



BETWEEN THE TIDES

THE 2012 PENSION LAWYERS ASSOCIATION CONFERENCE

Pensions payable to the veterans of the struggle under the Special Pensions Act

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INTRODUCTION

- **South African Special Pensions is regulated by Special Pensions Act, 69 of 1996 (the Act). This Act was enacted to give effect to Section 189 of the Interim Constitution (Act, 200 of 1993), which stated that provisions shall be made by an Act of Parliament for the payment of special pensions by the national government to persons (or their dependents) who made sacrifices or who have served the public interest in the establishment of a democratic constitutional order.**
- **The interim Constitution further required that an Act of Parliament shall prescribe: the qualifications of a beneficiary entitled to receive a special pension; the conditions for the granting thereof and the manner of determination of the amount of such pension, taking into account all relevant factors, including, inter alia, any other remuneration or pension received by such beneficiary. Section 189 of the interim Constitution envisaged a non-contributory pension scheme in which members were not required to contribute to the monetary cost of their pensions, but rather through service and sacrifice for the establishment of the constitutional order.**
- **The national department responsible for distribution and payment of special pensions is the Ministry of Finance. The administration of the Act is the responsibility of the designated institution and practically it has been shifted to the Special Pensions Administration (“the SPA”) which is located under the Government Pensions Administration Agency. For all those who qualify or their dependants can approach SPA for application for special pensions benefits. There are prescribed forms which need to be fulfilled.**

A COMRADE WITH HIS FAMILY IN EXILE



COMPARATIVE PERSPECTIVES

- When the former Deputy Minister of Finance (“the DM”), Gill Marcus who is now a Governor of the South African Reserve Bank, introduced the Act in parliament she stated that *“the Act reflected the pain and anguish, torture and depravation that so many people experienced under the apartheid ills, misfortunes and hardships caused by the apartheid years, the provisions of the Act were aimed at addressing the dire needs that these people may experience in their old age”*.
- *The former DM of Finance, Mr. Jabulani Moleketi said that “the passing of the Special Pensions Act in 1996 was indeed a historical event and unique in its foundation and probably the first and only of its kind in the world. We are proud of the progress our country has made with the implementation of this dispensation”*.
- On a comparative note, the above statement resonates well with the speech echoed by Canadian Prime Minister, Sir Robert Borden, as Canadians prepared for the battle of Vimy Ridge in 1917. He offered his commitment, by stating that:
“You can go into this action feeling assured of this, and as the head of the government. I give you this assurance, that you need have not fear that the government and country will fail to show just appreciation of your service to the country in what you are about to do and what you have already done. The government and the country will consider it their first duty to prove to the returned men it’s just and appreciation of the inestimable value of the service rendered to the country; and no man, whether he goes back or whether he remains in Flanders, will have just to reproach the government for having broken faith with the men who won and the men who died”.

PURPOSES OF THE ACT

- The purpose of the Act is to compensate those who were involved in the liberation struggle and who on that account lost the opportunity to provide for a pension before 2 February 1990 for a period of at least five years. It also seeks to compensate the surviving spouses and dependants of such persons.
- A reading of the Act as a whole reveals that the object of the Act is to provide financial support to persons involved in the struggle, not in general, but specifically in their old age. The requirement in terms of the Act that a person must have been at least 30 years or older on 1 December 1996 is precisely to ensure that only those who would not have been in a position to make provision for their old age would qualify for special pension. If a person was younger than 30 years on this date, the assumption is that, despite a person's contribution to the liberation struggle, he or she was young enough to still make provision for retirement.

WHO QUALIFIES FOR THE BENEFIT?

- Any person who has contributed for South Africa to become a non-racial constitutional democratic order.
- this person must have served full time in a banned political organization for a total or combined period of five years (example: PAC, ANC, AZAPO, SACP, UDF, MK, APLA, POQO, SASO, BCM Movements, ANCYL, other youth formations, trade unions, and civil society organisations).
- restricted or banished to be in a particular area.
- Imprisoned or detained for an offence relating to the pursuance of a political objective
- was at least 30 years of age on the commencement date of the Act.
- A person has the right to a survivor's lump sum benefit in terms of the Act if that person is a surviving spouse or a surviving dependant who-
- was a citizen, or entitled to be a citizen, of the Republic;
- is not disqualified in terms of section 1(8) (not committed offences calculated to undermine the political struggle, convicted for an offence after 2 February 1990 and for offences mentioned in Schedule 1 of the Criminal Procedure Act, 51 of 1977).
- either has died but, had he or she survived, would have qualified as a result of full-time service or died prior to 2 February 1990 while he or she was imprisoned or detained for any crime or in terms of any law mentioned in Schedule 1 of this Act;

