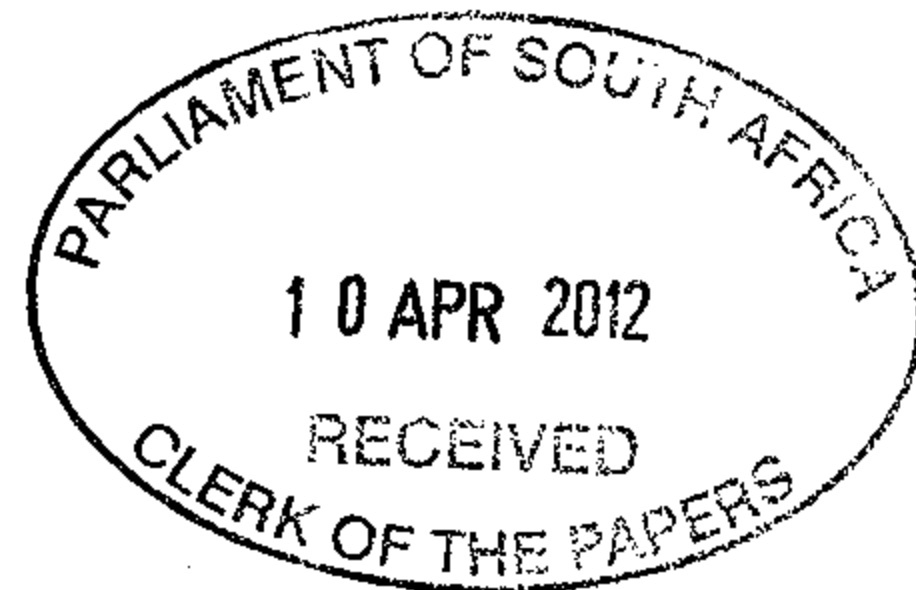




MINISTER
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REPUBLIC OF SOUTH AFRICA

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Speaker of the National Assembly
Honorable M V Sisulu
Parliament of the RSA
Cape Town
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Dear Mr Sisulu

**SUBJECT: PROGRESS REPORT: PROVISIONAL SUSPENSION OF A
MAGISTRATE: MR I W O M MORAKE**

The purpose of this report is to inform Parliament about progress made in respect of the provisional suspension of Mr I W O M Morake, the Magistrate at Lichtenburg in terms of section 13 (3) (f) of the Magistrates Act, No. 90 of 1993 (Act No 90 of 1993).

Kind regards

J. Raade

MR J T RADEBE, MP
MINISTER FOR JUSTICE AND
CONSTITUTIONAL DEVELOPMENT

DATE: 29/03/12



PROGRESS REPORT DATED 26 MARCH 2012 TO PARLIAMENT: PROVISIONAL SUSPENSION FROM OFFICE, MAGISTRATE I W O M MORAKE, LICHTENBURG

1. INTRODUCTION

The Magistrates Commission must in terms of section 13(3)(f) of the Magistrates Act, No. 90 of 1993 (Act) cause a report on the progress made in respect of inquiries against magistrates who have been provisionally suspended from office to be submitted to Parliament every three months.

Section 13(3)(e) of the Act provides that the provisional suspension of a magistrate in terms of paragraph (a) lapses after 60 days from the date of suspension, unless the Commission, within that period, commences its inquiry into the allegation in question by causing a written notice containing the allegations concerned to be served on the magistrate.

2. DISCUSSION

2.1 The Minister, on the advice of the Commission, provisionally suspended Mr Morake from office with effect from 4 November 2010 which suspension was confirmed by both Houses of Parliament on 18 and 24 November 2010 respectively.

2.2 Mr Morake is the Magistrate and Judicial Head at Lichtenburg. Several complaints were lodged with the Magistrates Commission against Mr Morake. The allegations were as follows:

- Attorneys Ranamane Phungo Incorporated alleged that Mr Morake had personally called their client into his office and instructed her to vacate the

property she was occupying. This instruction was given to her although there was no eviction application before the court. No eviction order had been made by the court, nor had she consented to vacate the property.

