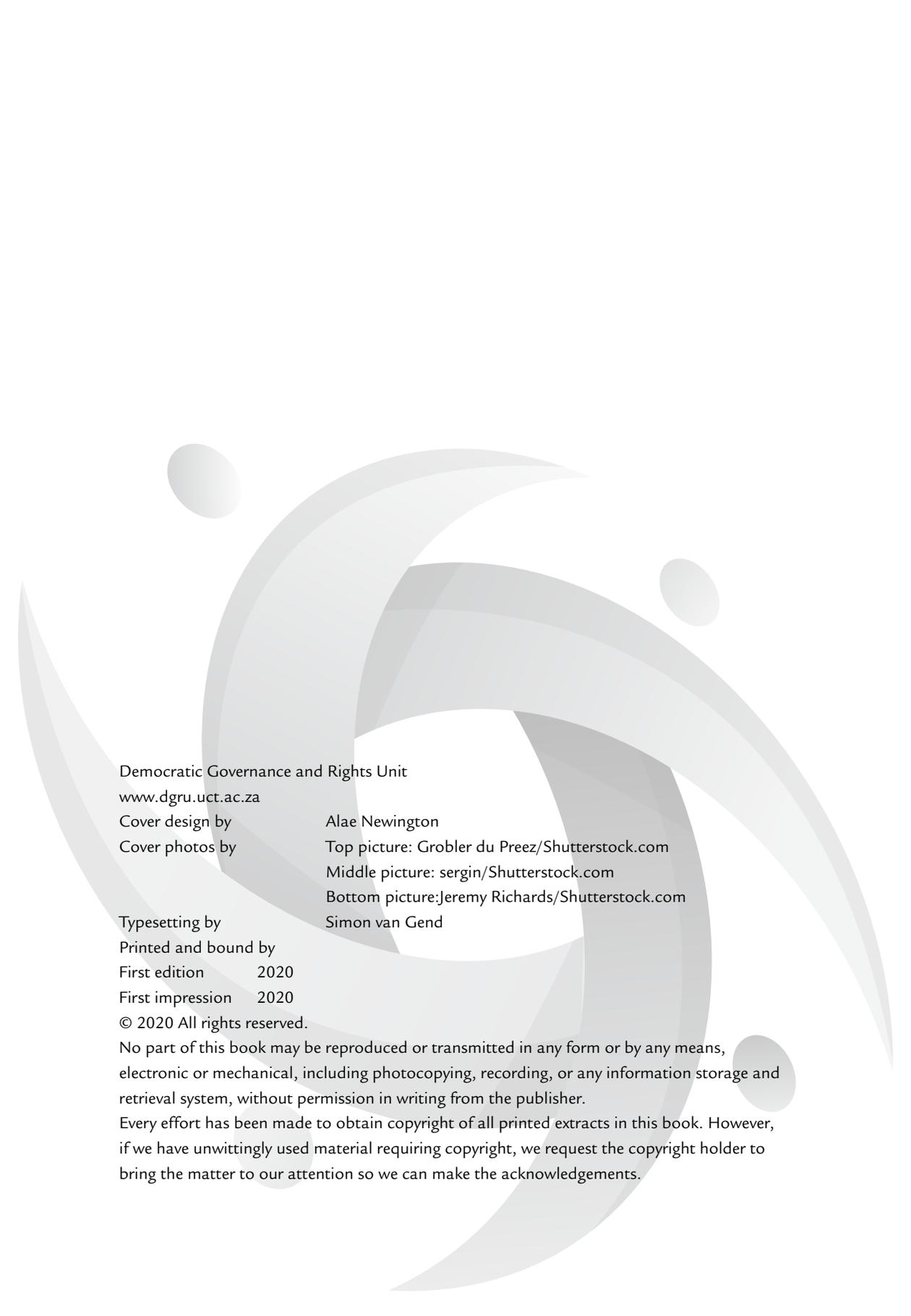


The Coalface Of Justice:

An Analysis of Misconduct Proceedings
against Magistrates in South Africa





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Executive summary

Most South Africans come into contact with the judicial system in the magistrate's courts. As our broader research project has indicated, however, magistrates face numerous challenges. This report looks specifically at the regulation of magistrates' conduct, and in particular the disciplinary processes followed by the Magistrates Commission. We sought to compare negative perception by ordinary South Africans of corruption in the magistracy with empirical data regarding magistrates' conduct. To this end, we conducted research into complaints lodged with the Magistrates Commission.

The report sets out the formal disciplinary process, including the procedures for lodging complaints, investigating and prosecuting alleged misconduct, provisional suspension, and removal from office. We examine empirical records from the Magistrates Commission and Parliament, as well as additional material from the Parliamentary Monitoring Group. In total, we looked at 213 complaints lodged with the Magistrates Commission between 2015–2018. We also carried out a separate analysis of cases which had been considered by Parliament between 2001–2018, and conducted case studies of selected cases in order to identify key challenges faced by the system. The initial findings were discussed with a focus group of senior magistrates, and the feedback received has been incorporated into the report.

Whilst a majority of cases were resolved within a year of the complaint being filed, we identified several factors which can contribute to serious delays in the process, notably the bringing of interlocutory applications, applications for postponement, bringing proceedings on judicial review, and delays in the process once matters are being considered by Parliament. We make six core recommendations, relating to the need to fill a lacuna in the legal framework regarding the processing of complaints; the need for

improved case flow management and record keeping; the need for greater transparency and publicity regarding the work of the Magistrates Commission; the possibility of introducing prescribed timelines and changing the pool from which presiding officers and investigating officers are drawn; possible law reform initiatives to create a legal framework and procedures for dealing with misconduct cases; and finally, to consider the impact of infrastructural problems on perceptions of corruption.

Introduction

The judicial system in South Africa comprises the following courts of law: the Constitutional Court; the Supreme Court of Appeal; the Labour Appeal Court; the High Courts; the Labour Court; the Magistrates' Courts; and any other court established by legislation (such as the Small Claims Court and the Equality Court). More often than not, when people talk of the judiciary in South Africa, they refer to judges and seldom do they perceive magistrates as part of the judiciary. Yet, legally speaking magistrates are judicial officers who perform judicial functions, including hearing cases and delivering judgments in both civil and criminal matters. In terms of section 89 of the Magistrates' Court Act,¹ the district magistrate's court has jurisdiction over all criminal offences, except treason, murder and rape and may impose a sentence of three years or less, and a fine not exceeding R200 000, with a civil jurisdiction of R100 000. The regional magistrates court has jurisdiction over all offenses except treason and may impose a sentence of up to life imprisonment, and a fine not exceeding R600 000, with a civil jurisdiction of R300 000.

With such a wide jurisdiction, magistrates are a very important part of the structure of the judicial system and are at the coalface of the South African justice delivery system, as they are usually the first port of call for people who come into contact with the criminal justice system or who are involved in civil litigation. Magistrates are primarily regulated by the Magistrates Act of 1993² and the Magistrates' Court Act of 1944. In 2018 the Office of the Chief Justice reported that the total number of magistrates stands at 2 036. There is a Magistrates Commission, whose objectives include promoting professional development and independence of the magistracy, conducting investigations and making recommendations

Magistrates are a very important part of the structure of the judicial system and are at the coalface of the South African justice delivery system.

1 Act 32 of 1944.

2 Magistrates Act 90 of 1993.

A magistrate can be removed from office prior to his or her retirement age only for reasons of misconduct, continuous ill health or incapacity.

to the Minister of Justice and Correctional Services on the appointment, suspension and removal of magistrates. The Magistrates Commission is established in terms of the Magistrates Act. This Commission is appointed by the President of the Republic. Section 3 of the Magistrates Act makes provision for the constitution of the Commission and the period of office of members of the Commission. In terms of the Act, the Commission shall constitute a total of 27 members, with a High Court judge as the Chair.

There are mechanisms in the Magistrates Act to safeguard security of tenure for Magistrates. According to section 13 (3) of the Act and as was underscored by the Constitutional Court in *S v Van Rooyen*, a magistrate can be removed from office prior to his or her retirement age only for reasons of misconduct, continuous ill health or incapacity. In practice, allegations of misconduct, continuous ill health and incapacity must be reported to the Magistrates Commission who in turn will conduct investigations, as well as a hearing if required. Where the Commission finds the magistrate guilty of the allegations, it may make recommendations for the Minister to remove the magistrate. The Minister may however decide to impose another appropriate remedy, which may not necessarily be to remove the magistrate from office. The Minister is required to account to Parliament by tabling a report to Parliament if any decision has been made to suspend or remove a magistrate. This report must be tabled by the Minister within 14 days after the suspension or removal of the magistrate, if Parliament is in session. If Parliament is not in session, the report must be tabled within 14 days after the commencement of Parliament's next session.

In the words of former Chief Justice of South Africa Ismail Mohamed, *"it is in the Magistrates' Courts that justice is tested in its most crucial, most pervasive, most voluminous, most pressurized, and logistically most demanding dimensions – in literally thousands of cases every day...the continuous struggle for the legitimacy and the efficacy of the instruments of justice is substantially lost or won in the Magistrates Courts"*. It is therefore important that citizens engage with the issues relating to

the magistracy in order to promote the independence, accountability and the efficiency of this critical structure of the judicial system.

The judiciary in general has long been seen as one of the more functional branches of government. This has been particularly true during the era of “state capture”, when it has been common to describe the judiciary as a last bastion of good governance, “holding the line” against impunity and misrule. The words of political analyst Raymond Suttner are reflective of widely held views of the judiciary during the Zuma presidency and the “state capture” era:

“The courts came to the aid of the poor and marginalised whose monies were being squandered by the insatiable greed of the immediate past president and his acolytes.

What is it that happened, in democratic terms? The Constitution mandated the executive and legislature with advancing and defending democratic rights under the Constitution. They were charged with playing an active role to achieve social justice. Instead of acting in accordance with this duty, they negated their constitutional obligations.

Paradoxically, it was the judiciary and to some extent the Public Protector, unelected individuals, with no direct popular democratic mandate, who came to the rescue of South African democracy ...”³

Whilst much of the attention for this pushback is focused on the highest courts in the country, it would be natural to assume that all parts of the judicial ecosystem are functioning well and effectively, including the magistracy. However, it has become clear that there are a number of challenges facing the magistracy. While we analyse how magistrates view many of the challenges (e.g. court

It has become clear that there are a number of challenges facing the magistracy.

3 Raymond Suttner, “The judiciary, State capture and the future”, Daily Maverick 14 May 2019. <https://www.dailymaverick.co.za/article/2019-05-14-the-judiciary-state-capture-and-the-future/#gsc.tab=0>

The most recent Afrobarometer survey in 2018 indicates that 32% of citizens say that most or all magistrates and judges are corrupt, while a further 47% of South Africans say that some magistrates and judges are corrupt.

infrastructure, work load, etc.) in a separate report, the focus of this report is on the conduct of magistrates, and the disciplinary procedures of the Magistrate Commission in particular. Understanding how well the disciplinary mechanisms work is important, given the poor perception of the magistracy in the public's eye. The most recent Afrobarometer survey in 2018 indicates that 32% of citizens say that most or all magistrates and judges are corrupt, while a further 47% of South Africans say that some magistrates and judges are corrupt. Moreover, 47% of citizens surveyed have no or little trust in magistrates. Concerns around corruption in the judiciary are rising and this all gives rise to an increased need to focus on the lower courts. Yet, there is a paucity of empirical information on this challenge and its scope.

The DGRU was interested in comparing the perceptions of ordinary South Africans with empirical data on the actual conduct of the magistracy to see if there is a factual basis to these perceptions. At the same time, we wanted to investigate how the complaints system is operating. We decided to undertake research into all complaints lodged against magistrates since 1994 (when the Magistrates Commission came into being) to get a full picture of the number and kinds of issues as well as an analysis of the system by which conduct issues are investigated and resolved.

However, once we began our research, we had to reduce the scope of the analysis somewhat due to limited availability of information. We describe the data sources and their limitations in detail below, after setting out an outline of the formal complaints process. The third section begins by providing an overview of the number and types of complaints that have been submitted to the MC between 2015 and 2018. We then proceed to analyse how effectively complaints are dealt with in practice. This is done by focusing on two stages of the process – the internal investigations conducted by the commission, and the procedures involving parliament. In the last section,

we make several recommendations that may improve the conduct process.

This report was made possible thanks to the generous support of the Open Society Foundation and the Social Justice Initiative.

Section 1

The process on paper

Magistrates disciplinary system outline

In this section, we set out the process by which complaints against magistrates are dealt with. The primary actor for dealing with disciplinary issues within the magistracy is the Magistrates Commission (MC).⁴ Here we discuss three processes: how complaints are dealt with under the applicable regulations, as well as the necessary steps for the suspension and/or removal from office of magistrates under the Magistrates' Act.

In the course of our research, we discovered a significant lacuna in the legal framework for dealing with complaints against magistrates. On paper, it appears as though the process for lodging complaints against magistrates is set out in regulations promulgated in terms of section 6A of the Magistrates Act. These are the *Complaints Procedure Regulations* of 1998.⁵ These regulations have been legally brought into operation. However, we have been advised that the regulations are not being implemented and applied in practice. The reason for this is found in section 16(1) of the Magistrates Act, which provides as follows:

“The Minister may, after the Commission has made a recommendation, make regulations regarding the following matters in relation to judicial officers in the lower courts:

(a) (i) The requirements for appointment and the appointment, promotion, transfer,

4 Established by section 2 of the Magistrates Act 90 of 1993. (“Magistrates Act”).

5 Complaints Procedure Regulations, 1998, GN R1240 in GG 19309 of 1 October 1998.

*discharge and disciplinary steps; ...”
[Emphasis indeed].*

We have been advised that no recommendation was made by the Commission in respect of these regulations. This would render the regulations vulnerable to being set aside if they were to be challenged. The regulations had established a complaints committee for each cluster and regional division, to deal with complaints.⁶ Concerns have been expressed, however, about the potential for inconsistency arising from so many different structures, all composed of different magistrates, dealing with complaints in the first instance.

In these circumstances, the complaints procedure regulations have effectively not been put into operation and are not being utilised in practice. The committees contemplated by the regulations have not been established. This is obviously a problematic situation, as will be apparent from the discussion which follows. This issue will be discussed further in the recommendations section of this report.

In these circumstances, the complaints procedure regulations have effectively not been put into operation and are not being utilised in practice.

Complaints Procedure

In the absence of the committees contemplated in the Complaints Procedure Regulations, it appears that complaints are laid with the secretary of the MC or the magistrate’s head of office.⁷ The MC’s website states that complaints should be reported to the judicial head of court, and if the complainant is not satisfied with how the matter is dealt with, the complaint may be directed to the secretary of the MC.⁸ It appears that, in practice, complaints are also received by the MC directly. The complaint must be a written declaration under oath or affirmation, and contain specified information, namely:

- The nature of the matter;

⁶ Complaints Procedure Regulations, regulation 2.

⁷ See also regulation 5(1) of the Complaints Procedure Regulations.

⁸ <https://justice.gov.za/mgc/complaint.html>

- The names of persons involved, including witnesses;
- The grounds on which the complainant believes an investigation is necessary;
- The date and time of the incident(s); and
- All relevant information known to the complainant.⁹

It is notable that this procedure very closely mirrors the provisions of the Complaints Procedure Regulations, despite those regulations not being directly applied in practice. The MC has established an ethics committee, which deals with misconduct complaints (as set out in the next section), and may refer less serious complaints to the relevant head of an administrative region or regional court president.

Misconduct

The lacuna in the legal framework caused by the absence of the committees discussed in the previous section is not as severe as it might be, because regulation 26 of the *Regulations for Judicial Officers in the Lower Courts*¹⁰ sets out the procedure for dealing with complaints of misconduct. The grounds on which a magistrate may be charged with misconduct are set out in regulation 25, and comprise:

- Being found guilty of a criminal offence;
- Contravening any provision in the Regulations for Judicial Officers;
- Contravening the Code of Conduct, if one is in effect for magistrates;
- Being “negligent or indolent” in carrying out their duties;
- Using intoxicants or stupefying drugs “excessively”;
- Accepting without the Minister’s permission, or demanding, a commission, fee or other pecuniary reward for carrying out their duties (other than emoluments due to them), or failing to report an offer of such;

9 Ibid. See also regulation 5(2) of the Conduct Procedure Regulations.

10 *Regulations for Judicial Officers in the Lower Courts*, 1994, GN R361 of 1994.

- Misappropriating or improperly using state property;
- Being absent from office or duty without valid leave or cause;
- Knowingly making a false or incorrect statement to obtain any privilege or advantage in relation to a magistrate's official position, or to the prejudice of the administration of justice; and
- Refusing to execute a lawful order.

The procedure for dealing with complaints of misconduct is dealt with in comprehensive detail in regulation 26. Once a magistrate has been accused of misconduct, the process is as follows:

- The Magistrates Commission (MC) appoints an investigating officer (IO) to conduct a preliminary investigation and obtain evidence. The IO then recommends whether the magistrate should be charged and what the charges should be. The MC will then charge the magistrate in writing with misconduct. However, if the MC is of the view that there is prima facie evidence to support the charge, the magistrate may be charged in writing with misconduct with no preliminary investigation.¹¹
- The charge must contain an invitation to the magistrate to deliver a written explanation.¹²
- If the magistrate admits guilt he is found guilty as charged. If the magistrate denies charges or fails to respond, the MC appoints a magistrate as presiding officer (PO) and magistrate or suitably qualified person to lead evidence.¹³
- The evidence leader may: (i) summon any person to give information or has evidence about the charges (ii) retain such evidence for the duration of the investigation (iii) lead evidence and arguments and cross-examine witnesses.¹⁴

11 *Regulations for Judicial Officers*, regulation 26(1) - (4).

12 Regulation 26(5).

13 Regulation 26(6).

14 Regulation 26(10).

- At a misconduct hearing, the magistrate charged may be present and be represented by another person, may give evidence, may remain silent, and may call witnesses, cross-examine, and have access to documents produced in evidence.¹⁵
- Following the presentation of evidence and argument, the PO makes a finding on a balance of probabilities as to whether the magistrate is guilty of misconduct, and provides reasons.¹⁶
- The PO may recommend to the Commission that the Magistrate be removed from office. Lesser sanctions include a caution or reprimand, the manner of which may be specified, directing an apology, or suspending a sanction, which may include conditions such as counselling or training.¹⁷
- If the recommendation is for removal from office, the magistrate may lodge representations with the Commission.¹⁸
- After consideration of relevant documentation, the Commission may recommend to Parliament that the magistrate be removed from office, and submit the relevant documentation to Parliament. If the Commission determines that the magistrate should not be removed from office, it may impose one of the lesser sanctions.¹⁹

The Regulations for Judicial Officers also set out the process for investigating a magistrate's incapacity (regulations 27 – 28) and potential removal from office for ill-health (regulation 29). As these two grounds of potential removal from office do not relate to the regulation of magistrates' conduct, they will not be discussed in detail in this report.

15 Regulation 26(12).

16 Regulation 26(14) - (15).

17 Regulation 26(17).

18 Regulation 26(20).

19 Regulation 26(22).

Suspension

A magistrate may be provisionally suspended by the Minister on the advice of the Magistrates Commission, while allegations are being investigated, if:

- The commission, having afforded the magistrate a reasonable opportunity to be heard, is satisfied that reliable evidence exists showing the allegations are so serious that it would not be proper for the magistrate to remain in office while they are being investigated, and
- The commission has instituted an investigation to assess the magistrate's fitness to hold office.²⁰

If the Minister decides to suspend the magistrate provisionally, the Minister must table a report to Parliament within 7 days, and the report must include the reasons for suspension. As soon as reasonably possible, Parliament must pass a resolution either confirming the suspension, or not. If not, the suspension lapses.²¹ A provisional suspension will in any event lapse after 60 days, unless the Magistrates Commission commences its enquiry into the allegation in question during the period of the provisional suspension, by serving a written notice stipulating the allegations on the magistrate.²² This enquiry must be concluded "as soon as possible", and a progress report on the investigation must be submitted to Parliament every three months.²³ Parliament may pass a resolution setting aside the suspension.²⁴

A magistrate receives full remuneration while suspended, unless the Magistrates Commission decides to reduce or withhold it. In such an instance, the Minister must table a report in Parliament setting out the Commission's determination and the reasons for it. Parliament must then decide whether to annul or confirm the determination,

²⁰ Magistrates' Act, section 13(3)(a).

²¹ Magistrates Act, section 13(3)(b) - (d).

²² Magistrates Act, section 13(3)(e).

²³ Magistrates Act, section 13(3)(f).

²⁴ Magistrates Act, section 13(3)(g).

with or without amendment. Should Parliament resolve to set the determination aside, the determination lapses with effect from the date when it was first made.²⁵

Removal

Section 13(4)(a) of the Magistrates Act provides that the Magistrates Commission can recommend that a magistrate be removed from office on one of three grounds:

- Misconduct
- Continued ill-health
- Incapacity to perform magisterial functions efficiently.

The Minister must then suspend the magistrate (or confirm a provisional suspension), and table a report in Parliament advising of the suspension and the reasons for it. This report must be tabled within 14 days of the suspension, if Parliament is in session, or within 14 days of the start of the next session.²⁶

Parliament must then resolve whether or not the suspended magistrate's restoration to office is recommended. This must be done as soon as is reasonably possible. The Minister must give effect to Parliament's decision by either reinstating or removing the magistrate from office.²⁷

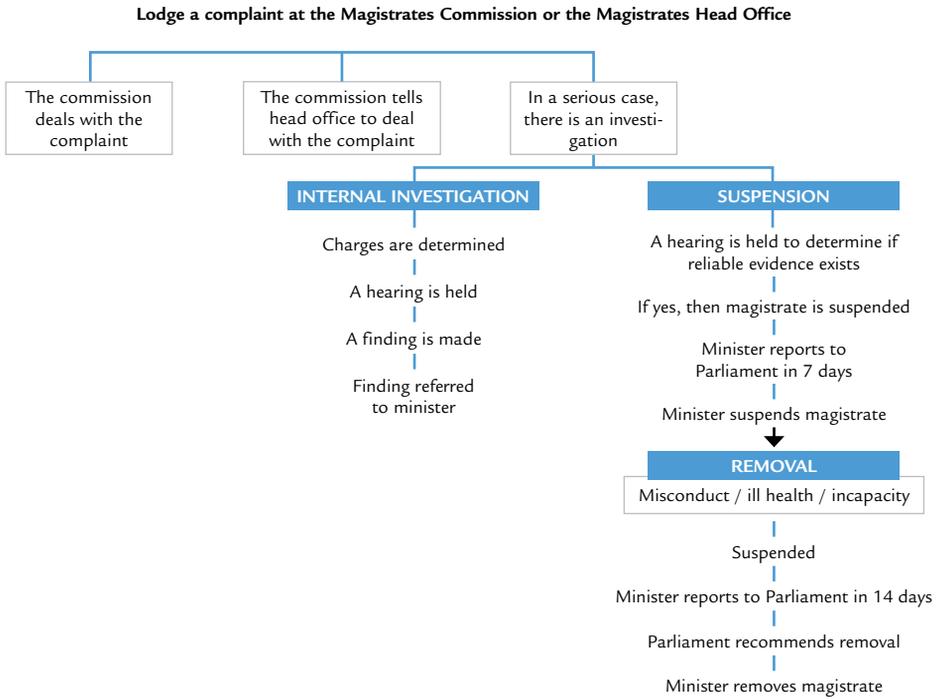
Removal may therefore *only* happen on the recommendation of the Magistrates Commission. Furthermore, it appears that three grounds in section 13(4)(a) are the *only* grounds on which the Commission may recommend a magistrate be removed from office. Therefore, if a complaint does not fall within one of these three categories, a magistrate cannot be removed from office.

25 Magistrates Act, section 13(4A).

26 Magistrates Act, section 13(4)(b).

27 Magistrates Act, section 13(4)(c) - (d).

Figure 1: Flow chart of the complaints process.





Section 2

Data and methodology

Once we began our research, we had to reduce the initial scope of this study somewhat due to limited availability of information. For example, we were not able to access any records from the MC prior to 2015 because the MC only started keeping comprehensive records in an excel spreadsheet from that time onwards. Any records from before then are in boxes and files in the MC building and it would have been difficult to create full sets of data in the same way as they were recorded on the spreadsheet. Thus, the empirical analysis is based on official records from the MC, as well as Parliament, and material curated by the Parliamentary Monitoring Group. The former was obtained through consultation with Mr Michael Nieuwoudt, Assistant Director/ Secretary of the Ethics Committee of the Magistrates Commission, while the data from Parliament and the PMG data were accessed through the internet as well as receiving the Committee notes from the National Council of Provinces' (NCOP) Secretary of the Committee, Mr Gershwyn Dixon. Throughout the report both quantitative and qualitative methods of data analysis are employed.

To get a broad understanding of the amount of formal complaints that the MC receives, we use official complaints from 2015–2018.

To get a broad understanding of the amount of formal complaints that the MC receives, we use official complaints from 2015–2018. In this first step, we include all 213 cases that were registered with the MC between 2015 and 2018. We supplement this analysis with a more detailed evaluation of the types of claims that were submitted in 39 cases. Unfortunately, we were not able to include more cases for two separate reasons. First, and as mentioned above, important parts of the complaints system are still largely paper-based. This means that many of the files were

not available during the period in which we conducted primary research. Second, in the beginning of 2016 the MC made significant changes to how it records complaints, thus making a comparison between cases launched in 2015 and 2016–2018 less meaningful for this type of analysis. Notwithstanding the few cases, this analysis still provides some valuable insights.

