (or the prison sentence) is six years. But, pointed out the judge, most conscripts do far less than the full period of two years plus two. They do more like two years' basics plus six months' worth of camps, and so the period of community service (or the sentence) should be reduced accordingly.

It was these three cases which led to the drafting of the Defence Amendment Bill 1986 which the standing committee was asked to consider.

To date the standing committee has discussed only the definition of "religious" and decided against the proposed change, on the grounds, for example, that it would be too difficult to define a supreme being, giving Hartmann and others a temporary respite. Parliament was adjourned before the committee could approve the change to sentences and periods of service of mandatory length, but the committee is expected to meet in December or January and upon its approval the rest of the proposals will be tabled before Parliament. Conscientious objectors, the churches and other interested bodies have therefore only a few months in which to mobilize against these retrogressive steps.

Another objector turned down

Recently a Christian pacifist objector in Durban, Don Edwards, went before the Board of Religious Objection and after two lengthy examinations (four hours each) his application for community service was refused. Apparently the Board was not convinced of his Christian convictions — even though the man's priest was flown in to Bloemfontein to testify on his behalf.

Board members pro-military

This case highlights once again the conviction of this journal and of several church denominations at the time of the passing of the relevant Act in 1983 that the legislation is fundamentally flawed. It requires the Board which is composed of mere humans — including several military people and chaplains at that — to decide on a man's conscience. None of the people who sit on the Board are conscientious objectors. The judge, one trusts, is impartial. However, the military men and chaplains on the Board can confidently be predicted to hold strongly pro-military opinions. It is inconceivable that a man with thirty years' military service behind him could even comprehend the convictions of a conscientious objector, much less come to a reasoned judgement as to how sincere the objector is.

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Methodology

One might well pose the question: given that most of the members of the Board (excluding the president who is a judge) are pro-military, what kind of methodology would they employ when considering an application by a conscientious objector?

Consider, for example, what would happen if (as is possible) there is a clear demarcation in their minds between "political" beliefs and "religious" beliefs. They might then look through the objector's application, and as long as it sounds religious, pass it, but if it starts to sound "political" (read leftist or liberal, not right-wing!), fail it.

Religion versus politics

One might even ask whether their method is not a "key-word search", i.e. pick out the political-sounding words if there is more than a certain proportion of them then it must surely follow that the man is not really religious because he is political, for religion and politics are necessarily mutually exclusive.

Of course it is impossible for this journal to find out at short notice what is the procedure used, but the evidence seems to point in this direction. The statement laid before the Board by Don Edwards was transparently religious and pacifist all the way through. In addition, Edwards had the misfortune to be honest and open about his beliefs, so he also explained in his statement what his political convictions were. This provoked a storm of protest from the Board which in the end decided he was not a genuine religious pacifist.

One suspects that if Edwards had been sly he would have hidden the fact that he is a thinking, broad-minded intellectual who notices that South Africa is going through a revolution (in fact Edwards is an engineer and runs a journal part-time). He would have been cleverer to try to convince the Board that he holds no strong political convictions, knowing that they would seize on these and deem him insincere. Edwards, like many other conscientious objectors, faces the problem that to convince narrow-minded people that you adhere to a set of beliefs that they have defined narrowly, one has to become (or convey the impression of being) as narrow-minded as one's interlocutors.

The impossible

This is not the only problem with the Board. The Board is required *to do the impossible.* How can any person ever truly know the motives of another? In terms of the very Christian theology which the chaplains espouse "The heart is more deceitful than all else and is desperately wicked; who can understand it?" (Jer. 17:9) Every person's motives

are mixed when doing any action; therefore the only way one can ever tell what a person's real motives are is by observing that person's actions. We are reminded of our Lord's words, "You will know them by their fruits" (Matt. 7:16). He added that by merely saying "Lord, Lord" people would not enter the Kingdom of Heaven (Matt. 7:21). Mere protestations of sincerity and belief do not on their own amount to the depth of conviction required to act upon them. It appears, though, that the Board is requiring young men to do the "Lord, Lord" act in order to be regarded as conscientious objectors. Could it be that if they just get the phraseology right and carefully edit out any awareness of the revolution this country is passing through, they will be accepted as "genuine"?

The current arrangement is unavoidably elitist. People with a good turn of phrase and a university training in essay- and speech-writing (and the requisite degree of self-censorship) can be reasonably certain of fulfilling the Board's requirements. People without considerable literary sophistication but with the depth of conviction that would drive them to acting and suffering for their beliefs run the risk of being sent to jail.

Church representatives

The above problems with the Board raise the question of the church's participation in the scheme. There is a Methodist minister, and also an Anglican priest on the Board (the latter in contradiction to the will of the Anglican church). The Presbyterian, Congregational and Catholic churches have refused to send representatives because of their disagreement with the Board's terms of reference.

As mentioned above, the memorandum used by the Defence standing committee states that the Board approved of the proposed changes in the legislation. It is implied (if not in the minds of the Anglican and Methodist Board members, then certainly in the minds of the politicians who formulate the legislation) that these two churches also support the proposed legislative changes. This is so as long as these churches say nothing to the contrary — and they have not yet done so.

Collaborators

In view of how matters have turned out, the Presbyterian, Congregational and Catholic churches clearly made the right decision. The Methodist and Anglican Board members have effectively become collaborators in a move to limit the amount of conscientious objection as far as possible; their participation on the Board has given the Board a religious and moral legitimation which it does not deserve *in terms of their own theology.* Both these churches have called upon the state to open the conscientious objection legislation to all sincere objectors, pacifist and non-pacifist, religious and non-religious, and have advanced theological reasons for doing so. Yet the two Board members are now participating in a scheme which is steadily narrowing the definition of legally acceptable conscientious objection and making it more difficult for objectors by raising the periods of service and sentence.

The basic aim: exclusion not inclusion

Appalling as the proposed changes are, it should not be forgotten that the fundamental difficulty is that the legislation on conscientious objection is too exclusive.

The public appears to be under the impression that since there is a Board conscientious objectors are basically O.K. That is emphatically not the case. The legislation specifies that only religious pacifists may do community service. This excludes non-religious pacifist objectors. The "English-speaking" churches have individually and collectively (through the SACC) called for the extension of community service to these groups as well.

Probably the current legislation excludes many more conscientious objectors than it includes. Its intention, no doubt, was not so much to distinguish clearly between the genuine and the fake, between the conscientious objector and the convenience objector, but to limit the number of conscientious objectors as far as possible without angering the church excessively.

And it has succeeded. The number of objectors rose when the legislation was first passed in 1983, but to nowhere near the level it would have if all conscientious objectors were accepted. Furthermore the church has remained silent apart from some good statements in that year.

> "Could it be that if applicants to the Board just get the phraseology right and carefully edit out any awareness of the revolution this country is passing through, they will be accepted as "genuine"? . . . the intention [of the current legislation] was not so much to distinguish between the conscientious objector and the convenience objector, but to limit the number of objectors without angering the church excessively."

> "The churches should make it clear that the Board carries no theological, moral or ecclesiastical legitimation and stress that it is a shabby pretence at liberalism when its real objective is to force men into the apartheid army."

Lethargy

It is time for the churches to set aside their lethargy and take up the struggle of conscientious objectors. The church is responsible for them to the extent that the church's own theological response to apartheid in the past five years compels young men to consider conscientious objection as an option. It is wrong for the churches to conscientize people, pass resolutions condemning apartheid as a heresy, and then remain indiffernt to the fate of those young men who take their theology seriously.

