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**6. Report of the Select Committee on Security and Justice on the Suspension from the Office of Magistrate of Mr IWOM Morake, Magistrate at Lichtenburg, tabled in terms of section 13(4)(a)(i) of the Magistrates Act, 1993 (Act No 90 of 1993), dated 23 May 2018.**

1. **Introduction**

The Select Committee on Security and Justice, having considered the Magistrates Commission’s report dated 8 February 2018, as tabled by the Minister for Justice and Correctional Service, on the suspension and removal from office of Mr IWOM Morake, Magistrate at Lichtenburg, on the ground of misconduct in terms of section 13(4)(a)(i) of the Magistrates Act, 1993 (Act 90 of 1993, hereinafter the Act) reports as follows:

1. **Background**

The previous incumbent Minister, on the advice of the Commission, provisionally suspended Mr Morake from office with effect from 04 November 2010 which suspension was confirmed by both Houses of Parliament on 18 and 24 November 2010 respectively. The Commission on 24 November 2011 determined to withhold his remuneration with immediate effect, which determination was confirmed by Parliament on 24 November 2011. Mr Morake is currently not receiving any remuneration.

1. **Criminal proceedings**
	1. Mr Morake is the Magistrate and Judicial Head at Lichtenburg. The Commission charged Mr Morake with six counts of misconduct which are contained in a charge sheet which was served on Mr Morake on 29 December 2010.
	2. One of the counts related to the fact that the Regional Court, Lichtenburg on 18 October 2010 convicted him on two counts of theft.  On 13 July 2007, Mr Morake appeared in the Lichtenburg Regional Court on three charges of theft. On 21 July 2011 the Court sentenced him to four years’ imprisonment on each count in terms of Section 276(i) of the Criminal Procedure Act. The sentences were to run concurrently. He filed an application for leave to appeal, which application was finally struck from the roll on 27 January 2016. He was represented by Senior Counsel and argued all along that the record of the criminal proceedings against him were incomplete and had to be reconstructed. The Court refused another postponement for this purpose and revoked his bail. He started to serve his sentence on 27 January 2016 and was released at the end of 2016.
	3. The Commission commenced with the disciplinary inquiry against Mr Morake on 11 April 2011. He requested the disciplinary inquiry to be kept in abeyance until the outcome of the criminal case against him. The Commission therefore served an amended charge sheet on him in March 2012 and proceeded to set down the matter for hearing. A copy of the amended charge sheet dated 20 March 2012 is attached.
	4. The inquiry was set down to continue on 23 April 2012. Since then Mr Morake on numerous occasions requested for a postponement to either instruct an attorney or to raise funds to pay his attorney and Senior Counsel, etc. The evidence was finally led on 28 September 2015 and postponed for Heads of Argument to be filed.
	5. Mr Morake's incarceration caused a further delay to have the misconduct inquiry against him concluded.
	6. The inquiry was however postponed to a provisional date in April 2016 for both parties to submit Heads of Arguments on the merits to the Presiding Officer. On 25 May 2016 Counsel for Mr Morake advised the Presiding Officer that he was not placed in funds for drafting Heads of Arguments and indicated that judgment may be delivered in his absence. Counsel, as well as his instructing attorney's mandate was terminated.
	7. Arrangements were made for Mr Morake to appear at the Lichtenburg Court House for both parties to address the Presiding Officer the merits on 26 September 2016. He reported ill and did not appear. His legal representative advised the Presiding Officer on 26 September 2016 that he has again been instructed to proceed in the misconduct proceedings and to brief counsel. Although Mr Morake was afforded an opportunity to file Heads of Argument, he failed to do so.
	8. A notice of motion was set down for the inquiry to continue on 18 April 2017 was served on Mr Morake.  He appeared in person and indicated that his former attorney of record and counsel will again represent him. The inquiry was postponed to 23 June 2017 for both parties to address the Presiding Officer (PO) on the merits. Neither Mr Morake nor counsel was present. The Presiding Officer ruled to proceed with the inquiry in Mr Morake’s absence. The Presiding Officer delivered judgment on 23 June 2017 and found Mr Morake guilty of five counts of misconduct. A copy of the judgment and the reasons therefore is available.
	9. The Presiding Officer imposed a sanction on 16 November 2017 and in terms of Regulation 26(17)(b) of the Regulations for Judicial Officers in the Lower Courts, 1994 (the Regulations) recommended to the Commission that Mr Morake be removed from office as contemplated in Section 13 of the Act.
	10. A decision by the Magistrates Commission to determine to withhold Mr Morake’s remuneration in terms of Section 13(4A)(a) of the Magistrates Act No 90 of 1993 was confirmed by Parliament on 24 November 2011. Mr Morake is currently not receiving any remuneration. His whereabouts since his last appearance at the misconduct inquiry and the withdrawal of his legal team are unknown. He could not be traced and failed to submit any representations.
	11. Having duly considered all the required documentation presented to it, the Commission's Executive Committee on 30 January 2018 resolved to recommend that Mr Morake be removed from office in terms of Section 13(4)(a) of the Act.
2. **Legal position**
	1. In terms of Section 13(4)(a) of the Magistrates Act, 90 of 1993, the Minister, on the advice of the Magistrates Commission, must suspend that magistrate from office or, if the magistrate is at that stage provisionally suspended in terms of subsection (1)(a), confirm the suspension.
	2. A report in which the suspension in terms of paragraph (a) of a magistrate and the reason therefore are made known, must be tabled in Parliament by the Minister within 14 days of such suspension, if Parliament is then in session, or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session in terms of Section 13(4)(b) of the Act.
	3. Parliament must then as soon as is reasonably possible, pass a resolution as to whether or not the restoration of his/her office of a Magistrate so suspended is recommended in terms of Section 13(4)(c) of the Act.
	4. After a resolution has been passed by Parliament as contemplated in paragraph 4.3, the Minister shall restore the Magistrate concerned to his/her office or remove him/her from office, as the case may be.
3. **Committee recommendation to the NCOP for approval**

The Select Committee on Security and Justice, having considered the Magistrates Commission’s report dated 8 February 2018, as tabled by the Minister for Justice and Correctional Services, on the suspension from office of Mr IWOM Morake, Magistrate at Lichtenburg, on the ground of misconduct in terms of Section 13(4)(a)(i) of the Magistrates Act, 1993, recommends that the National Council of Provinces does not restore Mr Morake to the office of Magistrate.

**Report to be considered.**