While the majority of cases are resolved by the MC directly, more serious cases – those involving suspension and potential removal from office – go on to be deliberated on and potentially confirmed by a parliamentary sub-committee. Therefore, we analyse these cases separately. Again, we were not able to obtain all cases going back to the first year of when the MC became operational. However, we were able to obtain information on all 50 cases that came before parliament between 2001 and 2018. Moreover, we created detailed timelines for 25 cases that went before parliament (see Appendix for brief summaries of all these cases). A comparative analysis of these cases allows us to draw out several commonalities across this sub-group of cases that can be considered a stress test of the complaints system more broadly.

Following the analysis of the official records, we conducted a focus group with a group of senior magistrates, and obtained additional feedback from the MC. The feedback we have obtained from these engagements has been incorporated into the report.

Taken together, this provides the first systematic review of how claims of magistrates' misconduct are dealt with in South Africa.

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Section 3

The process in practice

The number of complaints was substantially higher in 2015 (129 cases) compared to the three subsequent years combined (84 cases). On average the MC dealt with 28 cases between 2016 and 2018.

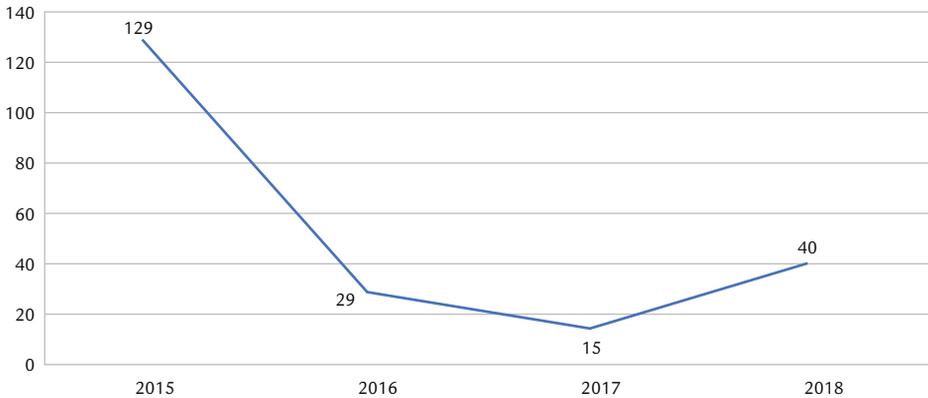
Overview of Complaints

Between 2015 and 2018, the Magistrates Commission received 213 formal complaints. However, as mentioned above, between 2015 and 2016 the MC changed the way it records complaints. Whereas until 2015, a new file was opened for every official complaint launched with the commission, from 2016 onwards the MC has only considered cases that it determines it has jurisdiction over. This change in procedure has several implications. First, as shown in Figure 1, the number of complaints was substantially higher in 2015 (129 cases) compared to the three subsequent years combined (84 cases). On average the MC dealt with 28 cases between 2016 and 2018. Second, it increases the share of substantive cases that are being recorded. Therefore, we conduct separate analyses of the data where appropriate.

Nature of complaints against magistrates

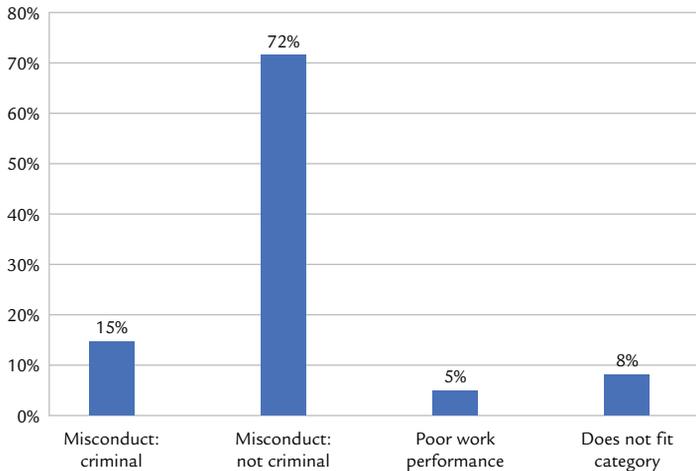
To get a better understanding of the type of complaints that the MC receives, we conducted a preliminary analysis of 39 cases that were opened between 2016 and 2018. The charges have been classified according to the categories that are outlined in the formal process (see Section 1 above). As can be seen from Figure 3, in only 6 cases (15%) do the misconduct charges rise to a criminal offense (e.g. tampering with evidence, using false matric certificate, etc.). By contrast, 28 of the 39 cases (72%) are misconduct charges in which no criminal offense is involved. These include, among others, attempts to influence a magistrate

Figure 2: Number of new cases filed at Magistrates Commission | 2015–2018



Note: The total number of new cases is 213.

Figure 3: Charges against magistrates 2016–2018 as of June 2019 | 39 available cases



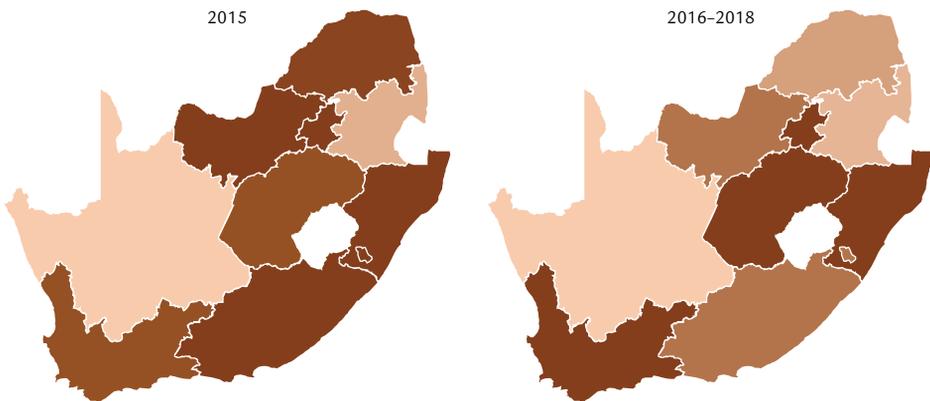
Note: Only 39 files were available to conduct this analysis at the time.

to allocate a case to a particular magistrate, and the use of abusive or derogatory language. In only 2 cases (5%) are magistrates being accused of poor work performance (absenteeism).

Who are the complaints made against?

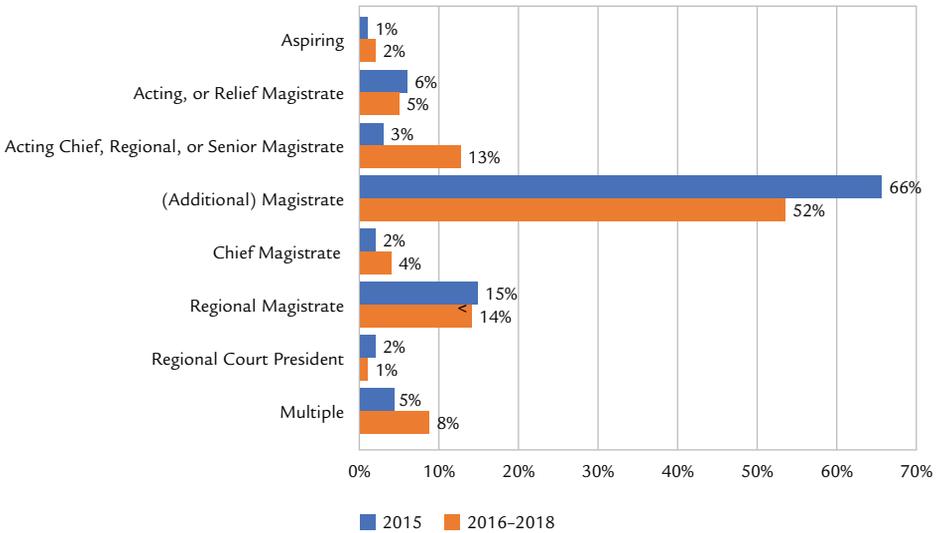
An important question is who these complaints are made against. Part of the data sharing agreement with the MC was that we cannot provide detailed demographic descriptions of the magistrates. Nevertheless, we are able to provide some basic insights regarding the geographic locations as well as the rank of the magistrates (Figures 4 & 5). Not only is there substantial variation in terms of the provinces in which the alleged misconduct occurred, but also between the cases of 2015 and 2016 – 2018. For example, in 2015, 30% of misconduct claims were filed against Magistrates in Gauteng, 16% in KwaZulu Natal, but only 9% in the Western Cape and 2% in the Northern Cape. In contrast, under the new more stringent system, only 20% of complaints were targeted against magistrates from Gauteng, compared to 27% and 20% against magistrates from KwaZulu-Natal and the Western Cape respectively. Despite these fluctuations, however, this pattern broadly reflects the proportions of magistrates in the respective provinces.

Figure 4: Percentage of new cases filed at Magistrates Commission | by Province | 2015–2018



Note: This excludes 1 case in which magistrates in all provinces were accused. Left panel: N=129; right panel=84.

Figure 5: Rank of Magistrates accused of misconduct | 2015–2018



Similarly, the rank of magistrates who have been accused of misconduct also broadly reflects the number of magistrates in the respective positions. Importantly, this pattern holds across all four years, with the partial exception of two categories (“Acting Chief, Regional or Senior Magistrate”, and “(Additional) Magistrate”).

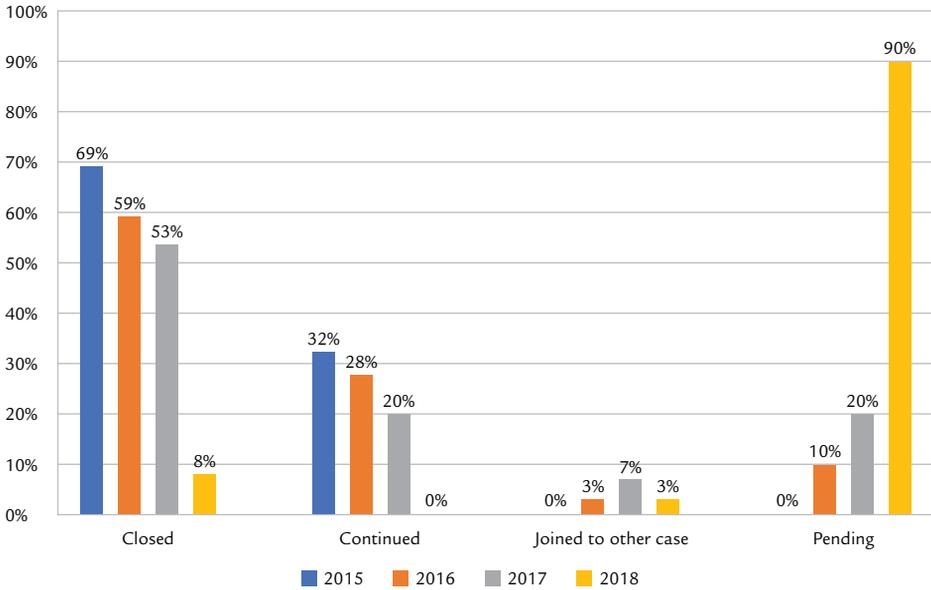
When combining cases across all four years, 13% of accused magistrates did act in a position they are not permanently employed in (6% acting, or relief Magistrates, and 7% acting in a more senior position). Moreover, 5% of cases were brought against individuals in leadership positions (3% Chief magistrates, 2% Regional Court President). Between 2015 and 2018, 13 cases (6%) were brought against two or more magistrates. At times, this also included magistrates of different ranks.

5% of cases were brought against individuals in leadership positions (3% Chief magistrates, 2% Regional Court President).

Outcomes of initial screening and preliminary investigations

Once a file is opened for a complaint, a process of initial screening begins. While 2 out of 3 (68%) files that were

Figure 6: Status of files from 2015–2018 as of June 2019 | Initial screening

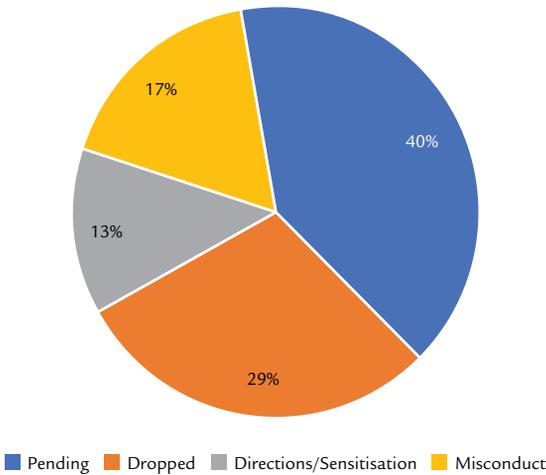


Note: this includes all 213 cases.

opened in 2015 did not go beyond this point, this ratio changes for more recent cases (Figure 4). In part, this could be due to the introduction of the informal mechanism introduced in 2016 (as outlined above). However, it is difficult to draw any conclusions on this until a decision has been made on the remaining pending cases from 2016 onwards. Unfortunately, as of mid-2019 the MC had not yet made a decision on whether to continue beyond the screening stage for 20% of complaints that were opened in 2017, and 90% of complaints that were opened in 2018.

The formal process of dealing with a complaint in terms of regulation 26 is started once an investigating officer is appointed to conduct a preliminary investigation determining whether there is a prima facie case of misconduct. For 52 of the 213 files that were opened between 2015 and 2018, the MC conducted such a preliminary investigation. Following such, three outcomes are possible according to the regulations (see description

Figure 7: Status of files from 2015–2018 as of June 2019 |
Outcome of preliminary investigation



above): 1) the case is dropped due to a lack of evidence, 2) for minor offenses, a magistrate may be cautioned, reprimanded, or receive guidance/training from the appropriate official, 3) the investigation regarding misconduct continues.

Of the 52 cases for which a preliminary investigation was conducted, 40% (21 cases) were still pending an outcome (Figure 7). A further 29% of cases were dropped at this stage as the investigation revealed that the allegations of misconduct were unfounded. However, in 30% of the cases, the MC found that the Magistrate(s) in question did not conduct themselves appropriately. Consequently, in 7 cases (13%) Magistrates received directions or sensitization, while in another 9 cases (17%) Magistrates were charged with misconduct.

To put these numbers into perspective, of the total 129 files that were opened against magistrates in 2015, only 8 were charged with misconduct, while a further 7 received Directions/Sensitization. Similarly, of the 84 cases that were opened between 2016 and 2018, so far only two magistrates were charged with misconduct, while one received Directions/Sensitization. However, the latter numbers are likely to rise, once the pending cases are dealt with.

To put these numbers into perspective, of the total 129 files that were opened against magistrates in 2015, only 8 were charged with misconduct, while a further 7 received Directions/Sensitization.

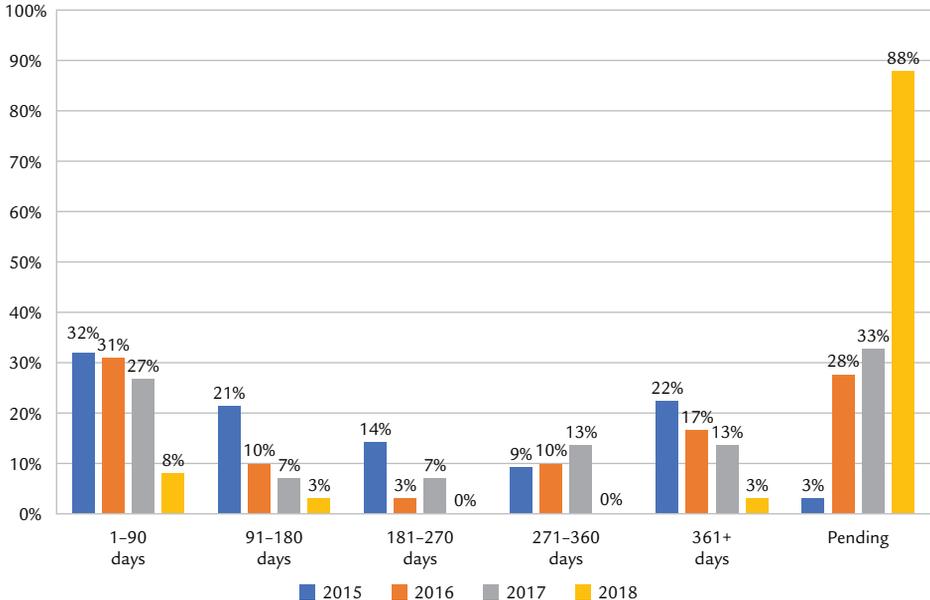
Efficiency of the Magistrates Commission

Despite the sizable number of cases that are still pending, most cases are resolved within a year of filing the complaint (Figure 8).

Despite the sizable number of cases that are still pending, most cases are resolved within a year of filing the complaint (Figure 8). Importantly, this includes the completion of the MC’s recommended remedies (e.g. sensitization of magistrate). It is also encouraging to see that for the years 2015 to 2017 between a quarter and a third of cases were resolved within the first 90 days, and between half and a third of cases were resolved within the first six months.

Why does it take longer to resolve some cases, but not others? In large part, this is related to the nature of the complaint. We can disaggregate the duration of cases into four broad categories based on their outcome. First, the MC can close a case because it falls outside of its jurisdiction. This could be the case because it is not empowered to interfere with a judicial function, that is, a complaint

Figure 8: Time taken to complete case | 2015–2018



N=213

against a specific application of the law by the magistrate, rather than the behaviour of a magistrate. Second, the MC might no longer have jurisdiction over the magistrate in question because he or she resigned, retired, or was an acting magistrate. The third category of cases contains complaints that were closed because the initial screening, or the preliminary investigation of the complaint revealed insufficient evidence for misconduct. Fourth, in cases where the MC identifies misconduct of a magistrate, it can impose a sanction such as a mandatory meeting with the head of the court (as well as others, if applicable) to caution, direct, guide, or sensitize the magistrate. Lastly, the MC might close a case for other reasons (e.g. amicable resolution of an issue between the complainant and the magistrate).²⁸

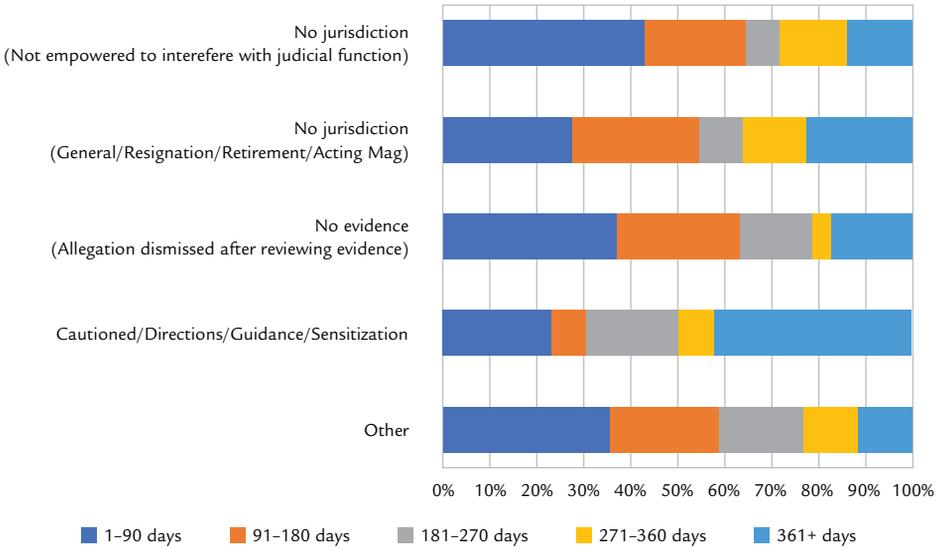
In order to remain consistent with our analysis above, we also separate the cases into two groups – those filed in 2015, and those filed between 2016 and 2018. Two broad patterns are apparent when comparing the complaints filed in 2015. First, for the cases that fall outside of the commission’s jurisdiction, or where the investigating officer does not find evidence of misconduct, the majority of cases (between 55% and 64%) are dismissed within six months (Figure 9). A similar pattern also holds for those complaints that were categorized as ‘other’. By contrast, 70% of cases that resulted in ‘guidance, sensitization, cautioning, or directions’ took more than six months to resolve, while 42% of cases in this category took more than a year. A qualitative analysis of the available records generally suggests a considered application of the formal process and a detailed tracking of the different steps. However, it also shows that the current system is prone to delays when waiting on responses from magistrates or complainants.

Comparing the data for 2015 with that of the 2016–2018 time period shows both similarities and differences. First, due to the new recording system, complaints that

70% of cases that resulted in ‘guidance, sensitization, cautioning, or directions’ took more than six months to resolve, while 42% of cases in this category took more than a year.

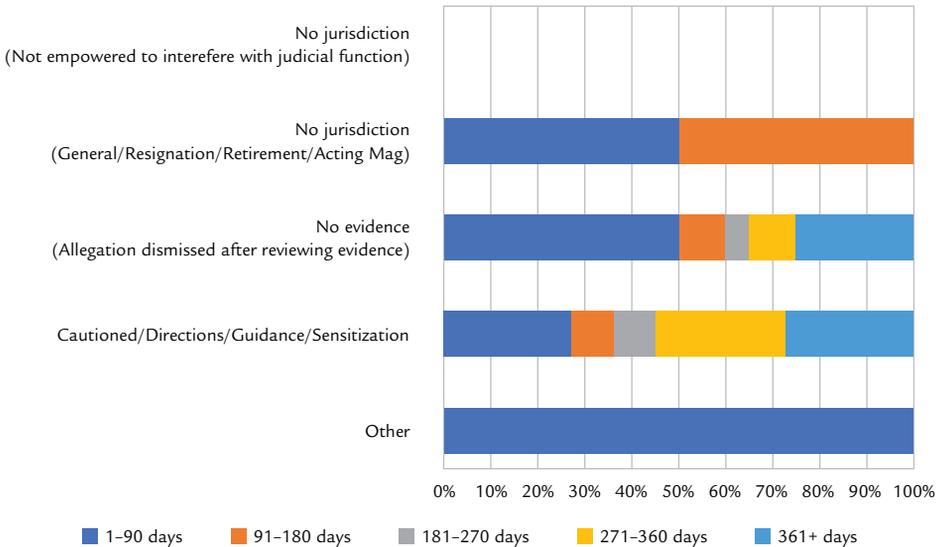
28 This category also includes cases for which it was not possible to determine why the case was closed after the initial screening stage.

Figure 9: Completed cases launched in 2015 as of June 2019 | by time taken to complete case



deal with the exercise of judicial functions are no longer recorded. The absence of any completed files in the top category in Figure 10 confirms that this new screening mechanism has been working effectively since 2016. An important related question, however, is whether the new procedure increases the efficiency of the commission for the remaining cases. There is some evidence that would suggest that this is indeed the case. All four cases that were closed because the MC did not have jurisdiction were closed within 6 months. Similarly, the proportion of cases which took more than a year and were resolved by the MC ordering guidance/sensitization has decreased by almost half (from 42% to 27% of cases in this category). Moreover, the one case that was classified as ‘Other’ was resolved within 3 months. However, there is little change for the 20 cases in the ‘No evidence’ category. Thus, while there seems to be a modest improvement in the overall efficiency of the MC, it is important to remember that 88% of cases filed in 2018 were still outstanding as of June 2019.

Figure 10: Completed cases launched in 2016–2018 as of June 2019 |
by time taken to complete case



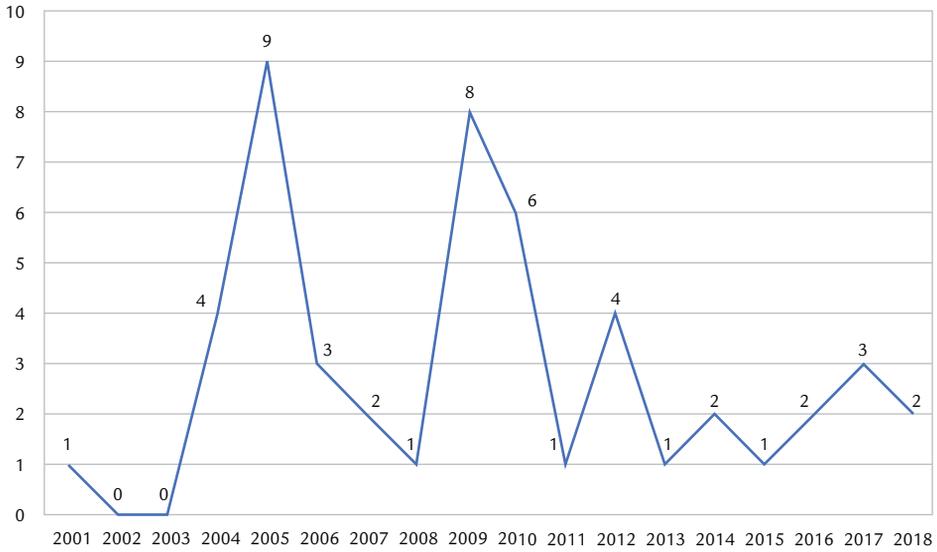
Note: Excluding Pending cases

Complaints Considered by Parliament

While the previous section considered all complaints that were submitted to the MC between 2015 and 2018, this section focuses on a different set of cases. Specifically, we analyse complaints in which the MC found *prima facie* evidence of misconduct or incapacity, and for which removal from office was proposed. Therefore, and in accordance with the formal procedure outlined above (and in the infographic), these 50 cases have all been considered by the parliamentary sub-committee. In such cases, the MC can advise the minister to provisionally suspend the magistrate in question and/or temporarily withhold remuneration.