The Anglican and Methodist Board members should immedately stand down. All the churches should issue urgent statements urging Parliament not to make matters more difficult for conscientious objectors. They should seek interviews with the Minister of Defence and try to persuade him to open up the legislation further. They should object in the strongest terms to the Board's rejection of men like Don Edwards. Above all, they should declare the whole system of the Board a farce. While not discouraging young men from applying to it if they choose, they should make it quite clear that the Board carries no theological, moral or ecclesiastical legitimation and stress that it is a shabby pretence at liberalism when its real objective is to force men into the army.

CONSCIENTIOUS OBJECTION AND ALTERNATIVE SERVICE:

REPRESSION OR CONCESSION?

New South African legislation in the light of the German experience

by PETER MOLL

New legislation on conscientious objection to military service was passed by the South African parliament in 1983. Alternative non-military service — whose nature has not yet been specified — will be granted to people who are both (a) religious and (b) absolute pacifists. Alternative service for recognized objectors will last for six years. Another objectors will go to prison for six years. The legislation has been strongly criticized by objectors and by churches on two grounds. Firstly, the penalties are harsh, exceeding those of some of the worst criminal offenders. Secondly, the Anglican, Catholic, Presbyterian, Methodist, Baptist and Congregational churches have all insisted that it is impossible to distinguish in treatment between absolute pacifists and objectors on ethical and moral grounds.

The Defence Force, in its magazine Paratus, *stands firm by its limitation of recognition to absolute pacifists only. The line of reasoning is frequently as follows. "In only one country in the world, namely Denmark, is political objection permitted. How then can the South African Defence Force be expected to allow political objection? Instead, as is the case in all Western demoncracies, we will allow alternative service only to genuine objectors, namely pacifists".*

This article focuses on the situation of conscientious objectors in Western Germany. A short historical overview will try to demonstrate important differences between European and South African war resisters. An examination of the recognized grounds for conscientious objection in Germany will raise crucial and as yet unanswered questions about what the SADF will deem to be "pacifism".

Several thousand pacifists were killed by the Nazis for refusing to take the oath of allegiance to the Fuehrer and join the Wehrmacht. The Germans' concern to prevent history from repeating itself resulted in constitutional safeguards for pacifists after the war, when in 1949 Germany became the only country in the world where the right of conscientious objection is recognized in the constitution. At that time the memory of Hitler's totalitarianism — when people were killed because "an order is an order" — was uppermost in their minds.

Is the government's real intention to pay lip-service to alternative service while using the new laws to enforce militaristic thinking on all and sundry?

The rearmament of Western Germany began in 1954. Conscription was introduced the next year. From the start non-military alternative service was provided. Conscientious objectors worked in hospitals and institutions for the elderly and retarded.

At the beginning a few thousand registered as conscientious objectors each year. Numbers started to climb at the time of the student protests of the sixties; by 1968 the number rose to 11952, in 1976 to 40618 and in 1982 to 59776. The social significance of conscientious objectors was increasing. A separate Government department was created to deal solely with alternative service for conscientious objectors. Over the years their service options were broadened to include ambulance work and work with the crippled. Some conscientious objectors did development work overseas.

Each conscientious objector had to undergo a careful test of his conscience before a four-person board. He had to demonstrate what his grounds were for conscientious objection and show how his thinking had already made an impression on his life and actions. He had to show that he rejected military service in all war on principle; only a universal rejection of political violence is an acceptable ground for recognition as an objector. A situation-

bound rejection of military service, referring to a specific opponent, in a specific war, or with specific weapons does not earn the objector the right to alternative service.

However this narrow band of acceptability for alternative service has been broadened in favour of the conscientious objector in several important respects.

Firstly, the difference between a situation-specific and a universal conscientious objector is somewhat fluid. For argument's sake let us distinguish among two broad groups of universal conscientious objectors: 1. Applicants whose conscience excludes on principle any participation in war, because war is always rejected as wrong in every historical situation without qualification ("dogmatic pacifists"); and 2. Applicants who, as a result of experiences and reflection on the current historical-political situation here and now, decide to reject military service on conscientious grounds, without insisting that their decision would be the same at all times and in all wars.

The right of the state to conscript for collective defence is not competitive with the right of the individual to remain true to his/her conscience.

Alternative service

The first group is obviously entitled to alternative service under the German system. And in fact, as long as they reject all war between Germany and other states, the second group is also entitled to alternative service, according to the West German constitutional court of 20.12.1960. The situation has become ambiguous since, with conscientious objectors being required to reject participation in other wars past and present as well.

Secondly, the willingness of an objector to participate in (violent) defence against an enemy whose intention is extermination does not exclude him from alternative service. The constitutional court of 10.12.1975 ruled that in such a situation of emergency one would be "driven" to help the defenceless out of elementary moral considerations. Thus one is regarded as a universal objector even though one would, for instance, fight on the Israeli side in the Israeli-Egypt war of 1967.

Thirdly, in respect of participation is wars of liberation, the conscientious objector may distinguish between two types of questions: 1. Is such-and-such a movement morally justified in offering military resistance to oppression? and 2. Would you personally take part in the military resistance of that movement? An affirmative answer to the first question does not exclude the applicant from recognition as a conscientious objector; an affirmative answer to the second does.

Fourthly, while the objector loses his chance of recognition if he admits that he would participate in (violent) defence, he does not if he replies that he would use non-violent means of defence. The concept of Social Defence is gaining popularity in Europe. The prototype was the non-violent social defence employed by the Hungarians during the Soviet invasion in 1956. With at least a little initial success they tried to make their country ungovernable by, among other things, changing the street names.

Fifthly, while a conscript may not refuse military service for political reasons, he may employ political reasoning in order to arrive at his decision of conscience to reject participation in all military service. Political considerations about armament and disarmament, the expansion of NATO, arms vs. development, etc. may legitimately lead the conscript to the insuperable conviction that he must not participate in violence.

Sixthly, while a conscript may not object conscientiously because of nuclear weapons, his application can be accepted if his considerations about nuclear weapons lead him to reject all war.

Finally, the objector has to answer only for his own convictions about war, not for anyone else. He may simultaneously reject participation in war and be tolerant of soldiers, police, wars of defence, United Nations peace-keeping forces and the like. In fact the examining bodies may even take exception to a condemnatory attitude to fellow soldiers! What this virtually means is that one may obtain alternative service for being a "vocational objector", i.e. one who, without morally approving or disapproving of all war, is convinced that he himself must not participate in any. The positions outlined in the third and fourth points above may be described as vocational conscientious objection. This was considered a morally consistent position by Quaker conscripts at the time of the American civil war. They rejected participation, but not the battle itself, and were therefore willing to comply with the regulations by finding a substitute or paying the government a soldier's salary.

It is evident that in the above seven ways the range of acceptable motives for conscientious objection has been widened considerably beyound the position of the "dogmatic pacifist".

Two further concessions are made to the law of universal conscription in West Germany. Firstly, West Berlin has no conscription at all because the area is under British, American and French control. An objector who suspects that his motives would not be honoured in the trial of conscience can settle in West Berlin and avoid all military service. Secondly, theological students and ministers are free of all military service.

