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**MINISTER
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The Honourable Ms B Mbete
Speaker of the National Assembly
Parliament of the RSA
CAPE TOWN
8000

Dear Ms Mbete

**CONDITIONAL UPLIFTMENT OF THE PROVISIONAL SUSPENSION OF
REGIONAL MAGISTRATE MR P S HOLE: REPORT BY THE MAGISTRATES
COMMISSION**

The purpose of this tabling is to provide Parliament with a progress report received from the Magistrates Commission on the upliftment of the provisional suspension of Magistrate P S Hole, Kimberley in terms of section 13(3)(f) of the Magistrates Act, 1993 (Act No 90 of 1993). A copy of the report is attached herewith.

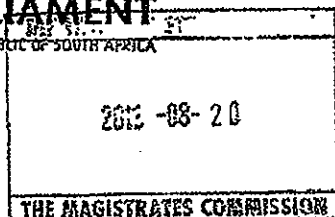
With kind regards


**T M MASUTHA, MP (ADV)
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES**

DATE: 31/07/14



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

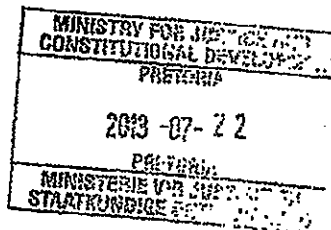


NATIONAL ASSEMBLY
THE SPEAKER

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2 July 2013

Mr JT Radebe MP
Minister of Justice and Constitutional Development
5th Floor, Room 510
120 Plein Street
Cape Town 8000



Dear Minister Radebe

Report of Portfolio Committee on Justice and Constitutional Development on Upliftment of provisional suspension from office of Magistrate PS Hole, Kimberley

I draw your attention to the report of the above Committee, which was adopted by the National Assembly on 20 June 2013.

The National Assembly approved the upliftment of the provisional suspension of Mr PS Hole with the following conditions, namely that:

- a) Mr Hole is assigned only the part-heard matters. Any decision regarding the allocation of new matters is to be informed by the outcome of the inquiry into his fitness to hold office currently underway;
- b) the Magistrates Commission considers starting those part-heard matters afresh where this is necessary and desirable having regard to possible prejudice to the children, women or any other person who has already testified;
- c) Mr Hole must not conduct himself in a manner that compromises the integrity of the judiciary and brings the administration of justice into disrepute; and
- d) the Magistrates Commission provides regular reports to the National Assembly on whether Mr Hole is abiding by the conditions of the upliftment and the progress of the cases before him as well as the status of the disciplinary hearing against him.

Copies of Minutes of Proceedings of the National Assembly dated 20 June 2013 and of the Announcement, Tablings and Committee Reports (19 June 2013, p 2902), are attached.

Yours sincerely

NC Mfeketo MP
Deputy Speaker of the National Assembly

cc Mr CT Frolick MP
House Chairperson: Committees, ICT and Oversight

Mr LT Landers MP
Chairperson of the Portfolio Committee on Justice and Constitutional Development

REPORT ON PARTLY HEARD MATTERS OF REGIONAL COURT MAGISTRATE, MR P S HOLE AS AT 29 JULY 2014

NR	CASE NO	ACCUSED NAME	POSITION	CHARGE(S)	FIRST APPEARANCE DATE	DATE OF PLEA IN R/COURT	PARTIES	CURRENT STATUS
1	RCZ161/06	Rirchard Kaleb	On warning	Rape(Common Law)	17/03/06	08/04/08	PP: Ms Botha Def: Mr Bergh	On 20/06/2014 Remanded in custody to 20/08/2014 for attorney.
2	RCZ344/08	Tshepo Mowana	In custody	1.House breaking and Rape (Sec 3) 2. HB and AGBH 3.Rape (Sec 3) 4. AGBH	19/05/08	09/05/11	PP: Ms Ilanga Defence Mr Bergh	Finalised on 27/09/2013.
3	RCZ 258/09	1.Jan Meyer 2.Tom Myer 3.Johnny Peterson 4.Joyce January	1.On bail 2.On warning 3.On bail 4.n warning	Theft	11/03/09	04/07/11	PP: Ms Deetlefs Defence: Acc1 &2 Mr Bergh Accused 3: Adv Fourie Accused 4: Mr Squires	On 20/06/2014 accused No's 1 & 4 Remanded On Bail and No3 Remanded In Custody to 15/09/2014 for further trial.
4	RCZ 555/09	Tony Taukane Mpeku	Sentenced	Rape(Sec 3)	09/06/09	06/11/09	PP:Ms Botha Defence: Mr Bergh	Finalised
5	RCZ573/09	Melato Jan Monyane	On bail	1.Rape (Common law) 2.Assault	17/06/09	24/06/10	PP: Ms Botha Defence: Mr Fletcher	Sent on special review on 20/11/2013
	RCZ877/09	Gordon Williams	On warning	1.Rape(Sec 3)x2	05/08/09	19/01/11	PP: Ms	Finalised on

