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TWELFTH PARLIAMENT – FOURTH SESSION

STANDING COMMITTEE ON NATIONAL SECURITY, DEFENCE AND
FOREIGN RELATIONS

REPORT ON THE PETITION CONCERNING ENACTMENT OF MILITARY
VETERAN LAW.

| | |
|-------------------|------------------------|
| DATE | 06/04/2021 |
| TABLED BY | Chair |
| COMMITTEE | Defence |
| CLERK AT THE TIME | David At. Hon. Speaker |

You may approve for
tabling
23/09/21

Approved
23/9/2021

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The Senate,
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2021

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1. Copy of the Petition
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PREFACE

Mr. Speaker, Sir

1. The Standing Committee on National Security, Defence and Foreign Relations was constituted in December, 2017 during the First Session of the Twelfth (12th) Parliament pursuant to the provisions of Senate standing order 187.

The Committee is mandated to consider all matters related to: *national security and foreign relations, disaster reduction and preparedness, home affairs, defence, immigration and international relations.*

2. In executing its mandate, the Committee oversees the Ministries of-

- (i). Interior and Co-Ordination of National Government;
- (ii). Defence; and
- (iii). Foreign Affairs.

3. The Committee comprises of the following Members-

| | | |
|---------|---|------------------------|
| (i). | Sen. Fred Outa, MP | Ag. Chairperson |
| (ii). | Sen. Fatuma Dullo, CBS, MP | Member |
| (iii). | Sen. Judith Pareno, MP | Member |
| (iv). | Sen. Beatrice Kwamboka, MP | Member |
| (v). | Sen Mithika Linturi, MP | Member |
| (vi). | Sen. (Eng.) Mohamed M. Mohamud, CBS, MP | Member |
| (vii). | Sen. Moses Wetang'ula, EGH, MP | Member |
| (viii). | Sen. Wario Golich Juma, MP | Member |

4. The petition concerning enactment of a military veteran law was presented to the Senate on 1st August, 2019, by Senator George Khaniri, Senator of Vihiga County. The Speaker of the Senate then directed that the petition be dealt by the Standing Committee on Labour and Social Welfare.

5. During the 7th Sitting of the Committee held on Thursday, 6th August, 2020 the Committee was informed that a communication had been received from the Speaker redirecting the Petition from the Senate Standing Committee on Labour and Social Welfare concerning enactment military veteran law on as prayed for by True North Society.

6. At its 8th Sitting held on Tuesday, 11th August, 2020, the Committee considered the petition and resolved to hold a meeting with the Petitioners to get their views.

7. The Committee held a meeting with the Petitioners during its 12th Sitting held on Tuesday, 18th August, 2020. After meeting the petitioners, the Committee reaffirmed their position that there is an urgent need for a legislation to address their concerns.

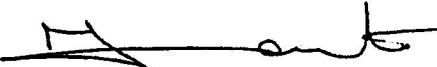
ACKNOWLEDGEMENT

Mr. Speaker Sir,

The Committee wishes to acknowledge the time and considerable effort made by all parties who volunteered information before it. I also wish to express my gratitude to my colleagues for their thoughtful input and engaged contributions to the matter. Further, the Committee is indebted to the Office of the Speaker and the Clerk of the Senate for facilitating all the actions that led to the production of this report. The Committee also wishes to recognize the commitment and dedication of the staff of the committee that made the work of the Committee and the production of this report possible.

Mr. Speaker Sir,

It is now my pleasant duty, pursuant to Standing Order 232 to table the report of the Standing Committees of National Security, Defence and Foreign Relations in relation to the Petition concerning the Enactment of a Military Veteran Law.

SIGNATURE.....

**SEN. MOHAMED YUSUF HAJI, EGH, MP)
CHAIRPERSON**

**STANDING COMMITTEE ON NATIONAL SECURITY, DEFENCE AND
FOREIGN RELATIONS**

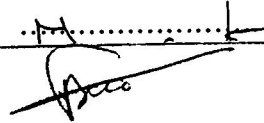
11th AUGUS, 2021

DATE.....

ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON NATIONAL SECURITY, DEFENCE AND FOREIGN RELATIONS.

We the undersigned Members of the Senate Standing Committee on National Security, Defense and Foreign Relations of the Senate, do hereby append our signatures to adopt the Report-


1) Sen. Fred Outa, MP - Ag. Chairperson

.....


2) Sen. Fatuma Dullo, CBS, MP

.....


3) Sen. Judith Pareno, MP

.....