Trials of conscience

There has been widespread dissatisfaction with the trials of conscience. In 1974 a commission of Evangelical (i.e. Lutheran) and Catholic churches concluded that the trials were subject to caprice and that the law was too ambiguous. It was unacceptable to leave the burden of proof with the candidate. The trials were biased in favour of those candidates of superior intellectual abilities. Finally, the four-person committee carrying out the trial were "Beamte" (officials of state) and were hence likely to favour the military. The commission therefore recommended abolition of the trial.

In 1977 the law was changed. The trial of conscience was abolished. The conscientious objector was required only to send a postcard to the military applying for recognition, which was granted automatically. The number of objectors continued to rise, whereupon the law was hastily changed the next year and the trial reintroduced.

An organization of conscientious objectors was created in 1971, called the Selbstorganisation der Zivildienstleistenden (SOdZDL). It consists of some 120 base groups. Every two months their newspaper *Info-Dienst* is published. Their ultimate aim is to transform the present alternative service system into a genuine service for peace. Such a service would be socially accepted, meaningful and independent and would use the talents and commitment of young people constructively.

Proximate goals in the meantime are to abolish the trials of conscience; to eliminate the extra service requirement of

one month; to obtain the right to policital work during service; and to obtain the right to strike.

A new system will be applicable from January 1984. The trial of conscience will be abolished. In its place the conscientious objector will have to fulfil two requirements. First, he will submit a formal written application which must include a great deal of detail about his motives and clearly demonstrate his commitment to social service and peace. Secondly, his service will be lengthened to 20 months — one-third longer than the military service commitment of 15 months.

This new legislation was passed in December 1982, at the instance of Dr Heiner Geissler, the Minister for Youth, Family and Health. He had done his doctorate on the subject of conscientious objection.

The new legislation has also been the object of much criticism. The chief complaint is that the recognition mechanism might not singificantly change. The written application will be read by an official of the alternative service department (Zivildienstamt). If he approves the application, the objector's recognition is automatic. If, however, he senses something suspicious or feels that the objector's motives cannot justify the right to alternative service, then the objector will be examined by a board as under the old system. Thus the only real improvement is that the conscientious objector may be recognized without personal examination. How many will go through automatically and how many will undergo personal examination is up to the discretion of the officials; hence the argument that apart from the longer period of service there may be no real change.

Strike of objectors

The SOdZDL organized a strike of objectors doing alternative service on 27.1.83 to protest the stiffening in the new legislation. Some 11 000 of the 34 000 then in service joined. Support was conveyed from groups in Oslo, Helsinki, Copenhagen, Stockholm, The Hague, Brussels and Milan. Even old people and cripples joined in the protest.

The strikers argued that the officials of government will still have the power to regulate the number of conscientious objectors. The point of the legislation was not to recognize genuine conscientious objectors but to cater for the needs of the Bunderswehr. The recognition procedure would be used as a throttle or curb rather than as a means for distinguishing between the false and the true. Therefore they argue that their constitutional right of conscientious objection has still not been enshrined in law.

The West German' quarter-century of experience in operating a massive alternative service scheme can provide us with valuable insights an provoke some searching questions at the commencement of the South African alternative service scheme.

I

The Germans have shown that it is possible to honour the consciences of their young men without damaging the strength of the Bundeswehr. The right of the state to conscript for collective defence is not competitive with the right of the individual to remain true to his/her conscience.

The diversity of thought and ideology within society are sufficient to ensure that even a strong peace movement can be tolerated without endangering national security. Therefore it is not necessary for the military to apply massive coercion to make everyone conform to militaristic ways of thinking. There is another way — a better way — of preserving national security than by forcing conformity upon the populace through shoddy propaganda backed up by the threat of years and years in Pretoria Central.

The extension of democracy throughout society should be the chief way of ensuring national security. When people feel they have a stake in the system their natural reaction is to defend it. If, however, they get the feeling that there are huge inequalities in wealth, education and opportunity their perceived stake falls to the point where they lose their loyalty to the state and do not see why they should defend it. It is only because South Africa is fundamentally undemocratice that the government feels constrained to maintain the military by giving propaganda to the malleable and jail to the recalcitrant.

There is a better way of preserving national security than by forcing conformity upon the populace through shoddy propaganda backed up by the threat of years and years in Pretoria Central.

II

It remains to be seen whether genuine South African conscientious objectors will be granted alternative service under the new system of whether the government's real intention is to pay lip-service to alternative service while using the new laws to enforce militaristic thinking on all and sundry.

As we have seen, Germans regard their own Zivildienst system as far from perfect. Nevertheless it would be reassuring if the South African system matched up to the breadth of the German one. The debate in Parliament and the utterances by senior Defence Force officials have caused suspicion of the real intention of the new legislation. Questions like the following have been and are being asked.

Non-religious objectors

★ Why is there no recognition of non-religious conscientious objection in South Africa? Western democracies recognize them and have had no grave problem with "shysters". To reply, as one senior official did to me, that it was in any case the churches and not non-religious people who requested legal changes, is to ignore the facts. Firstly, the churches have never distinguished between religious and non-religious objectors. Secondly, the position of the Progressive Federal Party on the rights of conscientious objection — including non-religious conscientious objection — has been abundantly clear for a long time.

★ How narrow, or how broad, will be the SADF's definition of conscientious objection? Will a willingness on the part of the applicant to use non-violent social defence exclude him from alternative service?

★ Will the applicant's inclusion of contemporary political comment (e.g. about Namibian independence) in his rationale for conscientious objection exclude him from alternative service? Or will it be understood, as in the German case, that serious political considerations can contribute to a conscientious objector's insuperable conviction that participation in all war is wrong?

★ Will the applicant's rejection of unjust means (e.g. torture or the strafing of civilian areas) exclude him from alternative service? Or will the authorities have the moral subtlety to accept, as do the Germans in the case of nuclear weapons, that the rejections of unjust means may lead an objector to reject all war?

★ Will the authorities require the applicant to condemn all soldiers in all wars

as deficient in good will? Or will they, as do the Germans, permit the applicant an attitude of tolerance to those who think differently? Otherwise stated, will they require the applicant to answer only for his own convictions, or will they require him to answer for (and roundly condemn) the attitudes and convictions of others? And to put this question into the South African context, will the authorities require of the objector a uniform condemnation of the moral probity of the SADF, the police, SWAPO, ANC, the military wing of the AWB – or will they permit the objector to make moral distinctions among these, while maintaining his conviction that *he himself* should not use violence?

★ Finally, in relation to movements of national liberation, will the authorities allow the applicant to distinguish between moral justification and personal participation, as does the German system? (cf. the previous set of questions). Or will the authorities insist on a position and personal participation as unanimous? More concretely stated, will the applicant be permitted, as in Germany, to have sympathy with the aims of a national liberation movement, while being convinced that military participation in them would be wrong for him – or will the authorities insist on ideological conformity here too? Or to put it in its baldest form, must the objector's political ideas be the same as those of the authorities before he will be granted alternative service, or will he be able to form his own mind on political matters?

III

Government and SADF officials often defend the new legislation on conscientious objection by saying that South Africa cannot be expected to open the sluice gates to all sorts of conscientious objectors – even if other countries can afford the luxury of doing so – because South Africa is at war and they are not. They argue that a country at war must first see to its national security needs. The politician would be irresponsible to act otherwise. Therefore war-time exigencies demand that dubious individual liberties must be subject to national security.

