

Military Veterans Bill [B1-2011]: Response of Department of Military Veterans to the submissions received during the public hearings

Date of Meeting: 25 May 2011

Chairperson: Mr M Motimele (ANC)

Documents handed out:

Military Veterans Bill presentation

Relevant document: Military Veterans Bill [B1-2011]

Audio recording of the meeting:

PC Defence: Departmental response to public hearings on Military Veterans Bill [B1-2011]

Summary:

The Deputy Minister of Defence and Military Veterans and the Director-General of the Department of Military Veterans briefed the Committee on the Department's response to the submissions received during the public hearings on the Military Veterans Bill held in March 2011. The proposed legislation received general support from civil society and other participants in the public hearings.

The intention of the Bill was to make certain benefits available to military veterans. Veterans were defined as (inter alia) permanent members of the South African National Defence Force and the other military forces that participated in South Africa's liberation conflict. Defence Force conscripts and members of the Reserve Force were not permanent members of the military forces and were excluded from the definition of 'military veteran' included in the Bill.

Certain submissions were considered to be more suitable for inclusion in the proposed White Paper on military veterans. The Department welcomed further improvements to the text of the Bill. The suggested amendments were of a technical nature and served to enhance the understandability of the proposed legislation. Substantive changes to the Bill were not considered.

The Committee was briefed on the issues raised in the submissions with regard to Sections 1, 2, 4, 5, 8, 9, 11, 13 and 20 of the Bill. The Department acknowledged the requests that the Bill addressed the needs of non-military activists and victims of human rights abuse but averred that the Bill was limited to military veterans. The benefits provided for in the Bill were socio-economic in nature and were subject to the availability of resources.

The Member representing the Democratic Alliance requested that the Committee obtained the opinion of the State Law Adviser on the constitutionality of excluding SANDF conscripts from the definition of 'military veteran'. The process whereby the legislation was introduced prior to the issuing of the White Paper on military veterans and the calculation of the cost of implementing the Bill (R1.6 billion over the Medium Term Expenditure Framework period) were queried. Previous briefings by the Departments of Health, Social Development and Transport had indicated that these Departments were not ready to provide the benefits included in the Bill. Concern was raised over the Deputy Minister's statement that more time was required to communicate the content of the Bill. The application of qualifying age criteria for child dependents of veterans was queried.

Formal deliberations on the Bill were scheduled to commence on 31 May 2011. The Committee requested that the amended version of the Bill was made available prior to the commencement of deliberations.

Minutes:

The Chairperson welcomed Mr Thabang Makwetla, Deputy Minister of Defence and Military Veterans to the proceedings.

Briefing by the Department of Military Veterans (DMV) Mr Makwetla advised that the Department had given careful consideration to the submissions made to the Committee during the public hearings on the Military Veterans Bill. The Department was gratified to note that there was general public support for the Bill. Certain submissions suggested where the Bill could be improved but other matters raised would be better dealt with in the proposed White Paper on Defence and Military Veterans and would be dealt with in the longer term. It was necessary to clarify the intention of the Bill. Certain aspects would become clearer in future as the Department required 'space and time to communicate'.

The Bill provided for Government assistance to military veterans who were full-time soldiers. Prior to 1994, the South African Defence Force (SANDF) was based on a system of conscription. Once the period of conscription service was completed, the person concerned no longer served in the SANDF and returned to civilian life. Conscripts were not considered to be military veterans in the Bill.

Currently, the SANDF applied the principle of the 'one force concept'. The SANDF comprised a permanent force and a reserve force. The Defence Act was amended in 2010 to allow the Chief of the Defence Force to call up the Reserve Force at any time (i.e. not only during times of war), including for service on peace-keeping missions. Members of the Reserve Force were not considered to be members of the permanent force and were therefore excluded from the definition of a military veteran in terms of the Bill.

The DMV welcomed further technical improvements to the Bill, suggestions to make the Bill more readable and to better capture the essence of Government's policy concerning military veterans.

Mr Tsepe Motumi, Director-General, DMV presented the briefing on the Department's response to the public hearing submissions (see attached document). Submissions were received from 14 organisations and individuals during the public hearings held from 29 to 31 March 2011. The input of the other affected Government Departments and the matters raised by the Members of the Committee were taken into consideration as well. The responses of the Department were classified in accordance with the various sections in the Bill.