4) Sen. Beatrice Kwamboka, MP

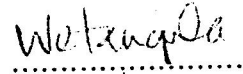
5) Sen Mithika Linturi, MP

.....

6) Sen. (Eng.) Mohammed M. Mohamud, CBS, MP

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7) Sen. Moses Wetang'ula, EGH, MP

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8) Sen. Wario Golicha Juma, MP

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CHAPTER 1: INTRODUCTION

1.1 Emerging Issues from the Petition

1. THAT, currently, there is no law which compels the Government of Kenya to care for military veterans especially, those who suffered from past occupational illness resulting from official military duties;
2. THAT, as a result of the neglect, many retired service men and women are living miserable lives together with their families with most dying premature;
3. THAT, currently, Military veterans and their families suffer from post-traumatic stress disorder (PTSD), suicide, homicide, incapacitation, loneliness, poverty, broken marriages and relationships;
4. THAT, to the best of our knowledge, there is no national body tasked with the care and management of military veterans;
5. THAT, the Defence Forces Medical Insurance Scheme does not cover mental health care as per Trust Deed. The majority of military veterans coming out of the war which began in 2011 do not qualify for pension because they have not served for more than a decade as dictated by the Kenya Defence Forces Act. The gratuity paid out is not sustainable. Upon dismissal, majority do not have medical boards carried out thus cannot claim disability rights;
6. THAT, upon dismissal, there is no avenue to address complaints and grievances such as the absence of the medical board being conducted, delay in payment of gratuity and pension, inability to afford and access mental health care for self and family and difficulty in transitioning and reintegration into the society. Widows and their children cannot afford legal fees to pursue their entitlements as beneficiaries in cases of rejection by the soldiers' family of origin;
7. THAT, those military veterans dismissed on grounds of mental health illness are locked out of employment opportunities thus lack the ability to support themselves and their families. Consequently, some are turning to violent crime;
8. THAT, we confirm efforts were first made to address these issues through the Military Veterans Bill, 2013;
9. THAT, the Bill sought to recognize military veterans' sacrifices, eliminate disparities in their post-service benefits and compensation packages and provide an avenue for addressing their complaints and concerns.

10. THAT, the Kenyan leadership and people are aware of the immense sacrifices and injuries faced by the Kenya soldiers in their quest to secure Kenya's territorial integrity;
11. THAT, the issues raised in this petition concern human rights, labour relations, pensions and post-service life and not directly the Department of Defence; and
12. THAT, we hereby confirm the issues raised with respect of this petition are not pending before any court of law, constitutional or legal body.

1.2 The Petitioners Prayers

The Petitioners prayers were that the Senate investigates the matters and make appropriate recommendations with a view to –

1. Enacting a military veteran law which will offer protection and care to military veterans who have sacrificed and served our motherland diligently;
2. Ensuring the rights and special needs of military veterans are guaranteed and respected to ensure that they live dignified lives as envisioned by the Bill of Rights in the Constitution of Kenya 2010 and the Universal Declaration of Human Rights, 1948;
3. Ensure that military veterans are paid back for their service by ensuring war wounds do not limit their life experiences, reduce their life expectancy; and
4. Mandate the Government to develop a mechanism to progressively adapt mental health care programmes to the needs of military veterans and their families.

CHAPTER 2: DELIBERATIONS & UNDERTAKINGS OF THE COMMITTEE

This section contains the deliberations that the Committee made and the presentations that were made by the Petitioners.

2.1 Committee Undertakings

The Committee considered the Petition on Tuesday, 25th February, 2020 where it resolved to invite the petitioners to a meeting to provide more specific information and evidence on the allegations made in the petition.

2.2 Meeting with the Petitioners

The Committee, before meeting the petitioners held an in-house meeting on Tuesday, 3rd March, 2020 and deliberated extensively on the matter. They noted that Article 241 (1) of the Constitution establishes the Kenya Defence Force consisting of the Kenya Army, the Kenya Air Force and the Kenya Navy; charged with the responsibility for defence and protection of the sovereignty and territorial integrity of the Republic; while 241 (5) establishes the Defence Council which consists of the Cabinet Secretary responsible for Defence as the Chairperson, the Chief of Kenya Defence forces, the PS in the Ministry responsible for Defence. The Council is responsible for the overall policy, control and supervision of the Kenya Defence Forces.