If this argument is made, it is reasonable for us to request consistency on the part of the government and the SADF.

If South Africa is at war, let the government declare war and state against whom the war is being waged.

If South Africa is at war, then we must require consistency on the part of the SADF in observing the international laws of war. International conferences starting in the last century, and climaxing in the Geneva Conventions of 1949 have laid down conditions under which war may be fought.

If South Africa is at war, let the SADF grant its prisoners all the usual rights given to prisoners of war. Let them receive food parcels and mail; let them be free of all interrogation but for finding out their identity; and let them have visits from the Red Cross.

But until the government and the SADF conform to international legislation regarding the waging of war, the argument that alleged wartime emergencies must inhibit the rights of conscience will ring hollow.

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RESISTER'S STATEMENT TO MASS MEETING

Brett Myrdal addresses a meeting of protest against the new constitution, at UCT, October 1983

Fellow students; I greet you today in solidarity with all other objectors; with the thousands who have left South Africa rather than serve in the South African Defence Force; in solidarity with Paul Dobson who, after 14 months in the SADF, chose to object and will now join the other conscientious objectors in Pretoria Central.

Last week I heard a report on capital radio covering the Transvaal National Party Congress. A resolution was passed calling for the rapid implementation of the extension of conscription to so-called 'coloureds' and 'Indians'. Magnus Malan, minister of defence, spoke to the resolution.

He explained that the law to extend conscription would, but for shortage of time, have been introduced during the last sitting of parliament. He said it only remained for the new constitution to be accepted, before the extension of conscription would become fact.

So, as I talk today, introduced as a conscientious objector, I am very conscious of the fact that conscription is fast becoming a reality for a far broader group of South Africans. And it is precisely because of the supposed political rights which are being 'given' to the 'coloured' and 'Indian' people, that they now face the threat of conscription in defence of the apartheid under which they live.

F.W. de Klerk, Transvaal Nationalist Party leader, has stated this clearly. I quote: "You can't ask a man to fight for his country if he can't vote. Among the terms of the new dispensation is the guarantee that coloureds and Indians will get voting rights. It follows that their responsibilities will increase accordingly, which means they will hold obligations to defend these rights."

This is one harsh consequence of the new constitution that we, gathered here as members of NUSAS and the United Democratic Front, reject as we reject all aspects of the government's new deal.

In July, I failed to report to Potchefstroom Medical Services Corps. I was charged at Voortrekkerhoogte and face a Court Martial there on November 8th. As a conscientious objector, I face a maximum sentence of two years' imprisonment.

But I, like thousands of others, had been morally and physically prepared for war. Why then make this choice?

I attended a high school in Port Elizabeth. Part of its 'liberal' tradition was to train us as officer material for the SADF. The military, in the form of compulsory cadet training, was a part of my life from the age of 13.

Instead of cowboys and Indians, at school camps we played 'nationalists vs terrorists'. We drilled with R1's; we were trained to shoot; 600 boys went on parade four times a year for the Eastern Province Command.

Our cadet camp (and I quote from our school year book) trained us in counter insurgency warfare and attacks on mock terrorist bases.

Then in our last year of school, we all received our first call up papers. The dilemma then was – varsity or national service? This was the year after Soweto '76 – we had always been told to prepare for the war against an external communist threat. But it was clear to many of us that

MPLOYERS GUIDE TO COMMUNITY SERVICE

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PREFACE

This guide has been prepared to assist employers and community servers to determine their rights and obligations in terms of the system of community service and to avoid the need for time-consuming and expensive enquiries to the Department of Manpower on each point requiring clarification in respect of individual community servers.

It is not exhaustive and it is envisaged that it will be updated from time to time as new issues arise.

DEFINITIONS

Community server - person classified as a religious objector in terms of Section 72D(1)(a)(iii) of the Defence Act, 44 of 1957.

The Minister - The Minister of Manpower, unless the context indicates to the contrary.

The Act - The Defence Act, 44 of 1957.

Employer - Department, institution, or body in which a community server is placed by the Minister.

Department - The Department of Manpower.

Headquarters

Camp

pay schedule/subregulations -

The regulations -

Section - Section of the Defence Act, 44 of 1957.

1. WHAT IS COMMUNITY SERVICE?

Community service is the system of alternative national service introduced by the 1983 Defence Amendment Act. It is a new dispensation for persons recognized by the Board For Religious Objection as persons "with whose religious convictions it is in conflict to render any military service or to undergo any military training or to perform any task in or in connection with any armed force" [Section 72D(1)(a)(iii) of the Defence Act]. The Board is chaired by a Judge and also consists of members of the SADF and theologians appointed by the Minister of Manpower.

Community servers perform their national service in terms of Section 72E(4) under the authority of the Minister of Manpower in government departments or local authorities. They perform their service in a continuous period of one-and-a-half times their maximum outstanding liability for military service. The system is administered by the Department of Manpower.

could be omitted

2. PARLIAMENT'S INTENTION FOR COMMUNITY SERVICE

Prior to 1983 any refusal to render military service was unlawful and persons who objected on religious grounds were punished with sentences of between one and three years imprisonment in military Detention Barracks or civilian prisons.

Parliament recognized the need to accomodate persons with bona fide religious objections to military service and whose objection was of a religious pacifist nature, in a positive manner. The new dispensation was created as a result of the recommendations of the Naude commission, chaired by the former Chaplain-General of the SADF.

Parliament felt that any alternative to military service would have to compensate for the potential hardship of army life. Thus two onerous provisions were included in the new system. Firstly community service is to be one-and-a-half times the length of the maximum outstanding period of military service. Secondly it is to be performed in a single continuous period. This comes to six years for those who have not rendered any military service and up to three years for those who only have camp liability outstanding.

These onerous conditions were not intended to punish bona fide religious objectors, who through community service, perform a lawful form of national service. In the case of S. v. Farber 1984 1 SA 340 Mr Justice M.T. Steyn (also first Chairman of the Board for Religious Objection) stated at 348

"... persone wat weens hulle godsdienstige oortuigings beswaar het teen enige vorm van militêre diens as sulks en op grond

daarvan weier om enige sodanige diens in 'n gewapende mag te verrig, word ingevolge die nuwe stelsel wat deur die 1983-wysiging van die Verdedigingswet ingevoer is, nie meer as oortreders beskou en behandel nie maar as persone wie se godsdienstige oortuigings eerbiedig moet word en wie se mannekragpotensiaal nou op die mees sinvolle wyse benut moet word as wat in ooreenstemming met hul godsdienstige oortuigings prakties moontlik is."

Parliament did not intend the immediate employer or the Department of Manpower to create further onerous conditions of service for community servers or to treat them in a punitive manner.

3. HOW THE SYSTEM WORKS

Once a person has been classified as a religious objector obliged to render community service by the Board, the Department of Defence refers that person to the Department of Manpower specifying the period of service which the person has to serve. At this point the Department of Defence's involvement in the community service terminates.

The Department of Manpower must then find placement for the community server in terms of his aptitude, experience and training. This is done in consultation with the community server and various potential employers. The community server may make representations as to the most appropriate placement.

The community server is notified by the Department of Manpower that he is to begin service in a specified post with a specified employer on a specified date. He is informed of the length of such service, which only begins when he actually begins working.