CONTINUATION

- A person who made sacrifices or served the public interest in establishing a non-racial constitutional order and who is a citizen, or entitled to be a citizen of the Republic has the right to a pension if that person was prevented from providing for a pension because, prior to 2 February 1990, that person suffered a permanent and a total disability arising out of full-time service to a political organisation, restriction or banishment to a particular area, imprisonment or detention for an offence committed with a political objective. A medical report needs to be provided to confirm the terminal illness and its connections to the political struggle.

AMENDMENTS TO THE ACT

- Prior to the 1998 amendment, a pensioner who qualified for a benefit was entitled to receive a pension payable monthly commencing on the first day of the month during which that person attained the age of sixty. The 1998 amendment however stipulated that the pension became payable on the first day of the month during which that person attained the age of thirty-five. The 1998 amendment also extended the right to a special pension to persons who suffer from terminal diseases.
- Prior to the 2003 amendment, the designated institution, National Treasury could not consider applications received after the closing date. However the 2003 amendment authorizes the designated institution to condone late applications in certain circumstances. The Act calls for the dissolution of the Special Pensions Board (“the Board”) and removed a requirement that one of the membership of the Review Board must be an Actuary.
- The 2005 amendment introduced a monthly pension (in addition to the survivor’s lump sum) for surviving spouses or orphans of pensioners. It also introduced funeral benefits for pensioners, surviving spouses and orphans. The 2005 amendment further provided for the dissolution of the Board and Special Pensions Review Board (“Review Board”) and made room for the National Treasury to be responsible for administering the Act.

CONTINUATION

- **The Minister of Finance was furthermore empowered to designate another department, government component or public entity to administer the Act in the place of National Treasury should this be deemed appropriate. The 2005 amendments also provided for the lapsing of part 1 of chapter 1 of the Act for pensions and survivor lump sums on 31 December 2006, that is, the closing date for all new late applications and no new applications could be considered or condoned after this date.**
- **Prior to the 2008 amendment, the Act provided that only persons thirty-five years and older on 1 December 1996 were entitled to a pension. The rationale for the age qualification was that the Act intended to make provision for pensions to persons whose ability to make provision for a pension was impacted by their full-time involvement in the struggle for democracy. It was parliament’s view that persons under the age of thirty-five still had sufficient opportunity to obtain employment and to make provision for a pension. However, it transpired that significant numbers of younger persons had not secured adequate alternative livelihoods. The amendment also extended the monthly pension and funeral benefit to the surviving spouses and orphans of persons who were thirty but under thirty-five on 31 December 1996 but who had died prior to the date on which the amendment took effect. The amendment also calls for the establishment of the Special Pension Appeal Board (“the Appeal Board”) which replaces the Review Board.**

CONTINUATION

- The 2011 amendments contains amendments to enable the implementation of the Revised Non-Statutory Forces (“NSF”) Pension Dispensation. On 15 April 2009 and 24 November 2010, Cabinet approved the revision of the NSF Pension dispensation by—
- abolishing the need for former NSF members to contribute to the funding of the recognition of their NSF Service by the Government Employees Pension Fund (“GEPF”);
- recognising the full period of NSF Service by all former NSF members who entered into an employment contract with all Government departments and institutions that contribute to the GEPF; and
- providing that Special Pension benefits paid to qualifying members who are still in service should cease at exit and that members should receive their full pension benefits in accordance with the GEPF Rules.

WHO IS A DEPENDANT?

- The definition of a dependant in terms of the Special Pension Act reads as follows:
'dependant' to mean an applicant in respect of whom a deceased person-
 - (i) was legally liable for maintenance*
 - (ii) was not legally liable for maintenance, if the applicant –*
 - (iii) was at the time of the death of the deceased in fact dependant on the deceased for maintenance*
 - (iv) is the spouse of the deceased, including a party to a customary union or a union recognised as a marriage under any Asian religion*
 - (v) is a child of the deceased, including a posthumous child, an adopted child and a child born out of wedlock or would have become legally liable for maintenance, had the deceased not died;*
- From the definition, there are three classes of dependants namely:
 - a) Legal dependants
 - b) Non-legal dependants or de facto dependants
 - c) Future dependants