Analysing these cases is instructive for two reasons. First, it provides a basic understanding of how many serious cases the MC has dealt with over time. Second, cases in which the alleged type of misconduct or incapacity is so severe that removal is suggested can be considered as

Figure 11: Number of cases referred to parliament | 2001–2018



Note: N=50

Parliament had to review recommendations made by the MC and the Minister for 50 cases over the past 18 years. On average, 2,8 such cases occurred between 2001 and 2018.

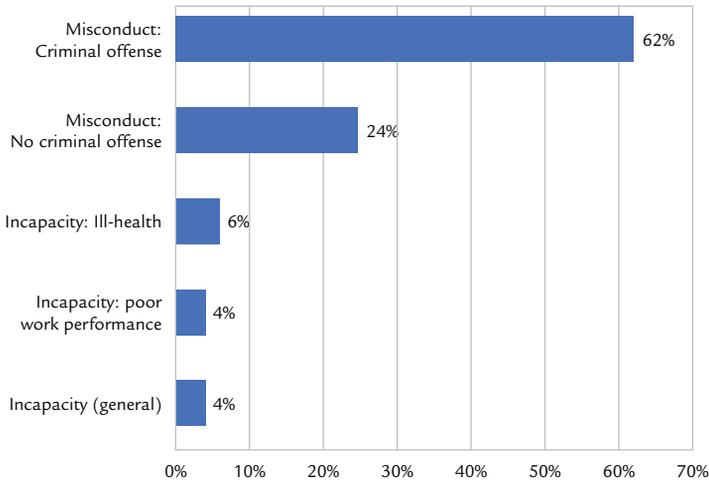
stress tests for the system more generally. Thus, findings from this analysis can inform recommendations as to how the broader process could be improved.

While we do not know how many complaints have been lodged with the MC since its inception, and thus we can not say whether the share of severe cases has increased or decreased over time, we can, nevertheless, get a broad sense of how often such severe measures were taken since 2001 (Figure 11).²⁹ Parliament had to review recommendations made by the MC and the Minister for 50 cases over the past 18 years.³⁰ On average, 2,8 such cases occurred between 2001 and 2018. Moreover, the majority of cases were launched against male magistrates (74%). To put this into perspective, in 2018 the judiciary employed 2036 magistrates, 55% of whom were male. Moreover, the number of cases spikes in 2005, 2009 and 2010, yet the

²⁹ Data was not available for such cases prior to 2001.

³⁰ In 8 of these cases, several separate charges were combined if they all concerned the same magistrate and the first case had not yet been finalized.

Figure 12: Cases referred to parliament | by type of misconduct/incapacity | 2001–2018



number of cases per year remains low throughout the period under investigation. However, at this point it is unclear what accounts for these spikes. Importantly, this trend contradicts citizens' perceptions of increasing levels of corruption among magistrates and judges over the same time period.

An important question in relation to these cases is what types of misconduct magistrates were accused of. When categorising these cases, we followed the same approach as earlier, distinguishing between two types of misconduct (criminal offense / non-criminal offense) and two forms of incapacity (ill-health and poor work performance) as well as a more general category of incapacity when more details were not available.³¹

Overall, 86% of cases that were referred to parliament included some form of misconduct charges (Figure 12). In 31 cases (62%) the charges included counts of misconduct that also amounted to a criminal offense. Charges in this category range from drunken driving, to fraud, theft,

Overall, 86% of cases that were referred to parliament included some form of misconduct charges. In 31 cases (62%) the charges included counts of misconduct that also amounted to a criminal offense.

³¹ In cases where multiple allegations were made, the case was coded according to the most severe one. For example, if a magistrate was charged with abscondement (no criminal offense) and theft (criminal offense), the case was only counted as a case of misconduct - criminal offense.

defeating the ends of justice, and murder. In a further 24% of cases, the charges did not amount to criminal offenses. Here, the cases ranged from abscondment, to bringing the office of the magistrate into disrepute, running a private practice as an attorney in defiance of a direct decision of the Magistrates Commission, to sexual harassment of administrative staff at the office. Only in a few instances (14%) were cases referred to parliament due to incapacity of the magistrate (6% ill-health, and 4% poor work performance). In short, the current system seems to work well in as much as the cases that do end up in parliament ought to be considered by the sub-committee according to the current regulations.³²

The next question, however, is whether parliament – a formally independent branch of government – confirmed the proposed suspension of magistrates, or if it disagreed with the decisions taken by the MC and the minister. Here we consider two broad questions, one about process, and the other about the outcome of the charges:

- To what extent do the MC, the minister and parliament invoke temporary measures such as provisional suspension and withholding of remuneration while a magistrate is under investigation?
- What were the outcomes of the cases that were considered by parliament?

First, in 39 cases the MC or the minister provisionally suspended the magistrate in question. In all but 2 cases, this decision was confirmed by parliament (Figure 13). Overall, in 73% of all cases considered by parliament the magistrate in question was provisionally suspended. Furthermore, in 51% of all cases the remuneration of the magistrate was withheld while the case was ongoing. Once again, parliament confirmed the suggestions made

Overall, in 73% of all cases considered by parliament the magistrate in question was provisionally suspended.

³² The question of whether there are more cases that should have been forwarded to parliament between 2001 and 2018 but were not, cannot be answered with the available data. We return to this point at the end of this section.

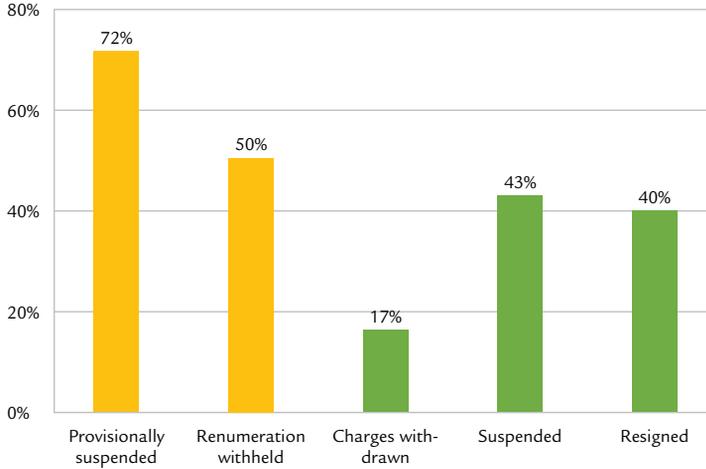
by the MC and the minister in virtually all cases.³³ This suggests that while such temporary measures are being used relatively frequently, they are not applied arbitrarily.

A further analysis of the data also reveals that in only 17% of cases, the charges were withdrawn. As one might expect, these were mostly minor offences not warranting suspension of the magistrate. Of the 8 cases, 5 were related to theft, or drunk driving, while the remaining three fall into a more severe group (corruption, fraud/forgery, and defeating or obstructing the administration of justice). By contrast, in 43% of all cases the accused magistrate was suspended. Did those magistrates who eventually were suspended remain on the bench and receive their pay until their eventual removal? If yes, this might raise serious questions about the administration of justice depending on what the magistrate was charged with. Of all 18 cases that resulted in a suspension, 8 magistrates were provisionally suspended, while remuneration was withheld in 11 cases. Although it is impossible to determine whether taking these steps was justified or not without a more detailed analysis of each case – which is beyond the scope of this report – it is possible to say that these measures were not applied indiscriminately.

Lastly, in 36% of all cases, the case was closed because the accused magistrate decided to resign. This group of cases is worth highlighting for two reasons. First, in 13 of the 15 cases (87%) the nature of the alleged misconduct rose to a criminal offense, this is far higher than for the overall number of cases. What is more, the charges are almost exclusively related to theft, fraud, or corrupt activities. Second, the rate at which magistrates in this group were provisionally suspended, and did not receive their salary while the case was pending is also much higher – 93% compared to 72% (provisional suspension), and 80% compared to 50% (remuneration withheld). This suggests that most of the magistrates who decided to resign did so

33 In only one case (72/2004) was the provisional suspension set aside. This was also one of the two cases in which parliament did not confirm the provisional suspension of the magistrate. After being convicted of *crimen injuria*, intimidation, and various other misconduct charges, the magistrate eventually vacated the office due to ill-health.

Figure 13: Type of action taken against magistrate



Note: for the 'Provisionally suspended' and 'Remuneration withheld' categories: N=50; However, 4 cases still pending, in 2 cases, magistrate passed (not counted), 2 cases unclear outcome thus N=42 for last three categories.

in order to avoid a formal suspension. It should be noted that we were advised that magistrates do not lose their pension benefits if they resign or are removed from office. Unlike judges, who receive a salary for life, magistrates contribute to a pension fund, and in the event of their resignation or dismissal from office, they are paid out in terms of a prescribed formula.

Case studies: Analysing the Process

One of our aims in this project was to try and identify aspects of the conduct process which were not working well. This is not a simple task, and will provide fruitful grounds for further research beyond this current project.

We explored potential fault lines in the system by looking more closely at some of the cases which had come before Parliament. It will be evident from the legal framework set out earlier that misconduct cases which come before Parliament to consider the potential removal of magistrates from office are likely to be of a very serious

One of our aims in this project was to try and identify aspects of the conduct process which were not working well. This is not a simple task, and will provide fruitful grounds for further research beyond this current project.

nature. How then does the system cope with these cases, and what problems does this ‘stress-testing’ reveal?

We examined those cases which have come before Parliament where we could find information, primarily through the Parliamentary Monitoring Group website, and developed a procedural history and timeline of how the complaint had been dealt with. This information was written up into a series of timeline summaries of the progression of these cases (these are attached to this report in the Annexure). Whilst recognising that many different variables are at play in determining whether the process is strong or weak, we proceeded on the assumption that cases which have taken significantly longer to finalise are likely to reflect some weaknesses in the system. We do so mindful that our views must be tentative due to the small number of cases analysed.

Based on this analysis, it seems that there are some factors which indicate a significantly more drawn-out process. We suggest these are (i) the bringing of a multiplicity of interlocutory applications during the disciplinary hearing, (ii) postponements of disciplinary hearings due to issues relating to legal representation and illness of the accused magistrate, (iii) taking the proceedings on review in the high court, and (iv) delays in Parliament dealing with matters once they are referred. We first set out summaries of the timelines of selected cases, which in our view provide clear illustrations of the issues identified, before drawing out key elements that create blockages for the resolving of complaints.

Case study: Magistrate Pumelele S. Hole (Kimberley, Northern Cape)

A former regional magistrate, Mr Hole was the subject of a range of charges including abuse of power, causing a Regional Court President to be ridiculed in public, and discussions, remarks and comments being made in a manner which brought the judiciary into disrepute. The complaints were first considered by the MC in July 2011. He was provisionally suspended by the MC in September

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2011, which was confirmed by Parliament in November 2011.

Formal charges were brought in November 2011, but the misconduct inquiry only commenced in October 2012. The reasons for this delay are unclear. The inquiry was postponed on multiple occasions for reasons such as arranging for legal representation, challenging the refusal to grant legal representation at state expense, illness, and various interlocutory applications. During this time, in June 2013 the provisional suspension was conditionally uplifted to allow the magistrate to deal with part – heard matters. In March 2015, Mr Hole instituted litigation, seeking amongst other things to interdict the disciplinary hearing and to have the appointment of the Presiding Officer declared unlawful. The case was not pursued, but it seems to have caused some delay. In November 2015 the MC determined that the hearing should proceed, but it only resumed in May 2016. In June 2016, the presiding officer found Mr Hole guilty.

In November 2016, the MC determined to withhold remuneration in terms of s 13(4A)(a) of the Magistrates Act. As this took place after conviction, it does seem that it could have had any impact on expediting the process. On 25 November 2016, the MC resolved to recommend to the Minister that Mr Hole be removed from office as a magistrate on the grounds of misconduct. Nearly a full year later, on 1 November 2017, Parliament confirmed the suspension and withholding of remuneration. It is not clear why such a long delay should have ensued. Mr Hole was formally removed from office on 24 January 2018.

The magistrate was thus removed from office some six and a half years after the Magistrates Commission was seized with the complaints against him. Some reasons for this delay are apparent from the timeline. There are some significant delays in the process – for example, of almost a year between the charge sheet being served and the commencement of the disciplinary hearing, and of almost a year between the matter being referred by the MC and considered by Parliament. Whilst there may be

good reasons for some delay at both of these stages, the length of these delays seem excessive. It also appears that the bringing of a legal challenge, even though it was later abandoned, delayed the disciplinary inquiry for several months.

Case study: Magistrate Collen Dumani (Graaf Reniet, Eastern Cape)

The magistrate was charged with 4 counts of sexual harassment against female clerks. A misconduct inquiry began on 5 August 2009, and Mr Dumani was provisionally suspended on 5 February 2010. On 24 May 2010, the presiding officer recommended removal from office. In August 2010, the MC endorsed the recommendation.

In September 2010, Magistrate Dumani brought an application in the high court to interdict the Minister from taking any further steps against him, pending an application to review and set aside the presiding officer's decision to convict. The interdict application was not opposed and an order was granted on 21 October 2010. On 24 March 2011 the review application was postponed from March 2011 after administrative problems in the Grahamstown High Court. The application was ultimately dismissed with costs on 12 August 2011. The MC requested Parliament to hold the matter in abeyance pending the finalisation of an appeal. Parliament confirmed a resolution to withhold his remuneration on 24 November 2011.

On 30 November 2012 the Supreme Court of Appeal dismissed the appeal. On 7 December 2012 Parliament was requested to place the removal of Mr Dumani from office on the agenda of the relevant committees. Mr Dumani was finally removed from office in June 2013, nearly 4 years after his misconduct inquiry had begun.

In this matter it is striking that the Magistrates Commission had completed its inquiry and taken a decision on removal within a year of the inquiry beginning. Review proceedings in the high court, including the appeal to the SCA, led to the matter taking a further 3 years to finalise.

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Case study: Magistrate Judith van Schalkwyk (Kempton Park, Gauteng)

The proceedings against Magistrate Van Schalkwyk seem to require a new comparison – perhaps to the Siege of Candia, which lasted for 21 years and is said to be the second – longest siege in history.

In legal circles, it is common to refer to a long-delayed case of disciplinary proceedings with reference to the siege of Stalingrad in the Second World War, since the conflict evokes images of slow, painstaking and gruelling struggle, a battle won by sheer attrition. The proceedings against Magistrate Van Schalkwyk seem to require a new comparison – perhaps to the Siege of Candia, which lasted for 21 years and is said to be the second – longest siege in history.³⁴

Magistrate Van Schalkwyk was provisionally suspended in May 2013 pending an investigation into allegations of misconduct and abuse of power. The suspension was confirmed by Parliament in November 2013. Meanwhile, Magistrate Van Schalkwyk filed a written objection to the appointment of the evidence leader. The inquiry was postponed on several occasions to allow Magistrate Van Schalkwyk to bring an application in the high court to challenge the validity of the Regulations for Judicial Officers and the Code of Conduct for Magistrates. The misconduct inquiry was kept in abeyance while this application was being finalised.

The misconduct hearing was first held in October 2014. As well as the delay caused by the high court challenge, the inquiry was postponed for reasons including a lack of documents and the death of the accused magistrate's mother. The application was heard by the high court in March 2017, and dismissed in August 2017. An application for leave to appeal was dismissed in November 2017, and in March 2018 the Supreme Court of Appeal dismissed a petition for leave to appeal. The disciplinary inquiry resumed again in April 2018, when it was again postponed. The high court application appears to have caused a delay of 3 years to the MC's disciplinary process.

Meanwhile, in November 2017 a MC report was tabled in Parliament, recommending the withholding

34 https://en.wikipedia.org/wiki/Siege_of_Candia

of Magistrate Van Schalkwyk's remuneration. By June 2018, the relevant Parliamentary committees had adopted the recommendation. In the MC's report which served before Parliament, it was noted that: *"Ms van Schalkwyk is still receiving the remuneration of a Chief Magistrate, whilst the disciplinary proceedings are pending against her. More than four (4) years have gone by and not a single piece of evidence has been placed before the disciplinary inquiry. The Person Leading Evidence has been requested, in consultation with the Presiding Officer at the misconduct inquiry, to set the inquiry down to continue without any further delay."*

The disciplinary proceedings were rescheduled until July 2018, but were again postponed due to the magistrate's new legal representative not being available. After a further postponement, evidence was finally heard in October 2018. In January 2019, Magistrate Van Schalkwyk requested a further postponement to brief new counsel, following the death of her previous counsel. By June 2019, Magistrate Van Schalkwyk had fired her counsel, and planned to defend herself. The hearing was again postponed. To the best of our knowledge, at the time of writing the disciplinary inquiry has still to be finalised, nearly six years after the first hearing.

The lengthy delay caused by the judicial review proceedings in the high court is a striking feature of this case. So too are the delays occasioned by frequent changes in legal representation.

Case study: Magistrate Michael Masinga (uMlazi, KwaZulu-Natal)

In March 2009, Magistrate Masinga appeared in court on charges relating to domestic violence. It was alleged that he had assaulted his wife with a blunt axe, that he kicked her, hit her with open hands and threatened to kill her. He was also alleged to have assaulted his daughters.

He was provisionally suspended in February / March 2010. Charges of misconduct were brought against him in February 2010. Criminal proceedings commenced in April 2010 and were transferred to the regional court,

The lengthy delay caused by the judicial review proceedings in the high court is a striking feature of this case. So too are the delays occasioned by frequent changes in legal representation.

with additional charges of attempted murder and assault being added. The criminal trial was postponed on several occasions.

The misconduct hearing was set down to begin in August 2010 but was postponed on numerous occasions, including to resolve issues relating to legal representation, and due to the absence of the magistrate from the hearing. Magistrate Masinga was convicted of attempted murder in June 2011, and sentenced to 10 years' imprisonment in January 2012. Further postponements were obtained due to difficulties in communicating with his legal representatives. In January 2012, Magistrate Masinga indicated that he would defend himself, and sought a postponement due to lack of access to documents held by his former attorney. In February 2012, a further postponement was granted due to Magistrate Masinga having lost his spectacles in a taxi the evening before, which he claimed would not enable him to take notes or cross-examine witnesses. In March 2012, after a further postponement due to illness, the presiding officer ordered that the matter proceed in his absence. An attorney for Magistrate Masinga came on record in June 2012, only to withdraw the following month. After further hearings and postponements, the Presiding Officer delivered judgment in February 2014, recommending removal from office. In October 2014, the select committee of the National Assembly recommended confirmation of suspension and removal from office. Magistrate Masinga was removed from office on 4 December 2014.

The overlapping of criminal proceedings with the MC's disciplinary process might be thought to be a contributing factor for delays.

The overlapping of criminal proceedings with the MC's disciplinary process might be thought to be a contributing factor for delays. It is our understanding that it was previously the MC's practice to delay their proceedings until the criminal proceedings were complete. The potential for significant delays in that situation is clear. However, as illustrated in the Masinga case, that is no longer the practice, and a parallel criminal process does not seem to have caused any disruption to the MC process in this case. The four year period to resolve what one might

have expected to be a relatively straightforward case seems rather to have been caused by delays within the disciplinary inquiry, particularly caused by issues relating to legal representation. It must also be said that at first blush, some of the reasons for the granting of postponements seem rather flimsy.

General comments

Based on the above sample of specific cases, it appears as if the process of taking aspects of proceedings on review in the high court, either while the MC process is still ongoing or after the disciplinary hearing is completed but before the matter is finalised, are notable causes of delay. This is especially striking in the case of Magistrate Van Schalkwyk. Interlocutory points brought during proceedings were also a significant cause of delay, with changes in legal representatives and illness being frequent grounds on which postponements were sought. The Magistrates Commission itself has raised concerns about magistrates using “every trick in the book” to delay hearings.³⁵ Some long delays between the MC making a recommendation to Parliament, and Parliament dealing with the matter, were also observed.

It might be expected that the withholding of remuneration, with its potentially drastic impact on an accused magistrate’s livelihood, might have the effect of speeding up the finalisation of matters. If a magistrate were invoking “every trick in the book”, the possibility of a lack of salary might be expected to dissuade them from this approach. However, the case studies considered do not appear to bear that supposition out. In the Hole and Dumani cases, for example, Parliamentary endorsement of the withholding of salary took place late in proceedings, after the disciplinary inquiries had already been completed. The threat of salary being withheld also does not seem to have done anything to expedite the Van Schalkwyk

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35 See <https://www.news24.com/news24/southafrica/news/magistrates-use-every-trick-in-the-book-to-delay-disciplinary-hearings-parliament-hears-20190829>

Concerns were expressed that the withholding of salary might look like a technique by the MC to pressure an accused magistrate into resigning.

matter. During the focus group discussions, magistrates repeatedly emphasised that the withholding of salary was a drastic measure, although one which had been approved by the Constitutional Court in the *Van Rooyen* judgment in cases where a magistrate had been provisionally suspended. It was emphasised that it was important to avoid imposing an effective punishment before cases had been resolved. As magistrates are forbidden from holding down additional employment, it would be difficult for them to pay their legal representatives once their salary was suspended. Whereas in the past it was permissible for another magistrate to defend a colleague in disciplinary proceedings, this is no longer permitted. Concerns were expressed that the withholding of salary might look like a technique by the MC to pressure an accused magistrate into resigning. It was also felt that a magistrate whose salary had been withheld might feel they had no option left but to attempt to delay the process as much as possible.

In addition to the issues identified from the case studies, other reasons for delayed proceedings which have been identified by the MC include the complexity of the preliminary investigations; requiring the MC to prove every allegation made, even if not material to the dispute; asking for extensive further particulars to an unreasonable degree, and using on the Promotion of Access to Information Act to try and obtain additional information; requests to reconsider the institution of charges; and members of the commission, POs and IOs being unavailable due to commitments to their regular jobs, result in postponements.

The implications of these observations will be discussed further in the recommendations section which follows.

Section 4

Recommendations

1. The legal framework

As discussed above, the procedure for receiving and dealing with complaints is in a legal vacuum due to the Complaints Procedure Regulations being held in abeyance. Whilst the provision of regulation 26 of the Regulations for Judicial Officers in the Lower Courts ensure that there is an adequate legal framework for dealing with misconduct complaints, the status of the Complaints Procedure Regulations is highly problematic and ought to be rectified as a matter of urgency. As discussed, it appears on paper that the regulations are fully valid and in force. When we initially researched the legal framework, we assumed that the Complaints Procedure Regulations were the operative provisions for dealing with the initial stages of complaints procedures, and other academic researchers have proceeded on the same assumption.³⁶ This lack of certainty as to the applicable legal framework is contrary to the rule of law.

We would therefore recommend that the regulations be withdrawn as soon as possible, and the Commission engage with the Minister to make recommendations as to suitable regulations to replace them. Indeed, this offers an excellent opportunity for revisiting the process of lodging complaints, and introducing a new legal framework determined by the experience of the Commission since the 1998 regulations were drafted.

The status of the Complaints Procedure Regulations is highly problematic and ought to be rectified as a matter of urgency.

³⁶ See M. Olivier, "The magistracy", in C. Hoexter and M. Olivier, *The Judiciary in South Africa* (2014), pp. 342 - 343.

2. Case flow management and record keeping

When we attended the Magistrates Commission, it was striking that the system of recording complaints and keeping track of them is outdated and cumbersome. There are literally rooms full of paper-based records which are difficult to access and rely on significant manual human intervention. The current capturing of the cases on a spreadsheet was an innovation of a staff member of the MC but a government entity such as a MC should be in a position to modernise and make use of one of the many off-the-shelf digital options available for recording disciplinary matters that can be customised to the specific needs of the MC.

3. Transparency and publicising the Commission's work

We have seen that public opinion data suggests that there is a significant perception among members of the public that there is a problem of corruption in the magistracy. However, the data regarding the conduct process considered in this report does not bear this perception out. The perception of corruption in the magistracy seems to show a significantly higher level of perceived corruption than is indicated in the actual record of conduct cases against the magistracy. Considering that we found only 24% of the 213 cases resulted in a sanction by the Commission, it may be argued that the record of serious corruption in the magistracy is negligible.

There are two possible ways of understanding this disjunct. On the one hand, it may be that the public perception is mistaken. The range of role players who work with magistrates is large. That corruption is a significant problem in the police and prosecution service is common knowledge, and may draw in magistrates by association.

The perception of corruption in the magistracy seems to show a significantly higher level of perceived corruption than is indicated in the actual record of conduct cases against the magistracy.

Insulating magistrates from allegations that there is corruption within the magistracy may be very difficult.

On the other hand, the possibility of significant under-reporting of complaints in general, including those relating to corruption, must be considered. There may be insufficient awareness among members of the public as to how and where complaints against magistrates can be made. whilst the MC has a website, it may be that people do not know about it. During engagements with lawyers who practice in the magistrates' courts, we have been struck by how many lawyers also do not know how to lay a complaint. If this is so for lawyers, the problem is likely to be even more acute for members of the general public. The possibility of under-reporting must therefore be considered.