The Committee also observed that the Kenya Defence Forces Act (25 of 2012) (Pensions and Gratuities) (Officers and Service Members) Regulations, 2017 need to be revised on the following Regulations—

- (a) (10) (1) on computation of pension where assessment is done at the annual rate of one-four hundredth of his pay for each completed month of reckonable service;
- (b) (12) (1) on Pension to dependants of an officer or service member which limits the term to 5 years;
- (c) (12) (3) (d) which discriminates a female child dependant pension or share to ceasing upon marriage;
- (d) (12) (3) (g) which also limits the time frame to 5 years;

- (e) (13) on gratuity where an officer or service member dies in service or after retirement or discharge (1) the gratuity is very little
- (f) (18) (1) on establishment of the Pensions Assessment Board – the service members do not have a say and have not included veterans who have suffered a disability;
- (g) (19) (2) on duties and powers of the Board – the medical boards have not been constituted;
- (h) (20) (4) on Entitlement to disability pension - cases have to be determined by the Board which is non-existent.
- (i) (21) on Degree of disablement is not being implemented due to lack of a medical board;
- (j) (37) (1) (a) on Nature of award in respect of death – the amount is very little
- (k) (38) (1) on the Pensions Appeal Board – the Board is not functional due to absence of the medical board
- (l) (39) (1) excludes officers who served in Somalia and had to retire early on medical grounds

The Committee acknowledged that the regulations discriminated against gender especially (12) (3) (d) which discriminates a female child dependant pension or share to ceasing upon marriage.

The Committee also noted that assessing disability rates by percentage may not be accurate because disability relates to functionality of a person. The degree of disability is either permanent, severe, slight etc.

2.3 Meeting with the Petitioners

The Committee met with the Petitioners on Tuesday, 3rd March, 2020 at 12 noon and the following were in attendance –

1. Major (Rtd) Lucy Mukuria - True North Founder/ CEO
2. Mary Kittakah - True North
3. Chelsie Mugambi - True North

The Chair-person welcomed all present and invited the petitioners to make their submissions as follows –

a) **Presentation by Major (Rtd) Lucy Mukuria**

Major (Rtd) Wairimu started by stating that Kenya has over 40,000 military veterans made up of both men and women, with men being the majority in number due her history of recruitment for military service. She added that there does not exist an official number and this approximation is based on the frequency of recruitment for both service men and women and officer cadets, the number of years of service, the number of years since recruitment pegged retirement of commission.

She maintained that those who served in anti-colonial Kenya Land and Freedom Army “*mau mau*”, the colonial Kenyan Rifles to those in our independent military had a program called ‘Kenya Defense Forces Comrades Association’ (DEFOCA) previously known as ‘Kenya Defense Forces Old Comrades Association’ which is an offspring of the British Legion, African Section. These associations, she added, exists to raise funds and invest it in income generating program to improve the welfare of its members who contribute monies from their salary during their years of service.

She added that there also exists the Defense Forces Medical Insurance Scheme (DEFMIS) which begun in 1996 whose mandate is to give a chance to the serving members of the Defense Forces to participate while they are serving by contributing 3.1% of the basic salary, for a period of fifteen years or so (depending on the length of service of the contributor). The money contributed would be used to provide members and their families with medical insurance after retirement.

She mentioned that a Military Veteran Bill was introduced to Parliament in 2013 to recognize veterans’ sacrifices, eliminate disparities on their post-service benefits and compensation packages and provide an avenue for their complaints and concerns. The bill lapsed.

She argued that though the limitation of some rights and freedoms under the Kenya Defence Forces Act are necessary for purposes unique to the operation of military service to ensure the defence and protection of the sovereignty and territorial integrity of the Republic of Kenya, the protection of classified information, the maintenance and preservation of national security, the security and safety of members of the Defence Forces, to maintain good order and service discipline⁷ and public health and safety; service men and women therefore lose their rights and freedoms such as freedom of conscience, religion through belief and opinion, freedom of expression, political rights, freedom of movement and residence, right to privacy, access to information, freedom of association, right to assemble, demonstrate, picket and petition, right to labour relations, economic and social rights and rights of an arrested person. The loss of the above-mentioned rights makes a soldier become vulnerable when he becomes a veteran.

She emphasized that for veterans, as people who have undergone basic military training, the symbol of surrender and loyalty to the ethos of military service are not simply espoused by giving up their national identity cards, they are also stripped of their humanity and built in the image of the military. The changes of this evolution are not just intellectual and physical but emotional, spiritual and mental as well. They are also desensitized from individualization and become inducted into wolf pack-like orientation. No one in uniform walks alone through their professional, family and personal life while in service. Upon discharge, it takes at least a year to be fully reoriented to life outside the military.

She maintained that the lack of psycho-social-spiritual support for veterans makes them vulnerable to recruitment into gangs, terrorists groups, sexual exploitation, prostitution and human trafficking, drug trade, addiction and dependence, early marriage and childbirth, breakdown of the marriages and families, intergenerational trauma.

