



PARLIAMENT

OF THE REPUBLIC OF SOUTH AFRICA

PARLIAMENTARY MILLENNIUM PROGRAMME



**COMMEMORATING THE 20TH ANNIVERSARY
OF THE BATTLE OF CUITO CUANAVALÉ**

TRAUMA HEALING INITIATIVE

**A STUDY OF LEGISLATION AND POLICY
PERTAINING TO WAR VETERANS AND
EX-COMBATANTS**

PREPARED BY



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SECTION A

Mandates

Managing For Excellence was mandated to conduct research in relation to the following:

- 1.1 The definition of 'veterans' and 'ex-combatants'.
- 1.2 The status of "detainees" and "political prisoners" insofar as social welfare is concerned.
- 1.3 A review of relevant policies and legislation pertaining to veterans affairs in particular in relation to the following areas:
 - trauma healing;
 - economic opportunity;
 - reconciliation;
 - integration into society;
 - acknowledgement and recognition required for the sacrifices veterans made;
 - strengthening and integrating the veterans / ex-combatant sector;
 - community integration; and
 - integrated service delivery (private sector, recognize skills and prior learning, use local knowledge).

SECTION B

Executive Summary

1. Section A

This section details the mandates from Parliamentary Millennium Programme by ME.

2. Section C

The section provides a detailed description of specific national legislation applicable to war veterans. Legislation mentioned includes:

- the *Constitution of the Republic of South Africa Act No. 108 of 1996* with specific reference to the right to social security.
- the *Military Veterans Affairs Act No. 17 of 1999* with specific mention of the objectives of the act, the definition of war veteran, the fundamental principles relating to war veterans and the powers and duties of the office for Military Veteran's Affairs.
- the *Social Assistance Act 13 of 2004* with specific mention of the objectives, the definition of war veteran, social grants, grants in aid, social assistance, social relief of distress, eligibility for social grants and the war veterans grant.
- *Military Pensions Act No. 84 of 1976* with mention of the relevant provisions and objectives.
- *Income Tax Act No. 58 of 1962* with reference provided to taxation exemptions provided to war veterans.
- *Occupational Diseases In Mines and Works Act No. 78 of 1973* with reference to the increases in social pensions.
- *Advisory Board On Social Development Act No. 23 Of 2001* with regard to the need for improvement of social services, the promotion of development initiatives, integrated service delivery, observing the best practices from other jurisdictions and the introduction of new policies and legislation.

The section ends with a note on the lack of legislation specific to ex-combatants.

3. Section D

This section details the results of research conducted in relation to each province in relation to war veterans and ex combatants. No welfare and social provincial legislation exists in relation to ex-combatants save for general welfare legislation applicable.

The following legislation is mentioned.

- *Social Assistance Act No. 59 Of 1992* which addresses the issue of social grants;
- *Ciskeian Social Pensions Act 8 Of 1976* which addresses the issues of pensions;
- *Social Pensions Act No. 40 Of 1978* which addresses the issues of pensions;
- *Northern Province Welfare Services Act No. 6 Of 1998* which addresses the issue of social grants;
- *Mpumalanga Social Assistance Act No. 5 Of 2000* which addresses the issue of social grants;
- *Aged Persons Act No. 81 Of 1967* which addresses the issue of social grants;
- *Bophuthatswana Social Pensions Act No. 18 Of 1978* which addresses the issue of social pensions;

4. Section E

This section details the results of research conducted in relation to regulations, ordinances, notices, bylaws and policies pertinent to war veterans and ex-combatants at the national, provincial and local level. Cognisance must be taken of the fact that the legal standing and entitlements of “war veterans” are issues that date back to the 1900’s with the result that the validity of many pieces of legislation, regulations, ordinances etc may not have been tested against the current constitutional framework and may not be applied in practice but are mentioned for purposes of this memorandum.

Part A addresses the National Regulations emanating from various acts with specific reference to the following regulations:

- *Gnr.750 Of 24 April 2001: Regulations On Military Veterans' Affairs, 2001* which addresses dependants of veterans, development programmes,
- *Gnr.418 Of 31 March 1998: Regulations Regarding Grants And Financial Awards To Welfare Organisations And To Persons In Need Of Social Relief Of Distress* which address social relief.
- *Gnr.162 Of 22 February 2005: Regulations In Terms Of The Social Assistance Act, 2004 (Act No. 13 Of 2004) - (government gazette no. 27316)* which address the criteria for social grant.
- *Gnr.1505 Of 16 October 2003: Intelligence Services Regulations, 2003* which provide a regulatory framework for a veteran association.
- *Gnr 151 Of 28 January 2004: Regulations Regarding Television Licence Fees. Broadcasting Act No. 4 Of 1999* addresses concessionary domestic licences for war veterans.

Part B addresses Provincial and Local government ordinances, notices, regulations and bylaws specific to certain provinces. These include the:

- *Municipal Ordinance No. 20 Of 1974* with specific mention of grants in aid in relation to rates for war veterans.
- *Provincial Notice No. 425 Of 1997 Under Kwazulu-Natal Cemeteries And Crematoria Act No 12 Of 1996* with specific mention of rebates provided to persons collecting a war veterans pension.
- *Government-Aided School Teachers' Pension (Military Service) Ordinance No. 4 Of 1941; assented to by the Governor-General in council on 28 may, 1941 and commenced on 12 June 1941* where provision was made for the military service of Government-Aided school teachers which service counted for pension purposes provided that such service was in the war which the Union was engaged in.
- *P.N. 446 Of 1981: Municipal Golf Course Bylaws* which allowed special reduced fees to war veteran pensioners.
- *Local Authorities Rating Ordinance No. 11 Of 1977* with specific mention of grants in aid in relation to rates for war veterans.
- *Divisional Councils Ordinance no. 18 of 1976* with specific mention of grants in aid in relation to rates for war veterans.
- *Local Authorities (Development According To Community) Ordinance No. 6 Of 1963* with specific mention of grants in aid in relation to rates for war veterans.
- *Municipal Ordinance Cape 20 of 1974* with specific mention of grants in aid in relation to rates for war veterans.

- *General Notice No. 166 Of 2006 in terms of Section 41 (1) (C) Of The National Health Act, 2003 (Act 61 Of 2003) where regulations Under Act No. 61 Of 2003 relate to full subsidization of medical costs for war veterans.*

5. Section F

In analysing the legislation, regulations, ordinances etc, the overarching requirement was to ascertain the status of war veterans, policies and legislation applicable to the same. The necessity for reform in relation to the manner in which war veterans have been acknowledged, integrated, healed, financially cared for is well recognised in welfare legislation and more importantly the constitution in section 27 which mandates social security for citizens. Section F assesses all of the legislation that was provided in Sections C, D and E in light of the mandates and elaborates on the concept of social security in light of the policy decisions taken at the ANC 52nd Conference in Polokwane this year.

6. Section G

This section details the legislation that was considered in the research for purposes of this memorandum.

SECTION C

National Legislation

National Legislation was scanned to assess the legislation specifically applicable to war veterans and ex-combatants. This section details the results of research conducted.

1. EX-COMBATANTS

No social welfare legislation exists at national level where there is a definition provided for ex-combatants nor has any national legislation been encountered which elaborates on the protection and welfare of the same save for the overall general protection under the general welfare laws relating to all citizens of South Africa.

2. WAR VETERANS

2.1 **CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, ACT NO 108 OF 1996**

2.1.1 Relevant Provision

2.1.1.1 **Section 27- Health care, food, water and social security.**

- (1) Everyone has the right to have access to—
 - (a) health care services, including reproductive health care;
 - (b) sufficient food and water; and

- (c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.
- (3) No one may be refused emergency medical treatment.

2.2 **MILITARY VETERANS AFFAIRS ACT NO 17 OF 1999**

2.2.1 **Objectives**

The objectives of the act are:

To provide for the development of national standards regarding military veterans and their dependants, including their entitlements; for the President to be Patron-in-Chief of all military veterans; for relevant Cabinet Committees to perform certain functions for the purposes of this Act; for responsibilities of the Minister of Defence; for the establishment of an Advisory Board for Military Veterans' Affairs; for an Office for Military Veterans' Affairs; for the development, promotion and implementation of policy; and for matters incidental thereto.

2.2.2 **Relevant Definitions**

“military veteran” means any person who—

- (a) either voluntarily or under conscription or call-up served as a member of—
 - (i) the Union Defence Forces or any military force of a country allied to the former Union Government during the Great War of 1914 to 1918, World War II being the war which commenced on 6 September 1939, or the hostilities in Korea from 1950 to 1953; or
 - (ii) the South African Defence Force or any defence force of a territory which prior to the commencement of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), enjoyed the status of an independent State in terms of a law of the Republic of South Africa; or
 - (iii) the South African National Defence Force, and has not been dishonourably discharged, is retired, or no longer serves in the South African National Defence Force and is a citizen of the Republic, and irrespective of whether any such service envisaged in subparagraph (i), (ii) or (iii) has been rendered in a permanent or in a part-time component or part-time capacity; or
- (b) is a “war veteran” as defined in section 1 of the Social Assistance Act, 1992 (Act No. 59 of 1992); or
- (c) served as a member of any non-statutory force as defined in section 1 of the Demobilisation Act, 1996 (Act No. 99 of 1996); or
- (d) belongs to any other prescribed category of military veterans;

“approved development programme” means—

- (a) in relation to a development programme which for the implementation thereof in terms of legislation or administration only involves the Department of Defence or recognised military

veterans' organisations, a development programme approved by the Minister;

- (b) in relation to any other development programme, any such development programme which has been approved by one or both of the Cabinet Committees;

“development programme”, in relation to affairs relating to, and particularly, the entitlements of, military veterans envisaged in paragraph (e) (iv) of section 15, means any such programme which has, in terms of paragraph (e) (vi) of the said section been formulated by the Office in accordance with the provisions of this Act and the prescribed format and requirements;

“entitlement”, in relation to a military veteran and his or her dependants, includes any pension, grant, allowance, subsidy, compensation, accommodation or retirement assistance, loan, insurance benefit, burial benefit, social assistance or other benefit which any such person is entitled to in law and any prescribed entitlement;

2.2.3 **Relevant Provisions**

2.2.3.1 **Section 3 - Fundamental principles.**

For the purposes of this Act the following fundamental principles are recognised by the State as governing affairs relating to military veterans, namely that—

- (a) sacrifices made by military veterans in the service of or for their country or their role in the democratisation of South Africa are honoured;
- (b) compensation to which military veterans may be entitled for disablement constitutes reparation and is, despite any provision to the contrary contained in any law, not a welfare benefit;
- (c) in the event of a military veteran or category of military veterans being considered for possible aid by the State, which is non-contributory, subject to budgetary and infrastructure constraints, such military veterans must have been income- and means-tested and must, in the case of female veterans, have reached the age of 55 years and, in the case of male veterans, have reached the age of 60 years;
- (d) special consideration must be given that must benefit and relieve military veterans who suffer from any physical or mental disability arising from military service rendered by them;
- (e) disparities, inequalities or unfair discrimination as regards the entitlements of military veterans and their dependants, must be identified and, where possible, remedied;
- (f) all governmental entities involved with military veterans' affairs must co-operate with the Office to ensure the achievement of the objects of this Act, and, within their available resources, to take reasonable legislative and other measures to achieve the progressive realisation thereof; and

- (g) the State, or any State Department or State Agency, may not undertake, be committed or obliged to provide State aid or any other assistance to any military veteran other than through the existing legislative and administrative channels.

2.2.3.2 **Section 15 - Powers and duties of Office for Military Veterans' Affairs.**

The Office—

- (e) must—
 - (i) review, develop and co-ordinate policy regarding military veterans' affairs;
 - (ii) report to the Minister on the monitoring of the execution of approved military veterans' policies by State departments and provincial executive authorities, and the rendering of inputs for required corrective action;
 - (iii) research, define, investigate, evaluate and promote military veterans' affairs on an integrated basis;
 - (iv) identify legislative or administrative disparities, inequalities or unfair discrimination regarding the entitlements and the needs of military veterans and their dependants in order to rectify such disparities, inequalities or unfair discrimination;
 - (v) review existing legislation with a view to making new policy and promoting a consolidation of such legislation in order to provide for an integrated regulation of affairs of military veterans and their dependants;
 - (vi) formulate development programmes and submit proposals and recommendations to the relevant State

departments and provincial executive authorities in connection with the development of military veterans' affairs;

- (f) must consult the Department of Defence, and other State departments and provincial executive authorities, and all other persons, organisations or institutions who or which are concerned with military veterans' affairs, to achieve the objects of this Act;
- (g) must, as soon as practicable after the date of commencement of this Act, conduct a survey of State-controlled and privately administered schemes or programmes dealing with any aspect of the affairs of military veterans;
- (h) must collect data and information regarding all existing entitlements of military veterans and their dependants, and establish a data base on military veterans and military veterans' affairs, which must be updated regularly;
- (i) must include, in any such data base, information collected and compiled as provided for in paragraph (h), and data regarding persons qualifying as military veterans or dependants;
- (j) must compile data of ascertained disparities, inequalities or unfair discrimination regarding the entitlements and needs of military veterans and their dependants which require rectification on a group or individual basis, whether by legislative provision or otherwise;
- (k) must, as soon as practicable after the date mentioned in paragraph (g), compile a priority list of the prescribed

development programmes, proposals or recommendations, to be dealt with in the interest of military veterans and their dependants;

- (l) must submit development programmes to the Minister—
 - (i) for submission to Cabinet Committees for their approval;
 - or
 - (ii) for his or her approval, and must publish all approved development programmes in the *Gazette* for public notification, whereupon such programmes become binding on all persons and bodies to which they refer and must be implemented according to their terms;
- (m) may forward proposals or recommendations in connection with any aspect of affairs relating to military veterans and their dependants to the Minister or the Advisory Board, or any other person or body, for purposes of obtaining advice, guidance, direction or endorsement;
- (n) may make inputs, through the Department of Defence, in respect of policy and budgets of State and provincial administrations relating to military veterans' affairs;
- (o) may negotiate with State departments, provincial executive authorities and non-governmental organisations to act as agents for the Department of Defence to carry out duties regarding military veterans; and
- (p) may exercise any power and perform any duty as may be prescribed.

