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**1. Report of the Select Committee on Security and Justice on the Provisional Suspension from the Office of Magistrate of Mr M D Hinxa, Chief Magistrate Bloemfontein, tabled in terms of section 13(3)(b) 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 29 November 2017, as tabled by the Minister for Justice and Correctional Service, on the provisional suspension from office of Mr MD Hinxa, the Chief Magistrate at Bloemfontein, pending the outcome of a misconduct hearing into his fitness to hold the office of magistrate, as is required by section 13(3)(b) of the Magistrates Act, 90 of 1993, reports as follows:

1. **Background**
	1. The complainant in the matter is a 42year old woman from Botshabelo. On 29 July 2016 she lodged a complaint with the Minister alleging that she was raped by Mr Hinxa in his flat in Bloemfontein after he made false pretences to her. Her complaint was submitted to the Department and on 02 November 2016 the complaint was referred to the Commission for attention.
	2. The complainant had reported the matter on several occasions to different police stations. They all refused to open a case hence her letter to the Minister as a last resort.
	3. On 14 January 2017, before the matter could serve before the Commission's Ethics Committee, Mr Hinxa apparently approached Mr Ramoroka, the then Secretary of the Commission, indicating to him that he became aware that a complaint was filed with the Commission against him by a member of the public for alleged rape. Mr Hinxa showed the Secretary a report from the Director of Public Prosecutions, Free State (DPP) following a consultation the latter had with the complainant, indicating that he would not be prosecuted. Mr Hinxa furnished the Secretary with a sworn statement, allegedly made by the complainant, indicating that she was paid R100 000-00 by Maroka Attorneys to implicate him. The Secretary submitted the scanned documentation to the Commission's Ethics Division suggesting that the complainant be advised that her *"complaint will not be followed on and to close the file against Mr Hinxa".*
	4. The complainant however persisted that she was raped by Mr Hinxa and denied having ever made such a statement. The names and signatures on her letter of complaint and the statement provided by Mr Hinxa differ substantially. Many other unclarified issues arise from the documents provided by Mr Hinxa to Mr Ramoroka, the former Secretary.
	5. The Commission therefore resolved to conduct a preliminary investigation into the allegations of rape against Mr Hinxa.
	6. Having approached the Regional Court Presidents for assistance, Mr I Cox and Ms N Dembula-Smile, Regional Magistrates at respectively Benoni and Paarl were appointed on 17 February 2017 to conduct a preliminary investigation in terms of Regulation 26(1) of the Regulations for Judicial Officers in the Lower Courts, 1994. Mr Hinxa was advised accordingly in writing.
	7. Mr Hinxa, in an email dated 22 February 2017 directed representations to the Secretary of the Commission, requesting the Commission to "promptly review and set aside the decision of the Ethics Committee to investigate him”. He based his request mainly on the statement dated 21 June 2015, purportedly made by the complainant, in which she withdrew the complaint against him. As indicated above, Mr Hinxa provided Mr Ramoroka with a copy of this statement on 14 January 2017. On 01 March 2017 Mr Ramoroka's successor, Mr Misser, advised Mr Hinxa that, due to short notice, his representations could not be placed on the agenda of the Commission's meeting held on 24 February 2017 and that the matter will be referred to the Ethics Committee for their input/comments. The Secretary held the view that it would be prudent to first refer the matter to the Ethics Committee to afford the Committee an opportunity to respond to his representations before placing the matter on the agenda of the Commission or its Executive Committee's (EXCO) next meeting for consideration. This caused the conclusion of the investigation to be delayed.
	8. The Ethics Committee at its meeting held on 03 April 2017 considered Mr Hinxa's representations and resolved "…*to stand by its decision to conduct a preliminary investigation in terms of Regulation 26(1) of the Regulations, due to the serious nature of the allegations and far reaching consequences thereof on both sides. The Committee further resolved that the matter be accordingly placed before the EXCO of the Magistrates Commission for its* *endorsement.*"
	9. EXCO at its meeting held on 10 April 2017 resolved that the preliminary investigation against Mr Hinxa must proceed.
2. **Discussion**
	1. Having concluded their investigation, the Investigating Officers filed their combined report with the Commission on 12 October 2017. The Investigating Officers, based on the evidence they obtained, are of the view that the evidence justifies that Mr Hinxa be charged with misconduct.
	2. It is common cause that Mr Hinxa had approached the office of the DPP Free State, concerning the criminal case filed against him by the complainant. It appears that the DPP's decision to decline to prosecute Mr Hinxa on a charge of rape is inter alia based on an incomplete investigation, including the withdrawal statement purportedly made by the complainant. On 18 October 2017, the National Director of Prosecutions (NDPP) has, in the interest of justice, been provided with a copy of the docket, the preliminary investigation report and the supporting statements which were obtained during the preliminary investigation with a recommendation to reconsider the matter and take the steps he may deems fit.
	3. In a letter dated 27 October 2017 Mr Hinxa was invited to show cause why the Commission should not recommend that he be provisionally suspended from office in terms of Section 13(3)(a) of the Act, pending the outcome of an investigation into his fitness to hold the office of magistrate.
	4. Mr Hinxa, through his attorney, responded and furnished the Commission with his representations dated 09 November 2017.
	5. Having due regard to the serious nature of the allegations, the totality of the information at hand and Mr Hinxa's representations, the Commission at its meeting held on 24 November 2017 resolved to charge Mr Hinxa with misconduct and to recommend that he be provisionally suspended from office in terms of Section 13(3)(a) of the Magistrates Act, 90 of 1993.
	6. The Commission holds the view that:
		1. Mr Hinxa’srepresentations mainly rely on the Director of Public Prosecution's (DPP) decision not to criminally prosecute him. The evidence obtained during the preliminary investigation however indicates that there is sufficient evidence to charge Mr Hinxa with misconduct.
		2. The existing evidence against Mr Hinxa is of such a serious nature as to make it inappropriate for him to perform the functions of a Magistrate while the allegations are being investigated.
		3. Mr Hinxa's conduct tarnishes the good name, dignity and esteem of the Office of Magistrate and the administration of justice.
		4. Without anticipating the outcome of the investigation into his fitness to hold the Office of Magistrate, the available evidence against Mr Hinxa is of such a serious nature that it would justify his removal from office, should he be found guilty of the misconduct charges which are preferred against him.
3. **Legal position**
	1. In terms of Section 13(3)(a) of the Magistrates Act, 90 of 1993, the Minister, on the advice of the Magistrates Commission, may provisionally suspend a magistrate from office if-