Whatever the true state of affairs may be, our recommendation is similar. We recommend that the MC takes steps, including outreach initiatives, to increase transparency and awareness of the processes of laying complaints about conduct issues, but also to publicise the results of the outcomes of complaints. The results identified in this report may go some way to soothing public concerns about corruption in the magistracy. Data on how the MC deals with conduct cases is not available to the general public. During a recent NCOP meeting,³⁷ the MC committed to submitting to the NCOP committee a spreadsheet with the latest statistics on the number of cases reported, the ones that had been investigated and their outcomes in order to give the NCOP Committee an indication of the magnitude of the work done by the ethics division in the MC. Whilst this is encouraging, the MC should provide a similar summary report annually to the general public and make the same report available on its website.

It is our understanding that the MC is planning to release quarterly reports. In light of the considerations discussed, we would strongly support such an initiative.

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³⁷ <https://pmg.org.za/committee-meeting/28820/>.

4. Timeframes and Presiding Officers

It should also be noted that the MC process appears significantly more speedy than that of the Judicial Service Commission in dealing with complaints against judges of the superior courts.

As we have seen in the case studies considered in this report, allegations can take years to resolve. Previously, criminal charges have been considered the first step in such a process, with the Magistrates Commission process running after the criminal process is complete. Now that criminal cases and disciplinary matters run at the same time, a major cause of delay has been removed. This initiative should therefore be commended. It should also be noted that the MC process appears significantly more speedy than that of the Judicial Service Commission in dealing with complaints against judges of the superior courts. The MC should nevertheless adopt best practice guidelines for the time periods involved in each part of the process. It is encouraging to note that the MC is already contemplating ways in which to speed up the processes. This is evidenced in the parliamentary committee meeting of the NCOP committee on Justice and Security on 4 September 2019, when the MC noted that although they could not interfere in the independence of the investigating tribunal, they were planning to submit a circular to the POs and PLEs to indicate to them that both houses of Parliament stated clearly that inquiry delays should not be tolerated.³⁸

During discussions in the focus group, some reservations were expressed about establishing overly-rigid timelines. It was suggested that these could prove difficult to follow, considering that investigating and presiding officers are sitting magistrates with significant responsibilities in respect of their regular judicial work. There was a further concern that strict timelines could be used as a basis for judicial review, thus frustrating the process further. Some participants expressed a preference for better management of the process rather than the introduction of strict timelines.

One way of addressing concerns about presiding and investigating officers being over-burdened could

³⁸ See <https://pmg.org.za/committee-meeting/28820/>.

be to use retired judicial officers in these roles. Retired judicial officers would bring the benefit of extensive experience and knowledge to the role, which would then be kept within the judicial system, but would not have the demands on their time that are faced by active judicial officers. We understand that the Magistrates Commission is exploring such an initiative. We would strongly support this step. We would recommend that it be coupled with the introduction of provisions on timelines, which could be couched as softer guidelines or recommendations if necessary. Provisions could also require regular reporting from the PO's and IO's regarding the progress of matters, which would allow for problem cases to be identified proactively. Such measures should assist disciplinary inquiries to progress more quickly, whilst ensuring that the right to a fair hearing of all parties is upheld.

5. Possible law reform initiative to avoid procedural delays

This recommendation is closely linked to the previous recommendation. It is not viable to recommend any changes that will infringe on the fairness of the process to magistrates who are subject to a complaint. Nevertheless, the system seems to be vulnerable to significant delays caused by postponement applications, delays in obtaining legal representation, interlocutory points taken during the process, bring applications for judicial review, and so on. The case studies discussed above reveal instances where serious delays have occurred, to an extent that may well be unnecessary to preserve the rights of accused magistrates. The introduction of timelines to guide the process and the use of retired judicial officers should assist in this regard. But there may also be a need for a law reform initiative to develop a holistic legal framework for dealing with all aspects of the process, so as to limit the potential for review applications to delay an ongoing process, whilst naturally ensuring that an accused magistrate's right to a fair hearing is respected. Whilst participants in the focus

There may also be a need for a law reform initiative to develop a holistic legal framework for dealing with all aspects of the process.

group commented that it was possible to discern flimsy excuses or delaying tactics, it may be necessary for presiding officers to be provided with additional legal tools in order to make such determinations. The case studies considered in this report suggest that presiding officers are not always able to prevent what appear to be clear delaying tactics.

We have also noted instances of significant delays in the commencement of a disciplinary hearing, and between the MC's referral to Parliament and Parliament considering the matter. The exact causes of these delays would be a question for further study, but we would recommend that both the MC and Parliament review their own internal procedures to ensure that such delays do not occur.

6. The impact of infrastructure

During the focus group discussions, several magistrates commented on the perceptions of corruption within the magistracy by raising concerns about the physical infrastructure where magistrates work. The point was made that in smaller courts in particular, magistrates worked in very close proximity to other stakeholders, with a lack of separation between magistrates, prosecutors and police. One example was given where a magistrate's court in a small centre was based in the police station, requiring the magistrate to enter the station and obtain the key to open the courtroom from police officers. In more modern court buildings, this appears to be less of a problem.

The full impact of this issue on public perceptions and confidence in the magistracy is a point that would be worthy of further research. But there are good grounds to recommend that an examination be conducted of the facilities within which magistrates work, and that measures are taken to ensure sufficient physical separation between magistrates and the police and prosecution services. This is all the more so since we have been advised that the magistracy has been raising issues about inadequate physical space and facilities at a significant number of court buildings for over a decade. It does not appear that these concerns have been addressed.

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Timeline summaries

Timeline of Magistrate M K CHAUKE, ADDITIONAL MAGISTRATE PRETORIA Magistrate’s Commission Process

Overview:

Magistrate M K Chauke (MKC) was the Additional Magistrate, Pretoria. He was provisionally suspended by the Minister on 5 February 2010 (confirmed by the National Assembly and National Council of Provinces on 1 and 4 June 2010 respectively). This was after he was convicted and sentenced for receiving stolen property. On appeal, the sentence and conviction were set aside. On recommendation of the Magistrates Commission (MC), the Minister uplifted his provisional suspension—since the criminal conviction was set aside and his other misconduct did not impose a sanction of provisional suspension.

Charges:

The actual charges were not noted but allegations arose from MKC’s conviction and sentence for receiving stolen property.

Timeline of Key Dates and Developments in the Suspension Process

Date/Time Period	Nature of Development
16 September 2004	MKC's first appearance before Specialized Commercial Crime Court, Pretoria on a charge of theft.
08 November 2007	The Specialized Commercial Crime Court, Pretoria convicted MKC, his wife and son for receiving stolen property.
16 November 2007	MKC, his wife and son were sentenced to 12 months imprisonment, suspended for five years.
20 November 2007	MKC's advocates advised the MC that they had been instructed to appeal MKC's criminal conviction. The MC did not proceed with its misconduct inquiry pending the outcome of MKC's appeal.
18 August 2009	The Director of Public Prosecutions, Pretoria, the Ethics Division was informed of MKC's appeal against the criminal conviction was set down on the roll for 20 November 2009 in the North Gauteng High Court, for purposes of being struck out of the roll.
19 November 2009	MKC eventually filed his Heads of Argument. The High Court postponed the matter to 08 March 2010 for the appeal to be heard.
05 February 2010	The Minister on the advice of the MC provisionally suspended MKC.
01 June and 04 June 2010	Decision by the Minister was confirmed by the National Assembly and National Council of Provinces on 1 and 4 June 2010 respectively.
10-15 June 2010	The appeal was heard, and the conviction and sentence were set aside. Consequently, the MC did not proceed with this misconduct charge.
	In the meantime, the MC commenced with a misconduct inquiry against MKC in respect of the remaining two (2) misconduct charges—It was alleged that MKC contravened regulations for Judicial Officers in Lower courts, 1994 and the Code of Conduct of Magistrates, in October 2002 to July 2004, during and after official office hours, he retained and forwarded e-mails containing explicit pornographic material on a computer given to him for official duties.
5 July 2010	The Presiding Officer found MKC guilty of misconduct in respect of one of the charges relating to the pornographic material (he was acquitted on the other charge as it was found to be a duplication), in that he had failed to act in a manner which upholds and promotes the good name, dignity and esteem of the office of a magistrate and the administration of justice. The sanction was postponed for 12 months on certain conditions provided for in the Regulations for Judicial Officers in Lower Courts.

Date/Time Period	Nature of Development
	Since the provisional suspension was set aside (based on the theft charge), the Presiding Officer held that further provisional suspension was not justified. Further, the nature of misconduct he was found guilty of did not warrant provisional suspension. The Presiding Officer recommended that the MC recommends to the Minister the upliftment of the provisional suspension.
26 and 27 August 2010	The MC recommends that the Minister uplift the provisional suspension.
	The Minister uplifted the provisional suspension according to the MC's recommendation.
02 November 2010	Ministry of Justice and Constitutional Development wrote a report on the upliftment of suspension from office and addressed it to parliament.
05 November 2010	The Minister for Justice and Constitutional Development tabled the progress report and the upliftment of the provisional suspension from office of magistrate MKC to the NCOP.
10 November 2010	NCOP Security and Justice Committee concurred with the Minister's decision on upliftment of MKC's provisional suspension.

List of Documents Used:

- Hansard Proceedings of the National Assembly. Minister's Response/Member's Statements. 31 May 2010.
- Progress Report Dated 17 August 2010 to Parliament: Provisional Suspension from Office, Magistrate M K Chauke, Pretoria.
- Ministry of Justice and Constitutional Development. Report on Upliftment of suspension from office of a Magistrate: Mr. M K Chauke, Additional Magistrate, Pretoria, addressed to Parliament. 02 November 2010.
- Parliament of the Republic of South Africa. Announcements, Tablings and Committee Reports. 5 November 2010.
- Briefing Document: Magistrates Commission Reports: Disciplinary 9 November 2010
- NCOP: Unrevised Hansard. 9 November 2010.
- Parliamentary Monitoring Group. NCOP Security and Justice Committee. ATC101110: Report Upliftment of the Provisional Suspension from Office of Magistrate M K Chauke. 10 November 2010.

Timeline of Magistrate C M DUMANI, Magistrates Commission Process

Overview:

Magistrate C M Dumani (CMD) was charged with four counts of misconduct. He denied all the allegations against him. After a misconduct inquiry CMD was found guilty of three of the four charges of sexual harassment against female clerks at the Graaff-Reinet Magistrate's Office. CMD was provisionally suspended on 5 February 2010 by Magistrates Commission (MC); this sanction was confirmed by both Houses of Parliament. After investigation, the Presiding Officer recommended that CMD be removed from office. In 2012, the MC recommended CMD's removal from office to parliament.

Charges:

CMD was charged with four (4) counts of misconduct arising from allegations of sexual harassment against female clerks at the Graaff-Reinet Magistrate's Office.

Timeline of Key Dates and Developments in the Suspension Process

Date/Time Period	Nature of Development
05 August 2009	The Misconduct inquiry against CMD commenced. CMD was charged with four (4) counts of misconduct. He denied all the allegations against him. At the conclusion of the misconduct inquiry he was found guilty of three (3) of the four (4) charges of sexual harassment against female clerks at the Graaff-Reinet Magistrate's Office.
	The Minister, on the advice of the MC, provisionally suspended CMD from office with effect from 16 September 2009 which suspension was confirmed by both Houses of Parliament on 12 and 17 November 2009 respectively.
5 February 2010	The Minister, on the advice of the Commission, provisionally suspended CMD from office with effect from 5 February 2010. The suspension was confirmed by both Houses of Parliament.

Date/Time Period	Nature of Development
24 May 2010	<p>The Presiding Officer recommended that CMD be removed from office in terms of section 13(4)(a)(i) of the Act. CMD was legally represented throughout the inquiry but elected not to make any submissions about the imposition of sanctions. CMD lodged written representations with the Commission.</p> <p>The MC was scheduled to deal with the matter on 26 and 27 August 2010 for consideration in terms of regulation 26(22) of the Regulations for Judicial Officers in the Lower Courts, 1994 read with section 13(4)(a)(i) of the Magistrates Act.</p>
01 and 04 June 2010	Both Houses of Parliament confirmed CMD's provisional suspension.
17 August 2010	The MC issued a report on the progress of CMD's provisional suspension from office to the parliament.
26 and 27 August 2010	The MC supported the recommendation that CMD be removed from office.
02 September 2010	The MC appraised the Minister of Justice and Constitutional Development of the circumstances which moved it to make such a recommendation. The MC also advised CMD of its recommendation to the Minister to remove him from office in writing.
13 September 2010	CMD filed a motion application with the Registrar of the Eastern Cape High Court, requesting the Court to interdict and restrain the Minister of Justice and Constitutional Development from taking any further action against him, pending the final determination of another application before the Court to review and set aside the Presiding Officer's decision in the disciplinary proceedings, convicting Mr Dumani on three (3) counts of misconduct.
21 October 2010	<p>The Minister did not oppose the application. On 21 October 2010 the High Court granted the order in favour of CMD, interdicting and restraining the Minister from taking any further action against him.</p> <p>The review application was opposed. The application was set to be heard on 24 March 2011 but was postponed due to administrative problems at the Grahamstown High Court. The matter was placed on the roll for hearing on 29 July 2011</p>
24 February 2011	The MC issued a report on the progress of CMD's provisional suspension from office to the parliament.
12 August 2011	CMD's application to review and set aside the MC's findings of guilty on three charges of misconduct, was dismissed with costs. CMD subsequently lodged a Notice of Application for leave to appeal to the Supreme Court of Appeal.
	On 16 August 2011, CMD was invited to show cause why his remuneration should not be withheld. Despite the initial letter, and a reminder on 2 September 2011, no response had been received. The MC determined to withhold remuneration at its meeting held during September 2011.

Date/Time Period	Nature of Development
	<p>In a letter dated 23 August 2011, the MC had resolved to write to the Minister to confirm CMD's suspension from 15 September 2011. CMD had indicated that if the application for his suspension was tabled in parliament, he would bring an application to interdict the Minister. However, the MC was of the view that, since the application did not cover the withholding of remuneration, it would be justified still in asking Parliament to consider the withholding of his remuneration until the application for removal from office was processed.</p> <p>The resolution to withhold CMD's remuneration was confirmed by Parliament on 24 November 2011.</p>
19 and 26 October 2011	<p>The MC appeared before the Portfolio Committee and the Select Committee on 19 and 26 October 2011 respectively, requesting both Committees to hold CMD's matter in abeyance, pending the finalisation of the appeal.</p>
25 October 2011	<p>National Council of Provinces, Select Committee on Security and Justice agreed to withhold remuneration from CMD.</p>
	<p>When CMD's application for leave to appeal against the Grahamstown High Court's order was dismissed, he petitioned the Judge President of the Supreme Court of Appeal. On 21 February 2012 leave to appeal to the Supreme Court was granted. A date for the appeal to be heard was still to be determined</p>
21 November 2011	<p>The National Assembly Justice and Correctional Services Committee adapted the report and approved the withholding of CMD's remuneration by the National Assembly.</p>
26 March 2012	<p>The MC sent a progress report on CMD's provisional suspension to parliament.</p>
30 November 2012	<p>The Supreme Court of Appeal (SCA) delivered judgment in the matter and dismissed CMD's appeal with costs.</p>
	<p>The Secretaries of the respective Parliamentary Committees were advised accordingly and were on 7 December 2012 requested to again place CMD's suspension/removal from office on the agenda of the respective Committees for consideration.</p>
27 December 2012	<p>The MC was of the view that the Minister's decision to suspend CMD, taken on 15 September 2011, was still effective and that there was no reason why Parliament would not finally consider the report and pass a resolution that CMD not be restored to the office of Magistrate.</p>
19 February 2013	<p>The NCOP Security and Justice Committee agreed that CMD not be restored to the office of Magistrate.</p>
05 June 2013	<p>The Justice and Correctional Services Committee recommended that the National Council of Provinces confirm CMD's suspension.</p>

List of Documents Used:

- Progress Report Dated 17 August 2010 to Parliament: Provisional Suspension from Office, Magistrate C M Dumani, Graaff-Reinet.
- Briefing Document: Magistrates Commission Reports: Disciplinary. 9 November 2010.
- Progress Report Dated 24 February 2011 to Parliament: Provisional Suspension from Office, Magistrate C M Dumani, Graaff-Reinet.
- Progress Report Dated 29 June 2011 to Parliament: Provisional Suspension from Office, Magistrate C M Dumani, Graaff-Reinet.
- Report. Suspension of a Magistrate C M Dumani, Graaff-Reinet. 15 September 2011.
- Report in terms of Section 13(4A) (b) of the Magistrates Act, 1993: Withholding of Remuneration, Magistrate C M Dumani. 29 September 2011.
- Parliamentary Monitoring Group Meeting Summary. National Council of Provinces. Select Committee on Security and Justice. Magistrates Commission requests for suspension of magistrates and salary. 25 October 2011.
- Parliamentary Monitoring Group. National Assembly. Justice and Correctional Services. Reports on Suspension and Withholding of Remuneration of Magistrates. 21 November 2011.
- Progress Report Dated 26 March 2012 to Parliament: Provisional Suspension from Office, Magistrate C M Dumani, Graaff-Reinet.
- Progress Report Dated 27 December 2012 to Parliament: Provisional Suspension from Office, Magistrate C M Dumani, Graaff-Reinet.
- *Collen Mzingisi Dumani v Desmond Nair & another* (144/2012) [2012] ZASCA196(30 November 2012).
- Parliamentary Monitoring Group. NCOP Security and Justice. Suspension of Magistrates & Withholding of Remuneration: briefing by Magistrate Commission. 19 February 2013.

- Parliamentary Monitoring Group. National Assembly. Justice and Correctional Services Committee. Suspension of Magistrates: Progress Report and Briefing by the Magistrates Commission. 26 February 2013.
- Hansard: NCOP: Oral Questions, Reports of Select Committee on Security and Constitutional Development and Budget Vote No 19. 5 June 2013.

Timeline of Magistrate VT Gqiba Magistrate’s Commission Process

Overview:

Magistrate VT Gqiba (MVG) is the former Chief Magistrate at East London. She was suspended from office in 2017 after the Presiding Officer found her guilty on two counts of misconduct. The Presiding Officer and the Magistrates Commission (MC) recommended that MVG be removed from office in the same year. MVG was later suspended from office by the Minister of Justice and Correctional Services. She then filed an application to review and set aside the decision to remove her from office. In December 2017, there was an application to withhold her remuneration pending Parliament’s resolution to either restore or not to restore her to office. The National Council of Provinces (the NCOP) and the National Assembly passed a resolution not to restore MVG to the office of Magistrate.

Timeline of Key Dates and Developments in the Suspension Process

Date/Time Period	Nature of Development
3 October 2016	The charge sheet dated 29 September 2016 was served on MVG.
25 November 2016	The MC appointed a Regional Magistrate to preside at the hearing and a Magistrate to lead the evidence at the hearing.
6 March 2017	A notice containing the allegations was served on MVG and a pre-trial conference was held to limit the issues in dispute.
25 April 2017	The misconduct inquiry commenced.
26 April 2017	The Presiding Officer heard both parties and on the merits of the evidence found Ms Gqiba guilty on both counts of misconduct.
1 and 2 June 2017	The Presiding Officer heard mitigating evidence.
2 June 2017	The Presiding Officer recommended in terms of Regulation 26(17) (b) of the Regulations that MVG be removed from office as contemplated in section 13(4) of the Magistrates Act.

Date/Time Period	Nature of Development
25 August 2017	The MC considered the documents as required by Regulation 26(22) read with regulation 26(19) of the Regulations and resolved to recommend to the Minister that the recommendation of the Presiding Officer be accepted and that MVG be removed from the Office of Magistrate.
13 September 2017	The Minister for Justice and Correctional Services suspended MVG from office.
	The Select Committee on Security and Justice, having considered the disciplinary proceeding report from the MC and the Minister's suspension and removal of MVG from the Office of Magistrate, reports that it concurs with the suspension and recommends that the National Council of Provinces confirmed MVG's suspension from the Office of Magistrate.
13 November 2017	MVG filed a Notice of Motion in the Gauteng Division of the High Court, praying that the sanctions imposed on 02 June 2017 be reviewed and set aside.
28 November 2017	The National Council of Provinces (the NCOP) acting on legal advice, that since the NCOP was not mentioned in the Notice of Motion, that it could proceed with a resolution on the matter. On 28 November 2017 the NCOP passed a resolution not to restore MVG to the office of Magistrate. The National Assembly is yet to pass a resolution in this regard.
1 December 2017	MVG was invited to show cause why the MC should not determine to withhold her remuneration in terms of Section 13(4A)(a) of the Act, pending Parliament's resolution to either restore or not to restore her to office.
08 December 2017	MVG's attorney filed her representations on her behalf with the MC.
	The Select Committee on Security and Justice, having considered the Minister's report on the Magistrates Commission's determination to withhold the remuneration of MVG a Chief Magistrate at East London, tabled by the Minister for Justice and Correctional Services, in terms of Section 13(4A)(b) of the Magistrates Act, 1993 (Act No 90 of 1993), recommends to the National Council of Provinces to confirm the determination.
28 March 2018	The MC sought a resolution of the Committee confirming withholding of the remuneration of MVG.
29 May 2018	The National Assembly, having considered the report of the Portfolio Committee of Justice and Correctional Services, recommended MVG should not be restored to the office of magistrate.
28 August 2018	The Portfolio Committee on Justice and Correctional Services recommended that the National Assembly confirm the Commission's determination.

List of Documents Used:

2014

- Reasons for Sanction. 20 February 2014.

2016

- Appointment as Officer Leading Evidence. 25 November 2016.

2017

- Notice of Misconduct Hearing. 20 February 2017.
- Report on Suspension/Removal from Office MS VT Gqiba, Chief Magistrate, East London. 13 September 2017.
- Report of the Select Committee on Security and Justice on the suspension from Office of Magistrate of Ms V T 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). 1 November 2017.
- Notice of Motion. November 2017.
- Memorandum to obtain authorization from the Acting Secretary to Parliament for the State Attorney's Office to file a notice to abide with the decision of the High Court on behalf of the Speaker of the National Assembly. 3 December 2017.

2018

- Report in Terms of Section 13(4a)(B) of the Magistrates Act, 90 Of 1993: Withholding of Remuneration: Ms VT Gqiba, Chief Magistrate, East London. February 2018.
- Parliamentary Monitoring Group Minutes. National Council of Provinces. Security and Justice Committee. Magistrates Commission on suspension of magistrates/ removal from office & withholding of remuneration. 28 March 2018.
- Report of the Select Committee on Security and Justice on the Withholding of Remuneration of Magistrate Ms V T Gqiba, a Chief Magistrate at East London, tabled in terms of section 13(4A)(b) of the Magistrates Act, 1993 (Act No 90 of 1993). 6 June 2018.

- Parliamentary Monitoring Group Minutes. ATC180828: Report of the Portfolio Committee on Justice and Correctional Services on the withholding of remuneration of Ms V T Gqiba, a Chief Magistrate at East London, tabled in terms of section 13(4A)(b) of the Magistrates Act, 1993. 28 August 2018.
Not Dated
- Mediation documents (Ms V Gqiba and Ms Raphahlelo).
- Reasons for Finding in terms of Regulation 26(16)(a).

Timeline of Magistrate MD Hinxa's Magistrate's Commission Process

Overview:

Magistrate MD Hinxa (MMH) is the former Chief Magistrate, Bloemfontein, pending the outcome of an investigation/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. In 2016, a complaint was lodged with the Minister alleging that MMH was a rape perpetrator. A report by the investigating officers recommended that it was justified for MMH to be charged with misconduct. The preliminary investigation report was then forwarded to the National Director of Prosecutions (NDPP) with a recommendation to reconsider the matter and take the steps he deemed fit. The Magistrates Commission resolved to charge MMH with misconduct. The National Council of Provinces (NCOP) and the National Assembly confirmed the provisional suspension of MMH. However, it was reported that MMH was still receiving remuneration as of September 2019.

Timeline of Key Dates and Developments in the Suspension Process

Date/Time Period	Nature of Development
29 July 2016	Complaint lodged with the Minister alleging that MMH is a rape perpetrator.
02 November 2016	Complaint was submitted to the Department and on 2 November 2016 referred to the MC for attention.
14 January 2017	Before the matter could serve before the Commission's Ethics Committee, MMH 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.
17 February 2017	Two Regional Magistrates were appointed to conduct a preliminary investigation in terms of the regulation 26(1) of the Regulations for Judicial Officers in the Lower Courts, 1994. MMH was advised accordingly in writing.

Date/Time Period	Nature of Development
22 February 2017	An email 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.
01 March 2017	Mr Ramoroka's successor, Mr Misser, advised MMH that, due to short notice, his representations could not be placed on the agenda of the Commission's meeting held on 24 February 2017.
03 April 2017	The Ethics Committee considered MMH's representations and resolved "...to stand by its decision to conduct a preliminary investigation in terms of Regulation 26(1) of the Regulations."
12 October 2017	The Investigating Officers filed their combined report with the Commission. The Investigating Officers, based on the evidence they obtained, were of the view that the evidence justifies that MMH be charged with misconduct.
18 October 2017	The National Director of Prosecutions (NDPP) was, in the interest of justice, 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 deemed fit.
27 October 2017	MMH 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.
09 November 2017	MMH through his attorney, responded and furnished the Commission with his representations.
24 November 2017	The Commission resolved to charge MMH with misconduct and to recommend that he be provisionally suspended from office in terms section 13(3)(a) of the Magistrates Act, 90 of 1993.
29 November 2017	The Minister, on advice of the MC, provisionally suspended MMH from office. The Select Committee on Security and Justice confirmed MMH's provisional suspension from the office of Magistrate.
04 December 2017	MMH, through his attorney, filed a Notice of Motion with the Gauteng Division of the High Court for an order, inter alia, to stay the Minister's decision to provisionally suspend him from office, pending review proceedings which he intended to institute, and for an order interdicting and restraining the Commission from proceeding with the disciplinary inquiry against him. This urgent application was struck from the roll with costs.