DISQUALIFYING CRITERIA

- **Citizenship**
- **Time Barring**
- **Receipt of any other pension or benefit**

SPECIAL PENSIONS ADJUDICATIONS

- **Prior to the Special Pensions 2005 amendment, the administration of the Act was a duty incumbent on the Special Pensions Board and Review Board which has been replaced by Special Pensions Appeal Board and the Designated Official or the Chief Adjudicator who replaces the Board. The Chief Adjudicator is appointed by the designated institution with the involvement of the Minister of Finance.**

SPECIAL PENSIONS APPEAL BOARD

- An Appeal Board was established in 2008 in terms of the amendment to the Special Pensions Act and must consist of three members appointed by the *Minister*. The members must be competent persons, and must include at least one person that is an advocate or attorney with at least 10 years' experience in the practice of law as the chairperson. A member of the Appeal Board is appointed for a period of three years and is eligible for reappointment upon expiry of the member's term of office. A member of the Appeal Board may resign by giving three months written notice to the Minister. The Minister may terminate the period of office of a member of the Appeal Board if the performance of the member is unsatisfactory; or if the member, either through illness or for any other reason, is unable to perform the functions of office effectively.

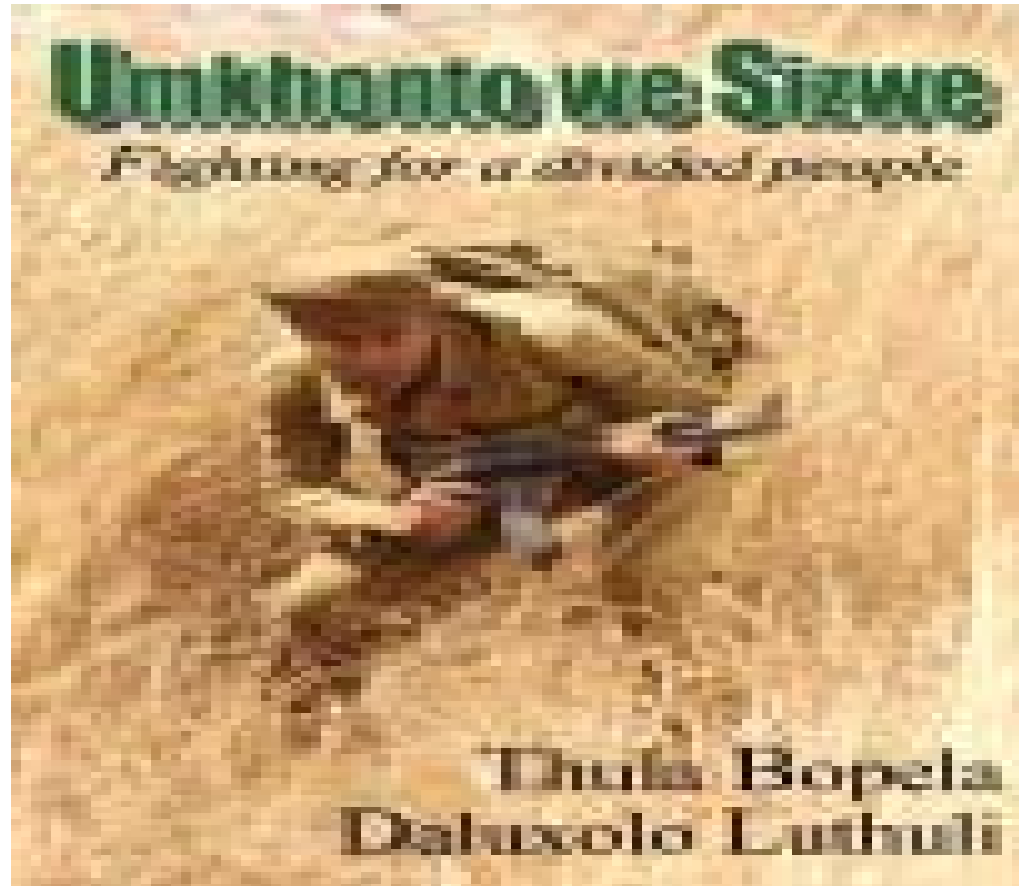
RIGHT TO APPEAL

- Any applicant who disagrees with any decision of the Board may appeal that decision by sending a written notice in the form determined by the designated institution to the Appeal Board within 60 days of the date of the decision. An appeal under shall take place on the date and at the place and time fixed by the Appeal Board.
- The Appeal Board also has the right to summon any person who has evidence or who can serve as a witness. The procedure at the appeal shall be determined by the chairperson of the Appeal Board. The Appeal Board may confirm, set aside or vary the relevant decision of the designated institution. A decision of a majority of the members of the Appeal Board shall be a decision of that board. A decision of the Appeal Board must be in writing, and a copy thereof must be made available to the appellant and the designated institution. A decision of the Appeal Board is final and it can only be reviewed in the High Court.

