



Commission for Gender Equality
A society free from gender oppression and inequality

COMMENTS ON THE DETERMINATION OF REMUNERATION OF
MEMBERS OF CONSTITUTIONAL INSTITUTIONS BILL – 2013 MADE
TO THE MINISTER OF JUSTICE AND CONSTITUTIONAL
DEVELOPMENT

18 JANUARY 2013

COMMISSION FOR GENDER EQUALITY



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1. INTRODUCTION

The Commission for Gender Equality (CGE) is a Chapter 9 Institution and in terms of Section 11 of its empowering legislation obliged to evaluate legislation and make recommendations to the relevant legislature. This responsibility is exercised with the primary aim of promoting, protecting and developing gender equality in South Africa. In addition to the aforementioned legal obligation the CGE has an additional duty to assist the Minister for Justice and Constitutional Development towards the development of a meaningful legislative framework which regulates the remuneration and conditions of service that apply to members of constitutional institutions in general which includes the CGE.

2. GENERAL COMMENTS

2.1 The Constitution

In terms of Chapter 9 and more especially Section 193 of the Constitution provision is made for the appointment of Members of Constitutional Institutions who have numerous important and specialised responsibilities to perform. Unfortunately, the Constitution does not make any provision for the remuneration of Members of Constitutional Institutions.

2.2 The Commission for Gender Equality Act

Section 8 of the Commission for Gender Equality Act 39 of 1996 makes reference to the remuneration and conditions of service of Commissioners but fails to provide any procedure or benchmark on what the remuneration and conditions of service should be based.

Against the above circumstances the manner in which the remuneration and conditions of service that ought to apply to the members of the CGE as well as most constitutional institutions is unknown. This has led to severe prejudice to members of constitutional institutions which continues to operate to their detriment. Therefore, the CGE is pleased that steps are being taken by the Minister for Justice and Constitutional Development to address this untenable situation and supports the Determination of Remuneration of Members of Constitutional Institutions Bill of 2013.

3. COMMENTS BY THE CGE.

The following clauses in the Determination of Remuneration of Members of Constitutional Institutions Bill of 2013 make reference to the members of the CGE :



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3.1 CLAUSE 6

The CGE supports the inclusion of Clause 6 in its current form.

3.2 CLAUSE 7

- 3.2.1 The CGE does not support Clause 7 in its current form because it allows for limited consultations between the Independent Commission and the Minister in the Cabinet as well as the Minister for Finance while excluding members of the CGE. It is untenable to exclude a stakeholder such as members of the CGE who can provide vital insight on their remuneration and conditions of service that affects them.

Therefore, the CGE recommends the inclusion of members of the CGE during any investigation or consideration regarding their remuneration or conditions of service.

- 3.2.2 Furthermore, there is ambiguity created in proposed Clause 7(a) which proposes recommendations to be made by the Independent Commission in instances where Commissioners are to perform additional duties and functions. The reason for this is that there are different types of additional functions ranging from attendance to conferences, specialised research or training which may be performed by Commissioners. In addition to this Commissioners may assume the duties and functions of their peers at short notice. These needs are ignored in the Determination of Remuneration of Members of Constitutional Institutions Bill of 2013.

Accordingly, the CGE recommends that the proposed clause should speak to these needs with greater clarity.

- 3.2.3 The CGE is concerned with the proposed construction of Clause 7(5)(b)(i) and (ii) which allows for Parliament to either approve a notice issued in terms of SS (4) or simply disapprove of it because it limits the options available to resolve issues on remuneration.

The CGE recommends that Section 7(5)(b)(i) and (ii) be constructed in a manner that allows Parliament to approve an amended notice as opposed to mere excision of untenable recommendations proposed by the President in terms of 8(1) (a).



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4. LIMITED APPROACH BY DETERMINATION OF REMUNERATION OF MEMEBRS OF CONSTITUTIONAL INSTITUTIONS BILL 2013

The CGE is concerned with the limited approach adopted in the Determination of Remuneration of Members of Constitutional Institutions Bill of 2013. Such an approach is certain to prejudice members of the CGE. In this regard the CGE recommends that the proposed legislation should ensure that the Independent Commission must also address the following at all times :

- 4.1 Medical Aid Benefits
- 4.2 Inflationary Increments
- 4.3 Uniform remuneration across constitutional institutions to address disparities
- 4.4 Upper limits of remuneration that take cognisance of the role, status duties, functions of members, the current principles and levels of remuneration in society generally, the need for the promotion of equality and uniformity of salaries inclusive of allowances and benefits for equal work performed.
- 4.5 A mechanism to appeal concerning unconstitutional, unlawful and untenable recommendations or decisions that are taken regarding the nature and procedure in determining remuneration and conditions of service that relate to members of all constitutional institutions. This is necessary in terms of the principle of *audi alteram partem*.

5. CONCLUSION

The CGE welcomes the Determination of Remuneration of Members of Constitutional Institutions Bill of 2013. It is necessary to promulgate this piece of legislation as a matter of urgency. Notwithstanding this the Bill herein must also address the gaps, prejudices and injustices relating to the remuneration of members of the CGE meaningfully. In this regard the CGE has made relevant comments and recommendations and trusts that these will be accorded consideration.

Cape Town
18 January 2013



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