**3. Report of the Portfolio Committee on Justice and Correctional Services on the suspension from office of Magistrate VT Gqiba, Chief Magistrate in East London, dated 16 May 2018**

The Portfolio Committee on Justice and Correctional Services, having considered the report of the Minister of Justice and Correctional Services on the suspension from office of Ms VT Gqiba, the Chief Magistrate at East London, tabled in terms of section 13(4)(b) of the Magistrates Act, 1993 (Act No 90 of 1993), reports as follows:

1. Ms VT Gqiba is a Chief Magistrate in East London. The Commission resolved to charge her with misconduct in that:

* Ms Raphahlelo, the Head of the Cluster and Chief Magistrate, Port Elizabeth, had arranged a meeting between the members of the Family Court Sub-committee of the Chief Magistrates Forum (CMF) to be held 23 March 2015. On 13 March 2015, a member of the CMF indicated that he would not be available and requested that an alternative date be arranged. No such date could be arranged and the meeting was, therefore, cancelled. On 18 March 2015, all members of the Sub-committee, including Ms Gqiba, were advised that the meeting was cancelled and Ms Raphahlelo informed Ms Gqiba again on the same day that the meeting had been cancelled. Despite this, Ms Gqiba still travelled to Pretoria on State’s expense, purportedly to attend the meeting, whereas she attended to matters of a personal nature. Ms Gqiba did not have official authority from her Head of the Cluster to travel to Pretoria on 23 March 2015 and her trip to Pretoria resulted in a total financial loss to the Department of R6 803.87
* Ms Gqiba submitted a travel and subsistence claim dated 24 March 2015 for R595.87, certifying that the expenditure she incurred was for official purposes. Ms Gqiba intentionally misrepresented to the Department of Justice and Constitutional Development that she was entitled to claim the said expenditure in that the expenditure so incurred was for official purposes.

1. The Commission is of the view that Ms Gqiba failed to act with integrity and/or failed to act at all times in a manner which upholds and promotes the good name, dignity and esteem of the office of magistrate and the administration of justice.
2. The charge sheet dated, 29 September 2016, was served on her on 3 October 2016.
3. On 25 November 2016, the Commission appointed a Regional Magistrate to preside at the hearing and a Magistrate to lead the evidence at the hearing in terms of Regulation 26(6) of the Regulations for Judicial Officers in the Lower Courts, 1994 (the Regulations).
4. A notice containing the allegations was served on Ms Gqiba. A pre-trial conference was held to limit the issues in dispute on 6 March 2017. The misconduct inquiry commenced at the Department's Regional Office, East London on 25 April 2017.
5. Having considered the evidence presented at the hearing/inquiry and having been addressed by both parties on the merits of the evidence presented to the tribunal, the Presiding Officer found Ms Gqiba guilty on both main counts of misconduct brought against her.
6. The Person Leading the Evidence on behalf of the Commission subsequently presented the tribunal with proof that Ms Gqiba had previously been severely reprimanded by the then Chairperson of the Commission, the Honourable Mr Judge President BM Ngoepe, for similar transgressions. She attended a course in Copenhagen and received an amount of R12 598.00 as incidental expenses. She could not furnish authority for the expenses incurred which resulted in a loss to the Department. On two other occasions she claimed for air tickets from the Magistrates Commission, which payments were made into her bank account, while these tickets were already paid for by the Magistrate Mdantsane. On another occasion, Ms Gqiba again submitted a transport and subsistence claim for payment. It was discovered that the Department already paid for the air ticket and car hire expenses for the same period and the same trip.
7. Having heard both parties' submissions in this regard, the Presiding Officer recommended that Ms Gqiba be removed from office, as contemplated in section 13(4) of the Magistrates Act, 1993. Ms Gqiba was given the opportunity to lodge written representations with the Commission.
8. Having considered Ms Gqiba's representations, the Presiding Officer indicated that he had no additional reasons for his recommendation to submit to the Commission.
9. At its meeting held on 25 August 2017, the Magistrates Commission resolved to recommend to the Minister that the recommendation of the Presiding Officer be accepted and that Ms Gqiba be removed from office on the grounds of misconduct. Her representations were not significant and relevant to the charges of misconduct levelled against her.
10. The Commission is of the view that Ms Gqiba's conduct is so serious that it justifies her removal from office. Her conduct displays dishonesty, which puts her integrity as a judicial officer in serious doubt and renders her unfit to hold the office of Magistrate any longer.
11. 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. 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. After Parliament has passed its said resolution, the Minister shall restore the Magistrate concerned to his/her office or remove him/her from office, as the case may be. The Minister for Justice and Correctional Services suspended Magistrate VT Gqiba from office on 13 September 2017.
12. **Recommendation**

Having considered the report from the Magistrates Commission and the Minister’s suspension and removal of Ms VT Gqiba from the Office of Magistrate, the Committee reports that it concurs with the suspension and recommends that the National Assembly resolve not to restore Ms VT Gqiba to the Office of Magistrate.

Report to be considered.