
Original Article

A legal analysis of the distribution and payment of special pensions under the South African Special Pensions Act

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ABSTRACT The South African government has paid compensation in the form of special pensions to individuals who have been exposed to certain types of hardship and suffering caused by the apartheid government. This compensation is described as 'the appreciation or sense of guilt of society towards those people on whom the government has rightfully or wrongfully and at any rate disproportionately inflicted damage'. The government has been prepared to pay compensation to the following persons: former enemies; victims of war; victims of harmful compulsory vaccination measures; persons who had sacrificed their jobs and education in the process of overturning oppressive governments establishing democratic government; and persons whose basic human rights had been violated by governments or their predecessors. These persons have sacrificed their lives either in exile or within South Africa fighting for democracy in South Africa. These persons must prove that they served their respective political organisations for a period of 5 years or more or that they were banished or restricted in a certain area, or imprisoned, or sentenced. This article considers the provision of special pensions in South Africa. Using special pension fund legislation, this article analyses the scope of coverage of the special pension fund system, and the beneficiaries entitled to compensation under the Act. The article acknowledges the role played by the government of South Africa in looking after the families of the war dead while making benefits generally available to veterans, and their families. In its conclusion, the article argues that other measures aimed at the integration of war veterans in the labour market need to be explored.

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INTRODUCTION

The Special Pensions Act,¹ which was enacted to give effect to Section 189 of the Interim Constitution, 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 dependants) who made sacrifices or who 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 of, or associated with and promotes the objectives of a political organisation.

On a comparative note, the above statement resonates well with the speech echoed by the Canadian Prime Minister, Sir Robert Borden,² 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 due 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 cause to reproach the government for having broken faith with the men who won and the men who died.

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. In pursuance of the above-mentioned constitutional mandate, the Act provides for special pensions to be paid to persons who have made sacrifices, suffered financial deprivation or served in the public interest during the liberation

struggle, in the course of establishing a non-racial, democratic, constitutional order in South Africa while serving full time in a banned or restricted political organisation and as a consequence of such activity were unable to or prevented from providing for pensions, for a significant period. 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.

WHAT IS THE PURPOSE 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 5 years. It also seeks to compensate the surviving spouses and dependants of such persons (p. 8).³

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 liberation struggle, not in general, but specifically in their old age. A person must have been unable to provide for a pension for at least 5 years before 2 February 1990 in order to qualify. 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 a 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.

When the Former Deputy Minister of Finance, Gill Marcus, introduced the Act in parliament, she stated that the Act reflected the pain and anguish, torture and deprivation 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.⁴

AMENDMENTS TO THE ACT

The Act has been amended four times since 1996. These amendments were passed in 1998, 2003, 2005 and 2008, respectively. These amendments primarily increased benefits, extended access to benefits and addressed technical and implementation difficulties.

The 1998 amendments⁵

Before 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 reached the age of 60 years. The 1998 amendment, however, stipulated that the pension became payable on the first day of the month during which that person reached the age of 35 years. The 1998 amendment also extended the right to a special pension to persons who suffer from terminal diseases.

The 2003 amendments⁶

Before the 2003 amendment, the designated institution, National Treasury, could not consider applications received after the closing date. However, the 2003 amendment authorises the designated institution to condone late applications in certain circumstances. The Act calls for the dissolution of the Special Pensions Board and removes the requirement that one of the membership of the Review Board must be an Actuary.

The 2005 amendments⁷

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 Special Pensions Board and made room for the National Treasury to be responsible for administering the Act. The Minister of Finance was furthermore empowered to designate another department, government component or public entity to administer the Act in the place of the National Treasury should this be deemed appropriate. The 2005 amendment 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 was now 31 December 2006 and no new applications could be considered or condoned after this date.

The 2008 amendments⁸

Before the 2008 amendment, the Act provided that only persons 35 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 the parliament's view that persons under the age of 35 years still had sufficient opportunity to obtain employment and make provision for a pension. However, it transpired that significant numbers of younger persons had not secured adequate alternative livelihoods.