6				2.Sexual Assault(Section 5(1)) x3			Ilanga Defence: Mr Bergh	14/01/2014
7	RCZ 1177/09	Mbulelo Fayo	On bail	1.Rape(Sec 3) 2.Assault	03/11/09		PP: Ms Ilanga Defence: Adv Fourie	Finalised on 14/11/2013
8	RCZ 410/10	Ben Dondolo	On Bail	Rape (Sec 3)	20/05/10	04/11/10	PP: Ms Ilanga Defence: Mr Fletcher	On 19/05/2014 Remanded on bail to 24/08/2014 for further evidence.
9	RCZ 963/10	Daniel Poloko Louw	On bail	Rape(Sec 3)	15/09/10	Not clear	PP: Ms Ilanga Defence Mr Mabaso	On 20/06/2014 Remanded on Bail to 18/08/2014 for Presiding Officer- reported sick but no medical certificate.
10	RCZ 969/10	Lucas Monnapule Manong	In Custody	Rape(Sec 3) x2	16/10/10	13/04/11	PP: Ms Ilanga Defence: Mr Mabaso	On 24/02/2014, finalised.
11	RCZ 1264/10	Ishmael Mohammed	In custody	Rape	19/11/10	26/05/11	PP: Ms Botha Defence: Mr Bergh	Finalised on 05/11/13
12	RCZ1263/10	Simone Tladi	On bail	Rape (Sec 3)X 3	19/11/10	14/03/11	PP: Ms Botha Defence: Ms Bergh	On 11/06/2014 Remanded in custody to 24/07/2014 for attorney.

13	RCZ 1375/10	Joseph Martins	On bail	Rape (Sec 3) X 2	15/12/10	08/08/11	PP: Ms Deetlefs Defence: Mr Mabaso	Finalised on 21/01/2014
14	RCZ 1378/10	Enoch Mgijima	In custody	1.Rape (Sec 3) X2 2.HB and Theft	15/12/10	25/05/11	PP: Ms Botha Defence: Mr Mabaso	Finalised
15	RCZ 1367/10	Phingas Magwegwa Jacobs	Sentenced	Rape(Sec 3)	14/12/10	04/08/11	PP: Ms Deetlefs Defence: Mr Bergh	Finalised
16	RCZ 1391/10	Portia Alexander	Sentenced	Child Neglect (Sec 305 (3))	17/12/10	26/09/11	PP: Ms Deetlefs Defence: Mr Bergh	Finalised on 31/10/2013
17	RCZ 71/11	Teele John Jatha	On bail	Attempted Rape (Sec 55 (a))	25/01/11	10/08/11	PP: Ms Deetlefs Defence: Mr Bode	Finalised on 21/10/2013
18	RCZ 208/11	Kgositsile Leonard Chweu	On bail	1.Housebreaking unknown x 2 2.Attempted Rape(Sec 55 (a)) X 2	07/03/11	20/09/11	PP :Ms Ilanga Defence: Mr Bergh	Finalised on 11/06/2014
19	RCZ 242/11	Koos Goeieman	In custody	Rape (Sec 3) X 2	22/03/11	22/06/11	PP: Ms Ilanga Defence:Mr Mabaso	Finalised on 19/09/2013
20	RCZ272/11	Yi Giyi Shi	On bail	Sexual Assault (Sec 5(1))	31/03/11	Not Clear	PP: Ms Ilanga Defence: Mr Bergh	On 20/06/2014 Remanded on bail to 16/09/14 because Mr Hole was absent-reported sick.

21	RCZ 292/11	Tebogo Africa	On bail	Rape(Sec 3) X2	12/04/11	14/06/11	PP:Ms Ilanga Defence: Mr Bergh	Finalised on 15/01/2014
22	RCZ 462/11	Jack Tumelo Motlehelo	On Bail	Rape (Sec 3) x2	09/06/11	03/10/11	PP: Ms Ilanga Defence: Mr Bergh	Finalised on 13/11/2013
23	RCZ618/08	Shadrack Fourie	Sentenced	Statutory Rape(Sec 15(1))	N/A	N/A	PP:Ms Ilanga Defence Ms Bergh	Finalised
24	RCZ 334/08	Lentikile John January	On bail	Rape (Sec 3) X4	15/05/08	21/07/10	PP: Ms Botha Defence: Mr Fletcher	On 20/05/14 Remanded on bail to 15/09/2014 for transcripts and further evidence.
25	RCZ 919/10	Ensley Poiho Bassie	On bail	1.Rape (Sec 3) x 2.Kidnapping 3.Assault GBH	03/09/10	17/03/11	PP: Ms Ilanga Defence: Mr Bergh	Finalised on 22/01/2014
26	RCZ 1257/10	Zakhele Raymond Mkhwanazi	On warning	1.Rape(Sec 3)x2 2.Attempted Murder	18/11/10	28/03/11	PP: Ms Ilanga Defence: Mr Bergh	On 13/06/2014 remanded on warning to 15/09/2014 for further evidence.