2.3 SOCIAL ASSISTANCE ACT 13 OF 2004

2.3.1 **Background**

Preamble.—SINCE the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), 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, and obliges the state to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights;

AND SINCE the effective provision of social assistance requires uniform norms and standards, standardised delivery mechanisms and a national policy for the efficient, economic and effective use of the limited resources available for social assistance and for the promotion of equal access to government services;

THEREFORE in order to prevent the proliferation of laws, policies and approaches to the execution thereof from materially prejudicing the beneficiaries or recipients of social assistance as well as the economic interests of provinces or the Republic as a whole or from impeding the implementation of a national social assistance economic policy;

AND in order to assist in securing the well-being of the people of the Republic and to provide effective, transparent, accountable and coherent government in respect of social assistance for the Republic as a whole.

2.3.2 **General Note**

The act is enacted in order to provide for the rendering of social assistance to persons; to provide for the mechanism for the rendering of such assistance; to provide for the establishment of an inspectorate for social assistance; and to provide for matters connected therewith.

2.3.3 **Objectives**

2.3.3.1 **Section 3 specifies the following:**

The objects of this Act are to—

- (a) provide for the administration of social assistance and payment of social grants;
- (b) make provision for social assistance and to determine the qualification requirements in respect thereof;
- (c) ensure that minimum norms and standards are prescribed for the delivery of social assistance; and
- (d) provide for the establishment of an inspectorate for social assistance.

2.3.2 **Relevant Definitions**

“grant-in-aid” means a grant made in terms of section 12;

“social assistance” means a social grant including social relief of distress;

“social grant” means a child support grant, a care dependency grant, a foster child grant, a disability grant, an older person’s grant, a war veteran’s grant and a grant-in-aid;

“social relief of distress” means social relief granted in terms of section 13;

“war veteran” means a person contemplated in section 11 (b);

2.3.3 **Relevant Provisions**

- **Section 2**

Application and implementation of Act.

- (1) This Act applies to a person who is not a South African citizen, if an agreement, contemplated in section 231 (2) of the Constitution, between the Republic and the country of which that person is a citizen makes provision for this Act to apply to a citizen of that country who resides in the Republic.
- (2) The Agency is responsible for the administration of social assistance in terms of chapter 3 and in terms of any function delegated to it in terms of section 29.
- (3) The Agency must offer all reasonable assistance to a person, who, due to his or her age, a disability or an inability to read or write, is unable to understand, appreciate or exercise his or her rights, duties or obligations in terms of this Act, in the official language of the Republic which he or she is likely to understand.
- (4) The Agency must, out of moneys appropriated by Parliament for this purpose or with funds donated for this purpose, publish and distribute to beneficiaries and potential beneficiaries, brochures in all official languages of the Republic setting out in understandable language the rights, duties, obligations, procedures and mechanisms contemplated in this Act, as well as contact details of the Agency or anyone acting on its behalf.

- **Section 4**

Provision of social grants.

The Minister must, with the concurrence of the Minister of Finance, out of moneys appropriated by Parliament for that purpose, make available—

- (f) a war veteran's grant; and
- (g) a grant-in-aid.

- **Section 5**

Eligibility for social assistance.

- (1) A person is entitled to the appropriate social assistance if he or she—
 - (a) is eligible in terms of section 6, 7, 8, 9, 10, 11, 12 or 13;
 - (b) subject to section 17, is resident in the Republic;
 - (c) is a South African citizen or is a member of a group or category of persons prescribed by the Minister, with the concurrence of the Minister of Finance, by notice in the *Gazette*;
 - (d) complies with any additional requirements or conditions prescribed in terms of subsection (2); and
 - (e) applies for social assistance in accordance with section 14 (1).
- (2) The Minister may prescribe additional requirements or conditions in respect of—
 - (a) income thresholds;
 - (b) means testing;
 - (c) age limits, disabilities and care dependency;
 - (d) proof of and measures to establish or verify identity, gender, age, citizenship, family relationships, care dependency, disabilities, foster child and war veterans' status;
 - (e) forms, procedures and processes for applications and payments;
 - (f) measures to prevent fraud and abuse.

- **Section 11 - War veterans' grant.**

A person is, subject to section 5, eligible for a war veteran's grant if he or she—

- (a) has attained the age of 60 years; or
- (b) owing to a physical or mental disability, is unable to provide for his or her maintenance, and—
 - (i) performed any naval, military or air force service during the Great War of 1914-1918 as a member of any Union or British Force, or was a member of the protesting burgher forces during the period September 1914 to February 1915;
 - (ii) performed any naval, military or air force service during the war which commenced on 6 September 1939 as a member of the Union Defence Forces or, in the case of a Union national, as a member of any British or Dominion Force or any force of a government which was allied to the Government of the Union during that war;
 - (iii) while he or she was not a Union national, performed any naval, military or air force service during the war referred to in subparagraphs (i), (ii) or (iv) as a member of any British or Dominion Force and who is a South African citizen on the date on which he or she applies for a war veteran's pension; or
 - (iv) while he or she was a member of the Union Defence Forces, signed an undertaking to serve in connection with the hostilities in Korea and who during such hostilities performed any naval, military or air force service.

- **Section 12**

Grant-in-aid.

A person is, subject to section 5, eligible for a grant-in-aid if, that person is in such a physical or mental condition that he or she requires regular attendance by another person.

- **Section 13**

Social relief of distress

The Minister may provide social relief of distress to a person who qualifies for such relief as may be prescribed.

- **Section 33**

Repeal of laws and transitional arrangements.

(1) The Social Assistance Act, 1992 (Act No. 59 of 1992), is hereby repealed insofar as it has not been assigned to another sphere of government.

(2) Any regulation or notice issued, any appointment made, any grant awarded, any moneys paid or anything else done by the national sphere of government under the Social Assistance Act, 1992, is deemed to have been issued, made, granted, paid or done under the corresponding provisions of this Act.

(3) Any regulation or notice issued, any appointment made, any grant awarded, any moneys paid, or anything else done by a provincial sphere of government under the Social Assistance Act, 1992, insofar as it has been assigned to that sphere of government, is deemed to have been issued, made, granted, paid or done under the corresponding provisions of this Act in the event that a provincial legislature repeals the Social Assistance Act, 1992, insofar as it has been assigned to that sphere of government, or amends the Act in such a way that it conflicts with this Act.

2.4 **INCOME TAX ACT NO. 58 OF 1962**

2.4.1 **Objectives**

To consolidate the law relating to the taxation of incomes and donations, to provide for the recovery of taxes on persons, to provide for the deduction by employers of amounts from the remuneration of employees in respect of certain tax liabilities of employees, and to provide for the making of provisional tax payments and for the payment into the National Revenue Fund of portions of the normal tax and interest and other charges in respect of such taxes, and to provide for related matters.

2.4.3 **Relevant Provisions**

2.4.3.1 **Section 10.**

Exemptions.

- (1) There shall be exempt from normal tax-
- (g) any amount received as a war pension, or as an award or a benefit under any law relating to the payment of compensation in respect of diseases contracted by persons employed in mining operations;

2.5 **OCCUPATIONAL DISEASES IN MINES AND WORKS ACT NO. 78 OF 1973**

2.5.1 **Objectives**

To consolidate and amend the law relating to the payment of compensation in respect of certain diseases contracted by

persons employed in mines and works and matters incidental thereto.

2.5.2 Relevant Provisions

2.5.2.1 Section 132- Increases in terms of Act disregarded for payment of social pensions.

- (1) 'In this section "other Act" means the Children's Act, 1960 (Act No. 33 of 1960), the Aged Persons Act, 1967 (Act No. 81 of 1967), the Blind Persons Act, 1968 (Act No. 26 of 1968), the War Veteran's Pensions Act, 1968 (Act No. 25 of 1968), and the Disability Grants Act, 1968 (Act No. 27 of 1968).
- (2) A person who immediately before the commencement of this Act was in receipt of a benefit or other amount under the previous Act as well as a pension or an allowance or a pension and an allowance under any other Act, shall continue to be entitled to such pension or allowance or pension and allowance notwithstanding the increase under this Act of the said benefit or other amount, which increase shall for the purposes of such other Act be deemed not to be means.

2.6 **ADVISORY BOARD ON SOCIAL DEVELOPMENT ACT NO. 23 OF 2001**

2.6.1 Objectives

To provide for a national advisory structure in the social development sector with the aim of building and consolidating partnership between government and civil society; for that purpose, to establish a body to be known as the Advisory Board

on Social Development; to provide for the objectives, duties and composition of the Board; and to provide for matters connected therewith.

2.6.2 Relevant Provisions

2.6.2.1 Section 2. Establishment of Advisory Board on Social Development.

A body to be known as the Advisory Board on Social Development is established.

2.6.2.2 Section 4 - Duties of Board.

- (1) The Board, in order to achieve its objectives, must—
 - (a) respond to, and advise the Minister on, social development issues identified by, or referred to, the Board;
 - (b) identify, promote, monitor and evaluate policy, legislation and programmes with regard to social development and its impact on the quality of life of the people and the delivery of services to people;
 - (c) facilitate dialogue between government and civil society on social development issues;
 - (d) promote stakeholder participation in social development, particularly consumer and grassroots sector participation;
 - (e) submit a report—
 - (i) on the activities of the Board to the Minister at least once a year, which report must also be tabled in Parliament; and
 - (ii) whenever requested by the Minister;
 - (f) make formal reports available to the public to ensure the commitment of the Board to transparency and accountability;
 - (g) keep abreast of international developments in social development policy.

- (2) The Board must establish clear lines of communication, including formal meetings, with structures that it interacts with, including the parliamentary committees on Social Development of the National Assembly and the National Council of Provinces.
- (3) Any advice or recommendation to the Minister must include the minority views of one or more members of the Board.
- (4) Nothing in this section precludes the Board from considering any matter pertaining to social development policy.

2.6.2.3 Section 3 - Objectives of Board.

The objectives of the Board are—

- (a) to advise the Minister on—
 - (i) measures to promote the transformation and continuous improvement of social development services;
 - (ii) measures to promote social development initiatives;
 - (iii) measures to include local government in the provision of integrated service delivery at local government level;
 - (iv) proposals for new legislative frameworks for the social development sector and amendments to existing legislation; and
 - (v) the introduction of local and international best practices in social development services;
- (b) to act as a consultative forum for the Minister to discuss social development matters, including—
 - (i) improving the quality of provincial and national social development;
 - (ii) the introduction of new policy and successful policy implementation in the government and non-governmental environment;

- (iii) facilitating consultation between stakeholders and government regarding the implementation of social development;
- (iv) ensuring effective review of formulation, implementation and evaluation of social development policies, programmes and legislation, as informed by the needs and priorities of society;
- (v) inputs from the social development sector to international forums and protocols.

2.7 WHITE PAPER ON NATIONAL DEFENCE FOR THE REPUBLIC OF SOUTH AFRICA DEFENCE IN A DEMOCRACY; MAY 1996

2.7.1 Relevant Extracts

2.7.1.1 Paragraph 23

Since these people contributed to the struggle against apartheid, it would be unjust to end their military careers without compensation, especially in the case of aged and disabled military veterans. They will consequently be assisted financially, as well as through the Special Pensions Act envisaged by the Constitution. It is a matter of great importance that this Act is now promulgated.

2.7.1.2 Paragraph 43.5

The government will seek to ensure that military personnel are adequately remunerated. It will also ensure that demobilised and rationalised soldiers, as well as veterans from the former statutory and non-statutory forces, are properly integrated into civilian society. The Chairperson of the Council of Military Veterans' Organisations serves as the Minister's adviser on military veterans' affairs. A directorate for military veterans' affairs will be established within the Defence Secretariat.

SECTION D

Provincial Legislation

1. Provincial Legislation was reviewed to assess the legislation specifically applicable to war veterans and ex-combatants. This section details the results of research conducted in relation to each province in relation to war veterans and ex combatants. No welfare and social provincial legislation exists in relation to ex-combatants save for general welfare legislation applicable. The section therefore focuses on legislation applicable to war veterans.

EASTERN CAPE, GAUTENG, KZN, MPUMALANGA, NORTHERN CAPE, NORTH WEST PROVINCE, WESTERN CAPE

**2.1 SOCIAL ASSISTANCE ACT NO. 59 OF 1992- ASSENTED TO 26
APRIL, 1992; DATE OF COMMENCEMENT: 1 MARCH, 1996 AS
AMENDED BY SOCIAL ASSISTANCE AMENDMENT ACT, NO. 45
OF 1994 & PROCLAMATION NO. R.7 OF 1996 (GG 16992)**

2.1.1 General Note

In terms of proclamation R7 of 23 February 1996, the administration of Act No. 59 of 1992 has been assigned to this province excluding section 13.

2.1.2 Objectives of Act

To provide for the rendering of social assistance to persons, national councils and welfare organizations; and to provide for matters connected therewith.