The effect of the 2008 amendments was that the right to a pension was extended to persons who were 30 years or between 30 and 35 years on 1 December 1996. The revised criteria were informed by the fact that in qualifying for a pension an applicant would have had to have been at least 19 years old in 1985. The 1985 date relates to the existing requirement that a person must have been prevented from providing for a pension for a total or combined period of at least 5 years before 2 February 1990. Applications for this category must be made by 31 December 2010. The amendments also extended the monthly pension and funeral benefit to surviving spouses and orphans of persons who received a survivor's lump sum benefit only in terms of the Act. Before this amendment, surviving spouses and orphans of persons who received a lump sum because of the death of a person during the struggle were not entitled to a monthly pension—only to a lump sum.

The amendment also extended the monthly pension and funeral benefit to the surviving spouses and orphans of persons who were over 30 years old but under 35 years old on 31 December 1996 and who had died before the date on which the amendment took effect.

The amendment also calls for the establishment of the Special Pension Appeal Board, which replaces the Special Pension Review Board.

THE RIGHT TO A SPECIAL PENSION BENEFIT

A person who made sacrifices or served the public interest in establishing a non-racial, democratic constitutional order and who is a citizen, or entitled to be a citizen, of the Republic of South Africa, has the right to a pension in terms of the Special Pension Act if that person⁹

- was at least 30 years of age on the commencement date of the Act, 1996;¹⁰
- was prevented from providing for a pension because, for a total or combined period of at least five years before 2 February 1990, one or more of the following circumstances applied:¹¹
 - that person was engaged full time in the service of a political organisation;¹²
 - that person was prevented from leaving a particular place or area within the Republic, or from being at a particular place or in a particular area within the Republic, as a result of an order issued in terms of a law mentioned in Schedule 1(3) of this Act;¹³
 - that person was imprisoned or detained in terms of any law or for any crime mentioned in Schedule 1 of this Act, or that person was imprisoned for any offence committed with a political objective.¹⁴

In determining whether a person committed an offence with a political objective, the designated institution must consider the following factors:

- the person's motive in committing the offence;¹⁵
- the context within which the offence was committed and, in particular, whether the offence was committed in the course of a political uprising or political event;¹⁶
- the nature and gravity of the offence;¹⁷
- the effect of the commission of the offence on a political opponent, State property, State personnel, private property or individuals;¹⁸
- whether the offence was committed as part of a programme, or with the approval of

an organisation that promoted a non-racial democratic constitutional order;¹⁹

- the relationship, proximity and proportionality of the offence and the political objective pursued in its commission; and²⁰
- whether the offence was committed without
 - personal gain; or
 - personal malice.²¹

A person who made sacrifices or served the public interest in establishing a non-racial democratic constitutional order and who is a citizen, or entitled to be a citizen, of the Republic, has a right to a pension in terms of the Act if that person was prevented from providing for a pension because, before 2 February 1990, that person suffered a permanent and total disability arising out of the full-time service in the political organisation or his detention or imprisonment.²²

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 if there is no surviving spouse, the surviving dependant, of a person who

- made sacrifices or served the public interest in establishing a non-racial democratic constitutional order;²³
- was a citizen, or entitled to be a citizen, of the Republic;²⁴
- is not disqualified in terms of section 1(8); and²⁵
- either has died but, had he or she survived, would have qualified in terms of section 1, based on the circumstances at the time of death; or died before 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; or died before 2 February 1990 while he or she was actively engaged in, and from causes arising out of, full-time service to a political organisation; or disappeared before 2 February 1990 while he or she was actively engaged in efforts attempting to establish a non-racial democratic constitutional order, and has been presumed in law to be dead.²⁶

The surviving spouse or dependant of a deceased person who would have been a qualifying pensioner had that person survived is entitled to

receive a single lump sum amount equal to twice the annual pension that would have been payable to that person had he or she survived until the commencement date.²⁷

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

- (a) was legally liable for maintenance;
- (b) was not legally liable for maintenance, if the applicant
 - (i) was at the time of the death of the deceased in fact dependent on the deceased for maintenance
 - (ii) is the spouse of the deceased, including a party to a customary union or a union recognised as a marriage under any Asian religion
 - (iii) is a child of the deceased, including a posthumous child, an adopted child and a child born out of wedlock or
 - (iv) would have become legally liable for maintenance, had the deceased not died;

The definition of 'dependant' in the Act creates three categories of dependants. The first category requires a person to have been dependent on the deceased for maintenance, where such dependency arises out of a legal duty to maintain. The second category refers to persons who were not legally dependent on the deceased for maintenance but who meet one of three possible criteria. The third category refers to a person, in respect of whom the deceased would have become legally liable for maintenance, had he or she not died.