Date/Time Period	Nature of Development
23 January 2018	MMH instituted review proceedings in the Gauteng Division of the High Court, he applied for an order to review and set aside the Minister's decision to provisionally suspend him from office - reviewing and setting aside the Commission's decision to institute a misconduct inquiry against him and declaring the disciplinary inquiry on the misconduct charges against him to be invalid and unlawful. This application was opposed. MMH terminated the services of his attorney and failed to instruct another attorney. The State Attorney was requested to bring an application to dismiss MMH's application because he took no further action and to recover the State's costs.
21 May 2018	In the absence of a court order barring the MC from proceeding with the disciplinary hearing/misconduct inquiry. The MC appointed a Regional Magistrate as the PO at the inquiry and two Regional Magistrates as PLEs on behalf of the MC.
23 May 2018	The select committee confirmed his provisional suspension from office in terms of section 13(3)(b) of the Magistrates Act, 1993. The inquiry was postponed, and the committee was advised that the hearing would continue from 30 September to 4 October 2019.
30 October 2018	The inquiry commenced and MMH raised various matters which had to be argued but no evidence was led. The matter was set down until 2 November 2018.
01 November 2018	MMH requested a postponement for him to attend to the review proceedings he instituted in the High Court and to instruct an attorney to act at the inquiry on his behalf. The PO postponed the inquiry to 14-18 January 2019. The PO also ordered that the inquiry would continue with or without MMH's attorney. The dates 18 -21 February 2019 were set, if the matter was not concluded before the previous set dates.
14 January 2019	The inquiry proceeded. MMH's instructing attorney and counsel were present; four witnesses testified on behalf of the Commission during this period.
17 January 2019	The inquiry was again postponed upon the request of MMH's legal team for further consultation with possible witnesses and to prepare to cross-examine the 4th witness. The inquiry was set to continue on 18 February 2019.
18 February 2019	Three further witnesses testified where after the matter was postponed to 27, 29 and 30 May 2019 for further hearing.
27, 29 and 30 May 2019	Further evidence was presented at the inquiry during this period. There was cross-examination of witnesses by MMH's counsel. The PLE's called the complainant to commence with her testimony at the inquiry. Her evidence was led, and she was still under cross-examination. The inquiry was further postponed to 15-19 July 2019.
15-19 July 2019	The inquiry was postponed and set to continue on 30 September to 4 October 2019.
13 November 2019	The Select Committee on Security and Justice recommended that the National Council of Provinces adopts its report.

List of Documents Used:

- Report on Provisional Suspension from Office: Mr MD Hinxa, Chief Magistrate, Bloemfontein. November 2017.
- 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). 23 May 2018.
- Unrevised Hansard. National Council of Provinces. 13 June 2018.
- Parliamentary Monitoring Group Minutes. ATC180828: Report of Portfolio Committee on Justice and Correctional Services on the provisional suspension from the office of Magistrate of Mr MD Hinxa, Chief Magistrate, Bloemfontein, tabled in terms of section 13(3)(b) of the Magistrates Act, 1993 (Act No 90 of 1993). 28 August 2018.
- Unrevised Hansard. National Assembly. 25 October 2018.
- Parliamentary Monitoring Group Minutes. National Council of Provinces. Select Committee on Security and Justice. Progress report on misconduct inquiries: Magistrates Commission briefing. 4 September 2019.
- Parliamentary Monitoring Group Minutes. ATC191106: Report of the Select Committee on Security and Justice on the quarterly progress reports of the Magistrates Commission as tabled in terms of section 13(3)(f) of the Magistrates Act, 1993 (Act No 90 of 1993). 6 November 2019.
- Unrevised Hansard. National Council of Provinces. 13 November 2019.

Timeline of Magistrate PS Hole Magistrate’s Commission Process

Overview:

Magistrate PS Hole (MPH) is a former Regional Magistrate at Kimberley. He held this position from March 2007 up until his provisional suspension on 29 September 2011. He was provisionally suspended, with full salary, pending an investigation by the Magistrates Commission (MC) to determine his fitness to hold office. The allegations forming the basis of the suspension stemmed from various patterns and acts of misconduct and abuse of power in 2011. The misconduct Disciplinary Hearing (DH) was delayed eleven (11) times for MPH to obtain legal representation. In the interim, the suspension was lifted on 19 June 2013 on condition he finalises his part-heard matters. In 2015, MPH made an application to the High Court to interdict the MC and the chairperson from proceeding with the DH. This application was dismissed, and the DH proceeded in 2016. The MC made a recommendation for his removal and a determination to withhold his salary pending the finalisation of the Parliamentary process, to the Minister. MPH sought to interdict this decision, but the application was dismissed by the High Court.

Timeline of Key Dates and Developments in the Suspension Process

Date/Time Period	Nature of Development
22 July 2011	The MC considered the contents of various complaints received during July 2011 from the Regional Court President, Mr Nqadala, regarding Mr Hole.
29 August 2011	MPH responded in writing on the intention of the MC to provisionally suspend him.
17 September 2011	MC meeting considered MPH’s response and provisionally suspended MPH from 29 September 2011 pending an investigation into his alleged misconduct.

Date/Time Period	Nature of Development
29 September 2011	Provisional suspension effective
17 November 2011	MC concluded its investigation
24 November 2011	Parliament confirmed decision on MPH's provisional suspension
25 November 2011	MPH was formally charged
28 November 2011	Charge sheet was served on MPH
15 October 2012	The misconduct inquiry against MPH commenced
1 March 2013	MC considered a preliminary investigation report which was compiled by an independent investigating team as well as all other relevant documentation and resolved that there were insufficient grounds for a charge(s) of misconduct against Mr Nqadala. DH postponed, on request of MPH to 15 April 2013 to enable him to arrange for legal representation and to challenge the decision of the Department of Justice and Constitutional Development not to provide him with legal representation at State expense at the misconduct hearing.
15 April 2013	The matter was again on request of MPH postponed until 29 July to 2 August 2013 for the hearing of evidence.
24 April 2013	Minister of Justice and Constitutional Development to Parliament sends letters dated 24 April 2013, addressed to the Speaker of Parliament and the Chairperson of the Justice Portfolio Committee, with a recommendation to uplift the provisional suspension of Mr Hole in terms of section 13(3)(g) of the Magistrates Act, 1993.
14 May 2013	Report by the MC: Request by the Minister of Justice and Constitutional Development to Parliament to Lift the Suspension of MPS
19 June 2013	Parliament resolved to uplift the provisional suspension of MPH, to complete his part-heard matters.
29 July 2013	MPH brought an application for postponement which was opposed by the magistrate designated to lead evidence on behalf of the MC. The presiding officer however ruled in favour of MPH and the matter was postponed for hearing on 2 to 6 December 2013.
16 September 2013	MPH's first part-heard matter commenced.
2 December 2013	MPH who was still unrepresented, applied for the recusal of the Presiding Officer.

Date/Time Period	Nature of Development
2 to 5 December 2013	The proceedings continued, when MPH submitted a note from a medical practitioner which indicated that he is ill and unable to proceed with the inquiry. The inquiry was in the circumstances postponed, to proceed from 12 to 16 May 2014.
12 May 2014	MPH brought various applications which included the application on new grounds for the recusal of the Presiding Officer. He also requested to be provided with a copy of a preliminary investigation report.
14 May 2014	Preliminary investigation report was made available to MPH. The matter was postponed, to proceed on 8 to 12 September 2014 and on 13 to 17 October 2014 for further hearing.
08 September 2014	MPH appeared in person and applied for a postponement of the matter on ground that his legal representative was sick. The person leading evidence strongly objected to the application for a postponement. The matter was argued, and the Presiding Officer eventually ruled that it is in the interest of justice that the matter be postponed. The matter was then postponed to 13 to 17 October 2014.
13 to 15 October 2014	The misconduct hearing was partly heard on 13 October 2014. On 14 October 2014, the Presiding Officer dismissed the application for postponement and ruled that the failure on the part of MPH to secure legal representation for the continuation of the hearing permits the person leading evidence to proceed. The hearing stood down until 15 October 2014 when MPH again appeared in person. MPH also submitted a medical certificate indicating that he was sick and not fit to proceed. The hearing was then postponed to 23 to 27 February 2015 and 23 to 27 March 2015.
23 February 2015	The matter was on the roll and Advocate Mnyatheli, Advocate Sethi and Mr Mthotwya (standing in for the instructing attorney) appeared on behalf of MPH.
26 February 2015	MPH'S legal team brought a substantive application, seeking that thee MC furnish him with a full record of the minutes of the Commission's Ethics Committee in which the decision to charge him was made as well as the minutes of the Ethics Committee where the decision not to charge Mr Nqadala was taken.
27 February 2015	MPH's legal team served the Presiding Officer and gave the Person Leading Evidence a copy of the affidavit signed by MPH, in which he indicated that he would be approaching the high court to review the Presiding Officer's decision.

Date/Time Period	Nature of Development
20 March 2015	<p>MPH served a Notice of Motion on the MC seeking a review of all the rulings on the applications.</p> <p>MPH sought to interdict, restrain and prohibit the Presiding Officer from conducting, commencing, resuming and/or proceeding with the disciplinary hearing ordered by the MC.</p> <p>He further sought a declaration from the High Court declaring that the Chairperson of the MC and/or the Commission's appointment of the Presiding Officer as Chairperson in the DH instituted against him was unlawful.</p>
23 March 2015	<p>MPH handed in proof that his application was filed at the North Gauteng High Court and that the matter was set down on an urgent basis for the next day, 24 March 2015.</p>
27 November 2015	<p>The MC, in light of MPH's conduct in delaying the finalization of the misconduct hearing against him and the absence of a court order not to proceed, ordered that the DH proceed and that the Officer Leading Evidence (PLE) be directed to set a date for the hearing to continue.</p>
12 February 2016	<p>The PLE was advised on the MC's decision of 27 November 2015.</p>
22 February 2016	<p>MPH's attorney was advised on the MC's decision of 27 November 2015.</p> <p>MPH indicated that he would contact counsel to confirm his availability for the continuation of the inquiry on 3 to 6 May 2016.</p> <p>The PLE was requested to serve a Notice for the inquiry to proceed on 03 May 2016.</p>
03 May 2016	<p>Despite having been duly notified, MPH and his legal team were absent. The Presiding Officer ordered the proceedings to continue in their absence. Evidence was led and the inquiry was postponed to 6-8 June 2016 for argument, judgment and, depending on the outcome, for the imposition of a sanction.</p>
02 June 2016	<p>The Office of the State Attorney, Pretoria, dealing with the High Court application on behalf of the Respondents, confirmed that MPH had not furthered his application and that he had not complied with his duty to have the matter prepared for hearing and set down.</p>
06 to 07 June 2016	<p>The PLE presented arguments on the merits and on 7 June 2016 the Presiding Officer gave a substantive written judgment, finding Mr Hole guilty on all the 10 (ten) charges, some on the alternative, levelled against him.</p> <p>A local attorney appearing on behalf of MPH, on 7 June 2016 again requested the tribunal to postpone the inquiry pending the outcome of MPH's application in the High Court. The Presiding Officer dismissed this application.</p>
16 September 2016	<p>The MC's Ethics Committee considered all the relevant documents and recommended to the MC that MPH be removed from office on the ground of misconduct in terms of section 13(4)(a)(i) of the Act. MPH's attorney was provided with a copy of the documents which served before the Ethics Committee.</p>

Date/Time Period	Nature of Development
19 September 2016	MPH's attorney sent an email to the Office of the State Attorney, proposing that MPH's Notice of Motion be withdrawn, with each party paying its own costs.
15 November 2016	MPH was advised of the Commission's Ethics Committee's recommendations to the Commission that he be removed from office and that the Commission intends to determine to withhold his remuneration in terms of section 13(4A) (a) of the Act.
16 November 2016	MPH's attorney advised that due to consultations with his client, he would only be in a position to lodge any representations at the earliest on 21 November 2016.
21 November 2016	The MC received MPH's response.
Not Stated	MPH was invited to show cause why the MC at its meeting to be held on 25 November 2016, should not accordingly determine to withhold his remuneration forthwith.
25 November 2016	The MC resolved to recommend to the Minister of Justice and Correctional Services that MPH be removed from office on the grounds of misconduct in terms of sections 13(4)(a)(i) and 13(3)(a) of the Act.
01 November 2017	The Select Committee on Security and Justice concurred with the suspension and recommended that the National Council of Provinces confirm MPH's suspension from office and withholding of remuneration.
15 November 2017	Portfolio Committee on Justice and Correctional Services concurred with the suspension and recommended that the National Assembly confirm MPH's suspension from office and withholding of remuneration.

List of Documents Used:

2011

- Report from the Minister of Justice and Constitutional Development informing the Parliament of the Recommendation of the Magistrates Commission to provisionally suspend Mr. Hole. 29 September 2011.
- Letter from the Chairperson of the Magistrate Commission confirming the provisional suspension of Hole pending the outcome of the inquiry as to his fitness for office. 29 September 2011.

- Parliamentary Monitoring Group. ATC111116: Report of the Select Committee on Security and Constitutional Development on the provisional suspension from office of Mr P S Hole, Regional Magistrate at Kimberley, dated 16 November 2011.
- Parliamentary Monitoring Group. ATC111122: Report of the Portfolio Committee on Justice and Constitutional Development on the provisional suspension of Magistrate PS Hole, Kimberley, dated 22 November 2011.
- Hansard. Proceedings of the National Assembly. 24 November 2011.

2013

- Request to the commission by the Minister of Justice and Constitutional Development to Parliament to Lift the Suspension of Mr P S Hole, Regional Magistrate, Kimberley: Report by the Magistrates Commission. 14 May 2013.
- Report of the Select Committee on Security and Constitutional Development on the Lifting of the Provisional Suspension of Magistrate Mr P S Hole. 19 June 2013.
- Report by the Magistrates Commission to Parliament on Progress with Finalisation of Part-Heard Matters: 4th Report to the National Assembly. 19 June 2013.
- Hansard. Proceedings of the National Assembly. 20 June 2013.
- Resolution of the National Assembly taken that the Magistrate's Commission must provide regular reports to the National Assembly on whether Mr. Hole was abiding by the conditions of the upliftment of the provisional suspension. 20 June 2013.
- Letter to the Minister of Justice and Constitutional Development by the Deputy Speaker of the National Assembly on Upliftment of Provisional Suspension from Office of Magistrate PS Hole Kimberley. 2 July 2013.

2014

- Letter from the Minister of Justice and Constitutional Development Report on conditional upliftment of provisional suspension of a magistrate. 12 March 2014.
- Letter by the Minister of Justice and Constitutional Development to Parliament to provide a progress report received from the Magistrates Commission on the upliftment of the suspension of Mr P Hole. 31 July 2014.
- Spread Sheet containing a list of partly heard matters partly heard matters of regional court magistrate Mr PS Hole, Kimberley, as at 15 December 2014.
- Letter from Magistrates Commission to the Minister of Justice and Correctional Services: 4th Report by the Magistrates Commission to the National Assembly on Progress with Finalization of Part-Heard Matters. 15 December 2014.

2015

- Report by the Magistrates Commission to Parliament on Progress with Finalisation of Part-Heard Matters: 5th Report to the National Assembly. 30 March 2015.

2016

- List of partly heard matters partly heard matters of regional court magistrate Mr P S Hole, Kimberley, as at 27/1/2016.
- Report by the Magistrates Commission to Parliament on Progress with Finalisation of Part-Heard Matters: 7th Report to The National Assembly. 29 February 2016.
- Report on Partly Heard Matters of Regional Court Magistrate, Mr P S Hole, as at 12/09/2016.
- Report by the Magistrates Commission to Parliament on Progress with Finalisation of Part-Heard Matters: 8th Report to the National Assembly. 18 September 2016.
- Representations in respect of Mr PS Hole. 21 November 2016.

- Report on suspension/removal from office on the ground of misconduct: Mr P S Hole, regional magistrate, Kimberley from the Minister of Justice and Correctional Services. 2016
- Report on withholding the remuneration of PS Hole the Minister of Justice and Correctional Services 2016.

2017

- Report of the Select Committee on Security and Justice on the suspension from office of Mr P S Hole, Regional Magistrate at Kimberley. 15 March 2017.
- Report of the Select Committee on Security and Justice on the suspension from office of Mr P S Hole, Regional Magistrate at Kimberley. 1 November 2017.
- Parliamentary Monitoring Group. ATC171101: Report of the Select Committee on Security and Justice on the suspension from office of Mr P S Hole, Regional Magistrate at Kimberley, dated 01 November 2017
- Parliamentary Monitoring Group. ATC171115: Report of the Portfolio Committee on Justice and Correctional Services on the suspension from office of Magistrate PS Hole, Regional Magistrate at Kimberley, dated 15 November 2017.
- *Hole v Magistrate Commission of South Africa* (95280/16) [2017] ZAGPPHC 228 (30 May 2017) SAFLII. Not dated
- Letter by the Minister of Justice and Constitutional Development to Parliament to parliament of the application by Childline Northern Cape to lift the suspension of Mr Hole, a Regional Court Magistrate in Kimberley and to request Parliament to pass a resolution to uplift the suspension of Mr P Hole.
- Letter from the Minister of Justice and Constitutional Development to Mr P Hole informing him of his provisional suspension from office pending further inquiry

Timeline of Magistrate MAGISTRATE MR D JACOBS, CLOCOLAN, Magistrate's Commission Process

Overview:

Magistrate D Jacobs (DJ) served the district of Clocolan as Magistrate since 1 January 1998. He was provisionally suspended by the Minister from 30 March 2010 (confirmed by National Assembly and National Council of Provinces on 1 and 4 June respectively). The Magistrates Commission (MC) contended that DJ suffered from a 'severe alcohol dependency', and as a result it was inappropriate for him to perform the functions of Magistrate while the allegations were being investigated. In 2011, the National Assembly approved the MC's request to withhold DJ's remuneration.

Charges:

DJ was charged with 10 counts of misconduct arising from allegations of 'severe alcohol dependency'.

Timeline of Key Dates and Developments in the Suspension Process

Date/Time Period	Nature of Development
30 March 2010	DJ was provisionally suspended by the Minister.
19 May 2010	The Select Committee on Security and Constitutional Development were briefed by the MC, in respect of the provisional suspension of DJ.
25 May 2010	DJ was charged with 10 counts of misconduct.
26 May 2010	NCOP Security and Justice Committee, having considered the report on the provisional suspension from office of DJ, recommended that the National Council of Provinces confirms the provisional suspension from the office of Magistrate of DJ.
27 May 2010	DJ was served with notice of the 10 charges.
01 and 04 June 2010	DJ's provisional suspension was confirmed by both Houses of Parliament.

Date/Time Period	Nature of Development
04 June 2010	The Select Committee on Security and Constitutional Development requested the MC to review the judgements pronounced by DJ during the period of his illness to determine the validity thereof.
	The MC requested the Chief Magistrate, Bloemfontein to release one of his Senior Magistrates, a Judicial Quality Assurance Magistrate, to peruse all the judgments delivered by DJ in the preceding three (3) years.
21 to 29 June 2010	DJ's judgments were verified, and a report was submitted to the MC on 30 June 2010.
6 August 2010	<p>The misconduct inquiry commenced and was postponed to 22 and 23 September so he could instruct counsel.</p> <p>The MC was informed that on 16 July 2010 during the period of provisional suspension DJ was arrested and appeared in Clocolan Magistrates Court on charges of drinking under the influence of alcohol.</p> <p>Further that, DJ appeared in court on 19 July 2010, but was not sober. Considering these incidents, the MC showed an intention to add further charges of misconduct against DJ.</p>
17 August 2010	The MC issued a progress report to parliament on DJ's provisional suspension.
18 August 2010.	All judicial work performed over the last three years by DJ was reviewed by a Judicial Quality Assurance Magistrate and a report was submitted to the Chairperson of the Select Committee.
22 September 2010	DJ's attorney advised the Presiding Officer that he has been instructed to represent Mr Jacobs during the inquiry and that Mr Jacobs abandoned his intention to brief counsel. He denied all the allegations against him but was prepared to make certain admissions. The defence further raised the point that DJ suffered from Post-Traumatic Stress Disorder and major depression resulting in him having developed a serious alcohol dependency. His condition was only detected recently.
2 November 2010	NCOP Security and Justice Committee, having considered the MC's report, recommended that DJ be removed from office and that his remuneration be withheld.
10 November 2010	The NCOP Security and Justice Committee, having considered the MC's report on the provisional suspension from office of DJ, reported that it will await the recommendation from the Minister for Justice and Constitutional Development before concluding the matter.
6, 7 December 2010 and 18 April 2011	Having heard the evidence of a clinical psychologist, the misconduct inquiry was, with the Commission's approval, converted to an inquiry into Mr Jacobs' capacity to carry out his duties of office efficiently. This inquiry was set to continue 18 April 2011.

Date/Time Period	Nature of Development
	DJ in the meanwhile filed a request with the Minister of Justice and Constitutional Development to allow him to vacate the office of Magistrate on account of continued ill health in terms of section 13(5)(a)(i) of the Magistrates Act. The inquiry was concluded on 18 April 2011.
21 and 22 July 2011	MC had resolved, in terms of section 13(4)(a)(iii) of the Act, read with regulation 28(3)(b) of the Regulations, to recommend to the Minister of Justice and Constitutional Development that DJ be provisionally suspended and the suspension of remuneration, pending the consideration by parliament. DJ, through his legal representative, was invited to show cause why the MC should not determine to withhold his remuneration.
04 August 2011	MC advised the Minister for Justice and Constitutional Development of its decision.
15 August 2011	Having considered the MC's recommendation, the Minister for Justice and Constitutional Development confirmed DJ's provisional suspension.
05 September 2011	DJ's attorneys responded on DJ's behalf in a letter showing cause why his remuneration should not be withheld.
09 September 2011	A report submitted to parliament for consideration.
October 2011	The National Council of Provinces (NCOP) Select Committee on Security and Justice agreed with the MC's recommendation to provisionally suspend DJ from office and suspend his remuneration.
22 November 2011	Having considered the MC's report, the Justice and Correctional Services Committee recommended that the National Assembly approved the suspension of DJ from office.
23 November 2011	Having considered the MC's request for the withholding of DJ's remuneration, the Justice and Correctional Services Committee recommended that the National Assembly approve the request.

List of Documents Used:

- Parliamentary Monitoring Group. NCOP Security and Justice Committee. Security and Constitutional Development Committee: Adoption of Outstanding Reports. 25 May 2010.
- Parliamentary Monitoring Group. NCOP Security and Justice Committee. ATC100526: Report Provisional Suspension from Office of Magistrate of Mr D Jacobs, a Magistrate at Clocolan, Free State. 26 May 2010.

- Hansard: Minister's Response / Member's Statements. 31 May 2010.
- Progress Report Dated 17 August 2010 to Parliament: Provisional Suspension from Office, Magistrate D Jacobs, Clocolan.
- Magistrates Commission. Report to the Select Committee on Security and Constitutional Development on the Provisional Suspension from Office of Magistrate D Jacobs, Clocolan, Free State. 18 August 2010.
- Briefing Document: Magistrates Commission Reports: Disciplinary. 9 November 2010.
- Progress Report Dated 17 August 2010 to Parliament: Provisional Suspension from Office, Magistrate D Jacobs, Clocolan.
- Parliamentary Monitoring Group. NCOP Security and Justice Committee. ATC101102: Report Suspension from office & withholding of remuneration for Mr D Jacobs, Magistrate at Clocolan, Free State. 02 November 2010.
- Parliamentary Monitoring Group. NCOP Security and Justice Committee. ATC101110: Report Provisional Suspension from Office of Magistrate D Jacobs. 10 November 2010.
- Progress Report Dated 29 June 2011 to Parliament: Provisional Suspension from Office, Magistrate D Jacobs, Clocolan.
- Hansard: NCOP: Unrevised Hansard. 11 August 2011.
- Report in terms of Section 13(4A) (b) of the Magistrates Act, 1993: Withholding of Remuneration, Magistrate D Jacobs, Clocolan. 29 September 2011.
- Parliamentary Monitoring Group Meeting Summary. National Council of Provinces. Select Committee on Security and Justice. Magistrates Commission requests for suspension of magistrates and salary. 25 October 2011.
- Parliamentary Monitoring Group Meeting Summary. National Council of Provinces. Select Committee on Security and Justice. ATC111026: Report Progress

reports on provisional suspensions from office of Regional Magistrate T R Rambau, Magistrate C M Dumani, Graaff- Reinet; Magistrate D Jacobs, Clocolan; Magistrate L B Maruwa, Daveyton; Magistrate M T Masinga, Umlazi; Magistrate I W O M Morake, Lichtenburg; and Magistrate L Skrenya, Cala tabled to Parliament on 24 February 2011 and 29 June 2011. 26 October 2011.