2.1.3 Relevant Definitions

“grant” means a social grant, a maintenance grant, a foster child grant, a capitation grant, a supplementary grant or a grant-in-aid;

“grant-in-aid” means a grant made in terms of section 2 (b);

“social assistance” means a social grant, a capitation grant, a supplementary grant, a grant-in-aid, a maintenance grant, a foster child grant or financial award granted under this Act;

“social grant” means a grant made in terms of section 2 (a);

“social relief of distress” means social relief of distress as defined in section 15 of the Fund-raising Act, 1978 (Act No. 107 of 1978);

“supplementary grant” means a grant made in terms of section 2 (c);

“war veteran” means any person who has attained the age of 60 years or who is, owing to any physical or mental disability, unable to provide for his maintenance, and—

- (a) who performed any military or naval service in South Africa during the Anglo-Boer War, 1899–1902, in any British Force or any force of the former South African Republic or the former Republic of the Orange Free State; or
- (b) who performed duties in connection with the Zulu rebellion in 1906 in Natal as a member of a permanent or voluntary military unit; or
- (c) who performed any naval, military or air force service during the Great War of 1914–1918 as a member of any Union or British Force or who was a member of the protesting burgher forces during the period September 1914 to February 1915; or
- (d) who performed any naval, military or air force service during the war which commenced on 6 September 1939 as a member of the Union Defence Forces or, in the case of a Union national, as a member of any British or Dominion Force or any force of a government which was allied to the Government of the Union during that war; or
- (e) who, while he was not a Union national, performed any naval, military or air force service during such last-mentioned war as a member of any British or Dominion Force and who is a South African citizen on the date on which he applies for a veteran’s pension; or

- (f) who, while he was a member of the Union Defence Forces, signed an undertaking to serve in connection with the hostilities in Korea and who during such hostilities performed any naval, military or air force service on or after the date on which he had been detailed for duty in connection therewith; and

2.1.4 **Relevant Provisions**

2.1.4.1 **Section 2 - Payment of grants.**

The Minister shall, subject to the provisions of this Act and with the concurrence of the Minister of Finance, out of moneys appropriated by the Provincial Legislature concerned for that purpose, make—

- (a) social grants to aged and disabled persons and to war veterans;
- (b) in addition to a social grant, a grant-in-aid to or on behalf of any person referred to in paragraph (a) who is in such a physical or mental condition that he requires regular attendance by any person;
- (c) in addition to social grants and grants-in-aid, supplementary grants to war veterans;
- (d) a maintenance grant to a parent for the maintenance of a child in his custody;
- (e) a foster child grant to a foster parent;
- (f) to prescribed institutions, including places of safety, capitation grants for the care of persons admitted to such an institution or

place of safety in terms of an order of court or with the approval of the Director-General;

- (g) a care-dependency grant to a parent or foster parent in respect of a care-dependent child.

2.1.4.2 Section 3 - Social grants

Subject to the provisions of this Act, any person shall be entitled to the appropriate social grant if he satisfies the Director-General that he—

- (a) is an aged or disabled person or a war veteran;
- (b) is resident in the Republic at the time of the application in question;
- (c) is a South African citizen; and
- (d) complies with the prescribed conditions.

3. EASTERN CAPE

3.1 CISKEIAN SOCIAL PENSIONS ACT 8 OF 1976

3.1.1 Objectives

To provide a law for the Ciskei on pensions and allowances for aged, blind and disabled persons and war veterans; and to provide for incidental matters.

3.1.2 Relevant Definitions

“**veteran’s pension**” means a pension paid under section 2 to a war veteran;

“**war veteran**” means any person who has attained the age of sixty years or who is, owing to any physical or mental disability, unable to provide adequately for his maintenance, and —

- (a) who performed any naval, military or air force service during the Great War of 1914-1918 as a member of any Union or British Force or who was a member of the protesting burgher forces during the period September, 1914 to February, 1915; or
- (b) who performed any naval, military or air force service during the war which commenced on the sixth day of September, 1939, as a member of the Union Defence Forces, any British or Dominion Force or any force of a government which was allied to the Government of the Union during that war.

3.1.3 **Relevant Provisions**

3.1.3.1 **Section 2- Payment of social pension**

The Minister may, subject to the provisions of this Act, in consultation with the Minister of Finance, out of moneys appropriated by the Ciskeian Legislative Assembly for that purpose, pay—

- (a) to aged, blind and disabled persons and war veterans old age pensions, blind persons’ pensions, disability pensions and veterans’ pensions, respectively;

(b) to such persons additional and supplementary allowances;

3.1.3.2 **Section 3 - Persons entitled to social pensions.**

Subject to the provisions of this Act, any person shall be entitled to the appropriate social pension if he satisfies the Secretary—

(a) that he is an aged, blind or disabled person or a war veteran; and;

(b) that he is resident in the Ciskei at the time of his application for a social pension.

3.2 **SOCIAL PENSIONS ACT NO. 40 OF 1978 - ASSENTED TO 15 AUGUST, 1979, DATE OF COMMENCEMENT: 2 JANUARY, 1980.**

3.2.1 **General Note**

In terms of Proclamation No. 77 of 30 June, 1999, the administration of Act No. 40 of 1978 has been assigned to this Province.

3.2.2 **Objectives**

The objectives of the Act are to consolidate and amend the laws relating to pensions and allowances for aged, blind and disabled persons and war veterans; and to provide for incidental matters.

3.2.3 Relevant Definitions

“Social pension” means an old age pension, a blind person’s pension, a disability pension, a veteran’s pension or an allowance;

“veteran’s pension” means a pension paid under section 2 to a war veteran;

“war veteran” means any person who has attained the age of sixty years or who is, owing to any physical or mental disability, unable to provide adequately for his maintenance, and —

- (a) who performed any military or naval service in South Africa during the Anglo-Boer War, 1899-1902, in any British Force or in any force of the former South African Republic or the former Republic of the Orange Free State; or
- (b) who performed duties in connection with the Zulu rebellion in 1906 in Natal as a member of a permanent or voluntary military unit; or
- (c) who performed any naval, military or air force service during the Great War of 1914-1920 as a member of any force of the former Union of South Africa or Great Britain;
- (d) who performed any naval, military or air force service during the war which commenced on the sixth day of September, 1939, as a member of the Union Defence Forces of the former Union of South Africa or, in the case of Union National at the time, as a member of any British or Dominion Force or any force of a

Government which was allied to the Government of the Union of South Africa during that war; or

- (e) who, while he was not a Union National, performed any naval, military or air force service during such last mentioned war as a

member of any British or Dominion Force and who is a citizen of Transkei on the date on which he applies for a veteran's pension; or

- (f) who, while he was not a Union National, performed any naval, military or air force service during such last-mentioned war as a member of any British or Dominion Force and who is a citizen of Transkei on the date on which he applies for a veteran's pension; or

- (g) who, while he was a member of the Defence Forces of the former Union of South Africa, signed an undertaking to serve in connection with the hostilities in Korea and who during such hostilities performed any naval, military or air force service on or after the date on which he had been detailed for duty in connection therewith.

3.2.4 **Relevant Provisions**

3.2.4.1 **Section 2 - Payment of Social Pensions.**

- (1) The Minister may, subject to the provisions of this Act, out of moneys appropriated by Parliament for that purpose, pay—

- (a) to aged, blind and disabled persons and war veterans old age pensions, blind persons' pensions, disability pensions and veterans' pensions, respectively;
 - (b) to such aged, blind and disabled persons and such veterans additional and supplementary allowances;
 - (c) to, or on behalf of, any person to whom such pension is paid and who has attained an age determined by the Minister for the purpose or is in such a physical or mental condition that he requires the regular attendance of any person, an attendant's allowance.
- (2) The amount of any social pension (other than an allowance) payable in terms of this Act shall be calculated at the rate of twelve rand per annum.
- (3) The amount of any allowance payable to a pensioner in addition to the amount referred to in subsection (2), shall be calculated at a rate to be determined from time to time by the President by proclamation in the *Government Gazette*.
- (4) Any pension or allowance which was payable to any pensioner immediately before the commencement of this Act, shall, subject to the provisions of this Act, continue to be payable and the amount of any such allowance shall be deemed to have been calculated at a rate determined in terms of subsection (3).

Section 3 - Persons entitled to Social Pensions

- (1) Subject to the provisions of this Act, any person shall be entitled to the appropriate social pension if he satisfies the Secretary—
 - (a) that he is an aged, blind or disabled person or a war veteran; and
 - (b) that he is resident in Transkei at the time of his application for a social pension; and
 - (c)(i) that he is a citizen of Transkei; or
 - (ii) that he has resided in Transkei for a period of five years immediately preceding the date of such application and that he is allowed by or in terms of any provision of any law relating to the control of aliens to be in Transkei for the purpose of residing permanently therein or that he is exempted from such provision of such law.
- (2) If a pensioner is at any time compulsorily detained and maintained at the public expense in a leper institution, mental hospital, prison or other state institution, no social pension shall be payable to him from the first day of the month immediately following the month in which his detention and maintenance therein commences to the last day of the month immediately preceding the month in which he ceases to be so detained and maintained.
- (3) The payment of a social pension to any pensioner who ceases to be domiciled or resident in Transkei may, with the consent of the Secretary, be continued under such conditions as he may determine.

- (4) No social pension shall be paid under this Act to any person who is already in receipt of a pension under any law.

4. LIMPOPO PROVINCE

4.1 NORTHERN PROVINCE WELFARE SERVICES ACT NO. 6 OF 1998

4.1.1 Objectives of Act

To consolidate the laws relating to welfare services facilities and to provide for matters incidental thereto.

4.1.2 Relevant Definitions

“administration” means the Northern Provincial Administration including the Government of the Northern Province;

“board” means a welfare services board constituted in terms of section 11;

“Department” means the department responsible for welfare in the province;

“district manager” means a manager referred to in section 4;

“Member” means the Member of the Executive Council who is responsible for Welfare;

“Private Welfare facility” means a welfare service or facility which is not a welfare services facility of which the Northern Provincial Government (including the Administration) nor a local government is the owner nor which is managed by the Provincial Government or a local government;

“private practitioner” means—

- (a) a practitioner who is not in the full time service of the Provincial Government; or
- (b) a social worker who is not the holder of a teaching appointment in terms of section 42 (1) or section 43 or in terms of section 45;

“Provincial referral welfare facility” means a facility designated as such by the Member in terms of section 2 (3) (c);

“Regional referral welfare facility” means a facility designated as such by the Member in terms of section 2 (3) (b);

“resident” means a person who is permanently or temporarily institutionalised at any welfare services facility;

“treatment” includes the preventative provision of—

- (a) food and accommodation;
- (b) nursing care, and

- (c) medical, surgical, obstetric, dental, therapeutic or rehabilitative treatment;
- (d) diagnostic procedures;
- (e) counselling;

“**care**” means to provide for and look after the well-being of a resident;

“**service**” includes the provision of assistance or benefit to—

- (a) the aged;
- (b) the disabled;
- (c) abandoned children and orphans;
- (d) youth at risk;
- (e) persons with substance dependence; and
- (f) any other person in need.

4.1.3 **Relevant Provisions**

4.1.3.1 **Section 2 - Establishment and organisation of welfare services.**

- (2) The member may establish and maintain welfare facilities and services within districts referred to in subsection (1) including—
 - (a) district social work;
 - (b) district pension services;
 - (c) crèches;
 - (d) places of safety;

- (e) secure care centre;
 - (f) old age homes;
 - (g) chronic care institutions;
 - (h) community development support programmes;
 - (i) probation service;
 - (j) children's home.
- (3) The Member may designate identified welfare facilities to serve as—
- (a) district welfare facilities;
 - (b) Regional referral welfare facilities;
 - (c) Provincial referral welfare facilities.

4.1.3.2 **Section 34 - Manager's duty to admit clients.**

Subject to the provisions of section 35, every manager must admit for care at or in any welfare facility in his or her charge, so far as adequate and appropriate accommodation is therein available, persons suffering from or subject to any of the disease, injuries or conditions for the treatment of which such welfare facility is established.

4.1.3.3 **Section 35 - Order of admission of residents.**

All persons shall be admitted into a welfare facility in accordance with the urgency of their need for care, as determined by the manager on duty or such other officer as may be authorised to act on his or her behalf and in such order as such manager or other officer may direct.

4.1.3.4 **Section 36 - Care of residents.**

- (1) Any welfare facility shall ensure that the physical, mental and social wellbeing of all clients and residents are provided for.
- (2) All institutions providing residential care shall ensure the provision of curative and rehabilitative services in addition to accommodation board and lodging.
- (3) All welfare facilities and institutions including private organisations receiving grant-in-aid may return residents back into their communities or origin through the establishment of community services or networking with other organisations and services.

4.1.3.5 Section 37 - Regulations.

- (1) The Member may make regulations on any of the following matters:
 - (a) the admission, care, maintenance or discharge of residents;
 - (b) prescribing the fees for the care of a person in a welfare facility whether as a resident or as a client;
 - (c) the maintenance of order, discipline, decency and cleanliness among the residents of any welfare service or facility;
 - (d) prescribing the duties and privileges of private practitioners and the circumstances under which such practitioners may attend or have access to residents in

welfare facilities or have access to the case records and the results of any investigation relating to a resident who at the time of his or her admission to a provincial welfare facility was the patient of such practitioner.

- (2) In making any regulation the Member may make different regulations in respect of different welfare facilities.

5. MPUMALANGA

5.1 MPUMALANGA SOCIAL ASSISTANCE ACT NO. 5 OF 2000

5.1.1 Objectives

To provide for the rendering of social assistance to persons and welfare organisations in the Province; and to provide for matters connected therewith.