Legal dependants

A person is regarded as a dependant if the deceased is legally liable to maintain that person. This duty may arise as a result of a legal obligation, the common law or a statutory obligation.²⁸

Dependants in respect of whom the member is legally liable for maintenance include a spouse and children²⁹ who rely on the member for

the necessities of life.³⁰ Marriage gives rise to a reciprocal duty of support³¹ between spouses. A spouse's claim, unlike a parent's maintenance claim against children, is not restricted to the bare necessities of life. This duty of support can continue after the marriage ends in divorce,³² and the extent of the support will then usually be specified in the divorce order. A member is legally obliged to maintain an ex-spouse where a court has made such an order against the member. This obligation will survive the member's death if a settlement agreement is made an order of court. Therefore, this former spouse will qualify as a legal dependant.

The common law imposes a duty on a parent of a dependent child to support that child. This duty survives a parent's death. In *Governing Body, Gene Louw Primary School v Roodtman*³³ the Court said that a court order simply regulates the parents' common-law duty to support a dependent child. A parent, grandparent and grandchild can also qualify as a dependant. Like parents, children with the means to do so have a reciprocal duty to maintain their parents. But the parents must prove the necessity for support³⁴ and cannot merely allege the existence of a parent-child relationship.

Subject to the same requirements, a reciprocal duty of support also exists between grandparents and grandchildren. Therefore, a grandchild can be treated as a dependant if he can prove that he depended on his grandparents. Correspondingly, the same applies to the grandparents. A duty of support also arises between brothers and sisters. But the claimant will have to prove that he was indigent and in fact depended on the deceased sibling during his lifetime. To recap: dependants who fall into this category are determined with reference to their relationship with the deceased. The mere fact that a person is related is not sufficient to be considered for a death distribution. The person must prove that the deceased had a legal duty to support him.

Non-legal dependants

Section 1(1)(b) deals with persons who were not legally dependent on the deceased member for maintenance, and it then outlines categories of

such dependants. Where there is no duty of support, a person might still be a dependant if the deceased contributed to the maintenance of that person in some way. The person claiming to be a factual dependant will have to prove that he was dependent on the deceased (despite the latter's not having a legal duty of maintenance) when the member died.

To constitute maintenance, payments should have been made regularly by the deceased to the beneficiary claiming to be a factual dependant. They should not have been one-off payments but should have been made until the deceased died. Section 1(b)(ii) applies to spouses for whom there exists no statutory law in terms of which the marriage or union is recognised. Spouses who might be treated as dependants under this subsection include cohabitants living as 'husband and wife'.

Future dependants

In terms of the definition of the dependant, any person for whom the deceased would have become legally liable for maintenance, had he or she not died is regarded as a dependant. This section pulls into the ambit of a 'dependant' a person whom the deceased was not legally liable to maintain but who would have qualified as a legal dependant had the deceased not died.³

For example, where the applicant is the mother of the deceased and was not dependent on the deceased for maintenance at the time of his death. If the applicant can show that, subsequent to the date of death, she required financial, medical and other support and that the deceased, had he lived, would have become legally liable to maintain her in terms of the legal duty arising out of the child-parent relationship, then she would qualify as a future dependant.³

DISQUALIFYING CRITERIA

Citizenship

There are a number of disqualifying criteria in terms of the Act. Therefore, on receipt of an application, a determination should be made at the outset whether or not the applicant is

disqualified. The applicants need to be South African citizens or entitled to the citizenship for their applications to be considered by the designated institution. According to the South African Citizenship Act,³⁵ there are three ways in which a person can be a citizen:

- By birth;
- By descent; and
- By naturalisation

Citizenship by birth and descent are legal rights for anyone who can prove the facts of birth and parentage. Citizenship by naturalisation is not a legal right. It can be granted or refused by the Minister of Home Affairs at his or her discretion. In terms of the Act, a child born in South Africa to parents where one was either a South African citizen or a South African permanent residence holder at the time of the child's birth will be a South African citizen by birth in the case of births from October 1995, when the Act came into operation. The position before that (October 1995) was governed by the South African Citizen Act,³⁶ which contained a wide range of different requirements over the years. To determine a person's claim to South African citizenship in respect of births in that era requires the designated institution to examine the repealed South African Citizenship Act.