4. THE MINISTER'S POWERS

Community service must be rendered as determined by the Minister of Manpower in terms of the Act and regulations. The minister delegates his wide powers to regional officers.

The Minister may determine the following:

The placement of the community server;
The remuneration the community server is entitled to;
The disciplinary procedures the community server is subject to;
Transfers from one placement to another;
Secondments to non-governmental institutions;
Grades of promotion for particular community servers or community servers in general.

5. PLACEMENT

The placement of the community server is determined by the Minister of Manpower or a delegated official, having regard to the individuals aptitude, experience and training in order to maximise utilization of manpower.

A community server may only be placed in;

5.1 A government department as defined in section 1 of the Public Service Act, 1957 or;

5.2 An institution or body contemplated in section 84(f) of the Constitution Act, 1961 (This refers essentially to local authorities).

Placement transfers are possible should the community server or the employers require this. It is also possible for a person to be placed in a department and then be seconded by that department to a non-government body whose work relates to the placement. This would apply primarily to instances where the community servers aptitude, experience and training cannot be properly used in the placement position itself.

6. CREATION OF POSTS

Placement is not restricted to the employers pre-existing posts and the employer may create new posts according to its need and the community servers training and aptitude. It is therefore not necessary for the employer to be limited to budgetted posts to place a community server.

7. EMPLOYER'S OBLIGATIONS

7.1 The employer is obliged to accept the placement of any community server with it, whether or not it wishes to have the community server. (s72E(4)&(5))

7.2 The employer must administer the work of the community server once he has been so placed.

7.3 The employer must report to the department as to the progress of the community server.

7.4 The employer must interpret and apply the regulations to the community server and his work.

7.5 The employer must arrange for the community servers remuneration from the department.

7.5 The employer must authorize the annual and occasional leave of the community server.

8. COMMUNITY SERVER'S OBLIGATIONS

8.1 To obey lawful instructions by his employer.

8.2 To perform his community server in a responsible manner.

8.3 To comply with the Act and regulations.

9. COMMUNITY SERVER'S STATUS AND AUTHORITY

Any community server who is employed in a supervisory or controlling post over other employees has the same authority as that vested in a incumbent of such a post if he were an employee in a post on the fixed permanent establishment [Regulation 11]. This will also be the case if he is placed in a newly created post where his duties include the exercising of authority.

The community server has to be treated in the same way as any other employee, except as is limited by in the regulations. In judgements handed down in the Supreme Court, it was stressed that community servers are not offenders to be punished, but people who need to be respected for sincerely-held beliefs.

The community server is not to be treated as or compared to a military serviceman, other than in terms of his salary for the first two years (or equivalent thereof).

10. WHO TAKES DECISIONS?

It is sometimes unclear whether a particular decision in respect of a community server must be taken by the employer or the department.

10.1 The department is responsible for deciding questions relating to:

10.1.1 placement
10.1.2 promotion
10.1.3 transfers
10.1.4 some disciplinary matters
10.1.5 the pay schedule

10.2 The employer is responsible for deciding questions relating to:

10.2.1 Job description for placement
10.2.2 Training (including training courses and the obtaining of qualifications) required for placement from time to time
10.2.3 Application of categories in the pay schedule
10.2.4 Supplementing the remuneration stipulated in the pay schedule after the community servers first two years of service (or the equivalent thereof)
10.2.5 Allowances required by the community server
10.2.6 Annual and occasional leave

11. REMUNERATION

A community server must receive the aggregate of all amounts of remuneration refered to in paragraphs 11.1 and 11.2 hereunder.

11.1. Definitions

Daily or per day, when it refers to remuneration, means every calender day, irrespective of whether it includes public holidays, weekends or days of leave.

11.2. Minimum rate of remuneration

The minimum rate of remuneration is determined by the Minister of Manpower, in consultations with the Minister of Finance and the Commission for Administration, in terms of Regulation 14. The Minister issues determinations of remuneration and allowances in terms of this regulation from time to time. The most recent such determination was made with effect from 1986.04.01. It is this determination which is referred to, unless indicated otherwise.

11.2.1. A Non-Professional community server

(a) Who is an non-professional community server?

An non-professional community server is one who does not fall within the definitions of a semi-professional or a professional community server.

(b) Rate of remuneration

Unmarried

An unmarried community server has to be paid basic remuneration at a rate of R5.72 per day.

A community server who is married or has resident dependants.

A community server who is married or has dependents who are totally dependant upon them and who are resident with them, has

to be paid basic remuneration at a rate of R11.44. Divorced persons are treated as unmarried unless they have resident dependants who are totally dependant upon them. (For these definitions, see the Determination which was effective for level of pay before 1986.04.01.)

11.2.2. A professional community server

(a) Who is a professional community server?

Professional community servers are defined as people who are trained in one or more of the following professions:

Medical professional, Dental professional, Engineering professional (who must be registered as such), Pharma-ceutical professional, Architectual professional (who must be registered as such), Registered quantity surveyor, Registered land surveyor, City and regional planner, Professional in Veterinary Services.

It is not a requirement that such a community server be employed in one of the above-mentioned professions. A community server must be paid at the rate of a professional server if he has been trained in any of these professions, irrespective of whether he is employed in that capacity.

(b) Marriage status

The marriage status of a professional community server does not affect his remuneration at all.

(c) Rate of remuneration

A professional community server has to be paid basic remuneration at a rate of R11.44 per day as well as an allowance of R8.00 per day.

11.2.3. A semi-professional

(a) Who is a semi-professional community server?

A semi-professional community server is someone who has training for any other class of occupation where a degree or diploma of at least three years study is required. Therefore all community servers who have obtained a three year degree or diploma in any occupation have to be paid at the level of a semi-professional community server. There is no requirement that this occupation should be accepted for higher remuneration in military service.

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Ad par. 11.2.2.

The requirements which were set in Annexure C1 in the Determination which was effective before 1986.04.01, was not repeated in the one which became effective then. The requirement in the present Determination, "Alle oorblywende beroepsklasse ...", is therefore much wider than the preceding one.

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(b) Marriage status

The marriage status of a semi-professional community server does not affect his remuneration at all.

(b) Rate of remuneration

A semi-professional community server has to be paid basic remuneration at a rate of R11.44 per day.

11.3. Daily allowance

A daily allowance, over and above all monies due in terms of paragraph 11.2. (except for professional, but including non-professional community servers), has to be paid for the minimum time prescribed for the degrees and/or diplomas which the community server has obtained. This daily allowance has to be paid according to the following rates :

Duration of study	Daily Rate (R per day)
3 years	.50
4 years	1.00
5 years	2.00
6 years or more	3.00

11.4. Remuneration before the initial two years of community service and where no military service has been served

11.4.1. Limitation of remuneration

Employers are limited to pay remuneration at the rates referred to in paragraphs 11.2. to 11.3., and may not pay an amount more favourable than that determined by the Minister, as set out above.

11.4.2. Possibility for increased salary

The Minister may amend the provisions related to remuneration and determine that a specific community server or class of community servers may be paid at a scale higher than the general determination referred to in paragraph 11.1. and 11.2.

(Regulation 53). An employer may, therefore, if s/he feels that circumstances exist which justify a departure from the provisions of the regulations, apply to the Minister for such an amendment.