- Parliamentary Monitoring Group. NCOP Security and Justice Committee. ATC111117: Report: Progress reports on the provisional suspensions from office of Regional Magistrate T R Rambau, Magistrate C M Dumani, Graaff- Reinet; Magistrate D Jacobs, Clocolan; Magistrate L B Maruwa, Daveyton; Magistrate M T Masinga, Umlazi; Magistrate I W O M Morake, Lichtenburg; and Magistrate L Skrenya, Cala tabled to Parliament on 24 February 2011 and 29 June 2011, dated 16 November 2011. 17 November 2011.
- Parliamentary Monitoring Group. National Assembly. Justice and Correctional Services Committee. ATC111122: Report on Suspension of Magistrates D Jacobs, Clocolan. 22 November 2011.
- Parliamentary Monitoring Group. National Assembly. Justice and Correctional Services Committee. ATC111123: Report on Withholding of the remuneration of Magistrate D Jacobs, Clocolan. 23 November 2011.
- Hansard: NCOP: Unrevised Hansard. 24 November 2011.

Timeline of Magistrate M N JASSIEM Magistrate's Commission Process

Overview:

Magistrate M N Jassiem (MNJ) is a former additional magistrate at Mitchells Plain. On three occasions during 2006-2009 he wrote to the Magistrates Commission (MC) for approval to practice as an attorney whilst permanently appointed as a Magistrate. The MC did not to approve MNJ's request. MNJ was charged with misconduct for defying the orders of the MC by continuing to practise as an advocate and misleading the Cape Law Society and his Judicial Head of office, the acting Chief Magistrate, that he had the MC's permission to practice. After the misconduct inquiry, the MC recommended that MNJ be removed from office. In 2010, the Minister for Justice and Constitutional Development suspended MNJ pending the consideration by Parliament of the MC's recommendation that he be removed from office.

Charges:

The actual charges of misconduct against MNJ were not noted.

MNJ was charged with misconduct for defying the orders of the MC by continuing to practise as an advocate and misleading the Cape Law Society and his Judicial Head of office, the acting Chief Magistrate, that he had the MC's permission to practice.

Timeline of Key Dates and Developments in the Suspension Process

Date/Time Period	Nature of Development
08 October 2006	MNJ misled the Cape Law Society indicating in writing that he had the MC's permission to practise as an attorney whilst he knew that he did not have such written permission and only requested the MC's permission on 9 October 2006.
9 October 2006, 28 August 2007	MNJ wrote to the MC for approval to run his practice as an attorney whilst permanently appointed as a Magistrate.
23 May 2007	The Service Conditions Committee of the Commission resolved to refer the matter to the MC for consideration whether to refer the matter to the Cape Law Society for investigation.
17 July 2007	MNJ was informed that the Service Conditions Committee of the Commission, at its meeting held on, 23 May 2007 had resolved to refer the matter to the MC for consideration whether to refer the matter to the Cape Law Society for investigation.
23 August 2007	The MC resolved not to approve MNJ's request to practice.
12 September 2007	MNJ's Judicial Head of the Administrative Region, the Chief Magistrate, Wynberg was informed of the decision not to allow him to practice.
21 September 2007	A letter dated 21 September 2007 from the Chief Magistrate, Wynberg and directed to the Magistrate, Mitchells Plain, duly notified MNJ of the MC's resolution not to allow him to practice.
17 September 2009	The Senior Legal Officer of the Cape Law Society averred in an affidavit that MNJ ceased practising as an attorney on 09 October 2000 but had recommenced practicing for his own account as M N Jassiem Associates from 01 November 2006.
	MC's chairperson noted that MNJ was apparently still practising as an attorney and therefore held that MNJ was deliberately in defiance of a decision by the MC.
12 November 2009	After considering the contents of the affidavit, the MC (through its secretariat) invited MNJ to give reasons why he should not be charged with misconduct for deliberately defying a decision taken by the MC on 23 August 2007.
26 November 2009	The MC endorsed the Chairperson's decision; it also considered MNJ's response to its letter dated 12 November 2009 and resolved that MNJ be charged with misconduct.
11 December 2009	MNJ was subsequently charged with misconduct and acknowledged receipt of the charge sheet on the same day.

Date/Time Period	Nature of Development
06 April 2010	<p>The misconduct inquiry against MNJ commenced and he elected to conduct his own defence.</p> <p>Although MNJ initially pleaded guilty to the main charge, his plea was altered to one of not guilty as he indicated that he never ran any practice as an attorney but was doing conveyancing and estate administration. The MC therefore led oral evidence of four (4) witnesses and submitted letters of correspondence between the Commission and MNJ as exhibits.</p>
	<p>The presiding officer found MNJ dishonest in that he misled the Cape Law Society and his Judicial Head of office, the acting Chief Magistrate, that he had the MC's permission to practice. The presiding officer noted that MNJ, therefore lacked integrity as an officer of the court and found him guilty of misconduct on the main count.</p>
20 July 2010	<p>The presiding officer recommended that MNJ be removed from office.</p> <p>MNJ was given an opportunity to furnish the MC with written representations in respect of the sanction recommended by the presiding officer.</p>
26 August 2010	<p>The MC after considering all the necessary documents related to the inquiry as required by the relevant regulations in terms of the Regulations for Judicial Officers In Lower Courts, 1994, resolved to accept the findings of the Presiding Officer and recommended to the Minister for Justice and Constitutional Development that MNJ be removed from office on grounds of misconduct in terms of section 13(4)(a(i) of the Magistrates Act, 1993.</p>
4 November 2010	<p>The Minister for Justice and Constitutional Development suspended MNJ pending the consideration by Parliament of the MC's recommendation that he be removed from office.</p>
16 November 2010	<p>The National Assembly Justice and Correctional Services Committee recommended that the National Assembly confirm MNJ's suspension.</p>
23 November 2010	<p>The NCOP Security and Justice Committee concurred with the Minister for Justice and Constitutional Development and recommended that MNJ be removed from office.</p>

List of Documents Used:

- Ministry of Justice and Constitutional Development. Report on the Suspension of a Magistrate: MN Jassiem, Additional Magistrate at Mitchell's Plain addressed to the Parliament for consideration. 04 November 2010.
- Parliament of the Republic of South Africa. Announcements, Tablings and Committee Reports. 5 November 2010.
- Briefing Document: Magistrates Commission Reports: Disciplinary. 9 November 2010.
- The National Council of Provinces. Unrevised Hansard. 09 November 2010.
- Parliamentary Monitoring Group. National Assembly. Justice and Correctional Services Committee. ATC101116: Report on Provisional suspension from office of Magistrate MN Jassiem. 16 November 2010.
- Parliamentary Monitoring Group. NCOP Security and Justice. ATC101123: Report Suspension from office of Magistrate MN Jassiem. 23 November 2010.

Timeline of Magistrate J Kgomo Magistrate's Commission Process

Overview:

Magistrate J Kgomo (JK), Additional Magistrate at Randburg. JK had allegedly asked for and received R150 000, to influence the outcome of an extradition appeal in respect of a foreign corruption case involving R20 million. The money was found in his briefcase, in his presence, and a corruption charge was laid against him. In 2014, the Minister on the advice of the Magistrates Commission (MC) provisionally suspended JK from office. The Regional Court convicted JK on two counts of corruption in 2017. Having regard to the fact that JK was deliberately delaying the continuation of the disciplinary process against him and the serious nature of his criminal conviction, the MC determined to withhold his remuneration.

Charges:

The actual charges were not noted but the allegations arose from the criminal charge of corruption.

Timeline of Key Dates and Developments in the Suspension Process

Date/Time Period	Nature of Development
5 December 2013	JK was arrested during the afternoon.
6 December 2013	JK appeared in the Randburg Regional Court on a charge of corruption.
9 December 2013	The Court granted JK bail of R30 000 (thirty thousand rand).
	JK absented himself from office without leave or valid cause for the period 20 January 2014 to 4 March 2014, the latter being the day he was served with the Minister's letter informing him of his provisional suspension from office.
03 March 2014	The Minister, on the advice of the MC, provisionally suspended JK from office in terms of section 13(3)(a) of the Act with effect from 18 February 2014 which suspension was confirmed by Parliament on 13 March 2014.

Date/Time Period	Nature of Development
11 April 2014	The MC charged JK with misconduct.
	The criminal case was postponed on several occasions for various reasons. The matter was on 26 August 2014 remanded to 3 October 2014 for JK to instruct an attorney.
3 October 2014	JK's legal representative withdrew as attorney of record. The case was provisionally remanded to 30 October 2014 for JK to secure the services of a new legal representative. The Court also set the trial date for 16-20 February 2015.
30 October 2014	JK's new legal representative made his appearance in court.
	The National Prosecuting Authority (NPA) requested the MC not to commence with its disciplinary hearing/inquiry against JK since it is of the view that it would prejudice the State's criminal case against him.
	The MC at its meeting held on 31 October 2014 considered the NPA's request and resolved to keep a decision on the matter in abeyance until its next meeting to be held on 27 February 2015 for the NPA to provide the Commission with a progress report regarding JK's criminal prosecution. The MC further resolved to approach the NPA with a request to release the prosecutor tasked with the criminal prosecution, to also lead the evidence in the misconduct hearing.
	The criminal trial commenced on 16 February 2015 and proceeded for the entire week. Three witnesses testified in a trial within a trial. After judgment was passed, the State called the complainant to the stand. The matter was postponed to 9 June 2015 for further hearing and set down for three weeks for the evidence to be finalised.
27 February 2015	The MC at its meeting noted that the criminal case is complex and at a very sensitive stage. The MC therefore resolved to keep the disciplinary hearing against JK in abeyance at this stage. The NPA is keeping the MC posted on the progress made in the criminal trial. The MC further requested the State to provide the MC with a transcript of the record of proceeding thus far, for consideration. The NPA provided the MC with a copy of the transcribed proceedings thus far. The NPA keeps the Commission posted on the developments in respect of the criminal trial on a continuous basis.
9 June 2015	JK again had problems with legal representation. The record of the proceedings reflects that there was an issue between JK and his instructing attorney which issue could not be resolved, with the result that his attorney and counsel had to withdraw. The witnesses for the State had all been subpoenaed and most of them were in attendance. The case was remanded to 11 June 2015 for JK to sort out his problem concerning legal representation.
11 June 2015	JK placed on record that he had tried to negotiate with his previous legal team but that the relationship of trust had irretrievably broken down. He was given until 17 June 2015 to instruct a new legal representative.

Date/Time Period	Nature of Development
17 June 2015	JK appointed a new attorney. The Court postponed the case until 23 June 2015 on condition that JK's newly appointed attorney, as well as counsel be present to arrange new dates for the trial to proceed.
18 June 2015	JK however terminated the services of his new attorney and once again instructed another attorney to represent him. The now newly instructed attorney was on record on 23 June 2015. JK indicated that he would not be briefing counsel. Arrangements for a new trial date had to be set. The Presiding Officer however refused to set a trial date and gave JK until 01 July 2015 to pay his lawyer for the duration of the trial.
23 September 2015, 26-28 October and 2-3 November 2015	The matter was back in court for further hearing.
	The Prosecutor advised the MC that the State had made considerable progress in the matter. The matter was remanded to 3 and 4 May, 9 to 11 May, 16 to 18 May and 23 May 2016 for continuation of the hearing. The complainant testified and was thoroughly cross-examined. The State made significant progress in the matter during this period. The case was postponed until 3, 4, 6, 10, 11 and 17 to 19 October 2016 for further evidence. The Prosecutor indicated that she had approximately four (4) witnesses left before closing the State's case.
20 October 2016	The Director of Public Prosecutions: Gauteng Local Division reported that the State had closed its case and that the defence brought an application for JK's discharge in terms of Section 174 of the Criminal Procedure Act (CPA). The defence also brought an Application in terms of Section 186 of the CPA which was found to be premature. The court ordered the defence to proceed with its case and postponed the proceedings for this purpose until 18 -20 January 2017.
	JK's attorney was not available prior to the 18-20 January 2017 dates. The matter was further adjourned to 10 March 2017 to argue on the Section 186 Application. The Court on 31 March 2017 dismissed the application. The matter was postponed until 26 July 2017 for the parties to submit written Heads of Arguments and to address the court on the merits of the case. The cause of this long delay was once again due to the defence attorney not being available prior to this date and the fact that the parties requested a copy of the transcription of the record of proceedings. A magnitude of evidence had been led in the case which includes oral testimony as well as a large amount of documentary evidence.
23 October 2017	The Regional Court convicted JK on two (2) counts of corruption and postponed the matter to 7 and 8 February 2018 for sentencing.

Date/Time Period	Nature of Development
	On 27 October 2017 JK was invited to show cause why the MC (or its EXCO), at its next meeting, should not determine to withhold his remuneration forthwith. A letter in this regard was served on him on 03 November 2017.
09 November 2017	JK filed his representations out of time, which were nevertheless considered by the MC.
28 August 2018	The Justice and Correctional Services Committee, having considered the MC's report, recommended that the National Assembly withhold JK's remuneration.

List of Documents Used:

- Parliamentary Monitoring Group Minutes. National Assembly. NCOP Security and Justice Committee. Magistrates Commission briefings: Request to confirm suspension of Mr J Kgomo, updates on progress of other disciplinary inquiries. 11 March 2014.
- Provisional Suspension from Office: Mr M J Kgomo, Additional Magistrate, Randburg. 2014.
- Progress Report Dated 28 August 2014 to Parliament: Provisional Suspension from Office, Additional Magistrate M J Kgomo, Randburg.
- Progress Report Dated 29 December 2014 to Parliament: Provisional Suspension from Office, Additional Magistrate M J Kgomo, Randburg.
- Progress Report Dated 30 March 2015 to Parliament: Provisional Suspension from Office, Additional Magistrate M J Kgomo, Randburg.
- Parliamentary Monitoring Group Minutes. National Assembly. NCOP Security and Justice Committee. Magistrates Commission on progress reports and provisionally suspended magistrate; Revised Draft Rules for Promotion of Administrative Justice Act; UN Security Council Terrorist Proclamations. 02 September 2015.
- Parliamentary Monitoring Group Minutes. National Assembly. Justice and Correctional Services Committee. Minister on National Council for Correctional Services

appointments; Correctional Services contingent liability & legal services capacity; POPI Act appointments. 11 November 2015.

- Progress Report Dated 29 February 2016 to Parliament: Provisional Suspension from Office, Additional Magistrate M J Kgomo, Randburg.
- Parliamentary Monitoring Group. NCOP Security and Justice. ATC160511: Annual Report on the Activities of the Select Committee on Security and Justice 1 April 2015 to 31 March 2016. 11 May 2016.
- Progress Report Dated 18 September 2016 to Parliament: Provisional Suspension from Office, Additional Magistrate M J Kgomo, Randburg.
- Parliamentary Monitoring Group Minutes. National Assembly. NCOP Security and Justice Committee. Progress Reports on provisionally suspended magistrates: Magistrates Commission briefing; Committee interaction with presentation. 12 October 2016.
- Progress Report Dated 08 June 2017 to Parliament: Provisional Suspension from Office, Additional Magistrate M J Kgomo, Randburg.
- Report in Terms of Section 13(4A)(b) of the Magistrates Act, No. 90 Of 1993: Withholding of Remuneration: Mr M J Kgomo, Additional Magistrate, Randburg. November 2017.
- Parliamentary Monitoring Group. NCOP Security and Justice. Magistrates Commission on suspension of magistrates/removal from office & withholding of remuneration. 28 March 2018.
- Parliamentary Monitoring Group. NCOP Security and Justice. ATC180523: Report of the Select Committee on Security and Justice on the Withholding of Remuneration of Magistrate Mr M J Kgomo, an Additional Magistrate, Randburg, in terms of section 13(4A)(b) of the Magistrates Act, 1993 (Act No 90 of 1993), dated 23 May 2018.
- Hansard: NCOP: Unrevised Hansard. 13 June 2018.

- Parliamentary Monitoring Group. National Assembly. Justice and Correctional Services Committee. ATC180828: Report of the Portfolio Committee on Justice and Correctional Services on the withholding of remuneration of Mr M J Kgomo, an Additional Magistrate, Randburg, in terms of section 13(4A)(b) of the Magistrates Act, 1993 (Act No 90 of 1993), dated 28 August 2018.

Timeline of Magistrate A Maharaj Magistrate's Commission Process

Overview:

Magistrate A Maharaj (AM) is the former additional magistrate at George, on probation. She was charged with misconduct on 8 March 2007. Details regarding the nature of the allegations and charges are not provided in the Report from the Magistrates Commission (MC). The Minister suspended her from office in 2010 on recommendation by the Magistrates Commission (MC). In the same year, the MC recommended AM's removal from office, the recommendation was supported by the Minister and the Select Committee on Security and Constitutional Development.

Timeline of Key Dates and Developments in the Suspension Process

Date/Time Period	Nature of Development
8 March 2007	Charge Sheet produced.
20 March 2007	The misconduct inquiry against AM, initially commenced and was postponed at the request of the defence to obtain further instructions.
24 July 2007	The inquiry resumed at Durban and was postponed <i>sine die</i> pending submissions to be made by AM to the MC regarding the charges preferred against her.
20 September 2007	Upon receipt of AM's written submissions, the MC in a letter dated 20 September 2007, indicated to her that it would only proceed with the first two (2) of the eight (8) charges preferred against her and that it accepted her written explanation on the remaining counts.
17 July 2008, 21 July 2008	Further complaints of misconduct against AM were received and the MC resolved to add further charges of misconduct against her. She acknowledged receipt of the second charge sheet dated 17 July 2008 containing counts 9 - 13 on 21 July 2008.
12 March 2009	The inquiry eventually resumed at Durban. AM was on sick leave for a period prior to this date, she was represented by counsel throughout the proceedings. AM pleaded not guilty to all the counts of misconduct.

Date/Time Period	Nature of Development
18 August 2009	<p>The MC was only being able to start leading the evidence on this day, since various points <i>in limine</i> and special pleas were raised by the defence.</p> <p>The Presiding Officer found AM guilty of counts 1, 2, 9, 10 and 12. AM was acquitted on count 11, since no evidence was led in respect of it. AM was also acquitted of count 13.</p>
15 April 2010	<p>The Presiding Officer recommended that AM be removed from office as contemplated in section 13 of the Act.</p>
26 August 2010	<p>The MC considered all the relevant documents relating to the misconduct inquiry in terms of the Regulations for Judicial Officers in Lower Courts, 1994. The MC recommended to the Minister that AM be removed from office on the grounds of misconduct in terms of section 13(4)(a)(i) of the Magistrate's Act, 1993.</p>
4 November 2010	<p>The Minister suspended AM from office pending the consideration by Parliament of the Magistrates Commission's recommendation that Ms Maharaj be removed from office.</p>
23 November 2010	<p>The Select Committee on Security and Constitutional Development, having considered the suspension from office of AM, reported that it concurred with the Minister for Justice and Constitutional Development and recommended her removal from office.</p>

List of Documents Used:

- Ministry of Justice and Constitutional Development. Report on the Suspension of a Magistrate: Ms. A Maharaj, Additional Magistrate at George addressed to Parliament for Consideration. 04 November 2010.
- Parliament of the Republic of South Africa. Announcements, Tablings and Committee Reports. 5 November 2010.
- Briefing Document: Magistrates Commission Reports: Disciplinary. 9 November 2010.
- Parliamentary Monitoring Group. NCOP Security and Justice. ATC101123: Report Suspension from Office of Magistrate A Maharaj. 23 November 2010.

Timeline of Magistrate RM Malahlela'S Magistrate's Commission Process

Overview:

Magistrate Ms RM Malahlela (RM) was an aspirant additional Magistrate at Delmas. Her permanent appointment could not be finalized due to poor performance, irregularities in her work, absenteeism from office, refusal to execute lawful orders, major delays in handing down judgments, failure to finalize matters and poor utilization of court time. Her evaluation reports found that she is not a fit and proper person for appointment as a magistrate. She was provisionally suspended from office on 17 July 2014, pending the result of an investigation by Magistrates Commission (MC) to determine her fitness to hold office. On 24 November 2017, the MC resolved to withhold her remuneration.

Charges:

RM was charged with 29 counts of misconduct arising from allegations questioning her fitness to hold office of a magistrate.

Timeline of Key Dates and Developments in the Suspension Process

Date/Time Period	Nature of Development
18 October 2011	A report recommended that RM does not have the capacity to carry out her duties of office in an efficient manner due to continued ill-health and that she should furnish reasons in terms of Regulation 29(6) of the Regulations.
	The Minister, on the advice of the MC, provisionally suspended RM from office with effect from 17 July 2014 which provisional suspension was confirmed by both Houses of Parliament on 6 and 18 November 2014 respectively.
6 September 2012	The Ethics Committee resolved that RM be exposed to an additional six months of probation under the guidance of an onboard mentor, namely the then acting Judicial Head of Office.

Date/Time Period	Nature of Development
	A report in this regard was submitted to RM on 18 April 2013 for her comments. Although the gist of the report was positive in nature, the acting Judicial Head of Office at the time was not prepared to make a recommendation as RM was during the period of extended probation absent for 39 days, namely 31 days for vacation leave and 8 days for sick leave. The report however found that the statistics RM provided raised many questions as to her productivity because she often arrived late at work, did not attend in time to circulars/official correspondence which she was required to sign, and her dedication to her work was questionable.
24 April 2013	New complaints were lodged against RM.
7 May 2013	Further complaints on 7 May 2013 indicated that RM did not return on 2 May 2013 from leave and eventually handed in a sick note for the 2nd and 3rd of May 2013; RM did not submit her monthly statistics on 26 April 2013; RM only did so on 6 May 2013 after various reminders; RM did not respond to a reminder from the MC.
20 May 2013	A letter from the then acting Judicial Head of Office and the sub-cluster Head requested the MC to take into consideration all previous reports and recommendations to consider whether RM was indeed a fit and proper person to be appointed as a magistrate considering the many complaints and personal matters that reflected negatively on the conduct and good standing of a magistrate.
	The MC's Ethics Committee resolved to conduct a preliminary investigation in terms of Regulation 26(1) of the Regulations to obtain evidence in order to determine whether there are any grounds for a charge of misconduct against RM and to investigate the feasibility of re-opening the previous four charges of misconduct against her. The investigation report recommended that the MC charge RM with misconduct. A charge sheet comprising 29 counts of alleged misconduct was served on her on 5 March 2014.
18 June 2014	RM filed a Notice of Motion at the North Gauteng High Court, inter alia to declare the Commission's decision to charge her with misconduct to be wrongful and unlawful. The application was opposed.
31 October 2014	The MC considered RM's attorney's request not to proceed with the disciplinary hearing, pending the outcome of the High Court review application since the relief sought, inter alia, was to set aside the decision by the MC to charge RM with misconduct. The MC resolved to stand by its earlier decision that the misconduct hearing must proceed.
11 May 2015	The defence requested a postponement of the disciplinary inquiry which application was argued before the Presiding Officer. The Presiding Officer however ruled to keep the disciplinary inquiry in abeyance pending the outcome of RM's High Court application.

Date/Time Period	Nature of Development
	<p>The High Court application was delayed for more than three years, the matter was set down for hearing on 2 and 3 May 2017 by the Gauteng Local Division of the High Court. RM persisted with an application to have the matter heard by 2 Judges or more. This request was turned down. RM then brought an application for the Presiding Judge to recuse herself based on incidents which occurred in court. RM's attorney was given the opportunity to bring an application from the bar which he refused.</p> <p>RM's attorney insisted that he wanted to bring it by way of a Notice of Motion, supported by an affidavit. The Court refused this request given the fact that the matter would then have to be postponed allowing RM time to consult and bring such an application. The attorney then decided to withdraw as attorney of record. The Court allowed RM a postponement to afford her an opportunity to get another legal representative. She was ordered to pay the wasted costs.</p>
03 May 2017	The High Court postponed her application to afford her an opportunity to instruct another legal representative.
	The Office of the State Attorney, Pretoria held the view that the order of the Gauteng Division of the High Court of 03 May 2017 was not appealable and that the matter should be set down for hearing.
	The MC decided to withhold RM's remuneration.
	On 9 November 2017, RM was invited to furnish the MC with representations why the Commission should not determine to withhold her remuneration in terms of section 13(4A) (a) of the Act. The MC received no response from either RM or her attorney; and was of the view that RM was deliberately delaying the disciplinary process against her and that a determination by the MC to withhold her remuneration is justified.
24 November 2017	The MC, determined to withhold RM's remuneration in terms of Section 13(4A)(a) of the Act, pending the conclusion of the disciplinary inquiry against her with immediate effect.
	The Select Committee on Security and Justice, having considered the MC's report dated 29 November 2017, as tabled by the Minister for Justice and Correctional Service, on their determination to withhold the remuneration of magistrate RM, concurred with the MC

List of Documents Used:

- Letter from the Magistrates Commission to the Minister of Justice and Correctional Services. Provisional Suspension from Office: Mrs R M Malahlela, Aspirant Additional Magistrate at Delmas Court House. 14 July 2014.