Time barring

The Special Pensions Act makes provision for a cut-off date by which certain applications must be received. These cut-off dates must be adhered to strictly. In respect of application made under Part 1 of the Act (the over 35 years of age category), a certified application form must have been submitted to the Special Pensions Board (it is now called the designated institution) on or before 31 November 1997. Initially, the Review Board (it has since been replaced by Special Pension Appeal Board) had the discretion to condone late applications. This position changed in 2003 when the Act was amended. The Review Board was stripped of this power, and in its stead the Review Board was granted the discretion to condone any request for review

received after the prescribed period of 60 days in which applicants were required to submit their request for review.

The Special Pensions Board was granted the power to condone any late application if the Board is satisfied that, for reasons beyond the control of the applicant, the application could not be submitted on or before the closing date (31 November 1997). This was the legal position for late applications submitted to the Special Pensions Board received after 31 November 1997 but before 31 December 2006.

In 2005, the Special Pension Amendment Act was enacted to amend the Act to provide for the following:

- The lapsing of Part 1 of the Act on 31 December 2006,
- the Minister was granted the power, in terms of Section 27, to dissolve the Board 60 days after the lapsing of Part 1 of the Act and upon such dissolution the Head of Pensions Administration in the National Treasury is responsible for the performance of all functions of the Board in terms of the Act; and
- the Minister was also granted the power, in terms of Section 28 (6) and (7) read together, to dissolve the Review Board within a period of 90 days after dissolving the Board, in terms of section 27 (1), and upon such dissolution of the Review Board the Minister would be responsible for the performance of all the functions of the Review Board

Both the Board and the Review Board were dissolved in February 2007 and in May 2007, respectively. The Act also provided in section 29 (3) that 'Any power, function or duty conferred, assigned or imposed upon the Minister by this Act, may be delegated or assigned by the Minister, in writing, to any officer in the Public Service, but the delegation or assignment of such power, function or duty does not divest the Minister of that power, function or duty'. The Minister exercised his right to delegate his responsibilities for the performance of all the functions of the Review Board to 'an officer in the Public Service' as stipulated in Section 29 (3) of the Act.

The Act was again amended in 2008 to, *inter alia*, regulate the administration of the Act by the creation of the Special Pension Appeal Board in the place of the Review Board, and further to transfer the powers and capacities of the Board to a Designated Institution as defined in the Act.

The Special Pensions Board was tasked with the responsibility of deciding in each case submitted after 31 November 1997 whether the reasons for the delay were indeed not attributable to any fault on the part of the applicant. This is still the position for matters that were submitted before 31 December 2006 but have not been adjudicated on by the Delegated Authority.

The cut-off date for all late applications (over 35) is 31 December 2006; the rationale for this cut-off date is that it marks a period of 10 years since the promulgation of the Act, giving this category of applicants ample time within which to have applied. No late applications (over 35) can be received by the Special Pensions Administration because Part 1, which grants the right to a special pensions (over 35), had lapsed on 31 December 2006.

Any application made under Part 1AA of the Act³⁷ (between 30 and 35 years of age category) must be submitted on or after 11 January 2009 but before 31 December 2010 and there is also no provision for condonation in respect of these applications because Part 1AA, which grants the right to a special pensions (between 30 and 35 years of age category), will lapse on 31 December 2010.

Receipt of any other pension or benefit

The Special Pensions Act provides that a person's right to a special pension ceases on the day on which that person's right to a pension is recognised in terms of Government Employee Pension Law³⁸ or in terms of the rules of any other employee pension or provident or scheme.³⁹ Section 30A provides for the recognition of pensionable service of former members of non-statutory forces or services. According to this section, any former member of a non-statutory force or service may, in accordance with the rules of the Government

Employee Pension law, apply to the Government Employee Pension Fund to have any service as a member of a non-statutory force or service recognised as pensionable service.

For purposes of understanding section 30A, it must be noted that ‘non-statutory force Service’ (‘NSF Service’) is defined as the period between the date on which a former member of a non-statutory force or service joined his or her respective former forces or services (as reflected on his or her service certificate) and the date of their taking up employment, or entering into an agreement with or their attestation into the employer (the government), provided that such service will only be recognised for the period after the former member of a non-statutory force or service attained the age of 16 years, so that service before the age of 16 years will not be regarded as NSF Service. In the case of a beneficiary of a former member of a non-statutory force or service, NSF Service means the period of NSF Service of the former member of a non-statutory force or service through whom the beneficiary is entitled to a benefit in terms of the Government Employee Pension Fund.

