

TO : The Select Committee on Security and Constitutional Development

Dear Sirs/Madam,

**CONSIDERATION AND REPORT IN RESPECT OF THE SALARIES, ALLOWANCES AND BENEFITS PAYABLE TO MAGISTRATES ANNUALLY**

The draft notice and schedule determining the rate at which salaries, allowances and benefits are payable to magistrates annually has been referred to your committee for consideration and report.

I am thankful for this opportunity to take part in Parliament and to have my voice heard as guaranteed by the Constitution and democracy.

I am making these submissions as a single person. I am not representing a body of members. It is my hope that my little voice will receive the same serious consideration as if I was an organization representing hundreds or thousands of members.

My submissions are not an attempt to enter into any salary negotiations with the Committee. Its' purpose is to place certain aspects before the Committee to be taken into account when considering whether the said notice and schedule should be approved or rejected.

In paragraph 2.1 of the said notice, the total remuneration shall include a basic salary component equal to 60% of the total package which constitutes the pensionable salary.

The basic salary of Magistrates thus still stands at 60 % of the package even though SMS (Senior Management Services) had theirs increased to 70 %. The SMS members were also given a once off choice to change the pre-1 April 63% basic salary to 70% in the SMS package. Please see attached documents in this regard (Annexure A and B). Consideration should be given to giving Magistrates the same benefit as given to SMS members. There is no credible reason which justifies not granting them the same benefit. A basic salary component of 70% of the total package places Magistrates in a better position when the pension is calculated.

In paragraph 2.2 of the notice (which is being considered), the total remuneration shall include a pension fund contribution to the applicable pension fund. Currently Magistrates belong to the Government Employees Pension Fund (GEPF). They are statutorily compelled to belong to the Fund although they are not represented in the central bargaining council where members' interest in the Fund is negotiated.

The Independent Commission for the Remuneration of Public Office Bearers (ICRPOB) made a recommendation that a pension fund should be created for Magistrates which would be separated from the GEPF since they are no longer civil servants. Two years have passed and this recommendation has still not

been implemented. Please see attached letter dated 30 July 2010 which the ICRPOB addressed to the President of SA, His Excellency Mr Zuma in this regard (Annexure C).

In paragraph 1 of the notice (which is being considered) it is determined that the remuneration and allowances of Magistrates shall be as set out in Column 4 of Schedule 1. In Schedule 1 a remuneration adjustment of 5,5% is proposed.

This year the annual increase given to the civil service was 7%. The determinations which the President of SA, His Excellency Mr Zuma made this year and determinations which have been made in the past years with regards to annual salary increases of Magistrates has been less than that received by government employees. Magistrate's remuneration levels have been consistently dropping in real terms when compared with other public office bearers and senior public servants. In 2007, magistrates earned approximately 43% of the total income of the Chief Justice, this has now been reduced to about 30%. There are now prosecutors and Senior Prosecutors who earn more than Magistrates. The magistrate who is regarded to be in the senior position in the courts is remunerated for less.

The ICRPOB was informed about the fact that Public Prosecutors are earning a much higher salary than Magistrates and on 18 October 2011 it made an undertaking to conduct an investigation into these allegations and if it is confirmed, they would have a thorough review on salaries of magistrates aimed at altering the position. On 7 April 2012 the ICRPOB reneged on this undertaking. Documents to show this are attached herewith as Annexures D and E.

Please find attached a comprehensive report by the Lower Court Remuneration Committee (Annexure F) which was submitted to the ICRPOB. When you consider this report compared to the ICRPOB recommendations which I have also attached (Annexure G), it will become clear that the ICRPOB failed to consider the LCRC submissions. The LCRC supplied the ICRPOB with information showing the discrepancies between the salaries of Magistrates and Prosecutors. The LCRC report is not limited to these discrepancies. It is a thorough and well motivated document which should not be disregarded. It clearly shows that with regards to Magistrates, a salary adjustment is required which differs from that of other categories of office bearers.

I have attached a judgment by the Honorable Justice Bertelsmann (Annexure H) which was delivered on 3 September 2012. This judgment relates to an application to review the 2010 salary determination in respect of the remuneration of Regional Magistrates and Regional Court Presidents. The First Respondent was the President of SA and the Second Respondent was the ICRPOB. The Honorable Justice reviewed and **set aside** the decision taken by the President of SA wherein he increased their remuneration by 5 %.

At paragraph 44 the Honorable Justice states and I quote "*...in adopting the second respondent's approach of uniform increase for all classes of office*

*bearers, but at a reduced level, no consideration was given to the different circumstances of the different categories of public office bearers affected by the determination. Their respective roles, status, duties, functions and responsibilities were neither mentioned nor considered or compared with one another. There is no evidence of any appreciation that the circumstances of the Regional Magistrates.....might require a salary adjustment that differed from that of other categories of office bearers affected by the determination. Even if a blanket adjustment of all public office bearers' salaries were to be decided upon eventually, the first respondent to consider the circumstances of the individual categories of public office bearers and their particular claims to salary adjustments before coming to a final conclusion."*

Further at paragraph 46 the Honorable Justice states and I quote *"It follows that the first respondent's determination of the 2010 salary adjustments relating to the Regional Magistrates and Regional Court Presidents fails the test of legality because of the failure to comply with the statutory requirement to consider the public office bearers' particular role, status, function, duties and responsibilities prior to determining an appropriate salary increase, rendering the determination unlawful and irrational. It must therefore be set aside and remitted to him for reconsideration."*

This year's recommendation by the ICRPOB (Annexure G) is once again a uniform increase for public office bearers. This "one-size-fits-all" approach was criticized by the Honorable Justice. With the current recommendation the ICRPOB has failed to consider the magistrates' particular role, status, function, duties and responsibilities prior to determining an appropriate salary increase as statutorily required (section 8 (6) of the Commission for the Remuneration of Public Office Bearers Act 92 of 1997).

In light of the above, I respectfully submit that the notice and schedule cannot and should not be approved and that your Committee should recommend that it should not be approved by the NCOP. These issues have been dragging for some time and should be attended to instead of being postponed or delayed any further. The President of SA, His Excellency Mr Zuma and the ICRPOB should give consideration to the highlighted issues.

I am willing to respond to any questions which members of the Committee may have as well as to appear before the Committee should I be invited to do so.

Thank you for your time.

Regards

  
Annalene Larsen (mrs)