5.1.2 Relevant Definitions

“grant” means a social grant, a grant-in-aid, a supplementary grant, a child support grant, a foster child grant or a care-dependency grant;

“grant-in-aid” means a grant made in terms of section 2 (b);

“Province” means the Province of Mpumalanga referred to in section 103 (1) (e) of the Constitution;

“social assistance” means a social grant, a supplementary grant, a grant-in-aid, a foster child grant, a child-support grant, a care-dependency grant, or a financial award granted under this Act;

“social grant” means a grant made in terms of section 2 (a);

“social relief of distress” means social relief of distress as defined in section 15 of the Fund-raising Act, 1978 (Act No. 107 of 1978);

“supplementary grant” means a grant made in terms of section 2 (c);

“war veteran” means any person who has attained the age of 60 years or who is, owing to any physical or mental disability, unable to provide for his or her maintenance, and—

- (a) who performed any naval, military or air force service during the Great War of 1914-1918 as a member of any Union of British Force or who was a member of the protesting burgher forces during the period September 1914 to February 1915; or
- (b) who performed any naval, military or air force service during the war which commenced on 6 September 1939, as a member of the Union Defence Forces or, in the case

of a Union national as a member of any British or Dominion

Force or any force of a government which was allied to the Government of the Union during that war; or

(c) who, while he or she was not a Union national, performed any naval, military or air force service during such last-mentioned war as a member of any British or Dominion Force and who is a South African citizen on the date on which he or she applies for a veteran's pension;

or

(d) who, while he or she was a member of the Union Defence Forces, signed an undertaking to serve in connection with the hostilities in Korea, and who during such hostilities performed any naval, military or air force service on or after the date on which he or she had been detained for duty in connection therewith;

“welfare organisation” means—

(a) a welfare organisation registered under section 13 (1) of the National Welfare Act, 1978 (Act No. 100 of 1978);

(b) an organisation not so registered and which renders social welfare services for non-profitable purposes.

5.1.3 **Relevant Sections**

5.1.3.1 **Section 2 - Payment of grants.**

The MEC shall, subject to the provisions of this Act and with the concurrence of the responsible Member, out of moneys appropriated by the Provincial Legislature for that purpose and with due regard to section 16 (2) of the Social Assistance Act, 1992, make—

- (a) social grants to aged and disabled persons and to war veterans;
- (b) in addition to a social grant, a grant-in-aid to or on behalf of any person referred to in paragraph (a) who is in such a physical or mental condition that he or she requires regular attendance by any person;
- (c) in addition to social grants and grants-in-aid, supplementary grants to war veterans;

5.1.3.2 **Section 3 - Social grants.**

Subject to the provisions of this Act, any person shall be entitled to the appropriate social grant if that person satisfies the Head of Department that he or she—

- (a) is an aged person, a disabled person or a war veteran;
- (b) is resident in the Province at the time of the application for the grant in question;
- (c) is a South African citizen; and
- (d) complies with the prescribed conditions.

6. MPUMALANGA, NORTH WEST PROVINCE, NORTHERN CAPE, WESTERN CAPE

6.1 AGED PERSONS ACT NO. 81 OF 1967

6.1.1 Relevant Sections

Section 7 - Persons entitled to old age pension.

- (4) No pension shall be paid under this Act to any person in receipt of a pension or an allowance under the Blind Persons Act, 1962 (Act No. 39 of 1962), the War Veterans' Pensions Act, 1962 (Act No. 40 of 1962), or the Disability Grants Act, 1962 (Act No. 41 of 1962).

7. NORTH WEST PROVINCE

7.1 BOPHUTHATSWANA SOCIAL PENSIONS ACT NO. 18 OF 1978

7.1.1 Objectives of Act

To provide for pensions and allowances for aged, blind and disabled persons and war veterans in Bophuthatswana; and to provide for incidental matters.

7.1.2 Relevant Definitions

“aged person” means any person who in the case of a male, has attained the age of sixty-five years and, in the case of a female, has attained the age of sixty years;

“allowance” means any allowance paid under section 2 to or on behalf of a pensioner;

“Bophuthatswana” means the Republic of Bophuthatswana;

“Social pension” means an old age pension, a blind person’s pension, a disability pension, a veteran’s pension or an allowance;

“veteran’s pension” means a pension paid under section 2 to a war veteran;

“war veteran” means any person who has attained the age of sixty years who is, owing to any physical or mental disability, unable to provide adequately for his maintenance, and—

- (a) who performed any military or naval service in South Africa during the Anglo Boer War, 1899-1902, in any British Force or in any force of the former South African Republic or the former Republic of the Orange Free State; or
- (b) who performed duties in connection with the Zulu rebellion in 1906 in Natal as a member of a permanent or voluntary military unit; or
- (c) who performed any naval, military or air force service during the Great War of 1914-1920 as a member of any Union of South Africa or British Force or who was a

member of the protesting burgher forces during the period September, 1914, to February, 1915; or

- (d) who performed any naval, military or air force service during the war which commenced on the sixth day of September, 1939, as a member of the Union of South Africa Defence Forces or, in the case of a Union of South Africa National, as a member of any British or Dominion Force or any force of a government which was allied to the Government of the Union of South Africa during that war; or
- (e) who, while he was not a Union of South Africa National, performed any naval, military or air force service during last-mentioned war as a member of any British or Dominion Force and who is a citizen of Bophuthatswana on the date on which he applies for a veteran's pension; or
- (f) who, while he was a member of the Union of South Africa Defence Forces, signed an undertaking to serve in connection with the hostilities in Korea and who during such hostilities performed any naval, military or air force service on or after the date on which he had been detailed for duty in connection therewith.

Relevant Provisions

Section 2 - Payment of social pensions.

The Minister may, subject to the provisions of this Act, in consultation with the Minister of Finance and out of moneys appropriated by the National Assembly for the purpose, pay—

- (a) to the aged, blind and disabled persons and war veterans, old age pensions, blind persons' pensions, disability pensions and veterans' pensions, respectively;
- (b) to such persons additional and supplementary allowances; and
- (c) to or on behalf of any person to whom such pension is paid and who has attained an age determined by the Minister for this purpose or is in such a physical or mental condition that he requires regular attendance of any person, an attendant's allowance.

7.1.3.2 **Section 3 - Persons entitled to social pensions.**

Subject to the provisions of this Act, any person shall be entitled to the appropriate social pension if he satisfies the Secretary—

- (a) that he is an aged, blind or disabled person or a war veteran; and
- (b) that he is resident in Bophuthatswana at the time of his application for a social pension; and
- (c)(i) that he is a citizen of Bophuthatswana; or
- (ii) that he has lawfully resided in the Republic of Bophuthatswana for the period of five years immediately preceding the date of such application.

SECTION E

Regulations, Ordinances & Bylaws

This section details the results of research conducted in relation to regulations, ordinances, notices and bylaws pertinent to war veterans and ex-combatants at a national, provincial and local level. Cognisance must be taken of the fact that the legal standing and entitlements of “war veterans” are issues that date back to the 1900’s with the result that the validity of many pieces of legislation, regulations, ordinances etc may not have been tested against the current constitutional framework and may not be applied in practice but are mentioned for purposes of this memorandum. In addition, as a result of the nature of the tiers of government, complete uniformity does not exist in the legislation enacted by the Provincial Legislatures in relation to social welfare. Mention is therefore made of regulations, ordinances, bylaws insofar as they are applicable.

PART A

NATIONAL REGULATIONS, ORDINANCES

1. GNR.750 OF 24 APRIL 2001: REGULATIONS ON MILITARY VETERANS' AFFAIRS, 2001

1.1 General Note

The Minister of Defence has under section 16 of the Military Veterans' Affairs Act, 1999 (Act No. 17 of 1999), made the regulations in the Schedule.

1.2 Relevant Regulations

1.2.1 Regulation 2 - Requirements and conditions in respect of dependants of military veterans

A dependant must comply with the following further requirements and conditions as envisaged in section 1 (v) (c) of the Act:

- (a) The person must be wholly or partially financially or otherwise dependant upon the relevant military veteran and must be a member of the household of that military veteran or, where the military veteran is deceased, that person must remain a member of the household after such decease; and

- (b) a person who claims that he or she is a dependent child or spouse of a military veteran must have qualified as such in terms of any provision of a law relating to the South African National Defence Force and dealing with dependants of members of that Force and which applied to the military veteran immediately prior to the date on which the military veteran became a military veteran or, if the person is born or is legally adopted or becomes a spouse, as the case may be, on or after such date, would have qualified as such had the person been born or legally adopted, or become a spouse, before such date.

1.2.2 Regulation 3 - Format and requirements of development programmes.

- (1) All development programmes which the Office formulates in terms of the Act must—
 - (b) be drafted in a systematic logical sequence and must at least contain—
 - (i) an introduction concisely summarising the military veterans' affairs, particularly the entitlements (if any), dealt within the programme, with reference to all policy decisions and relevant statutory provisions or administrative practices dealing with the matter;
 - (ii) a statement of the needs, disparities, inequalities or discriminatory aspects, if any, pertaining to the current administrative or statutory regulation of the military veterans' affairs to be dealt with; and

- (iii) a recommendation, if any, of those administrative or legislative steps to be taken to address, alleviate or resolve the current situation contemplated in subparagraph (ii) above, and a suggested time-frame for the carrying out thereof.
- (2) For the purpose of this regulation, programmes, in connection with military veterans' affairs, include at least—
 - (a) reparation programmes, with reference to entitlements, income support and housing assistance;
 - (b) health care programmes, with reference to disablements, disabilities, injuries and illnesses, medical care, rehabilitation, and aged, retirement and general health care;
 - (c) occupational programmes, including counselling, career assessment, vocational support, re-education, training and funding assistance as regards resettlement and employment provisioning; and
 - (d) military heritage programmes.

3. GNR.418 OF 31 MARCH 1998: REGULATIONS REGARDING GRANTS AND FINANCIAL AWARDS TO WELFARE ORGANISATIONS AND TO PERSONS IN NEED OF SOCIAL RELIEF OF DISTRESS

3.1 Relevant Definitions

“**social relief of distress**” means the alleviation of the need of persons by means of the temporary and immediate rendering of material assistance to them;

3.2 Relevant Regulation

3.2.1 Regulation 2 - Persons eligible for social grants.

- (1) A person shall be eligible for a social grant only if, in addition to being an aged person, a disabled person or a war veteran—
 - (a) he or she and his or her spouse pass the means test as prescribed in regulation 12;
 - (b) he or she does not already receive a social grant; and
 - (c) he or she is not maintained in one of the following institutions run by the State—
 - (i) A prison;
 - (ii) a State psychiatric hospital;
 - (iii) a State home for the aged;
 - (iv) a care and treatment centre; or
 - (v) a treatment centre for drug dependants.

3.2.2 Regulation 6 -Supplementary grants to war veterans

A supplementary amount which may from time to time be determined by the Minister by notice in the *Gazette* shall be paid to a war veteran in addition to a social grant.

3.2.3 Regulation 7 -Grant-in-aid.

- (1) If a person to whom a social grant was awarded requires full-time attendance by another person owing to his or her physical or mental condition, an application may be made on a form determined by the Director-General for an amount which may from time to time be determined by the Minister by notice in the *Gazette*.
- (2) The Director-General shall, on the conditions and from a date he or she determines, award a grant-in-aid: Provided that such grant shall not be payable where a subsidy is payable by the State for the housing and care of such beneficiary to any home for the aged or other similar institution.

4. GNR.1505 OF 16 OCTOBER 2003: INTELLIGENCE SERVICES REGULATIONS, 2003 - INTELLIGENCE SERVICES ACT NO. 65 OF 2002. CHAPTER XXIII VETERANS ASSOCIATION

4.1 Objectives

4.1.1 Regulation 1 -Purpose

The purpose of this Chapter is to provide a regulatory framework for the formation of a Veterans Association for former members who would like to serve the Association.

4.2 Relevant Regulations

4.2.1 Regulation 2- Application of the regulation

- (1) The formation of a Veterans Association must be according to the “Intelligence Officer for Life” principle.
- (2) The Veterans Association must represent the interest of its members at national level.
- (3) The Veterans Association, the Intelligence Services and the Academy must establish and maintain a close relationship with each other.
- (4) The Veterans Association must promote comradeship and social interest among the members of the Association.
- (5) The Veterans Association may not discriminate against any member of the Association on one or more grounds, including race, gender, sex, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV-status, conscience, belief, political opinion, culture, and language.

5. GN 151 OF 28 JANUARY 2004: REGULATIONS REGARDING TELEVISION LICENCE FEES. BROADCASTING ACT NO. 4 OF 1999

5.1 Relevant Provisions

5.2.1 Section 5

The following persons may apply to the Corporation for a concessionary domestic licence:

- (1) A person who is entitled to and is in receipt of a social grant for himself or herself from the State by virtue of being an aged or a disabled person or a war veteran

as defined in the Social Assistance Act, 1992 (Act No. 59 of 1992).

6. GNR.162 OF 22 FEBRUARY 2005: REGULATIONS IN TERMS OF THE SOCIAL ASSISTANCE ACT, 2004 (ACT NO. 13 OF 2004) - (GOVERNMENT GAZETTE NO. 27316)

6.1 Relevant Regulations

6.1.1 Regulation 2- Payment of grants

The Minister shall, subject to the provisions of this Act and with the concurrence of the Minister of Finance, out of moneys appropriated by the Provincial Legislature concerned for that purpose, make—

- (a) social grants to aged and disabled persons and to war veterans;
- (b) in addition to a social grant, a grant-in-aid to or on behalf of any person referred to in paragraph (a) who is in such a physical or mental condition that he requires regular attendance by any person;
- (c) in addition to social grants and grants-in-aid, supplementary grants to war veterans;

6.1.2 Regulation 3- Social grants

Subject to the provisions of this Act, any person shall be entitled to the appropriate social grant if he satisfies the Director-General that he—

- (a) is an aged or disabled person or a war veteran;
- (b) is resident in the Republic at the time of the application in question;
- (c) is a South African citizen; and
- (d) complies with the prescribed conditions.

