

OFFICE OF THE TDF MVA SECRETARY

(DISCIPLINE, LOYALTY, DUTY)



Enquiries : W. M Ndzwayiba
No 2 Lilly Street, Fortgale
Mthatha

Cell: 071 679 0089 / 078 355 8616
Fax: 086 505 2154
Email: nmakhehle@yahoo.com

The Hon Minister

30 December 2022

Department of Defence and Military Veterans

Private Bag X943

Pretoria

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Attention: Director Legal Services

Dear Sir/Madam

RE: OBJECTIONS TO THE PROPOSED MILITARY PENSION REGULATIONS PUBLISHED FOR COMMENTS BY HON MINISTER OF DEFENCE PER NOTICE DATED 07 DECEMBER 2022.

1. Reference is made to the above mentioned regulations which have been circulated for comments.
2. Having read the regulations and as mandated by the Transkei Defence Force Military Veterans Association we wish to place on record our unhappiness and objection to the regulations as articulated in the following paragraphs:
 - a. **Definition of Non-Statutory Force.** The definition includes APLA and MK. The inclusion of the two in the definition is problematic for us due to the following reasons:
 - i. The status of being non-statutory for the two ended in 1994/95 when they intergrated into what was to be called the South African National Defence Force (SANDF) which itself is a Statutory Force. It should be recalled all forces (except AZANLA) submitted their CPR lists and upon intergration assumed the status of being statutory force in the name of SANDF.

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- ii. The only force that did not intergrate for reasons related to their political convictions is AZANLA and it is therefore our submission that they are the only force which fits the definition of being Non-Statutory as we speak.
 - iii. Since intergration APLA and MK members have been gainfully employed, earning salaries like any other former Statutory Force members of the SADF and TBVC armies.
 - iv. It is our submission therefore that the only force that fits the definition of being Non-Statutory is AZANLA which did not intergrate into SANDF.
- b. **Argument against exclusion of former Statutory Force military veterans for Military Pension Benefit.** The only reason that could be gleaned from the regulations informing the exclusion of these military veterans from this benefit is that they were statutory forces. In their media statement of the 22 December 2022, the Minister of Defence and Military Veterans and her Deputy Minister of Military Veterans had the following to say *“Through the intervention of the Presidential Task Team (PTT) priority will be given to members of the Former Statutory Forces as the main target group to access this benefit”*. Being prioritised means being considered first over somebody who will be considered next time. If this is true, one wonders why are the regulations silent as to when the former statutory component of the military veterans will be considered. In all fairness and for the purposes of completeness, one would expect that when priority is given to the former non-statutory group for whatever reason, the proposed regulations should provide in no uncertain terms, when the rest of the military veterans group will be considered. Would it be far fetched if one were to come to the conclusion that the very Presidential Task Team (PTT) is aimed at ensuring the beneficiation of the non-statutory component of military veterans and the exclusion of the statutory component? What ever the answer may be to these questions, one suspects a seriously conflicted PTT. Be that as it may we object to the exclusion of any military veteran from benefiting any of the military veterans benefits as enshrined in Section 5 of the Act unless informed by a means test equally applicable to all military veterans. Our objection is amongst others informed by the following:
- i. The dispensation we are enjoying today is as a result of a negotiated settlement, contrally to some amongst us who would want us to believe that there was this big

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battle fought in this country won by a certain group as a result of which we are today free.

- ii. At a point of discussing the intergration of forces, during negotiations, the issue of leveling the playing field between the Liberation Movement Forces and Statutory Forces was raised and discussed to finality. It was out of these discussions that the issue of financial compensation for Liberation Movement personel was dicided upon hence the lump sum payment for some and Special Pension.
- iii. All of the above took place after considering ones length of service, circumstances under which one worked/operated comperable to those who were in the Statutory Forces and were gainfully employed and earning salaries up to that point in time.
- iv. Today we have APLA and MK members, some on retirement (after serving in the SANDF) while others still serving in the SANDF who over and above their salaries still earn their Special Pension. Even those who opted to exit the Defence Force still earn their Special Pension.
- v. It is therefore our submission that at that very point of being Intergrated into SANDF and paid a Special Pension, the playing fields were leveled for both NSF (then refering to APLA and MK) and SF (then refering to SADF, TBVC armies). It is out of this understanding that non of the then Statutory Force members have ever claimed entitlement to Special Pension.
- vi. However the regulation seem to sugest those who earn Special Pension qualify for the top up if the Special Pension is less than the minimum ammount proposed for the Military Pension. It is for this reason that we therefor assert the exclusion of SADF, TBVC former soldiers is a blatant discrimination, it is unlawfull and unconstitutional. Why should APLA and MK be given a second bite of the cherry in total exclusion of the members of other forces?
- vii. It is pertinent to mention that some former NSF members did not qualify for either the Special Pension or lump sum payment due to the period they have been in service,

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age and other reasons as at 1994/95. Equally the Statutory Forces had members who served and exited service under similar (unfair) conditions. If the intention is to address the plight of the former NSF members who did not qualify, for whatever reason our submission is that, that cannot be done to the exclusion of former Statutory Force members unless we are informed what makes them (NSF members who did not qualify) now qualify. If there is a need to have a relook into this, the process should be all inclusive and not favour one group over others.

3. **Conclusion.** In summary, we submit that:

- a. The inclusion of APLA and MK in the definition of Non-statutory Forces in Clause 1 of Chapter 1 of the Regulations constitutes undue benefit/enrichment and therefore unlawful as it vitiates against public policy and the fundamental principle that disparities, inequalities and unfair discrimination must be remedied, where possible, like in this case; and
- b. The criterion that for a military veteran to qualify for the pension benefit he/she must be a non-statutory force member in Clause 7(1)(d) of Chapter 3, to the exclusion of all other veteran communities, is clearly unlawful as it amounts to unfair discrimination and therefore in conflict with the Military Veterans Act and the Constitution.

4. **Recommendations or requests.** We urge the Minister to amend these clauses in the regulations as follows:

- a. Exclude APLA and MK in the definition of non-statutory force.
- b. Delete in its entirety the criterion that for a veteran to qualify for the pension benefit he/she must be a non-statutory force member.
- c. We further urge the Minister to allow applications for Military Pension by all veterans regardless of former force, the qualifying criteria being:
 - i. The veteran appearing in the DMV data base.

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- ii. Means Test, the treshold being capped at R125 000 pa income as contained in the regulations



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