She added that it is a financial loss for Kenya to have young people crippled by war related injuries which are treatable.

She stated that there were two options to qualify for DEFMIS membership. One is by payment of 3.1% of basic salary for 15 years or a lump-sum payment which equals the

same amount. The sign up into the cover is conducted during basic training where it is sold as a post service medical insurance that will cover the contributors' medical bills 100% for life. This same service will be extended to the spouse, for life. In addition, that children under 21 years of age will as well receive full medical cover.

She outlined the limitations of DEFMIS as follows –

1. DEFMIS does not cater to the soldier and his young family who has been discharged from military service before completing their colour service (nine years), with an addition of three years to become pensionable. The widow and her children also suffer in the event the soldier expires while in action;
2. DEFMIS in its trust deed document states that it does not cater to medical expenses that result in mental health care. Psychological war related trauma is the number one medical emergency for military veterans and in some cases it is grounds for their de-enlistment and decommissioning from the military. The Trust does not also cater for Self-induced or inflicted conditions or injuries; and
3. DEFMIS discriminates on the basis of gender. It states that women will not be medically covered for birth control and men will not equally be covered for sexual enhancement drugs to treat erectile dysfunction.

The Major explained that she found out the limitations of DEFMIS when as a DEFMIS member, she discovered that the military does not recognize the children of ladies in uniform especially the unmarried ones. She added that the Trust deed states that the financial state of the Trust should be published annually to members countrywide but it has never happened and there is no recourse. The membership of the association is not representative since thought its membership and funding is by military veterans, they only get two out of ten slots.

She maintained that the situation with DEFOCA is similar in lack of representation, transparency and accountability yet worse because it does not benefit its members at all.

She advises that veterans could be protected by having an oversight committee that looks in to the psycho-social-legal- economic-physical needs of soldiers and their

families. The psycho-social support may cover mental and physical (prosthesis) health rehabilitation, legal representation, financial aid, transition and reintegration support, facilitation to access of education and higher education, Intergenerational re-enlistment strategy, acts of recognition and celebration for living, honor and validation for the dead, work and job openings allocations, deployment considerations, and family and parenting coaching and support.

The formulation of a military veterans Law which will cater to the psycho-social-legal-economic-physical-spiritual elements for military veterans and our families. The execution of this Law should be through a department of veterans under the Ministry of Labour and Social protection headed by a Director General with the oversight of an advisory council. That within this department, there exist a robust grievances and appeals board.

She concluded by informing the Members that the petition concerns itself with matters of labour and social welfare and thus fall under that committee because military veterans are not part of defence forces once they retire or are discharged.

CHAPTER 3: COMMITTEE OBSERVATIONS AND RECOMMENDATION

1.1 Committee Observations

The Committee generally observed that some of the concerns of the petitioners could be addressed by revising the following Regulations of the Kenya Defence Forces Act (25 of 2012) - Pensions and Gratuities (officers and service members) Regulations, 2017—

- (a) (10) (1) on computation of pension where assessment is done at the annual rate of one-four hundredth of his pay for each completed month of reckonable service;
- (b) (12) (1) on Pension to dependants of an officer or service member which limits the term to 5 years;
- (c) (12) (3) (d) which discriminates a female child dependant pension or share to ceasing upon marriage;
- (d) (12) (3) (g) which also limits the time frame to 5 years;
- (e) (13) on gratuity where an officer or service member dies in service or after retirement or discharge (1) the gratuity is very little;
- (f) (18) (1) on establishment of the Pensions Assessment Board – the workers do not have a say and have not included veterans who have suffered a disability;
- (g) (37) (1) (a) on Nature of award in respect of death – the amount is very little;
- (i) (12) (3) (d) which discriminates a female child dependant pension or share to ceasing upon marriage; and
- (j) the use of medically acceptable assessments for assessing disability.

Other concerns of the petitioners could also be addressed by implementing Regulations on constitution of the medical boards to enable the determination of entitlement to disability pension, degree of disablement. The operationalisation of the Medical Board will also make the Pensions Appeals Board operational.

The Committee also notes that there is a need for enactment of a military veterans law to cater for the needs of military veterans in the country.

1.2 Committee Recommendations

The Committee considered the petition and recommends that the Senate formulates a Bill in response to the prayers by the Petitioners. In addition, the Committee has already formulated a Bill, the Military Veterans Bill, 2021, Senate Bills No. 41 of 2021 which is awaiting consideration and processing by Parliament.