PART B

PROVINCIAL AND LOCAL GOVERNMENT ORDINANCES, REGULATIONS AND BYLAWS

NB. The contents of this section relate to war veterans as no reference to ex-combatants was found in research conducted. Insofar as reference to provinces is concerned, where no reference is made to a province, research conducted revealed that no regulations, ordinances, bylaws and notices were obtained.

1. EASTERN CAPE, NORTHERN CAPE

1.1 MUNICIPAL ORDINANCE NO. 20 OF 1974

1.1.1 Objective

To consolidate and amend the law relating to municipalities, village management boards and local boards.

1.1.2 Relevant Provisions

Section 81 - Grants-in-aid in respect of rates

- (1) Subject to the provisions of subsection (2), a council may make a grant-in-aid in respect of rates levied on the following classes of ratable property:
 - (i) ratable property, registered in the name of a trustee or trustees or any organisation, which is maintained for the welfare of as defined in section 1 of the Social Aid Act (House of Assembly), 1989 (Act 37 of 1989), and their families;
- (2) A grant-in-aid made under subsection (1) shall not exceed the amount which is payable as rate in any financial year in respect of the ratable property concerned.

2. KWAZULU NATAL

2.1 PROVINCIAL NOTICE NO. 425 OF 1997 UNDER KWAZULU-NATAL CEMETERIES AND CREMATORIA ACT NO 12 OF 1996

2.1.1 Development and Services Board

The Development and Services Board, acting under the powers contained in section 27 of the KwaZulu-Natal Cemeteries and Crematoria Act, 1996 (Act No. 12 of 1996) published the charges leviable by and payable to the

Board for the use of cemeteries in areas under the control of the said Board as set out in Schedule 1.

Charges for the use of cemeteries in areas under the control of the Development and Services Board

Rebates are provided to war veterans provided that the deceased person was immediately before his death a resident in the area under the control of the Board for a continuous period exceeding three months) (section 27 (1) (a) (i) of the KwaZulu-Natal Cemeteries and Crematoria Act, 1996)

2.2. GOVERNMENT-AIDED SCHOOL TEACHERS' PENSION (MILITARY SERVICE) ORDINANCE NO. 4 OF 1941; ASSENTED TO BY THE GOVERNOR-GENERAL IN COUNCIL ON 28 MAY, 1941 AND COMMENCED ON 12 JUNE 1941.

2.2.1 General Note

In terms of Proclamation No. 107 of 17 June, 1994, the administration of Ordinance No. 4 of 1941 had been assigned to this Province. **These regulations are not applicable currently as it was specific to the Military service conducted by teachers in the union war in the period that this ordinance was created.**

2.2.2 Objectives

To make special provision in respect of pensions in the cases of certain teachers in Government-Aided and other schools rendering military service during the present war.

2.2.3 Relevant Provisions

2.2.3.1 Section 1

When military service of Government-Aided school teachers may count for pension purposes.

- (1) If any person employed as a teacher or head teacher in a Government-Aided or other school was registered as such in terms of section 3 of Act No. 31 of 1910 (Natal) entitled "Act to provide pensions for teachers in Government-aided schools," and left his employment in that school in order to render military service during the war in which the Union of South Africa is presently engaged, the time spent by him in military service shall, notwithstanding anything to the contrary contained in the said Act, be reckoned as part of his service as a teacher for pension purposes in terms of the said Act and the proviso to section 2 of the Government-Aided School Teachers' Pension Repeal Ordinance, 1929 (Ordinance No. 22 of 1929); provided that such person shall within six months after his discharge from military service or any extension thereof which the Administrator may in his discretion authorise, resume service as a teacher in a Government-Aided or other school referred to in the aforesaid Act, unless during the period of his military service he shall have become eligible for a pension in terms of the said Act and Ordinance.

- (2) For the purposes of this Ordinance "military service" means service in any military, air or naval force of the Union of South Africa including any other defence force

or service established by or under any law of the Union, or in any military, air, or naval force of any other State-Member of the British Commonwealth of Nations.

2.3 **P.N. 446 OF 1981: MUNICIPAL GOLF COURSE BYLAWS**

South African Citizens that are war veteran pensioners pay special green fees as indicated in the Tariff of Charges. The fees are as follows:

- a. R 19-00 for a 18-hole course at Windsor Park or Papwa Sewgolum (excluding Saturdays, Sundays and public holidays)
- b. R 11,00 for a 9-hole course at Windsor Park or Papwa Sewgolum up to 10h00 (excluding Saturdays, Sundays and public holidays)
- c. R7,00 for a 9-hole Mashie course at Windsor Park (excluding Saturdays, Sundays and public holidays)

3. **LIMPOPO PROVINCE, MPUMALANGA, NORTHERN CAPE**

3.1 **LOCAL AUTHORITIES RATING ORDINANCE NO. 11 OF 1977**

3.1.1 **General Note**

In terms of Proclamation No. 114 of 17 June, 1994, the administration of Ordinance No. 11 of 1977 has been assigned to this Province.

3.1.2 **Objectives**

To provide for the levying of rates on rateable property by local authorities and for matters incidental thereto.

3.1.3 **Relevant Provisions**

Section 32A - Grants-in-aid in respect of rates.

- (1) Subject to the provisions of subsections (2) and (3), a local authority may, by a majority decision, grant a grant-in-aid in respect of the rate of rates levied on the following classes of rateable properties:
 - (d) rateable property registered in the name of a welfare organisation registered in terms of the National Welfare Act, 1978 (Act No. 100 of 1978);
 - (j) rateable property registered in the name of a trustee or trustees or any organisation and which is being maintain for the welfare of war veterans as defined in section 1 of the Social Aid Act (House of Assembly), 1989 (Act No. 37 of 1989), and their families;
- (2) A grant-in-aid shall not be granted under subsection (1) in respect of rateable property where a rebate under section 21 (4) in respect of the class rateable property concerned, has been granted.
- (3) A grant-in-aid granted under subsection (1) shall not exceed the amount which may be levied as a rate in any financial year in respect of the rateable property concerned.

4. **NORTHERN CAPE**

4.1 **DIVISIONAL COUNCILS ORDINANCE NO. 18 OF 1976**

4.1.1 **Objectives of Ordinance**

To consolidate and amend the law relating to divisional councils.

4.1.2 **Relevant Provisions**

4.1.2.1 **Section 79 - Grants-in-aid in respect of rates**

- (1) Subject to the provisions of subsection (2), a council may make a grant-in-aid in respect of rates levied on the following classes of ratable property:
 - (i) ratable property, registered in the name of a trustee or trustees or any organisation, which is maintained for the welfare of war veterans as defined in section 1 of the Social Aid Act (House of Assembly), 1989 (Act 37 of 1989), and their families;
- (2) A grant-in-aid made under subsection (1) shall not exceed the amount which is payable as rate in any financial year in respect of the ratable property concerned.

4.2 **LOCAL AUTHORITIES (DEVELOPMENT ACCORDING TO COMMUNITY) ORDINANCE NO. 6 OF 1963**

4.2.2 **Relevant Provisions**

4.2.2.1 **Section 81 - Grants-in-aid in respect of rates.**

- (1) Subject to the provisions of subsection (2), a council may make a grant-in-aid in respect of rates levied on the following classes of ratable property:
 - (i) ratable property, registered in the name of a trustee or trustees or any organisation, which is maintained for the welfare of war veterans defined in section 1 of the Social Aid Act (House of Assembly), 1989 (Act 37 of 1989), and their families;
- (2) A grant-in-aid made under subsection (1) shall not exceed the amount which is payable as rate in any financial year in respect of the ratable property concerned.

5. **CAPE, FREE STATE**

5.1 **MUNICIPAL ORDINANCE CAPE 20 OF 1974**

5.1.1 **General Note**

In terms of Proclamation No. 111 of 17 June, 1994, the administration of Ordinance No. 20 of 1974 has been assigned to this Province.

5.1.2 **Objectives of Ordinance**

To consolidate and amend the law relating to municipalities, village management boards and local boards.

5.1.3 **Relevant Provisions**

Section 81(1)(i) - Grants-in-aid in respect of rates.

- (1) Subject to the provisions of subsection (2), a council may make a grant-in-aid in respect of rates levied on the following classes of ratable property:
 - (i) ratable property, registered in the name of a trustee or trustees or any organisation, which is maintained for the welfare of war veterans as defined in section 1 of the Social Aid Act (House of Assembly), 1989 (Act 37 of 1989), and their families;

6. **MPUMALANGA**

GENERAL NOTICE NO. 166 OF 2006 IN TERMS OF SECTION 41 (1) (C) OF THE NATIONAL HEALTH ACT, 2003 (ACT 61 OF 2003) - REGULATIONS UNDER ACT NO. 61 OF 2003. HOSPITAL FEES MANUAL

6.1.1 **General Note**

The Mpumalanga Province's amended Hospital Fees Manual in the schedule, is published for general information in respect of public health facilities in the province.

6.1.2 **Definitions**

“HO PATIENT” are patients qualifying for full subsidization:
HO

6.1.3 Categories of Hospital Patients

6.1.3.1 Non-Private Patients

- Hospital patients are assessed according to family income (means test), and placed into four distinct groups based on proven income. Annexure A and B should be completed in this regard on the **first visit of every patient**, and reviewed annually in October.
- Dependents are not to be taken into account for establishing the groupings and persons are only to be grouped in terms of family units. Family units include a married couple, single parent or a single person with a dependent as defined in the Income Tax Act.
- Social pensioners, other than those who may be defined as externally funded (private), who furnish proof that they receive social pensions/allowances are automatically classified as H0 patients.
- Social pensioners include recipients of an old age pension, a war veteran’s pension, pension for the blind, disability grant, maintenance allowance, child support grant, or a family allowance.

- Should social pensioners also belong to a medical scheme, they will be regarded as full paying patients.

7. EASTERN CAPE, FREE STATE, GAUTENG, NORTHERN CAPE, NORTH WEST, WESTERN CAPE, LIMPOPO PROVINCE

Our research revealed no regulations in relation to war veterans, ex combatants and political detainees for these provinces save for regulations emanating from the Social Assistance Act 59 of 1992 which are detailed under national regulations above.

SECTION F

Analysis and Conclusion

In analysing the legislation, regulations, ordinances etc, the overarching requirement was to ascertain the status of war veterans, policies and legislation applicable to the same. The necessity for reform in relation to the manner in which war veterans have been acknowledged, integrated, healed, and financially cared for is well recognised in welfare legislation and more importantly the current Constitution of the Republic of South Africa. The development of mechanisms to add tangibility to legislation already enacted is a necessity in order to give due credence to the welfare legislation.

This analysis takes the following format:

- PART A - A brief overview of social security in South Africa.
- PART B - Defining a war veteran, ex-combatant, political detainee.
- PART C- The aspects of social welfare that is addressed by current national legislation; provincial legislation and regulations, ordinances and bylaws.
- PART D-The aspects of social welfare that is not addressed by current legislation.
- PART E- Conclusion

PART A

1. SOCIAL SECURITY SYSTEM IN SOUTH AFRICA

South Africa's social security system is characterised by a patchwork of fragmented departments with a lack of coherence in institutional arrangements, functions and establishment of social security schemes. This system has been formal employment-oriented (in particular as far as social insurance schemes and retirement provision are concerned) and restricts social welfare and assistance to categories of people through the adoption of a "means-test" approach. Presently social security, in particular, the need to ensure effective and efficient provision and service delivery to an increasingly larger circle of war veterans is on the political agenda. This was an issue that was raised in the 52nd African National Congress (ANC) Conference in Polokwane this year.

1.1 52nd ANC CONFERENCE – RESOLUTION IN RELATION TO VETERANS AND MK VETERANS

Resolutions emanating from the Recent emphasis was placed on the need to increase social security for veterans by the African National Congress in its 52nd conference in Polokwane in the form of resolutions. These resolutions were the following:

1.1.1 VETERANS

36. Conference notes the decisions of the Bloemfontein and Mafikeng Conferences to establish a Veterans Commission in the Office of the President and of Provincial Chairpersons Offices with a view to facilitate the full integration of all

veterans, ex-combatants and ex-prisoners into the mainstream political life of the ANC.

37. Conference agrees that veterans are comrades of advanced age, who have given unbroken and uninterrupted service to the movement and the people of South Africa over several decades of struggle. These comrades embody the organisational experience and memory of the movement and the people's struggle for freedom and democracy, and they can and should play an important role in reinforcing the traditions, history, values and unity of the movement.

38. Conference thus further resolves:

- To establish the Veterans League of the ANC, finalising the constitution and uniform, to be fully functioning at all levels by the time of the Centenary anniversary. The ANC membership system should be redesigned so as to recognise veterans.
- Conference agreed that for this purpose, a veteran be defined as someone who is sixty years and above, and with 40 years of uninterrupted and unbroken service to the movement and the people of South Africa over several decades of struggle.
- A constitutional amendment will be done by this conference to give effect to the establishment of the

Veterans League as a constitutional structure of the ANC.”

1.1.2 MK VETERANS

110. All government departments must adopt programmes that are directed at reintegrating ex-combatants into society and provision of health insurance should also be addressed.

1.1.3 MILITARY VETERANS

It was noted that:

36. The ANC has discussed in the past and adopted resolutions to improve the conditions of life of military veterans, as well as other measures to address their situation, and given that these have not been implemented fully. Therefore resolves:
37. That the Ministry of Military Veterans be established as a matter of urgency.
38. That the Special Pension of Military Veterans be subjected to a specially crafted tax system.
39. That the Non-Statutory Force (NSF) pension should be redrafted to allow for the payment of a lump sum at the end of the person's pensionable age.
40. That military veterans and members of the SANDF travel on public transport in the same way as members of the South African Police Service are allowed to benefit from this scheme.
41. That the age limit of 35 years for beneficiaries of the Special Pension in terms of the relevant Act should be reviewed to include groups that were excluded on the basis of age.