REINTEGRATION MEASURES

- **Reintegration refers to the process of facilitating the transition of former combatants to civilian life, which allows ex-combatants to adapt productively within both economy and society. The word ‘process’ implies that reintegration is not a one-off event, but that it is ongoing with changes and improvements along the way. The word ‘facilitate’ is central to the definition because it moves away from a top-down approach which views demobilized soldiers as passive objects of reintegration.**
- **The provision of reintegration programmes is central to the soldiers’ transition to civilian life because in most cases former combatants lack appropriate job skills. However, even when guerrilla combatants possess skills, reintegration is made difficult by other factors. Former combatants tend to have little or no experience in the labour market, having taken up arms at an early age. ‘They also tend to have an imperfect understanding of the state of the economy. Consequently, former combatants often have unrealistic assumptions about civilian life and thus require a period of adjustment to assess their personal situation and opportunities.’ In general, it is the lack of adequate assistance enabling them to reintegrate into civilian society that is the main source of combatants’ grievances.**
- **The reintegration processes will assist guerilla fighters not to resort to crimes due hard economic conditions.**

CDE IN DEFENCE OF THE REVOLUTION



MILITARY VETERANS ACT

- This Act was signed into law in 2011 and its date of effect has not yet been determined by the President. This Act is designed to restore the capability of veterans with disabilities and improve their quality of life and improve the definition of beneficiaries to make it inclusive.
- The legislation also seeks to establish an advisory council on military veterans, Military Veterans Appeal Board, set out the responsibilities of the department's Director-General in respect of the military veterans association and its functions and the department's powers and responsibilities
- The Act also contains a new definition on a military veteran. A military veteran is any South African citizen "who rendered service to any of the military organisations, statutory and non-statutory, which were involved on all sides of South Africa's liberation war from 1960 to 1994; or served in the Union Defence Force before 1961; or became members of the new SANDF after 1994; and has completed his or her military training and no longer performs military service, and has not been dishonourably discharged from that military organisation".
- The Act will also provides for conditions of military veterans, legislative protection to veterans, determine benefits such as housing, health care, education, business opportunities, pension and transport subsidies.

CONCLUSION & RECOMMENDATIONS

- A special pension is a non contributory fund and is unique in its nature and it differs from the normal pension funds. The South African special pensions is regulated by the Special Pensions Act and its administration falls under the Ministry of Finance. To date, cadres or comrades who sacrificed their lives so that South Africa can become a non-racial constitutional democratic order has benefited and those who had since passed away, their beneficiaries had benefited. Special pensions cannot replace the lives of those who had died, but it can offer at least little consolation to the survivors. The last call for applications for special pension has ended on the 31 December 2010. It is not yet clear if more applications can still be made after the deadlines. This is a good policy of the government and it shows that it cares for its people.
- Special pension is a social security measure and it strengthens section 27 of the Constitution which provides that “everyone has the right to have access to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance”.
- The state has the obligations to develop legislations and policies aimed at realising this right. To date, the South African government had developed legislations on special pensions in 1996, the same year when the Constitution was promulgated. As a point of departure, there is a need for government policies on special pensions to reintegrate the ex-combatants in the labour markets, and secondly to empower them with training.

CONTINUATION

- **The Act needs to be amended to covers for those who were fourteen years of age in 1985 for entitlement of special pensions benefits.**
- **The Act must further be amended to scrap out the cut-off dates since some applicants were not aware if they are entitled for the benefits or condonation needs to be granted to the Chief Adjudicator and the Appeal Board to condone non-compliance with the Act if good cause has been shown and there is also prospects of success.**
- **The Act needs to clarify if foreign nationals who were part of the struggle are entitled to the benefit from example citizens from Botswana, Lesotho, Namibia and Swaziland.**

END

*NDO LIVHUWA
THANK YOU
KE A LEBOGA
NKOMO
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