If the former member of a non-statutory force or service receives or has received any benefit in terms of the Special Pensions Act or the Demobilisation Act,⁴⁰ other than a benefit received as a dependant, the benefit payable by the Government Employee Pension Fund shall be reduced in accordance with the rules of the Government Employee Pension law.

This section applies to a particular class of persons, a former member of a non-statutory force or service; the Government Employee Pension Law defines a former member of a non-statutory force or service as:

- (a) any former member of Umkhonto we Sizwe or the Azanian People’s Liberation Army-
 - (i) who entered into an agreement for appointment with the Department of Defence or the South African Police Service on or before 31 March 2002; and
 - (ii) whose name, in the case where a person entered into an agreement for

appointment with the Department of Defence, appears in the certified personnel register or personnel list contemplated in section 224 (2) (c) of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993);

- (b) any former member of Umkhonto we Sizwe or the Azanian People’s Liberation Army or of the former Department of Intelligence and Security of the African National Congress or of the former Pan Africanist Security Services of the Pan Africanist Congress of Azania-
 - (i) who entered into an agreement for appointment with the National Intelligence Agency or the South African Secret Service between 1 January 1995 and 31 March 2004; and
 - (ii) whose name appears on the certified personnel register or personnel list contemplated in section 224 (2) (c) of the Constitution of the Republic of South Africa,⁴¹ or the personnel list defined in section 1 of the Intelligence Services Act, 2002 (Act 65 of 2002);
- (c) any former member of Umkhonto we Sizwe or the Azanian People’s Liberation Army or of the former Department of Intelligence and Security of the African National Congress or of the former Pan Africanist Security Services of the Pan Africanist Congress of Azania who entered into an agreement for appointment with any component of the employer other than those referred to in paragraphs (a) and (b) on or before 31 March 2002;
- (d) notwithstanding section 5 (Section 5 deals with persons excluded from membership of the Government Employee Pension Fund), any former member of Umkhonto we Sizwe or the Azanian People’s Liberation Army or of the former Department of Intelligence and Security of the African National Congress or of the former Pan Africanist Security Services of the Pan Africanist Congress of Azania who was never admitted as a member of the Government Employee Pension Fund by virtue of the fact that that person concluded a short-term employment contract with the employer; and

- (e) any person contemplated in paragraph (a), (b) or (c) who has been paid the benefits owing to that person by the Fund upon cessation of his or her membership, but who would have been entitled to an additional or greater benefit had his or her service as a member of a non-statutory force or service been taken into account.

Whether or not an applicant is entitled to a pension from the Government Employees Pensions Fund or any other retirement fund should also be ascertained at the outset. If so, he or she is disqualified in terms of the Special Pensions Act. However, note that an applicant who qualifies in terms of 1; 2 or 6D of the Special Pensions Act may receive payments in terms of the Social Assistance Act⁴² or the Military Pensions Act.⁴³

SPECIAL PENSIONS ADJUDICATION INSTITUTIONS

Before the Special Pension 2005 amendment,⁴⁴ the administration of the Act was a duty incumbent on the Special Pensions Board and Review Board, which has been replaced by the Special Pensions Appeal Board and the Designated Official or the Chief Adjudicator. The Chief Adjudicator is appointed by the designated institution with the involvement of the Minister of Finance. However, the administration of the Act is now the responsibility of the National Treasury and the Minister of Finance.

Special pensions appeal board (‘Appeal Board’)

Establishment and appointment of the 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*.⁴⁵ The members must be competent persons, and must include at least one person who is an advocate or attorney with at least 10 years’ experience in the practice of law as the chairperson.⁴⁶ A member of the Appeal Board is appointed for a period of 3 years and is

eligible for reappointment upon expiry of the member’s term of office.⁴⁷

A member of the Appeal Board may resign by giving three months’ written notice to the Minister.⁴⁸ 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.⁴⁹