42. That MKMVA must participate in the NEC Peace and Stability sub-committee at all levels.
43. That the Military Veterans Affairs Act, no 17 of 1999 must be amended with respect to, for example Section 3, Section 7 and other clauses, to enable full participation of the non-statutory forces.
44. That a transformed and all-embracing SANMVA should be the official representative body of all South African Military veterans as soon as the said Military Veterans Affairs Act has been amended.
45. That amended constitution of the SANMVA define the organisation as an administrator of all military veterans' projects, identify training areas and intervene on behalf of veterans for recognition of prior learning, training and skills qualifications acquired outside the SA borders.
46. That the Housing Ministry should reserve a certain percentage of RDP houses per province for military veterans.
47. That the possibility of the establishment of a special Medical Aid Scheme for military veterans be investigated.

1.1.4 ON EDUCATION

32. The overarching vision that informs ANC education policy is People's Education for People's Power.
33. Vulnerable children of veterans must be taken care of by the state.

1.1.5 ON HEALTH

56. There should be health cover for Veterans of the struggle.

1.1.6 ON HOUSING

69. There should be housing cover for Veterans of the struggle.

1.2 NATIONAL, PROVINCIAL AND LOCAL GOVERNMENT COMPETENCIES

Social welfare is presently the concurrent responsibility of the national and provincial Departments of Social Development. National Parliament has wide-ranging powers of legislation, except for the areas contained in Schedule 5 of the Constitution. However, section 44(2) of the same gives parliament the power, under certain circumstances, to pass legislation on a Schedule 5 matter. Schedule 4 delineates the functional areas of concurrent national and provincial legislative competence. Existing legislation, administered nationally, can also be assigned to provinces however in terms of Schedule 6, item 14, the assigned power must fall within the Schedule 4 or Schedule 5 category. (Cf the Welfare Laws Amendment Acts 106 of 1996 and 106 of 1997.)

Local government is also constitutionally vested with particular competencies in the area of social protection. It has to promote social and economic development, and a safe and healthy environment. (S 152(1)(c).)

S 153(a) states: "A municipality *must* structure its administration and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community")

1.2.1 The following social security-related matters contained in Schedule 4 (areas of concurrent competence) include:

- (a) education at all levels;
- (b) health services;
- (c) housing;
- (d) indigenous law, customary law and traditional leadership;
- (e) population development;
- (f) provincial public works programmes;
- (g) public transport and road traffic regulation; and
- (h) welfare services.

1.2.2 **The National Department of Social Development carries out the following functions** in conjunction with provincial governments and private sector role-players):

- (a) co-ordination;
- (b) national policy and planning;
- (c) norms and standards for social services, social security and facilities;
- (d) legislation;
- (e) marketing;
- (f) social welfare governance structures;
- (g) human resource development;
- (h) national programmes;

- (i) welfare funding;
- (j) national information system;
- (k) capacity and institution building in all tiers of government;
- (l) parliamentary liaison; and
- (m) international liaison.

1.2.3 The following functions are the responsibility of the provincial Departments of Social Development (in conjunction with the relevant governance structures):

- (a) social welfare services;
- (b) social welfare governance structures;
- (c) social security;

1.3 SOCIAL WELFARE

Social Welfare is defined as “an integrated and comprehensive system of social services, facilities programmes and social security to promote social development, social justice and the social functioning of people.” (*White Paper for Social Welfare Government Gazette 1108 GN 1108, 8 August 1997*)

Social welfare includes but is not restricted to social assistance, the payment of the social pensions, social grants, institutional and community care, and a range of essential services.

1.3.1 Social Grants

The Social Assistance Acts of 1992 and 2004 make provision for a number of social grants to be awarded to applicants who comply with the conditions of the Acts. These grants are administered by the Department of Social Development. Other social assistance services are administered by various other governmental departments e.g. the Department of Health in respect of primary health services. The social grants most extensively provided are the child support grant, the disability grant and the old-age grant for South African citizens which are all means tested. They do not require contribution as payments are made on the basis of an annual budgetary allocation.

1.3.2 Social assistance

The Social Assistance Acts 1992 and 2004 are important instruments, as they regulate the payment of social assistance grants and other relief measures. The state social assistance system allows for the provision of various kinds of social services (including in the area of institutional care) and the payment of social grants. Social assistance is rendered on a needs basis.

1.3.3 Health care and (private) pension arrangements

Health care for the bulk of the population is provided by the limited public measures in this area: free primary health care, as well as free hospital care for women with young children and the aged. For the rest, medical services are covered for a selected

part of the population by private schemes, which are increasingly subjected to regulation.

1.3.4 Workmen's compensation (employment-related injuries and diseases in terms of the Compensation for Occupational Injuries and Diseases Act 130 of 1993)

Presently different sets of legislation deal with this issue in and outside the mining sector, and it is administered by different government departments. On the level of preventative safety measures, the most significant Acts are the Occupational Health and Safety Act 85 of 1993 and the Mine Health and Safety Act, 29 of 1996 while protection against employment-related injuries and diseases is provided for by the Compensation for Occupational Injuries and Diseases Act 130 of 1993 and the Occupational Diseases in Mines and Works Act. 78 of 1973. There are several major differences between Occupational Diseases in Mines and Works Act benefits and compensation payable under the Compensation for Occupational Injuries and Diseases Act 130 of 1993. The result of these differences is that benefits under the Occupational Diseases in Mines and Works Act are generally inferior to those under the Compensation for Occupational Injuries and Diseases Act, although it offers free benefit examinations, which are not available under the Compensation for Occupational Injuries and Diseases Act.

1.3.4 **Unemployment insurance** -(Unemployment Insurance Act 63 of 2001)

Another system instituted for the protection of workers and their dependants made provision for coverage against temporary unemployment arising from termination of service, illness, maternity and adoption. This is a contribution based system by employees and prevents complete coverage for employment other than formal employment.

1.3.5 **Social insurance**

A non-employment based, social insurance scheme is the Road Accident Fund primarily funded from a compulsory fuel levy, this fund pays out compensation to a third party for any loss or damage suffered as a result of any bodily injuries or death caused by the negligent driving of motor vehicles. The current system of compensation can at most be described as social benefits with elements of insurance. Enormous financial and other problems experienced by the fund have led to numerous commissions of enquiry. A major revamping of the fund is expected. (Road Accident Fund Act 56 of 1996)

PART B

2. DEFINING A WAR VETERAN, EX-COMBATANT, POLITICAL DETAINEE

The words “war veteran” and “military veteran” can be used interchangeably. The definitions as per the various acts detailed in Section C & D and hereunder indicate that eligibility for status as a war veteran is based on service provided in various wars referred to in the legislation. It was resolved at the ANC conference in Polokwane that the Military Veterans Affairs Act, no 17 of 1999 must be amended with respect to, for example Section 3, Section 7 and other clauses, to enable full participation of the non-statutory forces.

2.1 “War Veterans” and “Military Veterans”

These are defined in the following national and provincial legislation :

- *Military Veterans Affairs Act No 17 Of 1999*

“military veteran” means any person who—

- (a) either voluntarily or under conscription or call-up served as a member of—
 - (i) the Union Defence Forces or any military force of a country allied to the former Union Government during the Great War of 1914 to

- 1918, World War II being the war which commenced on 6 September 1939, or the hostilities in Korea from 1950 to 1953; or
- (ii) the South African Defence Force or any defence force of a territory which prior to the commencement of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), enjoyed the status of an independent State in terms of a law of the Republic of South Africa; or
 - (iii) the South African National Defence Force, and has not been dishonourably discharged, is retired, or no longer serves in the South African National Defence Force and is a citizen of the Republic, and irrespective of whether any such service envisaged in subparagraph (i), (ii) or (iii) has been rendered in a permanent or in a part-time component or part-time capacity; or
- (b) is a “war veteran” as defined in section 1 of the Social Assistance Act, 1992 (Act No. 59 of 1992); or
 - (c) served as a member of any non-statutory force as defined in section 1 of the Demobilisation Act, 1996 (Act No. 99 of 1996); or
 - (d) belongs to any other prescribed category of military veterans;

- ***Social Assistance Act 13 Of 2004***

Section 11 - War veterans’ grant.

A person is, subject to section 5, eligible for a war veteran’s grant if he or she—

- (a) has attained the age of 60 years; or
- (b) owing to a physical or mental disability, is unable to provide for his or her maintenance, and—

- (i) performed any naval, military or air force service during the Great War of 1914-1918 as a member of any Union or British Force, or was a member of the protesting burgher forces during the period September 1914 to February 1915;
- (ii) performed any naval, military or air force service during the war which commenced on 6 September 1939 as or, in the case of a Union national, as a member of any British or Dominion Force or any force of a government which was allied to the Government of the Union during that war;
- (iii) while he or she was not a Union national, performed any naval, military or air force service during the war referred to in subparagraphs (i), (ii) or (iv) as a member of any British or Dominion Force and who is a South African citizen on the date on which he or she applies for a war veteran's pension; or
- (v) while he or she was a member of the Union Defence Forces, signed an undertaking to serve in connection with the hostilities in Korea and who during such hostilities performed any naval, military or air force service.

- ***Social Pensions Act No. 40 Of 1978***

“war veteran” means any person who has attained the age of sixty years or who is, owing to any physical or mental disability, unable to provide adequately for his maintenance, and —

- (a) who performed any military or naval service in South Africa during the Anglo-Boer War, 1899-1902, in any British Force or in any force of the former South African Republic or the former Republic of the Orange Free State; or

- (b) who performed duties in connection with the Zulu rebellion in 1906 in Natal as a member of a permanent or voluntary military unit; or
- (c) who performed any naval, military or air force service during the Great War of 1914-1920 as a member of any force of the former Union of South Africa or Great Britain;
- (d) who performed any naval, military or air force service during the war which commenced on the sixth day of September, 1939, as a member of the Union Defence Forces of the former Union of South Africa or, in the case of Union National at the time, as a member of any British or Dominion Force or any force of a Government which was allied to the Government of the Union of South Africa during that war; or
- (e) who, while he was not a Union National, performed any naval, military or air force service during such last mentioned war as a member of any British or Dominion Force and who is a citizen of Transkei on the date on which he applies for a veteran's pension; or
- (f) who, while he was not a Union National, performed any naval, military or air force service during such last-mentioned war as a member of any British or Dominion Force and who is a citizen of Transkei on the date on which he applies for a veteran's pension; or
- (g) who, while he was a member of the Defence Forces of the former Union of South Africa, signed an undertaking to serve in connection with the hostilities in Korea and who during such hostilities performed any naval, military or

air force service on or after the date on which he had been detailed for duty in connection therewith.

- *Social Assistance Act No. 59 Of 1992*

“war veteran” means any person who has attained the age of 60 years or who is, owing to any physical or mental disability, unable to provide for his maintenance, and—

- (a) who performed any military or naval service in South Africa during the Anglo-Boer War, 1899–1902, in any British Force or any force of the former South African Republic or the former Republic of the Orange Free State; or
- (b) who performed duties in connection with the Zulu rebellion in 1906 in Natal as a member of a permanent or voluntary military unit; or
- (c) who performed any naval, military or air force service during the Great War of 1914–1918 as a member of any Union or British Force or who was a member of the protesting burgher forces during the period September 1914 to February 1915; or
- (d) who performed any naval, military or air force service during the war which commenced on 6 September 1939 as a member of the Union Defence Forces or, in the case of a Union national, as a member of any British or Dominion Force or any force of a government which was allied to the Government of the Union during that war; or
- (e) who, while he was not a Union national, performed any naval, military or air force service during such last-mentioned war as a member of any British or Dominion Force and who is a South

African citizen on the date on which he applies for a veteran's pension; or

- (f) who, while he was a member of the Union Defence Forces, signed an undertaking to serve in connection with the hostilities in Korea and who during such hostilities performed any naval, military or air force service on or after the date on which he had been detailed for duty in connection therewith; and

- *Ciskeian Social Pensions Act 8 Of 1976*

“war veteran” means any person who has attained the age of sixty years or who is, owing to any physical or mental disability, unable to provide adequately for his maintenance, and—

- (a) who performed any naval, military or air force service during the Great War of 1914-1918 as a member of any Union or British Force or who was a member of the protesting burgher forces during the period September, 1914 to February, 1915; or
- (b) who performed any naval, military or air force service during the war which commenced on the sixth day of September, 1939, as a member of the Union Defence Forces, any British or Dominion Force or any force of a government which was allied to the Government of the Union during that war.

- *Bophuthatswana Social Pensions Act No. 18 Of 1978*

“war veteran” means any person who has attained the age of sixty years who is, owing to any physical or mental disability, unable to provide adequately for his maintenance, and—

- (a) who performed any military or naval service in South Africa during the Anglo Boer War, 1899-1902, in any British Force or in any force of the former South African Republic or the former Republic of the Orange Free State; or
- (b) who performed duties in connection with the Zulu rebellion in 1906 in Natal as a member of a permanent or voluntary military unit; or
- (c) who performed any naval, military or air force service during the Great War of 1914-1920 as a member of any Union of South Africa or British Force or who was a member of the protesting burgher forces during the period September, 1914, to February, 1915; or
- (d) who performed any naval, military or air force service during the war which commenced on the sixth day of September, 1939, as a member of the Union of South Africa Defence Forces or, in the case of a Union of South Africa National, as a member of any British or Dominion Force or any force of a government which was allied to the Government of the Union of South Africa during that war; or
- (e) who, while he was not a Union of South Africa National, performed any naval, military or air force service during last-mentioned war as a member of any British or Dominion Force and who is a citizen of Bophuthatswana on the date on which he applies for a veteran's pension; or
- (f) who, while he was a member of the Union of South Africa Defence Forces, signed an undertaking to serve in connection with the hostilities in Korea and who during such hostilities

performed any naval, military or air force service on or after the date on which he had been detailed for duty in connection therewith.