Section 1 dealt with definitions and several concerns were raised with regard to the definition of 'military veteran'. The Department responded that non-military veterans would not be included in the definition in accordance with Government policy; that the Appeal Board would consider matters concerning dishonourable discharge; that the Regulations would provide for documentary proof of dependents; that qualification as a veteran would not be prevented if a person failed to complete training for reasons beyond his/her control; that veterans played no active role in the SANDF; that the Bill covered the dependants of veterans at the time of enactment only and that rights and benefits accrued to individual members of military forces in their personal capacity.

Section 2 is an interpretation clause, which should remain in the Bill. The DMV agreed to amend the heading of Section 4 to reflect the President as the Patron-in-Chief of military veterans.

Section 5 listed the benefits made available to military veterans and their dependants. The DMV clarified that certain benefits were available to veterans or to both veterans and their dependants, subject to satisfying the applicable means test. Subject to the means test, a veteran may qualify for other social assistance benefits. Eligibility was not based on age or disability but on the applicable means test prescribed in the Regulations.

Sections 8 and 9 dealt with the South African National Military Veterans' Association (SANMVA). The Constitution provided for freedom of association and military veterans' organisations would not be compelled to join SANMVA. The suggestion that the mother bodies of organisations were recognised was discarded as the Bill recognised military forces rather than political parties. The functions of SANMVA and the Advisory Council differed and the clauses describing the respective functions would remain in the Bill.

Section 10 dealt with the Advisory Council. The Department rejected the suggestion that the composition of the Board should be representative as SANMVA was deemed to represent the military veteran organisations collectively on the Council. The Department agreed that members of the Advisory Council should not be restricted to military veterans (Section 13).

Section 20 established the Military Veterans Appeal Board and a group of medical professionals had recommended that a medical appeal board was established to consider complaints of a medical nature. The DMV considered the Appeal Board to be multi-disciplinary in nature and could source specialist medical input if required.

The DMV acknowledged the submissions concerning the needs of non-military activists and other persons who had suffered human rights abuses. However, these issues fell outside the ambit of the Bill. The benefits provided for in the Bill were socio-economic in nature and provision of the benefits was subject to the availability of resources.

Discussion

Mr D Maynier (DA) welcomed the announcement of the Deputy Minister concerning the White Paper on military veterans. He queried the process whereby the legislation on military veterans was introduced before the White Paper was issued as legislation had to be aligned to Government policy. He was of the opinion that the exclusion of former national servicemen members of the SANDF from the definition of 'military veteran' would create a constitutional problem as destitute former members of uMkhonto We Sizwe (MK) and the SANDF should not be treated differently. He suggested that the Committee obtained a legal opinion on the issue. In his budget vote, the Minister had indicated that the cost of implementing the Bill would amount to R1.6 billion over the Medium Term Expenditure Framework (MTEF) period. He wanted to know how this amount was calculated and requested that the Committee was briefed on the revised financial implications of the Bill. The Departments of Health, Social Development and Transport appeared to be unprepared to implement the Bill and he suggested that these Departments again briefed the Committee on how the Bill would be implemented.

Mr J Masango (DA) requested clarity on the statement made by the Deputy Minister that certain aspects of the Bill would become clearer in time. The Committee would commence formal deliberations on the Bill on Tuesday, 31 May 2011 but the Deputy Minister had invited further technical amendments to the Bill. He queried whether the Committee would be deliberating on a Bill that was subject to further changes. He noted the statement that age was not a factor and that a means test would determine whether or not a veteran and his dependents qualified for benefits. He wanted to know what qualifying criteria applied to the dependents of veterans. He suggested that the Committee was briefed by the Departments on what benefits were currently available to military veterans.

Mr Makwetla was under the impression that the Committee was aware of the introduction of a new White Paper, which included public participation. He explained the process to establish the DMV that commenced after the presidential announcement in 2009 that a separate Department for military veterans would be established. The establishment of the DMV before the White Paper was issued was not unprocedural.

Mr Makwetla said that the definition of 'military veteran' included members of all the military organisations involved in the liberation conflict, who were subsequently integrated into the SANDF. Conscripts were not full-time members of the SANDF and were excluded from the list of members submitted by the SANDF during integration. Conscripts performed a national service and were not disadvantaged by serving in the Defence Force. As such, conscripts were not considered to be deserving of further assistance by Government. Logically, responsibility for conscripts finding themselves in destitute circumstances could not be blamed on the State, unlike members of the non-statutory forces. Members of the non-statutory forces and permanent members of the SANDF had served on a full-time basis and were not comparable to conscripts.