- Parliamentary Monitoring Group. National Assembly. Justice and Correctional Services Committee. Magistrates Commission: roles and processes briefing, reports on suspension of magistrates Masinga, Mahlalela, upliftment of provisional suspension Magistrate Hole. 20 August 2014.
- Parliamentary Monitoring Group. National Assembly. Justice and Correctional Services Committee. ATC141028: Report of the Portfolio Committee on Justice and Correctional Services on the Provisional Suspension of Aspirant Magistrate RM Malahlela, dated 28 October 2014
- Progress Report Dated 29 December 2014 to Parliament: Provisional Suspension from Office Mrs RM Malahlela, Aspirant Additional Magistrate, Delmas.
- Progress Report Dated 30 March 2015 to Parliament: Provisional Suspension from Office Mrs RM Malahlela, Aspirant Additional Magistrate, Delmas.
- Progress Report Dated 29 February 2016 to Parliament: Provisional Suspension from Office Mrs RM Malahlela, Aspirant Additional Magistrate, Delmas.
- Progress Report Dated 08 June 2017 to Parliament: Provisional Suspension from Office Mrs RM Malahlela, Aspirant Additional Magistrate, Delmas.
- Report in terms of Section 13(4)(A)(b) of the Magistrates Act, 90 Of 1993: Withholding of Remuneration: Ms Malahlela, Additional Magistrate, Delmas. November 2017.
- Parliamentary Monitoring Group. National Council of Provinces. NCOP Security and Justice Committee. ATC180523: Report of the Select Committee on Security and Justice on the Withholding of Remuneration of Magistrate Ms RM Malahlela, an additional Magistrate at Delmas, tabled in terms of section 13(4A)(b) of the Magistrates Act, 1993 (Act No 90 of 1993), dated 23 May 2018.

Timeline of Magistrate L B MARUWA Magistrate's Commission Process

Overview:

Magistrate L B Maruwa (LBM) was appointed as Magistrate on 1 January 1995. LBM was an additional Magistrate at Daveyton District Court, Gauteng. On 29 September 2009, he was convicted by the Springs Regional Court on eleven counts of fraud. He was later sentenced to a fine of R5 000.00 or 12-months imprisonment and chose to pay the fine. He appealed against his criminal conviction and sentence, but the appeal was dismissed. The Magistrates Commission (MC) recommended that LBM's remuneration be withheld. The National Council of Provinces and the Select Committee on Security and Justice concurred with the MC's position to withhold his remuneration.

Charges:

The MC charged LBM with 11 counts of misconduct arising from MC's criminal conviction and sentence.

Timeline of Key Dates and Developments in the Suspension Process

Date/Time Period	Nature of Development
24 August 2007	LBM appeared before the Springs Regional Court on 11 counts of fraud.
29 September 2009	LBM was convicted on all 11 counts of fraud pertaining to allegations that while he was presiding over a case involving a traffic offence, he wrongly endorsed the court records.
9 November 2009	The Springs Regional Court sentenced LBM to a fine of R5 000.00- or 12-months imprisonment. LBM paid the fine. He appealed against his criminal conviction and sentence. A date for the appeal to be heard has not yet been determined.
11 December 2009	The MC charged LBM with 11 counts of misconduct. A notice in terms of section 13(3)(e) containing the allegations was served on him on 5 March 2010.

Date/Time Period	Nature of Development
3 February 2010	The MC provisionally suspended LBM from office, with remuneration.
4 June 2010	Parliament confirmed the provisional suspension. The misconduct inquiry commenced and was postponed <i>sine die</i> (indefinitely) at the request of the defence, pending the outcome of the criminal matter on appeal.
17 August 2010	The MC issued a progress report to parliament on the provisional suspension from office of LBM.
24 February 2011	The MC issued a progress report to parliament on the provisional suspension from office of LBM.
29 July 2011	The North Gauteng High Court dismissed LBM's appeal against his conviction and sentence.
	The MC had initially followed a procedure that in instances where a misconduct inquiry was instituted following criminal charges against a magistrate, the misconduct inquiry should not be proceeded with, pending the outcome of the criminal case, but it had later resolved that it could proceed with misconduct inquiries notwithstanding pending criminal proceedings. LBM believed that this should not proceed. He had also indicated his intention, notwithstanding the dismissal of his appeal by a full bench, to bring an application for leave to appeal to the Supreme Court of Appeal. The MC would oppose this application.
	MC was of the view that suspension of LBM's salary was necessary, pending the final determination of the matter. LBM was afforded an opportunity to show cause why the MC should not determine to withhold his remuneration, and representations were sent by his attorneys, but the MC was not convinced that they were sufficient.
25 October 2011	National Council of Provinces. Select Committee on Security and Justice agreed to withhold LBM's remuneration.

List of Documents Used:

- Progress Report Dated 17 August 2010 to Parliament: Provisional Suspension from Office, Magistrate L B Maruwa, Daveyton.
- Briefing Document: Magistrates Commission Reports: Disciplinary. 9 November 2010.
- Progress Report Dated 24 February 2011 to Parliament: Provisional Suspension from Office, Magistrate L B Maruwa, Daveyton.

- Progress Report Dated 29 June 2011 to Parliament: Provisional Suspension from Office, Magistrate L B Maruwa, Daveyton.
- Parliamentary Monitoring Group Meeting Summary. National Council of Provinces. Select Committee on Security and Justice. Magistrates Commission requests for suspension of magistrates and salary. 25 October 2011.
- Parliamentary Monitoring Group Meeting Summary. National Council of Provinces. Select Committee on Security and Justice. ATC111116: Report withholding of remuneration for Magistrate Mr L B Maruwa an additional Magistrate at Daveyton District Court, Gauteng. 16 November 2011.
- Parliamentary Monitoring Group. National Assembly. Justice and Correctional Services Committee. ATC111123: Report on Magistrates Commission on the withholding of the remuneration of Magistrate LB Maruwa, Daveyton. 23 November 2011.
- Parliamentary Monitoring Group. NCOP Security and Justice. ATC111026: Report Progress reports on provisional suspensions from office of Regional Magistrate T R Rambau, Magistrate C M Dumani, Graaff- Reinet; Magistrate D Jacobs, Clocolan; Magistrate L B Maruwa, Daveyton; Magistrate M T Masinga, Umlazi; Magistrate I W O M Morake, Lichtenburg; and Magistrate L Skrenya, Cala tabled to Parliament on 24 February 2011 and 29 June 2011.

Timeline of Magistrate M T MASINGA Magistrate's Commission Process

Overview:

Magistrate M T Masinga (MTM) is the former additional Magistrate at Emlazi, KwaZulu-Natal. On 19 March 2009, MTM appeared in the Durban Magistrates Court on a charge of domestic violence. The Magistrates Commission (MC) recommended that MTM be provisionally suspended pending the result of an investigation to determine his fitness to hold office. On 23 May 2011, MTM was convicted on a charge of attempted murder and sentenced to ten years imprisonment. On 16 October 2014, MTM's suspension and removal from office was confirmed..

Charges:

MTM with three (3) counts of misconduct arising from a charge on domestic violence.

Timeline of Key Dates and Developments in the Suspension Process

Date/Time Period	Nature of Development
19 March 2009	MTM appeared in the Durban Magistrates Court on a charge of Domestic Violence. It is alleged that he assaulted his wife with a blunt axe, that he kicked her, hit her with open hands and threatened to kill her. He also is alleged to have assaulted his daughters.
26 November 2009	The MC resolved to recommend that MTM be provisionally suspended.
11 December 2009	The MC advised the Minister of its recommendation to provisionally suspend MTM from office. The Minister provisionally suspended MTM from office with effect from 3 February 2010.
3 February 2010	MTM was charged with three counts of misconduct.
8 February 2010	The MC charged MTM with three (3) counts of misconduct. A notice in terms of section 13(3)(e) containing the allegations against him, was served on MTM.

Date/Time Period	Nature of Development
2 March 2010	The National Health and Allied Workers Union (NEHAWU) informed the Commission on 2 March 2010 that it was acting on behalf of MTM and would appoint a legal representative for him.
30 March 2010	MTM was provisionally suspended by the Minister.
14 April 2010	The criminal proceedings commenced. MTM was granted bail of R1 000.00. The criminal case was thereafter transferred to the Regional Court, Durban, where MTM appeared on additional charges of attempted murder and two counts of assault.
	The criminal case was postponed on various occasions at the request of the defence. The matter stands postponed to 3 September 2010 for an application for the recusal of the presiding officer.
1 and 4 June 2010	Provisional suspension confirmed by National Assembly and National Council of Provinces on 1 and 4 June respectively).
17 August 2010	The MC issued a progress report on MTM's suspension from office to the parliament.
	The misconduct inquiry was set down for 26 August 2010. NEHAWU, acting on behalf of MTM, requested a postponement to appoint a legal representative. They were further instructed to argue that the disciplinary hearing The hearing /inquiry was postponed to 21 October 2010 on which date the representative of NEHAWU was absent. The Presiding Officer postponed the proceedings to 4 February 2011 to inter alia enable MTM to obtain finality in respect of legal representation.
4 February 2011	Neither MTM nor the representative of NEHAWU presented themselves at the inquiry. The Presiding Officer in terms of regulation 26(14) of the Regulations for Judicial Officers in Lower Courts, 1994 postponed the inquiry in MTM's absence to 28 March 2011 and requested the MC to endeavour to serve a notice of hearing on MTM afresh. The notice was served on MTM.
24 February 2011	The MC issued a progress report on MTM's suspension from office to the parliament. The State closed its case on 24 February 2011. The matter was remanded to 11 April 2011.
28 March 2011	NEHAWU informed the Presiding Officer at the misconduct inquiry that they instructed Mr. Brett Purdon Attorneys to represent MTM at the inquiry.
23 May 2011	MTM was convicted by the Regional Court in Durban on a charge of attempted murder. The case was postponed for sentencing. MTM had indicated his intention to appeal or review.
24 May 2011	Mr. Purdon raised points <i>in limine</i> .
4 June 2011	Parliament confirmed MTM's provisional suspension from office.
12 August 2011	MTM's attorneys forwarded his representations on the MC's recommendation to withhold his salary.

Date/Time Period	Nature of Development
22 August 2011	The Presiding Officer was addressed on the points <i>in limine</i> raised on 24 May 2011. The inquiry was postponed to 31 October and 1 November for evidence to be led.
25 October 2011	National Council of Provinces, Select Committee on Security and Justice agreed with the MC, that the remuneration of MTM should be withheld.
5 December 2011	MTM placed on record that his attempts to approach his advocate were not successful. He again requested a postponement. The Presiding Officer granted him the postponement, provided that the inquiry would proceed for trial either with or without any representation.
16 January 2012	MTM was sentenced to ten (10) years imprisonment. He appealed against his conviction and sentence; the appeal is still pending.
18 January 2012	MTM placed on record that he would conduct his own defence. He however reserved his right to be represented at any time of the proceedings. He requested a postponement since, he alleged, he had no access to the documents in the possession of his erstwhile attorney and was not able to prepare himself. Copies of relevant documents he requested were given to him shortly thereafter.
09 February 2012	The matter did not proceed. The Commission's witnesses were all present. MTM placed on record that he had lost his spectacles in a taxi the evening before and that he would not be in a position to take notes and cross-examine the witnesses. The Presiding Officer again granted him a postponement as requested. The matter was postponed to 5 March 2012.
05 March 2012	The inquiry commenced late. MTM did not present himself. He instead, sent a relative to submit a medical certificate indicating that he was ill. Witnesses for the MC were again present. The matter did not proceed and was postponed to 23 March 2012. MTM was notified about this postponement per SMS. Attempts to serve a notice at his house were not successful.
23 March 2012	MTM was absent. He sent his fiancé to present a medical certificate. According to the certificate, issued by the same doctor, he was unfit to perform work from 22-24 March 2012. The Presiding Officer ordered that the inquiry continue in MTM's absence in terms of regulation 26(14) of the Regulations for Judicial Officers in Lower Courts, 1994. The evidence of three (3) witnesses was led. The matter was partly heard and was postponed to 20 April 2012 for further evidence

Date/Time Period	Nature of Development
26 June 2012	MTM's attorney came on record and advised the inquiry that he had instructions to request the Presiding Officer to recuse himself from the proceedings. This application was turned down where after various issues were again raised <i>in limine</i> . Since these issues were already dealt with earlier on in the inquiry, the Presiding Officer ruled that the leading of evidence be proceeded with. MTM's attorney was however not prepared to cross-examine the witnesses for the MC and a further postponement was granted.
23 July 2012	An inspection in loco was conducted. MTM's attorney withdrew as attorney of record the following day, without divulging reasons.
	MTM indicated once more that he will conduct his own defence. He on 1 August 2012 commenced with cross-examining the witnesses for the Commission who had already testified in his absence at length. The inquiry was postponed to 13, 14 and 17 August 2012 as well as 2 October 2012 for MTM to conclude his cross-examination of the first witness.
	MTM continued his cross-examination of the other witnesses, who testified on behalf of the Commission in his absence, on 8 and 9 November 2012, 10 and 11 December 2012, 1 February 2013 and 18 March 2013. The Commission on the latter day led the evidence of a further witness. MTM commenced cross-examining this witness the following day and continued to do so on 23 and 24 May 2013.
	On 21 June 2013, MTM was afforded the opportunity to cross-examine a further witness who testified in his absence. The MC closed its case on 16 August 2013 where after MTM filed an application similar to an application filed in terms of section 174 of the Criminal Procedure Act or absolution from the instance in civil matters. Having considered written and oral arguments presented by both parties, the Presiding Officer on 12 September 2013 dismissed his application.
	MTM placed his version of events on record and indicated that he intends to call witnesses in support thereof. The matter was postponed to 8 October 2013 for MTM to be subjected to cross-examination. The hearing continued on 8 October 2013 and was postponed to 8 November 2013 for MTM's witness to testify in his defence. On 8 November 2013 all the evidence was finally placed on record before the Presiding Officer who postponed the hearing to 12 December 2013 for both parties to address him on the merits. Written heads of argument were to be exchanged and submitted to the Presiding Officer in advance.
	Arguments on the merits were submitted on record before the Presiding Officer whereafter the inquiry was postponed to 28 February 2014 for judgement.
10 March 2014	MTM was still provisionally suspended and was not receiving remuneration.

Date/Time Period	Nature of Development
16 October 2014	The Select Committee on Security and Justice, having considered the MC's report on the suspension from office of MTM, recommended that the National Council of Provinces confirm MTM's suspension and removal from office.

List of Documents Used:

- Parliamentary Monitoring Group. NCOP Security and Justice. ATC100519: Report Provisional Suspension from Office of Magistrate M T Masinga. 19 May 2010.
- Progress Report Dated 17 August 2010 to Parliament: Provisional Suspension from Office, Magistrate M T Masinga, Umlazi.
- Briefing Document: Magistrates Commission Reports: Disciplinary. 9 November 2010.
- Progress Report Dated 24 February 2011 to Parliament: Provisional Suspension from Office, Magistrate M T Masinga, Umlazi.
- Progress Report Dated 29 June 2011 to Parliament: Provisional Suspension from Office, Magistrate M T Masinga, Umlazi.
- Report in terms of Section 13(4A) (b) of the Magistrates Act, 1993: Withholding of Remuneration, Magistrate M T Masinga. 29 September 2011.
- Parliamentary Monitoring Group Meeting Summary. National Council of Provinces. Select Committee on Security and Justice. Magistrates Commission requests for suspension of magistrates and salary. 25 October 2011.
- Progress Report Dated 26 March 2012 to Parliament: Provisional Suspension from Office, Magistrate M T Masinga, Umlazi.
- Progress Report Dated 01 October 2012 to Parliament: Provisional Suspension from Office, Magistrate M T Masinga, Umlazi.
- Progress Report Dated 27 December 2012 to Parliament: Provisional Suspension from Office, Magistrate M T Masinga, Umlazi.

- Progress Report Dated 12 February 2014 to Parliament: Provisional Suspension from Office, Magistrate M T Masinga, Umlazi.
- Parliamentary Monitoring Group. NCOP Security and Justice. Magistrates Commission briefings: Request to confirm suspension of Mr J Kgomo, updates on progress of other disciplinary inquiries. 10 March 2014.
- Letter from the Magistrates Commission to the Minister of Justice and Correctional Services. Suspension/Removal from Office on the Ground of Misconduct: Mr T M Masinga, Additional Magistrate, Emlazi. 14 July 2014.
- Parliamentary Monitoring Group. ATC141016: Report of the SC on Security and Justice on the Suspension from Office of Magistrate M T Masinga, dated 16 October 2014.

Timeline of Magistrate m mokone’s Magistrate’s Commission Process

Overview:

Magistrate M Mokone (MM) acted as Magistrate from 1 March 2007 to date of appointment. During this period, she inter alia acted at Senwabarwana (Bochum) Court House. On 20 August Ms Mokone applied for a vacant post of Magistrate at Bela-Bela with effect from 12 July 2010. She was still on probation. The Minister of Justice and Constitutional Development (the Minister) had filed a report in Parliament to provisionally suspend MM due to charges of fraud and defeating the ends of justice against her. She was provisionally suspended, and a report was table to inform her. However, MM did not survive a serious car accident on 17 December 2012. .

Charges:

The charges for the misconduct arose from MM’s criminal charges of fraud and defeating the ends of justice.

Timeline of Key Dates and Developments in the Suspension Process

Date/Time Period	Nature of Development
	On 17 March 2011, the Director of Public Prosecutions, Pretoria directed that Magistrate Mokone be prosecuted in the Regional Court, Polokwane on charges of fraud and defeating the ends of justice. Magistrate Mokone was summoned to appear in court on 25 November 2011 and a warrant for her arrest was authorised. The matter was transferred to the Regional Court, Mankweng and postponed to 14 February 2013 for trial.
27 July 2011	An Attorney at Law of the Firm Mokone & Mokone Polokwane swore an affidavit that was submitted to the MC.
24 August 2011	MM was given an opportunity to respond to the allegations.

Date/Time Period	Nature of Development
01 December 2011	MM's "supplementary statement" dated 18 November 2011 was considered by the Ethics Committee at its meeting. The Ethics Committee resolved to recommend to the Executive Committee of the Commission to consider recommending to the Minister to terminate MM's service agreement with one month's notice.
25 February 2012	The Executive Committee resolved to refer the matter back to the Ethics Committee to consider charging MM with misconduct based on the very serious allegations of fraud and defeating the ends of justice which have led to her prosecution in the Regional Court. The Committee was furthermore requested to consider whether she should not also be suspended since her further utilization as judicial officer who is standing trial on serious criminal charges in the Regional Court might not be in the interest of the judiciary.
09 October 2012	In order to advise the Minister on her provisional suspension from office pending the outcome of the investigation, MM was afforded the opportunity to comment on the desirability of such provisional suspension.
31 October 2012	MM responded arguing that she was confident that the criminal case against her would be withdrawn.
29 and 30 November 2012	The MC resolved to recommend that MM be provisionally suspended from office in terms of section 13(3)(a) of the Magistrates Act, 1993, pending the investigation into her fitness to hold office.
17 December 2012	MM did not survive a serious car accident that happened on 17 December 2012. Therefore, the matter was closed.

List of Documents Used:

- Provisional Suspension of a Magistrate: Ms M Mmokone Acting Magistrate at Bela-Bela.
- Parliamentary Monitoring Group. NCOP Security and Justice. Suspension of Magistrates & Withholding of Remuneration: briefing by Magistrate Commission. 19 February 2013.

Timeline of Magistrate S R MONALEDI'S Magistrate's Commission Process

Overview:

Magistrate S R Monaledi (SRM) was appointed as a Regional Court President, North West on 2 June 2003. The allegations forming the basis of her disciplinary matter were that she had submitted excessive transport claims, that she was seldom in the office, performed no work in the Regional Court and was not available to meet with the public, prosecutors, attorneys and the clerical staff. SRM was provisionally suspended by the Minister and the provisional suspension was confirmed by both houses of parliament.

Charges:

The charges arose from allegations that: SRM had submitted excessive transport claims, was seldom in the office, performed no work in the Regional Court and was not available to meet with the public, prosecutors, attorneys and the clerical staff.

Timeline of Key Dates and Developments in the Suspension Process

Date/Time Period	Nature of Development
5 March 2015	The MC received a letter alleging that SRM had submitted excessive transport claims, that she was seldom in the office, performed no work in the Regional Court and was not available to meet with the public, prosecutors, attorneys and the clerical staff.
23 July 2015	The MC referred the matter to the Ethics Committee on 23 July 2015 for further investigation. The Ethics Committee resolved that a preliminary investigation in terms of Regulation 26(1) of the Regulations for Judicial Officers in the Lower Courts, 1994 (the Regulations) be conducted into the allegations.
1 October 2015	The MC appointed two Senior Magistrates, in terms of the Regulations as Investigating Officers.

Date/Time Period	Nature of Development
12 February 2016	SRM elected not to meet with the Investigating Officers and questioned their authority to conduct the preliminary investigation. The Ethics Committee informed SRM that her claims on the authority of the Investigating Officers were baseless and that the Commission would not reconsider the authority of the Investigating Officers at this stage and that the law must take its normal course.
	In a letter dated 18 September 2016, the MC requested SRM to show cause why it should not recommend to the Minister that she be provisionally suspended from office pending the outcome of the investigation into her fitness to hold the Office of Magistrate. The letter was served on her on 18 October 2016. Despite a reminder having been sent to her on 12 November 2016, she had not furnished the MC with any response.
25 November 2016	The MC took the view that SRM was charged with allegations of such a serious nature that would justify her removal from office, if she was found guilty. Further, that the evidence justified that SRM be charged on numerous counts of fraud.
1 December 2016	The Minister tabled a report in parliament on the provisional suspension of a magistrate, SRM, for parliament's approval in terms of Section 13(3)(c) and (d) of the Magistrates Act, 1993 (Act no 90 of 1993).
8 March 2017	The Select Committee received a briefing from representatives of the Ethics Committee of the MC. The MC briefed the Select Committee on the particulars of the matter leading to the recommendation for the Minister to provisionally suspend magistrate SRM pending the outcome of an investigation into her fitness to hold office as a magistrate, as required by section 13(3)(a) of the Magistrates Act, 90 of 1993.
15 March 2017	NCOP Security and Justice Committee considered the MC's recommendation to provisionally suspend SRM from office and confirmed it.
19 April 2017	The MC received a letter from SRM'S attorney advising that they were instructed to represent SRM.
03 May 2017	A notice of hearing was directed to SRM to attend the misconduct hearing at Mmabatho on 22 and 23 May 2017.
04 May 2017	SRM's attorney advised the MC that they would be contacting their client and revert to the MC.
11 May 2017	SRM's attorney advised that SRM had been hospitalized and they had not gotten instructions to proceed.
15 May 2017	The MC advised SRM's attorney to appear without SRM and that they required written proof that SRM was hospitalized. The MC also advised that parliament had confirmed SRM's provisional suspension.
18 May 2017	SRM's attorney advised the MC that they could not contact SRM to confirm if she was still in hospital.

Date/Time Period	Nature of Development
22 May 2017	The misconduct inquiry commenced. SRM and her attorney were not in attendance. Having considered the documentary evidence, the presiding officer ruled to enrol the matter for the next day and that an email be sent to SRM and her attorney to be present the next day on the inquiry.
23 May 2017	Despite an acknowledgement of receipt of the email, SRM and her advocate were not present. The person leading evidence argued to proceed with the inquiry. The presiding officer was reluctant to do so since it was not clear whether SRM was still in hospital. The proceedings were then postponed to 24-27 July 2017.
25 May 2017	A new notice of hearing was sent to SRM's attorney and it was received on the next day.

List of Documents Used:

- Parliamentary Monitoring Group Minutes. National Council of Provinces. NCOP Security and Justice. ATC170314: Report of the Portfolio Committee on Justice and Correctional Services on the Provisional Suspension of Magistrate SR Monaledi, dated 14 March 2017.
- Parliamentary Monitoring Group Minutes. National Council of Provinces. NCOP Security and Justice. ATC170315: Report of the Select Committee on Security and Justice on the Provisional Suspension from Office of Ms S R Monaledi, Regional Court President, North West, dated 15 March 2017.
- Progress Report Dated 08 June 2017 to Parliament: Provisional Suspension from Office: Ms SR Monaledi, Regional Court President, North West.

Timeline of Magistrate I W O M Morake of Magistrate Magistrate’s Commission Process

Overview:

Magistrate I W O M Morake (MM) is a former Magistrate and Judicial Head at Lichtenburg. Several complaints were lodged with the Magistrates Commission against Mr Morake. He was provisionally suspended, pending the result of an investigation by Magistrates Commission (MC) to determine his fitness to hold office. His remuneration was suspended in the same year. The MC charged him with six (6) counts of misconduct.

The misconduct investigation has not yet been concluded.

Timeline of Key Dates and Developments in the Suspension Process

Date/Time Period	Nature of Development
13 July 2007	Mr Morake appeared in the Lichtenburg District Court on three charges of theft. The case was postponed to 18 October 2010 for judgment.
10 February 2010	The MC informed MM in writing that the MC was contemplating recommending that he be provisionally suspended from office pending the outcome of an investigation into his fitness to hold office. He was requested to show cause, in writing, why the decision should not be taken.
25 February 2010	The MC received MM’s response
26 August 2010	The MC, having considered MM’s response, resolved to advise the Minister to again provisionally suspend MM from office in terms of section 13(3)(a) of the Act.
18 October 2010	The Regional Court, Lichtenburg convicted MM on two counts of theft. The sentences were to run concurrently. MM filed an application for leave to appeal.
04 November 2010	Provisional suspension of MM from office with effect from 4 November 2010.
18 and 24 November 2010	The provisional suspension was confirmed by both Houses of Parliament on 18 and 24 November 2010 respectively.