- *Mpumalanga Social Assistance Act No. 5 Of 2000*

“**war veteran**” means any person who has attained the age of 60 years or who is, owing to any physical or mental disability, unable to provide for his or her maintenance, and—

- (a) who performed any naval, military or air force service during the Great War of 1914-1918 as a member of any Union of British Force or who was a member of the protesting burgher forces during the period September 1914 to February 1915; or
- (b) who performed any naval, military or air force service during the war which commenced on 6 September 1939, as a member of the Union Defence Forces or, in the case of a Union national as a member of any British or Dominion Force or any force of a government which was allied to the Government of the Union during that war; or
- (c) who, while he or she was not a Union national, performed any naval, military or air force service during such last-mentioned war as a member of any British or Dominion Force and who is a South African citizen on the date on which he or she applies for a veteran’s pension; or
- (d) who, while he or she was a member of the Union Defence Forces, signed an undertaking to serve in connection with the hostilities in Korea, and who during such hostilities performed any naval, military or air force service on or after the date on

which he or she had been detained for duty in connection therewith;

2.2 **Ex-combatants and Political Detainees**

Research conducted reveals no legal definition to these terms. The ANC Conference did however indicate that all government departments must adopt programmes that are directed at reintegrating ex-combatants into society and provision of health insurance should also be addressed.

PART C

3.1 CURRENT LEGISLATION

3.1.1 Constitutional Imperatives

The constitution entrenches social security rights. In Chapter 2 (the bill of rights), the constitution introduces a constitutional imperative whereby the “progressive realisation” of the right to access to social security is compelled. The constitution grants to everyone “[t]he right to have access to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance” in section 27. It furthermore obliges the government to implement appropriate measures: “[t]he state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights”. Section 7(2) provides that the state must respect, protect, promote and fulfil the rights in the bill of rights. The 1997 White Paper for Social Welfare (*Government Gazette* 18166 GN 1108, 8 August 1997) confirmed that section 27 provides enforceable rights to citizens.

Social security is therefore a right of war veterans that are citizens of South Africa. The mechanisms for security and social welfare can be established progressively. The entrenchment of social security in a bill of rights notionally and conceptually constitutes an example of socio-economic rights protection which means that they are enforceable if not provided. Due to the nature of social security rights as socio-economic rights, they cannot be enforced by the courts without intruding upon

the areas covered by the legislature and/or the executive branch of government. However, these rights are in fact capable of enforcement where the legislature or executive can be ordered to take action (without necessarily prescribing the details of the action) or be requested to arrange for a more equal distribution. The constitutional court is specifically empowered to decide that parliament (or the president) has failed to comply with a constitutional duty. In re Certification of the Constitution of the RSA, 1996 1996 10 BCLR 1253 (CC) par 77; 1996 4 SA 744 (CC) it was indicated that courts have the power to enforce socio-economic rights and in particular the right to access to social security and other social security related rights. This may result in courts making orders which have direct implications for budgetary matters.

3.1.2 NATIONAL LEGISLATION

3.1.2.1 *Military Veterans Affairs Act No 17 Of 1999*

This act recognises the fundamental principles that relate to military veterans and gives credence to the sacrifices that veterans have made. Benefits in terms of the act are “means test” and age based which conflicts with the recognition of the sacrifices made as certain veterans may qualify for the social grants whilst others may not as a result of no entitlement based on the means test or age. It specifies that disablement constitutes reparation and is not a welfare benefit and that special consideration must be given that must benefit and relieve

military veterans who suffer from any physical or mental disability arising from military service rendered by them.

The intent is to identify disparities, inequalities or unfair discrimination as regards the entitlements of military veterans and their dependants, must be identified and, where possible, remedy them. It also recognises progressive realisation where all governmental entities must get involved with military veterans' affairs and co-operate with an Office for Military Veterans Affairs to improve the affairs of veterans within their budgets and resources. It is submitted that this might prove problematic on the basis that the lack of coherence may be perpetuated. Section 15 requires the Office to review, develop and co-ordinate policy regarding military veterans' affairs and report to the Minister on the monitoring of the execution of approved military veterans' policies by State departments and provincial executive authorities, and the rendering of inputs for required corrective action. Furthermore, it must research, define, investigate, evaluate and promote military veterans' affairs on an integrated basis and identify legislative or administrative disparities, inequalities or unfair discrimination regarding the entitlements and the needs of military veterans and their dependants in order to rectify such disparities, inequalities or unfair discrimination.

The existing legislation must be reviewed with a view to making new policy and promoting a consolidation of such legislation in order to provide for an integrated regulation of affairs of military veterans and their dependants. It is foreseen that

developmental programmes must be created and proposals submitted with recommendations to the relevant State departments and provincial executive authorities in connection with the development of military veterans' affairs. Consultation with the Department of Defence, and other State departments and provincial executive authorities, and all other persons, organisations or institutions who or which are concerned with military veterans' affairs, must be conducted. An survey ought to have been conducted subsequent to the enactment to identify all State-controlled and privately administered schemes or programmes dealing with any aspect of the affairs of military veterans with all data and information regarding all existing entitlements of military veterans and their dependants being collected and a data base being established for regular update.

Disparities, inequalities or unfair discrimination regarding the entitlements and needs of military veterans and their dependants which require rectification on a group or individual basis must be identified. Development programmes must be created for veterans and their dependants. Veterans will also have the opportunity through the office to make inputs, through the Department of Defence, in respect of policy and budgets of State and provincial administrations relating to military veterans' affairs.

This act provides a framework for the development of increased social welfare to veterans and is the foremost piece of legislation in this regard. It does however not detail extensively the type of development that must take place in relation to

veterans' affairs but paves the way for further development. The ANC conference in Polokwane made mention of specific schemes that must be prioritised for veterans and MK veterans including housing, education, changes to this act.

3.1.2.2 *Social Assistance Act 13 Of 2004*

This act makes provision for social grants and social assistance to war veterans in the form of a veterans' grant, social relief of distress and a grant in aid. It also specifies the qualification requirements for social grants. It is the most recent legislation in relation to social grants. It does not however provide for any other welfare necessary for veterans and only entitles veterans that are older than 60 years to obtain a grant unless there is physical or mental disability which renders the veteran unable to maintain himself. A grant-in-aid can only be applied for if a person is in such a physical or mental condition that he or she requires regular attendance by another person.

3.1.2.3 *Income Tax Act No. 58 Of 1962*

War pensions are exempt from taxation in terms of section 10 (1)(g).

3.1.2.3 *Advisory Board On Social Development Act No. 23 Of 2001*

The act provides for a national advisory structure in the social development sector i.e. the Advisory Board on Social Development with the aim of building and consolidating partnership between government and civil society. The Board

will identify, promote, monitor and evaluate policy, legislation and programmes with regard to social development and its impact on the quality of life of the people and the delivery of services to people.

It will also advise the Minister on measures to promote the transformation and continuous improvement of social development services; social development initiatives; to include local government in the provision of integrated service delivery at local government level; proposals for new legislative frameworks for the social development sector and amendments to existing legislation; and the introduction of local and international best practices in social development services. It will also facilitate the introduction of new policy and successful policy implementation in the government and non-governmental environment whilst facilitating consultation between stakeholders and government regarding the implementation of social development and ensuring effective review of formulation, implementation and evaluation of social development policies, programmes and legislation, as informed by the needs and priorities of society.

This act provides a framework for the development of increased social welfare to veterans. It does however not detail extensively the type of development that must take place in relation to veterans' affairs but paves the way for further development.

3.1.2.4 *White Paper On National Defence For The Republic Of South Africa Defence In A Democracy - May 1996*

Paragraph 23 gives credence to the contribution of veterans towards the struggle against apartheid by indicating that it would be unjust to end their military careers without compensation, especially in the case of aged and disabled military veterans. Paragraph 43.5 further states that the government will seek to ensure that military personnel are adequately remunerated. It will also ensure that demobilised and rationalised soldiers, as well as veterans from the former statutory and non-statutory forces, are properly integrated into civilian society.

This paper is influential however it does not legally compel any citizens or the government to develop legislation and or increase social welfare for veterans.

3.1.3 PROVINCIAL LEGISLATION

3.1.3.1 *Social Assistance Act No. 59 Of 1992*

This act facilitates the rendering of social assistance to persons, national councils and welfare organizations. It enables grants in the form of grants in aid, veterans grant, social relief of distress, social assistance, supplementary grants to be issued to veterans.

3.1.3.2 *Ciskeian Social Pensions Act 8 Of 1976*

This act provides for payment of a social pension to veterans.

3.1.3.3 ***Social Pensions Act No. 40 Of 1978***

This act provides for payment of a social pension to veterans.

3.1.3.4 ***Northern Province Welfare Services Act No. 6 Of 1998***

This act provides for laws relating to welfare services facilities. Every manager must admit for care at or in any welfare facility in his or her charge, so far as adequate and appropriate accommodation is therein available, persons suffering from or subject to any of the disease, injuries or conditions for the treatment of which such welfare facility is established. All persons shall be admitted into a welfare facility in accordance with the urgency of their need for care, as determined by the manager on duty or such other officer as may be authorised to act on his or her behalf and in such order as such manager or other officer may direct. Welfare facilities shall ensure that the physical, mental and social wellbeing of all clients and residents are provided for. All institutions providing residential care shall ensure the provision of curative and rehabilitative services in addition to accommodation board and lodging.

3.1.3.5 ***Mpumalanga Social Assistance Act No. 5 Of 2000***

The MEC shall make social grants to war veterans; a grant-in-aid to or on behalf of any person who is in such a physical or mental condition that he or she requires regular attendance by any person in addition to social grants and grants-in-aid, supplementary grants to war veterans;

3.1.3.6 ***Bophuthatswana Social Pensions Act No. 18 Of 1978***

The Minister may in consultation with the Minister of Finance and out of moneys appropriated by the National Assembly for the purpose, pay to war veterans pensions respectively and to such persons additional and supplementary allowances.

3.1.4 **REGULATIONS, ORDINANCES AND BYLAWS**

3.1.4.1 *Gnr.750 Of 24 April 2001: Regulations On Military Veterans' Affairs, 2001*

These regulations require dependants of war veterans to be wholly or partially financially or otherwise dependant upon the relevant military veteran and must be a member of the household of that military veteran or, where the military veteran is deceased and that person must remain a member of the household after such decease.

A person who claims that he or she is a dependent child or spouse of a military veteran must have qualified as such in terms of any provision of a law relating to the South African National Defence Force and dealing with dependants of members of that Force and which applied to the military veteran immediately prior to the date on which the military veteran became a military veteran or, if the person is born or is legally adopted or becomes a spouse, as the case may be, on or after such date, would have qualified as such had the person been born or legally adopted, or become a spouse, before such date.

It specifies the format for development programmes and recognises the following programmes as programmes for development.

- (a) reparation programmes, with reference to entitlements, income support and housing assistance;
- (b) health care programmes, with reference to disablements, disabilities, injuries and illnesses, medical care, rehabilitation, and aged, retirement and general health care;
- (c) occupational programmes, including counselling, career assessment, vocational support, re-education, training and funding assistance as regards resettlement and employment provisioning; and
- (d) military heritage programmes.

3.1.4.2 ***Gnr.418 Of 31 March 1998: Regulations Regarding Grants And Financial Awards To Welfare Organisations And To Persons In Need Of Social Relief Of Distress***

These regulations detail the requirements for eligibility for social grants including supplementary grants and grants in aid.

3.1.4.3 ***Gnr.1505 Of 16 October 2003: Intelligence Services Regulations, 2003 - Intelligence Services Act No. 65 Of 2002. Chapter Xxiii Veterans Association***

The purpose of the Chapter is to provide a regulatory framework for the formation of a Veterans Association for

former members who would like to serve the Association with the intent to have co-operation between the Association and the Intelligence Services to promote comradeship and social interest.

3.1.4.4 ***Gn 151 Of 28 January 2004: Regulations Regarding Television Licence Fees. Broadcasting Act No. 4 Of 1999***

A concessionary domestic licence can be issued to a war veteran if he/she is in receipt of a grant.

3.1.4.5 ***Gnr.162 Of 22 February 2005: Regulations In Terms Of The Social Assistance Act, 2004 (Act No. 13 Of 2004) - (Government Gazette No. 27316)***

These regulations detail the requirements for eligibility for social grants including supplementary grants and grants in aid.

3.1.4.6 ***Municipal Ordinance No. 20 Of 1974***

In the Eastern Cape, Northern Cape, and Free State a grant in aid in respect of rates is provided to war veterans in accordance with Section 81.

3.1.4.7 ***Provincial Notice No. 425 Of 1997 Under Kwazulu-Natal Cemeteries And Crematoria Act No 12 Of 1996***

Rebates are provided to war veterans provided that the deceased person was immediately before his death a resident in the area under the control of the Board for a continuous period

exceeding three months) (section 27 (1) (a) (i) of the KwaZulu-Natal Cemeteries and Crematoria Act, 1996)

3.1.4.8 ***P.N. 446 Of 1981: Municipal Golf Course Bylaws***

South African Citizens that are war veteran pensioners pay special green fees for use of the Golf course in KwaZulu Natal that are state owned.