Mr Makwetla said that the question concerning the reduction in the cost of implementing the Bill implied that the reduction resulted from a policy change. The Department had provided preliminary figures after being 'pressurised' by the Committee to cost the Bill. The preliminary amounts quoted by the Department were not 'helpful'. He assumed that the Committee was informed of the revised cost of R1.6 billion over the MTEF period advised to the Cabinet. The preliminary amount was the estimated cost to the State of providing the benefits to veterans for the duration of their lives. Such long-term cost implications were generally not required by normal Parliamentary procedure. The cost over the MTEF period amounted to an average amount of R500 million per annum.

Mr Makwetla assured the Committee that the Department had engaged with the line function Departments responsible for providing the benefits envisaged by the Bill. It was the prerogative of the Committee to request briefings by these Departments. As with all other legislation, more time had to elapse before the provisions of the Bill was fully understood by all concerned. There could be different interpretations of the provisions, despite the clarity provided in the Bill. Further changes to the Bill would be of a technical nature rather than substantive, for example phrasing the benefits provided in the Bill in a more understandable manner. The Department was ready to brief the Committee on the amendments when required.

Mr Motumi explained that the definition of 'dependant' used in the Bill was in accordance with the definition in other current legislation. The wife and minor children of a military veteran were considered to be dependants. Depending on the relevant legislation, a minor child was younger than age 18 or age 21. For example, the South African Military Health Service (SAMHS) was already providing the health care envisaged in terms of Clause 5 (1) (a) of the Bill to veterans and their dependents. Dependent children were considered to be younger than age 18, unless the child was school-going, in which case proof must be provided on an annual basis.

Mr Maynier asked that the opinions of the State Law Adviser and the Parliamentary Law Adviser were obtained by the Committee on the Constitutional implications of excluding conscripts from the Bill. He suggested that the Committee was briefed on the final cost of the Bill. Earlier briefings by the line Departments indicated that the Departments were not ready to deliver the benefits envisaged in the Bill and he suggested that the Committee requested a re-briefing to satisfy itself that the relevant Departments were able to implement the Bill.

The Chairperson advised that the Departments had been requested to upgrade and re-submit the presentations made to the Committee. The Committee secretary would check that the revised documents were received. He would consider Mr Maynier's other suggestions.

Mr Makwetla said that it would be extraordinary for the Committee to determine the readiness of Departments to implement a Bill. There was no legislative requirement for such a precondition for processing the legislation as the assumption was that any legislation would be implemented by the affected Departments upon enactment.

Mr A Mlangeni (ANC) agreed with the Deputy Minister's comment. The function of the Committee was to pass legislation and the Departments were bound to implement the Act. A Bill was similar to a resolution passed by any other organisation. The full extent of the consequences might not be

known at the time a resolution was passed and subsequent amendments might be necessary to accommodate any unintended or unforeseen consequences.

Mr A Maziya (ANC) had understood that the DMV would be presenting an analysis of the submissions received during the public hearings, would indicate where further clarity was necessary, would determine if the Bill should include suggested amendments arising from the submissions and would include reference to the relevant submission document. He asked if the Committee would deliberate a new version of the Bill on 31 May 2011. He considered the other issues raised by the Deputy Minister to be his personal views and were not material to the Committee's consideration of the Bill.

Mr Maynier reiterated his suggestion that the State Law Adviser provided comment on the exclusion of conscripts from the definition of 'military veteran'. He disagreed with Mr Mlangeni's remark and said that in his opinion, Parliament had a duty to ensure that legislation could be implemented and could be afforded by the executive. The Committee was obliged to ascertain the cost of implementing the legislation it passed.

Mr Makwetla said that Members of Parliament represented the sentiments of the public and communities on how the State should operate. Previously, Members were not concerned with the financial cost of implementing legislation, which was the concern of the executive. Currently, Parliament merely determined if the country had the resources to implement legislation rather than if the relevant Departments were ready to implement the laws.

Mr Maziya considered conscripts to be comparable to temporary workers. Conscripts were not subjected to the same responsibility as the permanent members of the Defence Force and should not be entitled to the same benefits.

The Chairperson said that the Department had to check if a Bill complied with the Constitution when it was drafted. He asked the Director-General to ensure that the Committee received an amended version of the Bill before the commencement of deliberations. He thanked the Deputy Minister, Director-General and Members for their participation in the proceedings.

The meeting was adjourned.