

MC 491-61-4-1

**A CONSIDERATION OF WAR VETERANS
AND WAR VETERAN ENTITLEMENTS
IN THE LIGHT OF THE CREATION OF A
NEW DEFENCE FORCE**

vets

LEGAL RIGHTS AND ENTITLEMENTS OF VETERANS OF MK AND SIMILAR ARMED FORCES

The focus of this study is on the legal status and entitlements of former members of MK and any other similar bodies which might become involved in constituting the new National Defence Force.

Section 189 of the new Constitution provides that:

1. Provision shall be made by an Act of Parliament for the payment of special pensions by the National Government to -

a. Persons who have made sacrifices or have served the public interest in the establishment of a democratic constitutional order, including members of any armed or military force not established by or under any law and which is under the authority and control ofa political organisation; or

b. Dependants of such persons.

2. The Act shall prescribe the qualification of a beneficiary of a special pension, the conditions for the granting thereof and the manner of the determination of the amount....., taking into account all relevant factors, including any other ... remuneration received....

Preparations need to be made now to ensure that the Act is adopted soon after April 27 and that its provisions meet the objectives set out in the Constitution. At the same time, there are issues that go beyond the matter of pensions, such as war graves, medals and civilian re-integration grants that need to be considered. What follows is an overview of the problem, a proposal for achieving consensus positions that would be fair to all and a set of background documents.

THE BASIC APPROACH

The National Defence Force is being created on the basis of reconciliation, non-racialism and equality. It will be constituted out of members of all armed formations which fall under the command of organisations and administrations represented in the Transitional Executive Council. Fundamental to the concept of the new National Defence force is the equal status and dignity of all its members.

One of the first tasks facing those responsible for the establishment of this force will be to determine fair terms and conditions for all members. The notion of a single defence force presupposes the ironing out of differences in terms and conditions which might apply at the moment between members of different statutorily recognised armed forces [SADF, TDF and so on]. It goes further than that, however. Appropriate terms and conditions will have to be established to govern the service of members of non- statutorily recognised armed formations [MK and so on].

This study does not look at the questions will arise in relation to determining years of service, rank, pension rights, and decorations of the members of MK etc who enter into the NDF. Rather, it puts together materials which will help in establishing fairness for members and former members of MK etc who do not go into the NDF.

The underlying principle of the new constitutional arrangements in relation to the NDF may be summed up in the words: fairness to all, vengeance against none. This requires a balancing out of two concepts: existing statutory rights and entitlements will be recognised, and equivalent rights and entitlements will be created for those whose military service has not until now been covered by statute.

A strong case can be made out for giving special recognition for exceptional hardship and danger endured by members of MK etc. The basic starting-off point, however, must be that at the very least former members of armed formations that were established to overcome apartheid are entitled to the same degree of statutory recognition as veterans of armies which defended apartheid.

The promotion of voluntary public forms of acknowledgement of the service of members of MK etc. might be the best means of dealing with the aspect of special consideration. In this respect, the role played by the Governor-General's National War Fund during and after World War Two might be relevant. This would enable the public to contribute directly towards ensuring the dignified reintegration of former members of MK etc into civilian life.

PROPOSAL

Sensitive and practical means will have to be found for determining exactly who should be covered by the definition of war veteran and what rights and entitlements should

follow. We list a number of issues and problems that will have to be attended to.

Our proposal is that an all-in conference of interested bodies and persons be held with a view to achieving maximum consensus on these questions in the spirit of fairness and reconciliation mentioned above. We envisage that representatives of the welfare sections of all armed formations, statutory and non-statutory, as well as of ex-service bodies such as the South African Legion and the M.O.T.H.s, will be amongst those included.

The main issues that will have to be determined could include the following:

1. Achieving an expanded and inclusive definition of war veterans;
2. Determining the basis on which something equivalent to contributory pensions can be calculated taking into account years of service;
3. Determining age-based pensions for elderly MK etc veterans;
4. Determining disability-related pensions;
5. Working out appropriate discharge and retirement benefits;
6. Providing for re-integration grants covering study, housing, land and equipment, and considering the possibility of rand for rand grants or interest-free loans to promote economic activity;
7. Deciding on appropriate awards for veterans as well as plaques for their families;
8. Seeing to it that attention is given to the graves of fallen and deceased members of MK etc;
9. Making provision for living and other memorials for known and unknown members of MK etc, as well as appropriate memorials to peace, reconciliation and justice.

A number of technical and procedural problems will also have to be attended to. These would include:

1. Identifying individuals who qualify as war veterans - who decides, according to what criteria and what right of appeal should there be?

2. Indicating who should make the disbursements - and should there be room for discretionary payments?

3. Determining the way in which pensions of various types should be calculated - who should be responsible, should rank be relevant, and if so, how would rank be attributed, and what should the relationship be between these pensions and those of non-military persons, such as ex-political prisoners and exiles as contemplated by section 189?

4. Deciding on the criteria for medal awards and the presentation of plaques - who should do the investigations, how will the persons and families concerned be informed, and what ceremonies or processes should be adopted?

5. Creating the framework for a national fund based on voluntary contributions from the public which will play a role similar to that of the Governor-General's National War Fund during and after World War Two.

A number of background documents have been put together which could be useful in solving some of these questions. WE have divided them into three packages.

PACKAGE A contains an outline of current statutory provisions governing war veteran's pensions, disability pensions [annexures A and B explain the method of computation and payment], widow entitlements [annexures C and D explain the method of calculation], disability grants, medical treatment and war graves.

PACKAGE B is largely made up of an article published in the 1949 edition of the Handbook on Race Relations in South Africa. It presents an overview of the role played by what it calls non-Europeans in South African military history. It also provides an insight into their conditions of service and treatment with respect to payment and pension allowances and the distribution of the Governor-General's National War Fund. Most important for our purposes is Chapter Six which deals with demobilisation and the re-absorption of ex-servicemen and women into civilian life after World War Two. Examples are given of the gratuities which were payable [on a manifestly discrepant basis with regard to race], and of the attempts that were made to re-incorporate ex-service men and women into the community [dispersal depots, training facilities and land allotments]. An overview is also given

of the problems experienced with regard to disabled ex-service people and the demobilisation of what were referred to as native ex servicemen.

The article entitled 'Black ex-service welfare' written in about 1986 discusses attempts made by the South African Legion to de-racialise the standard of care received by ex-service people after World War Two. The article 'Forgotten corps' stresses the role played by black South Africans in the two World Wars.

There are also newspaper cuttings dealing with the discriminatory way in which black veterans were dealt with after these two wars - they received neither a heroes welcome nor the necessary allowances and benefits to help them in the difficult transition back into civilian life.

PACKAGE C contains two articles which appeared in the 1993 edition of the South African Defence Review. The piece by Jacklyn Cock is directly relevant to this study. It deals extensively with the question of demobilisation in the light of the thousands of MK soldiers now returning from years in exile. Her essential argument is that a demobilisation policy is a crucial component in the creation of a representative and legitimate defence force, and that MK and other demobilised soldiers constitute a priority group who face special problems. She suggests principles and characteristics of a demobilisation policy, ranging from educational benefits through to counselling, and refers to demobilisation policy in Mozambique and Zimbabwe.

The article by Greg Mills deals more generally with the problems of integrating the different armed formations in South Africa into a single defence force. He gives estimates of numbers and composition.

This compilation was made by Johnny de Lange and Sarah Stevens under the direction of Albie Sachs.

ALBIE SACHS

SOUTH AFRICA CONSTITUTION STUDIES CENTRE based in the
Community Law Centre, University of the Western Cape.

21 January, 1994