3.1.4.9 ***Local Authorities Rating Ordinance No. 11 Of 1977***

In Limpopo Province, Mpumlanga and Northern Cape, rateable property registered in the name of a welfare organisation registered in terms of the National Welfare Act, 1978 (Act No. 100 of 1978) or property registered in the name of a trustee or trustees or any organisation and which is being used for the welfare of war veterans as defined in section 1 of the Social Aid Act (House of Assembly), 1989 (Act No. 37 of 1989), and their families can be provided with a grant in aid in respect of rates levied.

3.1.4.10 ***Divisional Councils Ordinance No. 18 Of 1976***

In Northern Cape, grants in aid are issued in respect of rates for rateable property, registered in the name of a trustee or trustees or any organisation, which is maintained for the welfare of war veterans as defined in section 1 of the Social Aid Act (House of Assembly), 1989 (Act 37 of 1989), and their families

3.1.4.11 *Local Authorities (Development According To Community) Ordinance No. 6 Of 1963*

In the Northern Cape, rateable property registered in the name of a welfare organisation registered in terms of the National Welfare Act, 1978 (Act No. 100 of 1978) or property registered in the name of a trustee or trustees or any organisation and which is being used for the welfare of war veterans as defined in section 1 of the Social Aid Act (House of Assembly), 1989 (Act No. 37 of 1989), and their families can be provided with a grant in aid in respect of rates levied.

3.1.4.12 *General Notice No. 166 Of 2006 In Terms Of Section 41 (1) (C) Of The National Health Act, 2003 (Act 61 Of 2003) - Regulations Under Act No. 61 Of 2003. Hospital Fees Manual*

The Mpumalanga Province's amended Hospital Fees Manual in the schedule, is published for general information in respect of public health facilities in the province. It provides for full subsidization of hospital fees for social pensioners of which war veterans form a part.

3.1.4.13 *Eastern Cape, Free State, Gauteng, Northern Cape, North West, Western Cape, Limpopo Province*

Our research revealed no regulations in relation to war veterans, ex combatants and political detainees for these provinces save for regulations emanating from the Social

Assistance Act 59 of 1992 which are detailed under national regulations above.

3.1.5 INTERNATIONAL LAW

South Africa is bound by the obligations imposed by those international agreements which it has ratified. Ratified agreements include the United Nations Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the African Charter on Human and People's Rights and the African Charter on the Rights and Welfare of the Child.

South Africa is bound by obligations under section 39(1)(b) of the constitution which compels those bodies which are entrusted with the interpretation of the fundamental right of access to social security and other social security-related fundamental rights (namely every court, tribunal and forum), to consider international law when interpreting the bill of rights.

The Constitutional Court in *In S v Makwanyane* 1995 6 BCLR 665 (CC) indicated that for purposes of this provision public international law includes both non-binding and binding international law. International co-operation requires that international human rights as well as social and labour policy must be considered.

According to section 232 of the Constitution, customary international law is law in the Republic unless it is inconsistent with the constitution or an Act of parliament. Section 233 confirms the common law presumption which requires a court to interpret legislation consistently with international law by stipulating that when interpreting any

legislation, a court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.

3.1.5.1 Universal Declaration of Human Rights

Article 22 of the Universal Declaration of Human Rights (“UDHR”) provides for the following:

“Everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international cooperation and in accordance with the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”

It also caters for specific areas covered by the concept of social security. Specifically, it enshrines the right of everyone:

“to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.” Article 25.

Special recognition is accorded to mothers and children and, within the context of employment benefits, to workers.

3.1.6 DISCUSSION

An assessment of national, provincial and international law reveals that social security is necessary for war veterans. The right to social security can be progressively realised on the in relation to grants that can be issued, welfare services that can be extended, programmes that can be created and implemented for re-integration into society of ex-combatants and war veterans and reconciliation.

The introduction of programmes is necessary and must be undertaken in relation to the issues of housing, education and care for dependants of war veterans. Programmes have been implemented however there is no uniformity countrywide.

Resolutions emanating from the 52nd ANC Conference specify; the need to acknowledge comrades of advanced age who have given unbroken and uninterrupted service to the ANC movement and the people of South Africa over several decades of struggle, the establishment of the Veterans League of the ANC Conference, the improvement of definition of a veteran to include someone who is sixty years with 40 years of uninterrupted and unbroken service to the movement and the people of South Africa over several decades of struggle, the adoption of programmes that are directed at reintegrating ex-combatants into society and provision of health insurance, the establishment of the Ministry of Military Veterans; the development of the Special Pension of Military Veterans with specific tax implications, the redrafting of the Non-Statutory Force (NSF) pension, rebates in relation to public transport for veterans, the increasing of the age limit that qualifies beneficiaries for a Special Pension.

Furthermore, it is also envisaged that there must be an amendment of the Military Veterans Affairs Act, no 17 of 1999 to enable full participation of the non-statutory forces; that recognition of SANMVA (South African National Military Veterans Association) as an administrator of all military veterans' projects which should identify training areas and intervene on behalf of veterans for recognition of prior learning, training and skills qualifications acquired outside the SA borders, the reservation by the Housing Ministry of a certain percentage of RDP houses per province for military veterans, the investigation of the possibility of the establishment of a special Medical Aid Scheme for military veterans, the caring for vulnerable children of veterans of by the state; and that there should be health cover for Veterans of the struggle.

PART D

1. ASPECTS OF SOCIAL WELFARE THAT IS NOT ADDRESSED BY CURRENT LEGISLATION.

A comparison was made in relation to the aspects of social welfare we were mandated to research and the legislative stance on such aspects. Our assessment revealed no specific mention in legislation of trauma healing, economic opportunity; reconciliation; integration into society; strengthening and integrating the veterans / ex-combatant sector; community integration; and integrated service delivery in relation to war veterans.

However, provision is made in the Military Veterans Affairs Act of 1999 for developmental programmes to improve social security. Furthermore, the Advisory Board On Social Development Act No. 23 Of 2001 aims to promote the transformation and continuous improvement of social development services and social development initiatives; to include local government in the provision of integrated service delivery at local government level; to enable development of proposals for new legislative frameworks for the social development sector and amendments to existing legislation; and the introduction of local and international best practices in social development services. In lieu of the fact that only a framework is provided, an expansive social welfare programme in relation to veterans can be developed provincially and nationally. International law and best practices have not largely been considered but these should be considered for development initiatives.

Notwithstanding the fact that acknowledgement and recognition required for the sacrifices veterans made is provided for in the Military Veterans Affairs Act of 1999, the manner in which the eligibility for social grants, social assistance, grants in aid, supplementary grants are assessed does not give effect to this acknowledgement.

It ought to be noted that general welfare legislation is applicable to war veterans insofar as legislation enacted in relation to war veterans does not address all issues of welfare.

PART E

CONCLUSION

In the white paper on social welfare (*Gazette* 18166 Gn 1108, 8 August 1997) the vision outlined for a welfare system in South Africa is a welfare system which “facilitates the development of human capacity and self-reliance within a caring and enabling socio-economic environment”, while the mission is to “serve and build a self-reliant nation in partnership with all the stakeholders through an integrated social welfare system” that maximises existing potential and which is equitable, sustainable, accessible, people-centred and developmental.

The system of social welfare in South Africa is “developmental” and social welfare services and programmes are amongst a range of measures to achieve social development (including health services, nutrition programmes, education, housing, job creation programmes, rural and urban development

projects and land reform). Since 1996 legislative there have been the promulgation of a new statutes have caused greater confusion in that welfare services are governed by laws reflecting the old and the new dispensation. south africa does not have a comprehensive and co-ordinated system of social security, although many laws exist which regulate social security. A system of social security, involving co-operation and co-ordination between the state departments and between the public and the private sector will have to be developed in order to give credence to the Constitution.

An analysis of the social security system confirms that several categories and groups can be regarded as excluded and/or marginalised in terms of the present system. These include: the unemployed; excluded employees (for example farm workers); the self-employed, the informally employed and many other atypically employed categories; the rural and urban poor; the aged dependant on social assistance; non-citizens and veterans.

An integrated system of social security is necessary where legislation is not contradictory and uniform regulations are applied because the lack of a coherent approach in South African social security is clearly discernible. In a sense the present system suggests an archaic and rigid distinction between social insurance and social assistance – it allows those who are or have been in formal employment benefit from a fairly well-developed social insurance coverage (in particular unemployment insurance and workers' compensation coverage), while social assistance, in particular the grant system, remains restricted in coverage, as it is mainly based on a categorical, means-tested approach which provides basic, though important, protection against the occurrence of a limited number of social risks. There is, therefore, little social solidarity in the system, apart from state-mandated budgetary flows to social

assistance and some lesser forms of social solidarity present in social insurance.

Notwithstanding the above, legislation pertaining to war veterans is existant and has a foundation which needs to be developed and has received priority status by the leading party. Undoubtedly, the intention exists to acknowledge the commitment of veterans to the struggle and to extend social welfare rights. In light of recent public hearings, the mechanisms that will give life to the legislation is imminent and will add a new positive dimension to social policy in South Africa.

SECTION G

Other Welfare Legislation, Legislation Considered & Repealed Legislation.

Legislation relating to social security and general welfare are also applicable to war veterans notwithstanding the fact that no mention is made specifically of war veterans.

In conducting research, much legislation was considered which bore no relevance to war veterans but had elements of relevance to social security. This legislation is listed below.

1. Other Welfare Legislation & Legislation Considered

Legislation considered that did not have relevance to war veterans and ex-combatants include the following:

- National Welfare Act No. 18 Of 1987
- Repeal Of Chapter IIA Of The Ciskei Fund Raising Laws Act No. 10 Of 1995
- Social Pensions Act No. 40 Of 1978
- Rationalisation Of Welfare Laws Act No. 3 Of 1999
- Repeal Of Social Pensions Laws Act No. 20 Of 1998
- Gauteng Regional Welfare Institutes Act No. 15 Of 1998
- Gauteng Street Children Shelters Act No. 16 Of 1998
- Guateng Welfare Relations Act No. 17 Of 1998
- Kwazulu National Welfare Act No. 9 Of 1986
- Kwazulu Natal Joint Municipal Provident Fund Act No. 4 Of 1995
- Northern Province Welfare Services Act No. 6 Of 1998
- Northern Province Repeal Of Obsolete Welfare Laws Act No. 3 Of 1999
- Pension Laws Amendment Act No. 95 Of 1963
- Pension Laws Amendment Act No. 97 Of 1980
- Pension Laws Amendment Act No. 35 Of 1949
- Pension Laws Amendment Act No. 56 Of 1956
- Military Pensions Act No. 84 Of 1976
- Northern Province Repeal Of Obsolete Welfare Laws Act No. 3 Of 1999
- National Welfare Act, No 100 1978

- Gnr.203 Of 14 February 1964: Regulations For The South African Police.
- South African Police Service Act No. 68 Of 1995
- Gnr.361 Of 11 March 1994: Regulations For Judicial Officers In The Lower Courts, 1993 (Magistrates Act No 90 Of 1993)
- Natal Parks Board Conditions Of Service Regulations Provincial Notice No. 28 Of 1989
- Local Government Ordinance Orange Free State 8 Of 1962 [S 114a(1)(I)]
- Gnr.2080 Of 31 December 1965: Correctional Services Regulations
 - Correctional Services Act No. 8 Of 1959
 - Reconstruction And Development Fund Act, No 79 Of 1998
 - Skills Development Act, No 97 Of 1998
 - Skills Development Levies Act, No 9 Of 1999
 - Promotion Of Equality And Prevention Of Unfair Discrimination Act, No 4 Of 2000
 - Closed Pensions Fund Act, No 64 Of 1997
 - Social Work Amendment Act, No 102 Of 1998
 - Associated Pensions Act
 - Aged Persons Act, 1967
 - Fund Raising Act, 1978
 - Child Care Act, 1983
 - Welfare Laws Amendment Act, 1997
 - Developmental Welfare Governance Act, No 43 Of 2000
 - National Development Agency Act, No 108 Of 1998
 - Welfare Laws Amendment Act, No 106 Of 1997
 - Advisory Board On Social Development Act, 2001
 - Social Grants Appropriation Act (No. 2 Of 2002)
 - Occupational Diseases In Mines And Works Amendment Act (No. 60 Of 2002)
 - Occupational Diseases In Mines And Works Act No 78 Of 1973
 - Magistrates Court Act 90 Of 1993
 - Older Persons Act No. 13 Of 2006
 - Fundraising Act Of 1978
 - Appropriation Acts For Provinces
 - Public Service Act, 1994 (Proclamation No. 103 Of 1994)

2. Repealed Legislation:

The following acts that were considered have been repealed:

- War Veterans' Pensions Act 25 Of 1968
- Social Aid Act (House Of Assembly) No. 37 Of 1989
- War Measure No. 31 Of 1944
- Social Pensions Act No. 37 Of 1973
- War Measures Continuation Act, No 58 Of 1956
- Defence Amendment Act No. 8 Of 1974
- War Pensions Act, 1967
- State Of Emergency Act No. 86 Of 1995
- Defence Further Amendment Act No. 83 Of 1974
- Intelligence Services Act No. 38 Of 1994
- Civil Protection Act No. 67 Of 1977
- Division Of Revenue Act No. 1 Of 2005
- Defence Amendment Act No. 103 Of 1982
- Independent Broadcasting Authority Act No. 153 Of 1993
- Gazankulu Social Pension Act 7 Of 1976
- War Special Pensions Act, 1962 (Repealed Act Act 35 Of 1962
- Venda Social Pensions Act 10 Of 1977
- Lebowa Social Pensions Act No 11 Of 1978
- Venda National Welfare Act No 9 Of 1981
- Civil Protection Act No. 67 Of 1977
- Social Service Professions Act No. 110 Of 1978
- Commonwealth War Graves Act No. 8 Of 1992
- General Law Amendment Act No. 62 Of 1966