- The Provincial Head of the South African Police Detective Service, North West requested the Commission to investigate a complaint made by one of its members against Mr Morake. The member was the investigating officer (IO) in a stock theft matter and had arrested a suspect in the case in Lichtenburg. The suspect was charged, appeared before the Lichtenburg Magistrate's Court and the matter was remanded. The investigating officer alleges that a week prior to the remand date he was contacted by Mr Morake and ordered to appear before him at his office. Mr Morake threatened to issue a warrant for his arrest if he failed to do so. The IO complied with the instruction and attended the meeting. The accused was also present at the meeting. Mr Morake asked the IO if he would assist the accused. The IO refused. He later stated that he found the conduct of Mr Morake unusual and threatening.
- A complaint was received from Legal and Tax Services (Pty) Ltd (a legal expense insurance company) through the Chief Magistrate of the North West Administrative Region. It is alleged that Legal and Tax Services had paid Mr Morake R950 to assist their client to secure a loan. Mr Morake failed to secure the loan. They requested that the payment be refunded.
- In another incident, it was alleged that Mr Morake contacted a businessman, Mr Shohag and ordered him to see Mr Morake at his office. Mr Shohag was threatened with arrest if he failed to attend the meeting. Mr Shohag initially ignored the instruction but was later visited by three police officers who informed him that his employee had a problem with him and he had to go and see Mr Morake about this issue. Subsequently Mr Shohag and his two partners went to see Mr Morake at his office as instructed. Mr Shohag's employee was also present. Mr Morake forced Mr Shohag to sign an agreement that he (Mr Shohag) would conduct business with his employee.

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Mr Morake threatened Mr Shohag with deportation back to Bangladesh if he failed to follow the instructions. Mr Shohag later obtained an interdict against Mr Morake and reported the incident to the SAPS Organized Crime Unit.

- Mr Morake became involved in a dispute involving the payment of arrears in respect of electricity in the amount of R1173. He ordered a woman involved in the matter to come to his office with her husband. The other party was also present during the meeting. Mr Morake insisted that the woman pay the outstanding amount to him personally rather than to the municipality. He threatened to lock her in jail if she did not comply with his instructions. A few days later she paid him the money on the understanding that he would pay the money to the other party in the dispute. Weeks later she was summoned to the Small Claims Court for payment of the amount of R1173. The other party had not received the money. When she followed up with Mr Morake he made various excuses and finally stated that somebody had taken the money from his office.

2.3 On 13 July 2007, Mr Morake appeared in the Lichtenburg District Court on three charges of theft. The matter was postponed to 18 October 2010 for judgment. Mr Morake was convicted on two (2) of the three (3) charges. The matter was postponed to 1 February 2011 for sentence. Mr Morake however terminated the mandate of his attorney. The matter was postponed to 1 April 2011 for sentence. The criminal case was on 1 April 2011 again postponed to 13 May 2011. Mr Morake's attorney fell ill. On 13 May 2011 Mr Morake indicated that he wants to call witness(es) to testify in mitigation. The case was remanded to 21 June 2011 for this purpose. Mr Morake was sentenced to 4 years imprisonment on each count in terms of Section 276(i) of the Criminal Procedure Act. The sentences are to run concurrently.

2.4 The Magistrates Commission charged Mr Morake with several counts of misconduct which are contained in a charge sheet which was served on Mr Morake on 29 December 2010. Having considered Mr Morake's written explanation on the

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charges of misconduct, the Commission's Ethics Committee at its meeting held on 10 February 2010 resolved that the misconduct inquiry be proceeded with. A notice of hearing was served on Mr Morake. The inquiry into Mr Morake's alleged misconduct commenced on 11 April 2011. Mr Morake's representative requested the Presiding Officer to postpone the disciplinary proceedings against Mr Morake. They argued that Mr Morake will appeal against his conviction once a sentence has been imposed and requested that the inquiry be kept in abeyance until after the outcome of the criminal case on appeal.

The Presiding Officer granted a postponement until 24 June 2011, provided that Mr Morake should submit proof of the fact that he indeed filed an appeal against his criminal conviction of theft.

On 24 June 2011 the Presiding Officer granted Mr Morake a further request for postponement until 11 July 2011 to give him the opportunity to file his appeal against his conviction and furnish him with proof thereof.

- 2.5 The appeal has not been filed yet, since both parties are experiencing difficulty in having the record of proceedings reconstructed. Tapes and CD's, containing the criminal trial proceedings are missing.

The Presiding Officer in the misconduct inquiry, therefore ordered the disciplinary hearing to proceed on the actus reus concerning the allegations of theft. This implied that the charge of misconduct had to be amended or replaced.

- 2.6 The misconduct inquiry is now to proceed in respect of all the charges on 23 April 2012. 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 whilst the misconduct inquiry is proceeding against him.