**CONDITIONAL UPLIFTMENT OF REGIONAL MAGISTRATE MR PS HOLE'S
PROVISIONAL SUSPENSION BY PARLIAMENT ON 19 JUNE 2013 TO
COMPLETE HIS PART-HEARD MATTERS: REPORT BY THE MAGISTRATES
COMMISSION TO PARLIAMENT ON PROGRESS WITH FINALISATION OF
PART-HEARD MATTERS: 3RD REPORT TO THE NATIONAL ASSEMBLY**

1. On 19 June 2013, Parliament resolved to uplift the provisional suspension of Mr P S Hole, Regional Magistrate, Kimberley, with the following conditions:-
 - “(a) Mr Hole is assigned only these part-heard matters. Any decision regarding the allocation of new matters is to be informed by the outcome of the inquiry into his fitness to hold office currently underway;
 - (b) the Magistrates Commission consider starting those part-heard matters afresh where this is necessary and desirable having regard to possible prejudice to the children, women or any other person who has already testified;
 - (c) Mr Hole must not conduct himself in a manner that compromises the integrity of the judiciary and brings the administration of justice into disrepute; and
 - (d) the Magistrates Commission provide regular reports to the National Assembly on whether Mr Hole is abiding by the conditions of the upliftment and the progress of the cases before Mr Hole, as well as the status of the disciplinary hearing against him.”
2. In line with the conditions and directives issued by the Magistrates Commission on 8 July 2013 the Regional Court President arranged pre-trial conferences / consultative meetings with all the stakeholders and at these meetings all arrangements have been finalised to enable Mr Hole to as soon as possible complete his part-heard matters. The first part-heard matter commenced on 16 September 2013.
3. An updated list of part-heard matters is attached as **Annexure A**. 17 of the original 26 part-heard matters have in the meantime been finalised by Mr Hole.
4. The misconduct inquiry against Mr Hole was set down for the hearing of evidence on 29 July 2013. Mr Hole on this date brought an application for

postponement which was opposed by the magistrate designated to lead evidence on behalf of the Magistrates Commission. The presiding officer however ruled in favour of Mr Hole and the matter was postponed for hearing on 2 to 6 December 2013.

5. Mr Hole who on 2 December 2013 was still unrepresented, applied for the recusal of the Presiding Officer. He based his application on alleged institutional bias by the Magistrates Commission and referred to case law in this regard. His application was dismissed by the Presiding Officer who ordered that the inquiry be proceeded with. Mr Hole then requested a postponement in order to approach counsel to advise him on whether or not he should take the ruling by the presiding officer on review. The person leading evidence opposed the application for postponement. The Presiding Officer dismissed the application for postponement and ruled that the inquiry must proceed. The first witness was called and testified. The proceedings continued from 2 to 5 December 2013 when Mr Hole submitted a note from a medical practitioner whom he had consulted the previous afternoon which indicated that he is ill and unable to proceed with the inquiry. The inquiry was in the circumstances postponed to proceed from 12 to 16 May 2014 which will allow time for the magistrates who are witnesses to make the necessary arrangements as regards their individual court rolls. On 12 May 2014 Mr Hole brought various applications which included the application on new grounds for the recusal of the Presiding Officer. He also requested to be provided with a copy of a preliminary investigation report which was compiled by Magistrate Thulare following complaints against Mr Nqadala. The Presiding Officer dismissed the application for recusal and ruled that the Thulare-report be made available. The report was made available to Mr Hole on 14 May 2014 whereafter Mr Hole further requested that copies of statements which were obtained from prospective witnesses who were interviewed by Mr Thulare as part of the preliminary investigation must also be made available to him. The Presiding Officer ruled that the person leading evidence must approach the Magistrates Commission to ascertain whether the statements are still available and if so, whether the Magistrates Commission is prepared to furnish Mr Hole with copies of the statements. The matter was on 14 May 2014 postponed to proceed on 8 to 12 September 2014 and on 13 to 17 October 2014 for further hearing. The Secretariat of the Magistrates Commission in the meantime traced the recordings which were made during the interviews with the witnesses and the transcription thereof will be provided to Mr Hole upon receipt thereof from the service provider.

6. Follow up reports will be submitted to Parliament on a regular basis to report on progress with the finalization of Mr Hole's part-heard matters.

M F Legodi

M F LEGODI

CHAIRPERSON: MAGISTRATES COMMISSION

29 JULY 2014