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**5. Report of the Select Committee on Security and Justice on the Suspension from Office of Magistrate of Ms X B Stuurman, an Additional Magistrate at East London, tabled in terms of section 13(4)(b) of the Magistrates Act, 1993 (Act No 90 of 1993), dated 01 November 2017**

1. **Introduction**

The Select Committee on Security and Justice, having considered the Magistrates Commission’s report dated 18 August 2017 on the suspension of a magistrate, Ms X B Stuurman, an Additional Magistrate at East London, tabled by the Minister for Justice and Correctional Services, in terms of section 13(4)(b) of the Magistrates Act, 1993 (Act No 90 of 1993), reports as follows:

1. **Background**
	1. Ms XB Stuurman was appointed to the office of Magistrate on 5 May 2003.
	2. Ms Stuurman was charged with 18 counts of misconduct, contained in three separate charge sheets dated; 12 July 2013, 7 November 2013 and 3 December 2014.
	3. The Magistrates Commissions’ Person to Lead the Evidence (PLE) at the misconduct hearing withdrew charge 2 contained in the first charge sheet. Ms Stuurman placed all the remaining charges in dispute. The Presiding Officer, with both parties in agreement, had the charges set out in the second and third charge sheets dated 3 December 2013, renumbered for purposes of convenience and continuity.
2. **Misconduct charges**
	1. The misconduct charges against Ms Stuurman relate to various incidents which occurred during 2011 and 2014.
		1. Ms Stuurman would insult and belittle a number of clerks employed at the East London Magistrates Court.
		2. She would both, at the office and in open court, use offensive language, being discourteous, disrespectful, raising her voice and shouting at not only clerks and their supervisors in the presence of other staff members, attorneys and members of the public but also her peers, a Senior Magistrate, the Chief Magistrate and Judicial head of Office and local attorneys.
		3. She would issue and publish emails to administrative staff using offensive language.
		4. Ms Stuurman refused to accept a Notice of Motion from the Respondents’ attorneys, the Sheriff of the Magistrates Court, East London and the Chief Magistrates Secretary. Ms Stuurman failed to adhere to a prayer as set out in the Notice of Motion.
		5. She published a document in which she discussed, remarked and commented on matters pertaining to her profession in the media which was detrimental to the image of the office of magistrate.
3. **Misconduct inquiry**
	1. The misconduct inquiry commenced on 13 March 2015.
	2. Ms Stuurman contended that the evidence which led to the resolution of the Commission’s Ethics Committee to charge her with misconduct was obtained in a manner contrary to the procedure laid down by the Constitutional Court in **Van Rooyen and Others v S and Others 2002 (8) BCLR 810 CC**.
	3. Ms Stuurman further maintained that the complaints against her was not conducted in a manner consistent with natural justice as required in the Van Rooyen case.
	4. The PLE submitted the arguments countering Ms Stuurman’s points in writing.
	5. The Presiding Officer, on 30 June 2015, found no merits in the points raised by Ms Stuurman and therefore dismissed her special pleas filed by her in this regard.
	6. Thirteen witnesses testified on behalf of the Magistrates Commission.
	7. Ms Stuurman called one witness and elected not to testify in her own defence.
	8. The Presiding Officer on 12 December 2016 delivered her judgment and found Ms Stuurman guilty on 17 counts of misconduct. The matter was postponed to 16 January 2017 for imposition of sanctions.
	9. On 16 and 17 January 2017 the Presiding Officer considered all the mitigating and aggravating factors. The Presiding Officer imposed a sanction and submitted her reasons for recommending to the Magistrate’s Commission in terms of Regulation 26(17)(b) of the Regulations for Judicial Officers in the Lower Courts, 1994 (the Regulations), that Ms Stuurman be removed from office as contemplated in Section 13(4)(a)(i) of the Magistrates Act, 90 of 1993.
4. **Recommendation to suspend and remove Ms XB Stuurman from the office of Magistrate**
	1. The Minister, in terms of Section 13(4)(a) of the Magistrates Act, if the Magistrates Commission recommends that a magistrate be removed from office on *inter alia* the basis of misconduct, must suspend that magistrate from office or, if the magistrate is provisionally suspended from office, confirm the suspension. A report in which such suspension and the reasons therefore are made known, must be tabled in Parliament by the Minister within fourteen (14) days of such suspension, if Parliament is then in session, or, if Parliament is not then in session, within fourteen (14) days after the commencement of its next ensuing session.
	2. Parliament must then as soon as is reasonably possible, pass a resolution as to whether or not the restoration of his/her office of the Magistrate so suspended is recommended.
	3. After a resolution has been passed by Parliament as contemplated in paragraph 2 above, the Minister shall restore the Magistrate concerned to his/her office or remove him/her from office, as the case may be.
	4. The Minister for Justice and Correctional Services suspended Magistrate XB Stuurman from office on 18 August 2017.
5. **Committee recommendation to the NCOP for approval**

The Select Committee on Security and Justice, having considered the disciplinary proceedings report from the Magistrates Commission and the Minister’s suspension and removal of Ms XB Stuurman from the Office of Magistrate, reports that it concurs with the suspension and recommends that the National Council of Provinces confirms Ms XB Stuurman’s suspension from the Office of Magistrate.

**Report to be considered.**