11.5. Remuneration after the initial two years of community service or military service has been served

The same minimum rates of remuneration apply to such community servers as apply to servers referred to in paragraph 11.4., but employers may pay any additional remuneration and grant any addotional benefits according to his seniority.

Where a community server has completed his initial two years of military service, he has to be paid at a rate as if he was in his third year of community service. His employer is further free to pay him and grant him benefits according to his seniority. [* See below.]

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Ad par. 11.5.

It stands to reason that the provisions of Regulation 14, which states that salaries, pay or allowances, "shall not be more favourable than that determined for serving national servicemen of corresponding classification, mustering or grade over a corresponding period of service" is ultra vires because it falls outside the intention of Parliament. We refer here to the provisions of Section 72E(5)(c) of the Defence Act, which states (with reference to someone who is to render community service with an institution which he was working for before he was classified as a religious objector) that service in an institution shall not, for "the first two years of such service" be regarded as service with such institution "for the purposes of seniority, promotion and remuneration".

The only intention that the legislature could have had in making this provision in the Act, is that such service could be regarded as service for the purposes of seniority, promotion and remuneration by an institution where the community service is rendered. If this was the intention of Parliament with regard to people who are placed in community service in institutions where they were employed before commencing with their community service, its intentions must have been the same for all community servers after the first two years of community service.

Consequently, employers are entitled to regard service after the initial two years of community service as service for purposes of seniority, promotion and remuneration. They could, thus, remunerate and provide benefits to a community server according to his years of service (excluding the first two years) and

according to his seniority.

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The only problem with the above argument is that, logically, it excludes the possibility that previous military service could be taken into account when one looks as pay & benefits. Section 72E(5)(c) expressly says "the first two years of such service [refering to community service and not service in general] shall not ... be regarded as service with that ... institution".

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12. PROMOTION

An employer is not entitled to promote a community server and remunerate him accordingly at a higher rate of pay, during his first two years of community service, unless he has already rendered military service. [See caveat upstairs.]

If a community server has ~~rendered~~ already rendered two years community service, his employer may promote him and increase his salary and benefits approriately. If a community server has rendered any military service, the period which he has rendered may be taken into account, up to a maximum of two years, in lieu of the first two years of community service or part thereof required before an employer is entitled to grant promotion to a community server.

13. LEAVE

13.1. General questions regarding leave

13.1.1. Who grants leave?

In terms of Regulation 15, it is the employer's obligation to grant leave, only subject to the provisions of the Regulations. The employer is free to use her/his discetion in deciding when and how to grant leave, within these confines. In terms of the Regulations which are applicable, the Minister of Manpower does not have any jurisdiction in this regard.

13.1.2. Remuneration during leave

Community servers have to receive payment of all categories of remuneration for every day of leave of any category, excluding court leave [See paragraph 13.4.].

13.2. Annual vacation leave

13.2.1. Definitions

Consecutive Days : A period of consecutive days' leave have to start on the first working day of a working week (usually a Monday, of course) [Regulation 16]. The effect of this is that the weekend preceding a continuous period of leave is not counted as part of the days of official leave.

Twelve month cycle : Leave days prescibed in the Regulations are in respect of each twelve month cycle of service, starting on the first day of community service and ending a year later. It, therefore, does not refer to calender years.

13.2.2. Community Servers who have not completed 1 year of military service.

During the first year of community service

An employer must grant a community server leave of a total of 14 consecutive days for the first twelve month cycle of service [Regulation 15].

After the first year of community service

An employer must grant a community server vacation leave of a total of 21 consecutive days after the first twelve month cycle of community service [Regulation 15].

13.2.3. Community servers who have completed at least one year of military service

Such a community server is in the same position as one who have completed his first year of community service, as described above under paragraph 13.2.2.

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On what legal provision do we base our argument that people who have completed 1 or more years or military service do not fall under the first year limit to leave?

Or is the argument just based on equity, i.e. "since such community servers have already been subjected to a limited number of days leave during their military service, they should not be so subjected again"? If that is our only base, can we argue that the law is as described above?

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13.2.4. When must vacation leave be granted?

Vacation leave can be granted at any time during a particular leave cycle as well as during the first four months of the following leave cycle [Regulation 16]. It is not required that, if it is granted before the end of a cycle, it be granted pro rata to the period of the leave cycle which the community server have already served. A community server could thus combine two years' leave during the four months after the end of each cycle.

During the last cycle of a community server's service, he must be granted his full vacation leave before the end of this last cycle.

This leave could be granted in different periods during the year as occational leave and the employer may then reduce the consecutive days of annual leave granted by this number of days [Proviso to Regulation 16 - see paragraph 13.3.].

13.3. Occational leave

A community server must apply for occasional leave in wrtiting. An employer has the descretion to grant a community server occational leave in terms of Regulation 15. What may qualify as occational leave is not limited in the Regulations, and can thus include the following :

Leave for vacation
Study leave
Compassionate leave

In terms of the Regulations which are applicable, the Minister of Manpower is not granted any jurisdiction to require that applications for occational leave be submitted to them.

An employer further has the discretion to decide whether to reduce or not to reduce the annual leave due to the community server by the number of days of occational leave granted.

13.4. Sick leave

A community server is entitled to unlimited paid sick leave in terms of Regulation 17. It is not required of the community server to present his employer with a doctors certificate for the first three days of absence due to illness. He has to hand in a doctors certificate stating the diagnoses of the nature of his illness on his return after absence of more than three days, in which the doctor prescribes the duration of his further absence for purposes of recuperation.

The period during which a community server is unable to serve as

a result of an injury on duty, is naturally taken as service and he is entitled to full pay during this period [Regulation 18]. If a community server is unable to serve because of this reason, he is not required to hand in a doctors certificate. See also paragraph 14.

13.5. Leave to appear in court or due to arrest

A community server is entitled in terms of Regulation 19 to ###unpaid leave in the following cases :

(a) If summoned to appear as a witness before a civil or criminal court;

(b) If arrested to appear on a charge before a criminal court of which he is subsequently acquitted. If a community server is found guilty as charged, the days during which he was absent from work are not taken as service in terms of the Defence Act.

14. INJURY AND DEATH OF A COMMUNITY SERVER

14.1. Remuneration during absence due to injury sustained on duty

A community server is entitled to full remuneration during a period of absence due to injury sustained while on duty [See paragraph 13.4.].

14.2. Compensation for disablement ###

When a community server is disabled, either temporarily or premanently, due to accidents or industrial diseases he is entitled to receive compensation for such disablement. The provisions of the Workmen's Compensation Act [WCA] (Act 30 of 1941) in this regard are made applicable to community servers in terms of Regulation 34.

The WCA requires that such an accident happens in the cause of the employment of a workman (i.e. while the workman is on duty) or that the industrial disease is one as is defined in the Act.

The level of remuneration in terms of WCA is determined directly according to the monthly earnings of a workman. In terms of Regulation 34(c) the community server's monthly earnings is taken as his remuneration, as is described in paragraph 11. It expressly excludes all allowances and all benefits and privileges which can be calculated in terms of money from this figure. The Regulation is thus a departure from the usual provisions of

the WCA, which allows a workman to claim compensation according to most levels of benefits received from his employer (including living allowances, value of food provided to the workman etc.).

[Give more details of WCA.]