The Minister may terminate the period of office of all members of the Appeal Board, if the performance of the Appeal Board is unsatisfactory.⁵⁰ In the event of the dismissal of all the members of the Appeal Board, the Minister may appoint persons to act as caretakers until competent persons are appointed.⁵¹ The Minister must appoint a temporary replacement member for an appeal, if before or during an appeal it transpires that any member of the Appeal Board:

- (a) has any direct or indirect personal interest in the outcome of that appeal; or
- (b) will, because of illness, absence from the Republic or for any other bona fide reason, be unable to participate or continue to participate in that appeal.⁵²

Right to appeal against Special Pensions Board decision

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.⁵³ An appeal shall take place on the date and at the place and time fixed by the Appeal Board.⁵⁴

The Appeal Board may for the purposes of an appeal –

- (a) summon any person who, in its opinion, may be able to give information for the purposes of the appeal or who it believes has in his or her possession or custody or under his or her control any document that has any bearing upon the decision under appeal, to appear before it at a time and place specified in the summons, to be questioned or to produce

- that document, and may retain for examination any document so produced;
- (b) administer an oath or accept an affirmation from any person called as a witness at the appeal; and
 - (c) call any person present at the appeal proceedings as a witness, and interrogate such person and require such person to produce any document in his or her possession or custody or under his or her control, and such person shall be entitled to legal representation at his or her own expense.⁵⁵

The procedure at the appeal shall be determined by the chairperson of the Appeal Board.⁵⁶ 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 (Nevondwe and Tetey,⁴ p. 47).

REINTEGRATION MEASURES OF THE EX-COMBATANTS

Reintegration refers to the process of facilitating the transition of former combatants to civilian life, which allows ex-combatants to adapt productively within both the 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.^{57–59} The word ‘facilitate’ is central to the definition because it moves away from a top-down approach that views demobilised soldiers as passive objects of reintegration.

Reintegration is meant to provide an enabling environment for transition to civilian life. Demobilised soldiers are responsible for making choices and determining their destiny within this environment. The phrase ‘transition to civilian life’ as used here takes into consideration the fact that demobilised soldiers do not necessarily have an in-depth knowledge of the civilian life they are about to enter. In several countries, many combatants have no memory of the pre-war times; they have never known ‘peace’. It is thus

necessary to implement reintegration programmes, which are ‘assistance measures provided to former combatants that would increase the potential for their and their families’ economic and social reintegration into [civilian] society’.^{60,61}

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 (Mogapi,⁵⁷ pp. 434–435).

CONCLUSION

The special pension is a non-contributory fund and is unique in its nature. It differs from the normal pension funds. The South African special pension 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 could become a democracy have received special pensions and the beneficiaries of those who have since passed away have been allocated special pension benefits.

Special pensions cannot replace the lives of those who have died, but it can at least offer a little consolation to the survivors. The last call for applications for special pensions ended on the 31 December 2010. It is not yet clear whether more applications can still be made after the deadline. This government policy is good and it shows that it cares for its people. Special pensions are a social security measure and they strengthen section 27 of the Constitution,⁶² 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'.⁶³ The state has obligations to develop legislations and policies aimed at realising this right.⁶⁴ To date, the South African government has 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 the special pension fund to reintegrate the ex-combatants into the labour markets, and secondly to empower them with training.^{57,58}