“(i) the Commission, after affording the magistrate a reasonable opportunity to be heard regarding the desirability of such provisional suspension, is satisfied that reliable evidence exists indicating that an allegation against that magistrate is of such a serious nature as to make it inappropriate for the magistrate to perform the functions of a magistrate while the allegation is being investigated; and

(ii) an investigation has been instituted by the Commission into such magistrate’s fitness to hold office.”

* 1. A report in which the provisional suspension and the reasons therefore are made known, must be tabled in Parliament by the Minister within 7 (seven) days of such suspension, if Parliament is then in session, or if Parliament is not then in session, within 7 (seven) days after the commencement of its next ensuing session (section 13(3)(b) of the Act).
	2. Parliament must, as soon as is reasonably possible, pass a resolution as to whether or not the provisional suspension of the magistrate is confirmed (section 13(3)(c) of the Act).
	3. If Parliament passes a resolution as contemplated in paragraph *(c)* that the provisional suspension is not confirmed, the suspension lapses (section 13(3)(d) of the Act).
1. **Committee recommendation to the NCOP for approval**

The Select Committee on Security and Justice, having considered the Magistrates Commission’s report dated 29 November 2017, as tabled by the Minister for Justice and Correctional Services, on the provisional suspension from office of Mr MD Hinxa, the Chief Magistrate, Bloemfontein, pending the outcome of a misconduct hearing into his fitness to hold the office of magistrate, as is required by section 13(3)(b) of the Magistrates Act, 90 of 1993, recommends the National Council of Provinces confirm Mr MD Hinxa’s provisional suspension from the office of Magistrate.

**Report to be considered.**