14.3. Death of a community server

14.3.1. Compensation due to his wife or dependants

When a community server dies in an accident or due to an industrial disease, his wife or dependants are entitled to receive compensation from the Workmen's Compensations Commissioner. The provisions of the **Workmen's Compensation Act** [WCA] (Act 30 of 1941), as is described in paragraph 14.2, are made applicable to community servers in terms of Regulation 34.

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14.3.2. Conveyance of his body

If a community server dies whilst rendering service (i.e. not only due to accidents while on duty or industrial deseases caused by his work), his body has to be conveyed at the expense of his employer to any place within South Africa indicated by his next of kin as the place for his burial [Regulation 31].

15. REFUNDING OF PAYMENTS MADE BY EMPLOYER

In terms of the agreement between the Department of Manpower and employers of community servers, all payments made by employers in terms of the Regulations will be refunded by the Department to the employer.

16. ACCOMMODATION

16.1. Provision of accommodation

An employer have to provide accommodation or an accommodation allowance to a community server at his own expense [Regulations 20 and 24]. "Accommodation" includes lodging, bedding, meals, liquid refreshments (excluding alcoholic beverages) and laundering and includes a hotel board levy, service charges and sales tax but excludes dry-cleaning [Regulation 1].

The employer is only obliged to provide such accommodation or living allowance only for the community server himself. The employer is nevertheless free to provide such accommodation to

the community server's wife or dependants. The employer is further free to pay an accommodation allowance to the community server's wife or dependants, since this is not an additional benefit to the community server. The employer cannot, however, claim this additional allowance back from the Department of Manpower since it is not provided for in the Regulations.

16.2. Official quarters

If an employer has official quarters in which accommodation is supplied, s/he may require a community server to live in such quarters [Regulation 22]. An employer has the discretion, though, not to require of a community server to live in such official quarters, but to pay him an accommodation allowance as discussed under paragraph 16.3.

The employer may not require of a community server who is accomodated in official quarters to pay any fees for such quarters. With this exception, the community server is subject to all rules and regulations governing living in such quarters as they are applicable to permanent employees who may be required to live in. The employer may not, however, apply any additional rules or regulations, which are not applicable to permanent employees who are required to live in, to the community server because of his living in such quarters.

If any of the services described in paragraph 16.1 as part of accommodation is not provided where a community server is accomodated in official quarters, a living allowance covering proven expences in this regard is payable up to the level determined by the Minister of Manpower in terms of Regulation 23 [see paragraph 16.3]

16.3. Accommodation allowance

Where no official quarters are available or where an employer does not require of a community server to reside in official quarters, where they are available, an accommodation allowance has to be paid to him [Regulations 22 and 23]. The maximum value of this allowance is determined by the Minister of Manpower from time to time. Presently employers are required to pay an allowance covering actual expenditure for the provision of accommodation as described in paragraph 16.1, to a maximum of R250 per calendar month.

A community server must submit proof of his actual expences in respect of his accommodation at the commencement of his service and again if his expences change substantially. Community servers are thus not required to submit proof of expences every month.

This allowance is called **a living allowance** where a community server's headquarters are in the same place where he normally resides [Regulation 24].

Where a community server does not commence with his community service on the first day of a calendar month or does not end his service on the last day of a calendar month, he is still entitled to an accommodation allowance for that month of actual expenditure for the provision of accommodation to a maximum of R250 for that calendar month.

16.4. **Allowances payable where it is required of a community server to be away from his headquarters on official duty**

If it is required of a community server to be absent from his headquarters on official duties, the allowances described under paragraphs 16.4.1 and 16.4.2, where applicable, has to be paid to him in addition to any other allowances to which he is entitled. [For a definition of **headquarters**, see paragraph <>.] The amount of these allowances is determined by the Minister of Manpower from time to time.

Official duty outside the municipality of a community server's headquarters, will constitute duty in another city, town or place. Where a community server's headquarters is not in a city or town, official duty away from that place will constitute duty in another city, place or town.

16.4.1. Subsistence allowance [Regulation 25]

A subsistence allowance has to be paid to a community server who is required to be absent from his headquarters on official business in another city, town or place, whether accommodation at this other city, town or place is available or not. $ This allowance is presently determined as R39.00 per day and R1.62 per hour for periods shorter than one day.

16.4.2. Camp allowance [Regulation 26]

A camp allowance must be paid to a community server who is required to be absent from his headquarters where accommodation is not available, whether he also receives a subsistence allowance or not, in addition to any other allowances to which he is entitled. $ This allowance is presently determined as R12.50 for married and R11.75 for unmarried community servers.

17. CONVEYANCE

17.1. **Conveyance to and from work**

17.1.1. Provision of free transport

If public transport is not available within reasonable distance, an employer has to provide free transport to a community server from a his place of accommodation to his work and back by any means determined by his employer [Regulation 29]. An employer may provide this "free transport" to a community server by paying him a travelling allowance which enables him to alternative transport at no cost to himself [See 17.1.2].

17.1.2. Travelling allowance

A community server must submit proof of his expences in respect of transport to and from his headquarters at the commencement of his service and again if his expences change substantially. Community servers are thus not required to submit proof of expences every month.

(a) Where public transport is available

If a community server's place of accommodation is more than three kilometers distant from his place of work and his employer does not provide him with free transport, he has to be paid a travelling allowance [Regulation 28]. This allowance is at the discretion of the employer, but must be sufficient to enable him to travel by means of available public transport to his headquarters and back.

It is not required that this allowance is at the rate of the cheapest public transport available, and it could thus be for a class and by a means of public transport which is convenient for the community server.

It is further not required that the community server actually uses the public transport to enable him to travel to work. If he, therefore, travels to work by means of his own, a travelling allowance as described above must still be paid to him.

(b) Where public transport is not available for a reasonable part of the distance between place of accommodation and work

As described in paragraph 17.1.1, a community server's employer has to provide him with free alternative transport to his headquarters and back where there is no public transport available [Regulation 29]. Such transport has to be provided in the folowing cases :

* within reasonable distance from the community server's place of accommodation:
    * where public transport is not available for a reasonable

part of the distance between a community server's place of accommodation and place of work; and

* where public transport is not available within a reasonable time before the commencement or after the end of his daily service.

An employer may provide this "free transport" to a community server by paying him a travelling allowance which enables him to use alternative transport at no cost to himself. This allowance is at the discretion of the employer [Regulation 27], and may be by way of a repayment of expences incurred by his use of his own means of transport or of commercial transport (taxis).

17.2. Any other transport required for official business

17.2.1. Provision of transport by employer

A community server may be conveyed at the expense of his employer for the purpose of the community service by any means determined by his employer [Regulation 27].

In terms of Regulation 30 transport of a type and class which the employer have to determine has to be provided to a community server --

* in connection with or for the purposes of duties, related to his community service, which he is required to perform away from his headquarters [see definition of "headquarters" under paragraph <>];

* who must temporarily render community service from a place away from his usual place of accommodation where conveyance is required between the nearest shop and such place for his personal subsistence (the Regulation describes this place as a "camp" [see definition under paragraph <>]). The "nearest shop" would be the nearest shop which stocks the supplies which the community server needs.

Transport, therefore, has to be provided :

*where a community server has to travel from a his headquarters for ordinary service;

*where he has to travel to and from the city, town or place of his headquarters to perform duties elsewhere; and

*when he has to stay at a place other than his usual place of accommodation, where his has to render service temporarily, to and from a shop which stocks the supplies that which are necessary.