REFERENCES AND NOTES

- 1 Special Pensions Act No. 69 of 1996 (hereinafter referred to as 'the Act').
- 2 Borden, R. (1994) Speech delivered during the House of Commons Debate as Canadians prepared for the battle of Vimy Ridge 14 June. p. 3816.
- 3 Thipa Incorporated Attorneys. (2007) *Special pensions manual in South Africa*, Special Pensions Administration, South Africa.
- 4 Nevondwe, L. and Tetey, J. (2010) The role of the Pension Funds Adjudicator and Special Pension Tribunals. *Insurance and Tax* 25(3): 45.
- 5 Act 75 of 1998.
- 6 Act 21 of 2003.
- 7 Act 27 of 2005.
- 8 Act 13 of 2008.
- 9 Section 1(1) of the Act.
- 10 Section 1(1) (a).
- 11 Section 1 (1) (b).
- 12 Section 1(1)(b)(i).
- 13 Section 1(1)(b)(ii).
- 14 Section 1(1)(b)(iii).
- 15 Section 1(2)(a).
- 16 Section 1(2)(b).
- 17 Section 1(2)(c).
- 18 Section 1(2)(d).
- 19 Section 1(2)(e).
- 20 Section 1(2)(f).
- 21 Section 1(2)(g)(i) and (ii).
- 22 Section 1(3)(iii) of the Act.
- 23 Section 2(1)(a).
- 24 Section 2(1)(b).
- 25 Section 2(1)(c).
- 26 Section 2(1)(d)(i), (ii), (iii) and (iv).
- 27 Section 2(2)(a).
- 28 At common law, a duty to maintain will arise where the following three requirements are met: (a) The relationship between the parties is such that it imposes a duty of support. (b) The person claiming support is unable to maintain himself or herself. (c) The person from whom support is requested has capacity to support (*Reyneke v Reyneke* 1990 (3) SA 927 (E)).
- 29 The duty of support will normally end once the child reaches the age of majority, but may continue until the child becomes self-supporting, provided that the parents have the means to continue to support the child until he becomes self-supporting.
- 30 Necessities of life include food, accommodation, medical care and education (s 15(2) of the Maintenance Act 99 of 1998).
- 31 Maintenance includes food, clothing, medical and dental care and whatever else is reasonably required.
- 32 Section 7(1) of the Divorce Act 70 of 1979. In *Lombard v Central Retirement Annuity Fund Lombard v Central Retirement Annuity Fund* [2003] 3 BPLR 4460 (Pension Funds Adjudicator]. The complainant divorced the deceased in 1999. During the divorce proceedings, the complainant did not ask for maintenance and it was also not contained in the divorce order, which incorporated the settlement agreement. The settlement agreement stated at the time that the deceased member should be liable for the complainant's reasonable medical expenses. The Adjudicator found that although the order stated that no maintenance was sought, the rest of the order clearly related to another aspect of maintenance (medical expenses). So the Adjudicator found that the deceased member was legally liable for the complainant's maintenance, though limited, and that the complainant should be treated as a dependant under s 1(1)(a).
- 33 2004 (1) SA 45 (C).
- 34 Parents will have to prove on a balance of probabilities that they are indigent and cannot support themselves, and that the deceased was able to or did contribute to their maintenance (*Smith v Mutual and Federal Insurance Co Ltd* 1998 (4) SA 626 (C)).
- 35 Act 88 of 1995. This Act makes provisions for the acquisition, loss and resumption of South African Citizenship.
- 36 Act 49 of 1949.
- 37 Special Pensions Amendment Act 13 of 2008.
- 38 Section 3A. This Law has been enacted in 1996.
- 39 Section 14(4) of the Government Employees Pension Law 1996.
- 40 Act 99 of 1996.
- 41 Act 200 of 2003.
- 42 Act 13 of 2004.
- 43 Section 14(1) of the Act. This Act was enacted in 1976.
- 44 Special Pensions Amendment Act 27 of 2005.
- 45 Section 8AA (1) of the Special Pensions Amendment Act, 13 of 200; See also Nevondwe and Tatter,⁴ p. 46.
- 46 Section 8AA(2).
- 47 Section 8AA(3).
- 48 Section 8AA (4).
- 49 Section 8AA (5). See also Nevondwe and Tetey,⁴ p. 46.
- 50 Section 8AA(6).
- 51 Section 8AA(7).
- 52 Section 8AA(8).
- 53 Section 8(1).
- 54 Section 8(2).
- 55 Section 8(3).
- 56 Section 8(4).
- 57 Mogapi, N. (2004) Reintegration of soldiers: The missing piece. *Intervention* 2(3): 223–225.
- 58 Malan, M. (1996) Peacebuilding in post- conflict South Africa: The need for a comprehensive demobilisation and remobilisation programme. *African Security Review* 5(4): 28–50.
- 59 United Nations. (2000) Disarmament, demobilisation and reintegration of ex-combatants in a peacekeeping environment: principles and guidelines. Manual, Department of Peacekeeping Operations, New York, p. 15.
- 60 Mashike, L. (2008) Age of despair: The uninterrupted forces of South Africa. *African Affairs* 107(428): 433–453.
- 61 Ball, N. (1997) *Demobilizing and Reintegrating Soldiers: Lessons from Africa* in Krishna Kumar. London: Lynne Rienner, p. 6.
- 62 Act 108 of 1996.
- 63 Section 27(1)(c) of the Constitution.
- 64 Section 27(2) of the Constitution.