17.2.2. Transport allowance for official duties

Where an employer is not able to provide free transport to a

community server in the circumstances described under paragraph 17.2.1, s/he has to pay him a **transport allowance for official duties** [Regulation 30 read in conjunction with Regulation 27]. The employer has the discretion to determine the type and the class of transport for which the allowance has to be paid, to enable the community server to use this transport at no cost to himself.

17.3. Transport on commencement and completion of service

17.3.1. Provision of transport by employer

In terms of Regulation 30 transport of a type and class which the employer has to determine has to be provided to a community server --

* when he is required to travel from his place of residence to his heaquartes to commence his community service; and

* upon completion of his community service to return to his home or last place of residence.

This transport could be provided by the employer and s/he has the discretion to decide which type or class it will be. S/he has, however, no discretion about whether this transport should be provided, if a community server has to travel from his place of residence to his headquarters or back at commencement or completion of community service. **It is mandatory for an employer to provide such transport.**

Since the type and class of transport to be provided is within the discretion of the employer, it is within her/his discretion to provide transport which is sufficient for the community server to move his furniture and other belongings (including his vehicle, if he owns one) to the city/town/place of his headquarters. In the exercising of her/his discretion, the circumstances of the community server's accommodation in the city/town/place where his headquarter is situated, can be taken into account. Such circumstances may include the following:

* Where an employer does not provide a place of accommodation, it would be necessary for the community server to provide his own furniture etc. If he has furniture at his place of residence before commencement of community service, it would be reasonable for him to move this to his city/town/place of headquarters. In this context, it can be borne in mind that military servicemen are provided with all facilities and furniture necessary at the places where they are accommodated during their service, and therefore do not need this provision.

* Where a community server will need his own vehicle to travel between his place of accommodation and his headquarters while serving, it would be reasonable for him to move his vehicle from the place where he resides before commencement of his service to the city/town/place of his headquarters.

17.3.2. Transport allowance for relocation costs

An employer is not compelled to provide the transport described in the preceding paragraph her/himself. Where an employer is not able to provide transport of a type and class which s/he has determined to a community server in the circumstances described under paragraph 17.3.1, s/he has to pay him a **transport allowance for relocation costs** [Regulation 30 read in conjunction with Regulation 27]. The employer has the discretion to determine the type and the class of transport for which the allowance has to be paid, to enable the community server to use this transport at no cost to himself.

The circumstances described in the preceding paragraph may also be taken into account in exercising this discretion.

18. CLOTHING, EQUIPMENT AND TOOLS

18.1 Provision of clothing, equipment and tools

An employer has to provide a community server with all necessary uniforms, protective clothing, equipment and tools and other articles to be worn or used by them during and for the rendering of community service. This has to be provided at the employer's expense and at a scale applicable to officers and employees on his fixed establishment [Regulation 32].

These articles which have to be provided to a community server include any clothing required for the fulfillment of his duties.

Where a community server's duties differ to any extent from the duties of employees on the employer's fixed establishment, and therefore require the use of any of the above-mentioned articles additionally to those issued to such other employees, the employer is obliged to provide the community server with these additional articles at his own expense.

18.2. Clothing, equipment and tools allowance

An employer can, with the consent of the community server, make an arrangement whereby any of the articles mentioned in paragraph 18.1 is not provided by the employer, but is supplied by the community server himself. If this is the case, the employer is

obliged to provide a clothing, equipment and tools allowance which is sufficient to cover all expences incurred by the community server to acquire the articles mentioned. A community server cannot, however, be required to provide these articles against his will.

19. ALLOWANCES

The following allowances can be paid to community servers :

(a) Accommodation allowance - See paragraph 16.3.

(b) Subsistence allowance - See paragraph 16.4.1.

(c) Camp allowance - See paragraph 16.4.2.

(d) Travelling allowance - See paragraph 17.1.2.

(e) Transport allowance for official duties - See paragraph 17.2.2.

(f) Transport allowance for relocation costs - See paragraph 17.3.2.

(g) Clothing, equipment and tools allowance - See paragraph 18.2.

If any of the allowances mentioned above are paid out from to a community server, the employer can claim re-imbursement ~~by~~ the Department of Manpower in terms of the agreement between the employer and the Department.

20. OVERTIME

The head of an office where a community server is rendering community service may require him to perform official duty on any day of the week or at any time during the day or night or to attend at his normal place of work or elsewhere for such work [Regulation 13(a)]. Only the head of the relevant office may require this, and it may only be for official duty.

If this service exceeds official hours of duty which a community server is normally required to work, he is not entitled to overtime remuneration [Regulation 13(b)]. His employer may, however, determine that the community server be relieved of duties during normal working hours proportionately to the overtime worked.

21. MOONLIGHTING

-moonlighting to a reasonable extent is not prohibited but it must not interfere with the performance of community service

22. TRANSFERS

-the minister may authorize at transfer within an employer or from one employer to another, at the instance of the C.S. if reasonable grounds are shown. The consent of the employer is advisable - necessary?

-A C.S. may only be transferred against his wishes if there are good reasons, usually of a disciplinary nature

23. SECONDMENT

- There is no prohibition against an employer seconding a C.S. to do work in a body not directly recognized in the Act
-if the secondment is for a long period then the secondment work should relate to the placement and the minister's consent should be obtained

24. COMMENCEMENT OF SERVICE

A community server must submit proof of his actual expenses in respect of his accommodation at the commencement of his service and again if his expenses change substantially. Community servers are thus not required to submit proof of expences every month. [See paragraph 16.3.]

A community server must submit proof of his expenses in respect of transport to and from his headquarters at the commencement of his service and again if his expences change substantially. Community servers are thus not required to submit proof of expences every month [See paragraph 17.1.2].

Expand :
-service commences when the C.S. report for duty on the day specified by the department of manpower

25. TERMINATION OF SERVICE

Compensation to wife and dependants

[See discussion under paragraph 14.3.]

Expand :-

-Community service ends either (1) after the expiry of the period specified by manpower or (2) when the minister of defence

exercises his discretion in terms of S72E to reduce the period for a particular objector or class of objectors

26. MORATORIUM ACT [Regulation 44]

-applies for the first two years of service

27. DEFERMENT OF SERVICE

-can be granted by exemption board on advice of board for RO after classification but not after placement and reporting for duty
-Community service cannot be interrupted for study.

28. TRAVEL

-local or international possible either in terms of employment assignment or normal leave

29. DISCIPLINE [Regulations 48 - 51]

-CS must unconditionally obey lawful commands
-If refuses and employer considers there to be no intent to defy authority = formal warning noted
-3rd warning = deemed intent to defy authority
-if intent to defy authority = investigation and report to minister of manpower
-minister can then (1) refer back for further warning
(2) initiate procedure to charge CS in court in terms of 72I(2)(b)
-rules of natural justice apply, eg. the community server must be given a fair hearing

30. EXCEPTIONS/DEPARTURE FROM REGULATIONS [Regulation 53]

-in ministers discretion to depart from regulations in respect of individual or group of C.S. where justified

31. MEDICAL AID

-Not prohibited in terms of regulations
-Employer should either arrange for manpower to place C.S. on its medical aid, or the employer should place the C.S. on its own medical aid. The employer or manpower respectively should be responsible for all premiums