Date/Time Period	Nature of Development
23 November 2010	The Select Committee on Security and Constitutional Development, having considered the report on the provisional suspension from office of magistrate MM, recommended that the National Council of Provinces (NCOP) confirms MM's provisional suspension from office.
24 November 2011	The MC determined to withhold his remuneration with immediate effect, which determination was confirmed by Parliament shortly thereafter.
29 December 2010	The MC charged and served MM with six (6) counts of misconduct.
11 April 2011	The MC commenced with the disciplinary inquiry against MM.
20 March 2012	The Commission therefore served an amended charge sheet (dated March 2012) on MM in March 2012 and proceeded to set down the matter for hearing. The inquiry was set down to continue on 23 April 2012. Since then MM, on numerous occasions requested a postponement to either instruct an attorney or to raise funds to pay his attorney and Senior Counsel.
28 September 2015	Evidence was led. 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 PO.
27 January 2016	MM's application for leave to appeal was struck from the roll. MM started to serve his sentence and was released at the end of 2016.
25 to 26 May 2016	MM's counsel advised the PO that he was not placed in funds for drafting Heads of Arguments and indicated that judgment may be delivered in his absence. Counsel and his instructing attorney's mandates were terminated. Arrangements were made for MM to appear at the Lichtenburg Court House for both parties to address the PO the merits on 26 September 2016. MM reported ill and did not appear.
	Notice of set down for the inquiry to continue on 18 April 2017 was served on MM. MM 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.
23 June 2017	The PO delivered judgment on 23 June 2017 and found MM guilty of five (5) counts of misconduct.
16 November 2017	The PO imposed a sanction in terms of regulation 26(17)(b) of the Regulations for Judicial Officers in the Lower Courts, 1994.
30 January 2018	The MC's Executive Committee resolved to recommend that MM be removed from office in terms of section 13(4)(a) of the Act.
23 May 2018	Security and Justice recommendation that NCOP does not restore MM.

List of Documents Used:

2010

- Report of the Select Committee on Security and Constitutional Development on the provisional suspension from office of Magistrate I W O M Morake. 23 November 2010.
- Parliamentary Monitoring Group Minutes. ATC101102: Report of the Select Committee on Security and Constitutional Development on the withholding of remuneration for Mr. I W O M Morake, Magistrate at Lichtenburg, 2 November 2010.

2011

- Progress Report Dated 29 June 2011 to Parliament: Provisional Suspension from Office, Magistrate I W O M Morake, Lichtenburg.
- Report from Minister for Justice and Constitutional Development to Parliament on withholding of Remuneration dated 9 September 2011.

2012

- Progress Report Dated 26 March 2012 to Parliament: Provisional Suspension from Office, Magistrate I W O M Morake, Lichtenburg.

2014

- Progress Report Dated 12 February 2014 to Parliament: Provisional Suspension from Office, Magistrate I W O M Morake, Lichtenburg.
- Progress Report Dated 28 August 2014 to Parliament: Provisional Suspension from Office, Magistrate I W O M Morake, Lichtenburg.
- Progress Report Dated 29 December 2014 to Parliament: Provisional Suspension from Office, Magistrate I W O M Morake, Lichtenburg.

2015

- Progress Report Dated 30 March 2015 to Parliament: Provisional Suspension from Office, Magistrate I W O M Morake, Lichtenburg.

2016

- Progress Report Dated 29 February 2016 to Parliament: Provisional Suspension from Office, Magistrate I W O M Morake, Lichtenburg.
- Progress Report Dated 18 September 2016 to Parliament: Provisional Suspension from Office, Magistrate I W O M Morake, Lichtenburg.
- Report from Minister for Justice and Constitutional Development to Parliament on withholding of Remuneration dated 29 September 2016.
- Parliamentary Monitoring Group Meeting Summary. National Council of Provinces, Security and Justice Committee. Progress Reports on provisionally suspended magistrates: Magistrates Commission briefing; Committee interaction with presentation. 12 October 2016.

2017

- Progress Report Dated 6 June 2017 to Parliament: Provisional Suspension from Office, Magistrate I W O M Morake, Lichtenburg.

2018

- 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). 23 May 2018.
- Report in Terms of Section 13(4)(A)(I) of the Magistrates Act, 90 Of 1993: Suspension/Removal from Office on the Ground of Misconduct: Mr Iwom Morake, Magistrate, Lichtenburg. 2018.

Timeline of Magistrate L Myles’ Magistrate’s Commission Process

Overview:

Magistrate L Myles (LM) was an additional magistrate, Upington. She was suspended from office on account of ill-health. LM had, on numerous occasions since 2009, been absent from work because of severe depression, and since December 2011 she had not been in office at all and was now failing to submit medical certificates. An independent service provider’s report suggested that she was possibly fit to continue working, if she could be given a reduced workload, less stressful cases, and continue her psychotherapy. This was not practically possible, and her continued absence was negatively affecting service delivery in the justice system. It had been suggested to her that she should request the Minister for permission to vacate office, but she was insistent that she was fit to work.

Charges:

The charges against LM were made on account of LM’s ill-health and absenteeism from work and failing to submit medical certificates.

Timeline of Key Dates and Developments in the Suspension Process

Date/Time Period	Nature of Development
17 March 2010	The Ethics Committee, which is a sub-committee of the MC, ordered that there be an investigation into LM’s removal from office on account of continued ill-health. They informed LM of this and she was given an opportunity to respond.
	LM was informed of the Ethics Committee’s decision and submitted the requested medical information to the MC. The information supplied by LM was, in turn, submitted for expert opinion to the service provider appointed to evaluate and advise on ill-health retirement.

Date/Time Period	Nature of Development
	<p>The service-provider reported that, since April 2009, LM's health has been compromised. It found that her working environment contributed significantly to her condition. Still, she was found fit enough to continue with her work. However, because of her medical history, it recommended that where possible she be accommodated in the workplace by reducing her workload and allocating less stressful cases to her. The employer should be more empathic and supportive towards her. Also, she should continue with regular medical treatment.</p>
1 December 2011	<p>Having considered the medical reports, together with other relevant information including her attendance record since November 2004, the Ethics Committee formed the opinion that LM did not have the capacity to carry out her duties of office in an efficient manner due to continued ill-health. LM was informed of the Committee's opinion and that she could submit written comments on it to the Chairperson of the MC.</p>
9 January 2012	<p>The MC received LM's written comments on the opinion, which argued that her sick leave was not unreasonable as it was covered by medical certificates for every period. She submitted that she had never asked to be accommodated with a reduced workload; her work performance showed that she was capable of producing longer court hours; and that she was able to dispose of more matters than her colleagues. In her view, she was capable of carrying a normal workload. She questioned her treatment by the Commission and submitted that the enquiry into her capacity to carry out her duties of office in an efficient manner due to continued ill-health was both substantively and procedurally unfair.</p>
16 February 2012	<p>The Ethics Committee considered her comments but disagreed as it felt that the review of LM's capacity to carry out her duties of office in an efficient manner was fair. LM was still on sick leave and it was unclear when she would return to work. The Ethics Committee, therefore, resolved to recommend to the MC that LM be removed from office due to continued ill-health. It, however, noted that the expert opinion suggested that she be accommodated, where possible. The question was whether it was possible to accommodate her as recommended given her sick leave history and the extent to which she had already been accommodated in terms of sick and vacation leave. The relevant Cluster Head was approached, who confirmed that the judicial officers at Upington were struggling to cope under the normal workload. During the last judicial staff establishment investigation, it was recommended that one further post of magistrate be established at Upington due to the increased workload. The post had not been created yet and the Magistrate at Kenhardt was assisting at Upington three days per week. The heavy workload at the Upington court required dedicated, versatile and hardworking magistrates who can assist across all divisions daily. There was no less stressful court and/or environment at Upington Court.</p>

Date/Time Period	Nature of Development
18 July 2012	As on 18 July 2012, LM had still not returned to work and since 31 December 2011 had failed to submit medical certificates to cover her absence from work despite various requests for the same.
20 and 21 July 2012	The MC, therefore, resolved to support the Ethics Committee's recommendation that LM be removed from office on account of her continued ill-health and advised the Minister accordingly.
23 July 2012	The MC appraised the Minister of Justice and Constitutional Development of the circumstances which moved it to recommend that LM be removed from office on account of ill health.
01 August 2012	The Minister informed the Parliament of LM's suspension from office pending consideration by Parliament of the MC's recommendation that LM be removed from office.
21 August 2012	The Committee on Justice and Constitutional Development (the Committee) considered whether Ms Myles should be removed from office on account of her continued ill-health. The Committee had certain concerns and, therefore, requested that a legal opinion be obtained from the State Law Advisors.
19 November 2012	The legal opinion obtained from the State Law Advisors concluded that: The MC had correctly applied the administrative procedure in terms of Regulation 29. It was logical that the recommendation of the medical experts that LM continue with her work was subject to it being possible to reduce her workload and to assign less stressful cases to her. If this was not possible, it followed that she was unable to continue the work and was not fit to do her work as a magistrate. Therefore, the MC's opinion that she was incapable of carrying out her duties in an efficient manner due to continued ill health was justified. The issues concerning LM's continued absenteeism could not be disregarded nor could her absenteeism be viewed in isolation from the issues that dealt with her ill-health when determining whether she was fit to continue work or be removed from office.
28 November 2012	Having considered the MC's report on the suspension from office of LM and the Minister's request, the NCOP Security and Justice Committee recommended that the National Council of Provinces confirm her suspension and removal from office as a Magistrate on the grounds of incapacity to perform her duties due to ill health.
27 March 2013	The National Assembly confirmed LM's suspension.

List of Documents Used:

- Letter from the Specialist Psychiatrist. 12 August 2009.
- Report, on Ms L Myles, from the Specialist Psychiatrist. 19 August 2009.

- Progress Report, on Ms L Myles, from the Specialist Psychiatrist. 01 September 2009.
- Letter from the Magistrates Commission to Ms L Myles informing her of the investigation into removal of office and affording her an opportunity to respond to the allegations. 17 March 2010.
- Report from a general practitioner on Ms L Myles. 05 July 2010.
- Trailing E-mail message from Ms L Myles, addressed to the Magistrates Commission. 07 July 2010.
- Feedback on case management- Magistrate L Myles. 09 September 2011.
- Letter from the Magistrates Commission to L Myles giving her an opportunity to respond to their findings on L Myles investigation for removal from office. 05 December 2011.
- Letter from Ms L Myles to the Magistrates Commission. 26 December 2011.
- Letter from the Magistrates Commission to the Minister of Justice and Constitutional Development. 23 July 2012.
- Report. Suspension of a Magistrate Ms L Myles an Additional Magistrate at Upington. 30 July 2012.
- Letter from the Ministry of Justice and Constitutional Development to the Speaker of the National Assembly. Suspension from Office of Magistrate L Myles an Additional Magistrate at Upington. 01 August 2012.
- Parliamentary Monitoring Group. National Assembly. Justice and Correctional Services Committee. Suspension of Magistrates: briefing by Magistrate Commission. 21 August 2012.
- Parliamentary Monitoring Group. NCOP Security and Justice. Sheriffs Amendment Bill: Adoption; Magistrates Commission reports & requests for suspension of magistrates. 30 October 2012.
- Department of Justice and Constitutional Development. Legal Opinion. Removal from Office on account of Ill Health: Ms. L Myles, Additional Magistrate, Upington. 19 November 2012.

- Parliamentary Monitoring Group. NCOP Security and Justice. ATC121129: Report of the Select Committee on Security and Constitutional Development on the Suspension from Office of Magistrate L Myles, dated 28 November 2012.
- Report. Suspension of a Magistrate: Ms. L Myles, Additional Magistrate, Upington. 2012.
- Parliamentary Monitoring Group. National Assembly. ATC130418: Report of the Portfolio Committee on Justice and Constitutional Development on the suspension of Magistrate L Myles, dated 27 March 2013.
- Functional Capacity Evaluation-L M Myles.

Timeline of Magistrate N Ndamase's Magistrate's Commission Process

Overview:

Magistrate N Ndamase (NN) was an additional magistrate at Pretoria. NN was permanently appointed to the office of Magistrate on 1 July 2000. She was charged with 42 counts of misconduct. She denied all the allegations against her. At the conclusion of the misconduct inquiry she was found guilty of 11 of the 42 charges preferred against her. NN was suspended from office with effect from 8 August 2012 pending the result of an investigation by Magistrates Commission (MC) to determine her fitness to hold office.

Charges:

NN was charged with 42 counts of misconduct.

- 8 counts for contravening of the Code of Conduct for Magistrates in one way or another as set out in Schedule E of the Regulations,
- 12 counts in terms of regulation 25(d), in that she was negligent/indolent in the carrying out of her duties,
- 2 counts in terms of regulation 25(h), in that she absented herself from office or duty without leave or valid cause,
- 19 counts in terms of regulation 25(j) in that she refused to execute lawful orders

Timeline of Key Dates and Developments in the Suspension Process

Date/Time Period	Nature of Development
16 November 2009	The MC informed NN of the 42 charges brought against her.
12 April 2012	Having heard the evidence presented at a lengthy misconduct hearing, the Presiding Officer, in his 209 page judgement, found NN guilty of eleven (11) counts of misconduct, eight (8) in respect of her refusal to execute lawful orders as contemplated in regulations 25(j) of the Regulations and three(3) counts in respect of her failure to execute her official duties objectively, competently and with dignity, courtesy and self-control.
2 May 2012	After considering the aggravating and mitigating circumstances, the Presiding Officer at the conclusion of the misconduct inquiry on 2 May 2012 recommended that NN be removed from office in terms of section 13(4)(a)(i) of the Act. NN elected to conduct her own defence throughout the inquiry.
14 May 2012	NN lodged written representations with the Commission. Representations in respect of the Presiding Officer's findings were received by the MC.
17 May 2012	The Presiding Officer in turn, forwarded to the Commission additional reasons for his recommendation dated 17 May 2012.
20 and 21 July 2012	The MC considered the Presiding Officer's findings and recommendation as well as the representations submitted by NN and resolved to recommend to the Minister that the recommendation of the Presiding Officer in terms of regulation 26(17) (b) of the Regulations for Judicial Officers in the Lower Courts, 1994 that NN be removed from office, be accepted. The MC was of the view that NN's conduct as set out in the charges of which she was found guilty is so serious that it justifies her removal from office. Her conduct renders her unfit to hold the office of Magistrate any longer. NN was suspended with effect from 08 August 2012.
2012	The Minister submitted the report on the suspension of NN from office to the Parliament for consideration.
12 March 2013	The Justice and Correctional Services Committee did not adopt the report on the disciplinary matter of NN. Members complained that the report was badly written and did not properly reflect the conclusions reached by the Committee. It was agreed that the report would be redrafted in its entirety. Consequently, this also meant that the House would not be able to approve the removal of NN from office during this term of Parliament.

List of Documents Used:

- Letter from the Magistrates Commission to Ms Ndamase containing the charges. 16 November 2009.
- Judgment of the Presiding officer. 12 April 2012.
- Sentence of the 12 April 2012 conviction. 02 May 2012.
- Respondent's Representations in the Disciplinary Hearing held at Pretoria. 12 May 2012.
- Letter from the Magistrates Commission to Letter from the Magistrates Commission to the Minister of Justice and Constitutional Development appraising him of the circumstances which moved the Magistrates Commission to recommend the removal of Ms Ndamase from office. 23 July 2012.
- Report from the Ministry of Justice and Constitutional Development to the Speaker of the National Assembly: Suspension of a Magistrate: Ms N Ndamase, Additional Magistrate at Pretoria. 01 August 2012.
- Report Suspension of a Magistrate: Ms N Ndamase, Additional Magistrate at Pretoria.
- Report in terms of Section 13(4A) (b) of the Magistrates Act, 1993: Withholding of Remuneration, Additional Magistrate N Ndamase, Pretoria. 2013.
- Parliamentary Monitoring Group. National Assembly. Justice and Correctional Services. Allowances & Benefits Payable to Magistrates; Disciplinary Matters of Magistrates & Allegations of Maladministration against Office of the Public Protector. 12 March 2013.
- Parliamentary Monitoring Group. National Assembly. Justice and Correctional Services. South African Human Rights Commission Bill: briefing by Department of Justice and Constitutional Development. 25 March 2013.

Timeline of Magistrate F K S Ntuli's Magistrate's Commission Process

Overview:

Magistrate F K S Ntuli (FKS) was an additional Magistrate at Uitenhage. FKS was arrested and charged for drunken driving on Friday 17 August 2012. He was issued with a written warning to appear in court in Uitenhage on 13 February 2013. FKS was previously convicted of the same offence on 20 March 2008. He was subsequently charged with misconduct, found guilty and on 8 July 2009, was strongly reprimanded by the Presiding Officer to refrain from similar misconduct in the future. In order to advise the Minister on his provisional suspension from office pending an outcome of the investigation, FKS was afforded the opportunity to comment on the desirability of such provisional suspension, on 12 September 2012.

Charges:

The charges against FKS arose from a repeated charge of drunken driving.

Timeline of Key Dates and Developments in the Suspension Process

Date/Time Period	Nature of Development
	<p>In her letter dated 30 August 2012 the Chief Magistrate of Port Elizabeth, informed the MC that FKS was arrested on Friday 17 August 2012 on a charge of drunken driving. He was allegedly found by a police officer in the town at around 07h15, driving alone in a motor vehicle, which was moving from one lane to another, an indication that the driver was not in proper control of the motor vehicle. He was issued with a written warning to appear in court at Uitenhage on 13 February 2013.</p> <p>FKS was previously convicted of the same offence on 20 March 2008. He was subsequently charged with misconduct, found guilty and, on 8 July 2009, strongly reprimanded by the Presiding Officer to refrain from any similar misconduct in future.</p>
12 September 2012	FKS was afforded the opportunity to comment on the desirability of provisional suspension in a letter.

Date/Time Period	Nature of Development
17 September 2012	FKS responded to the letter dated 12 September 2012.
25 September and 3 October 2012	Subsequent correspondence between the MC and FKS.
29 and 30 November 2012	The MC, having considered FKS's response dated 18 September and 3 October 2012, resolved to recommend that FKS be provisionally suspended from office in terms of section 13(3) (a) of the Magistrate Act 93 of 1993, pending the investigation into his fitness to hold office.
13 March 2013	The Justice and Correctional Services Committee recommended that the National Assembly confirms the provisional suspension.
	The MC had commenced with the misconduct inquiry against FKS on 20 May 2013 which inquiry was concluded on 17 July 2013. The Presiding Officer found FKS not guilty of the misconduct charge levelled against him.
21 May 2013	The NCOP Security and Justice Committee recommends that the National Council of Provinces confirms the provisional suspension.

List of Documents Used:

- A letter dated 12 September 2012, addressed to Mr Ntuli.
- Email Letter to Minister Provisional Suspension: Mr Ntuli. 29 November 2012.
- Letter from the Magistrates Commission to the Minister of Justice and Constitutional Development. Provisional suspension from office: Mr FKS Ntuli, Additional Magistrate, Uitenhage. 30 November 2012.
- Parliamentary Monitoring Group. National Assembly. Justice and Correctional Services. Allowances & Benefits Payable to Magistrates; Disciplinary Matters of Magistrates & Allegations of Maladministration against Office of the Public Protector. 12 March 2013.
- Parliamentary Monitoring Group. National Assembly. Justice and Correctional Services. ATC130313: Report of the Portfolio Committee on Justice and Constitutional Development on the suspension from office of Magistrate FKS Ntuli, dated 13 March 2013.

- Parliamentary Monitoring Group. NCOP Security and Justice. ATC130522: Report of the Select Committee on Security and Constitutional Development on the provisional suspension from office of Magistrate FKS Ntuli, dated 21 May 2013.
- Report Liftment of Provisional Suspension from Office of a Magistrate: Mr FKS Ntuli, Additional Magistrate, Uitenhage, 2013.

Timeline of Magistrate W J M PRINSLOO, ERMELO Magistrate's Commission Process

Overview:

Magistrate W J M Prinsloo (WJMP) is the former additional magistrate at Ermelo. He was provisionally suspended from office pending the outcome of an investigation into misconduct, on 3 February 2010. The allegations forming the basis of the suspension stemmed from ten (10) charges of misconduct from a female clerk against him. WJMP pleaded guilty to all charges and was found guilty by the Presiding Officer. The Presiding Officer found that although WJMP's conduct did not warrant a removal from office and ordered that WJMP be cautioned and reprimanded by the Chairperson of the Magistrates Commission (MC) and the Cluster Head within a month from the date the sanction was imposed. WJMP was also ordered to tender a written apology to the complainant within seven days of the sanction being imposed. Arrangements were made for WJMP to appear before the Chairperson of the Magistrates Commission and the Cluster Head on 12 August 2010. The provisional suspension was uplifted since the basis of the sanction had fallen away.

Charges:

WJMP was charged with ten (10) counts of misconduct, arising from allegations that he was conducting himself in an unbecoming manner and embarrassing manner towards a clerk.

Timeline of Key Dates and Developments in the Suspension Process

Date/Time Period	Nature of Development
18 April-05 May 2008	It was alleged that WJMP on ten (10) different occasions conducted himself in an unbecoming manner and embarrassing manner towards the complainant.
03 February 2010	The Minister on the advice of the MC provisionally suspended WJMP from office.
29 April 2010	The misconduct inquiry against WJMP commenced
01 June and 04 June 2010	The provisional suspension was confirmed by both Houses of Parliament.
26 July 2010	<p>The misconduct was concluded. WJMP pleaded guilty to all 10 charges of misconduct against him. After being questioned by the Presiding Officer in terms of the Regulations for Judicial Officers in Lower Courts, 1994, WJMP was found guilty.</p> <p>In mitigation of sentence WJMP called four witnesses. He indicated that he had been incited/provoked by the complainant resulting in him reacting in the manner that he did. The complainant also testified at the inquiry at the request of the Presiding Officer.</p> <p>In mitigation, WJMP called four witnesses. He indicated that he had been incited/provoked by the complainant resulting in him reacting in the manner that he did. The complainant also testified at the inquiry at the request of the Presiding Officer.</p>
	<p>The Presiding Officer found that although WJMP's conduct did not warrant a removal from office and ordered that WJMP be cautioned and reprimanded by the Chairperson of the Magistrates Commission (MC) and the Cluster Head within a month from the date the sanction was imposed. WJMP was also ordered to tender a written apology to the complainant within seven days of the sanction being imposed. Arrangements were made for WJMP to appear before the Chairperson of the Magistrates Commission and the Cluster Head on 12 August 2010.</p>
17 August 2010	The MC issued a progress report on the provisional suspension from office of WJMP to the Parliament.
26 August 2010	The MC noted the sanction imposed by the Presiding Officer. It was further noted that the complainant, at her own request, transferred to another office.
02 November 2010	<p>Since the basis of the provisional suspension had fallen away, the Minister uplifted the provisional suspension on the recommendation of the MC.</p> <p>The Minister informed the Parliament of this decision.</p>

List of Documents Used:

- Progress Report Dated 17 August 2010 to Parliament: Provisional Suspension from Office, Magistrate J M Prinsloo, Ermelo.
- Ministry of Justice and Constitutional Development. Report on Upliftment of suspension from office of a Magistrate: Mr. W M J Prinsloo Magistrate at Ermelo addressed to Parliament. 02 November 2010.
- Parliament of the Republic of South Africa. Announcements, Tablings and Committee Reports. 5 November 2010.
- Briefing Document: Magistrates Commission Reports: Disciplinary. 9 November 2010.

Timeline of Magistrate F R RAMBAU's Magistrate's Commission Process

Overview:

Magistrate F R Rambau (FRR) is the former Regional Magistrate, Polokwane. He held this position until his provisional suspension on 4 November 2010. He was provisionally suspended pending the result of an investigation by Magistrates Commission (MC) to determine his fitness to hold office. The allegations forming the basis of the suspension stemmed from a corruption charge that allegedly occurred on 5 February 2010. FRR and two others appeared before court, on this charge, and were released on R10 000 bail. FRR was prohibited from entering any Magistrates Court in the Thohoyandou cluster. On 6 October 2014, FRR tendered his resignation and the disciplinary hearing was closed since the MC had no jurisdiction to proceed.

Charges:

The misconduct charges against FRR arose from FRR's criminal charges of corruption.

Timeline of Key Dates and Developments in the Suspension Process

Date/Time Period	Nature of Development
5 February 2010	It was alleged that FRR and two others were arrested for corruption: colluding to arrange the outcome of a trial for financial benefit. They appeared before court and were released on R10 000 bail; and FRR was prohibited from entering any Magistrates Court in the Thohoyandou cluster. The matter was eventually set down for hearing at the Regional Court at Musina from 11 to 13 October 2010.

Date/Time Period	Nature of Development
8 February 2010	<p>FRR was requested to make written representations to the Ethics Committee of the MC as to why a decision to provisionally suspend him from duty pending the outcome of an investigation into his fitness to hold office, should not be taken.</p> <p>FRR and his co-accused appeared in the Musina District Court on charges of corruption. The matter was set down for 11 to 13 October 2010. The criminal case was postponed for further hearing to 7 – 11 March 2011, 11-15 April 2011 and 30 May – 3 June 2011. The criminal case against FRR was still part-heard and was postponed to 29 August 2011 - 2 September 2011 and 10 October 2011 - 14 October 2011.</p> <p>FRR was facing another criminal charge, for conspiracy to commit murder, that was remanded to 5-9 September 2011 for trial.</p>
10 February and 5 March 2010	<p>FRR responded in writing on 10 February and 5 March 2010. However, the report from the Department does not provide any information on these responses.</p>
07 July 2010	<p>The criminal case against FRR was on the roll in the District Court in Musina and was transferred to the Regional Court at Musina on 16 July 2010.</p>
16 July 2010	<p>The criminal case was postponed to 29 July 2010.</p>
29 July 2010	<p>A warrant of arrest was issued and by mutual agreement, the parties stayed until 11 October 2010. The matter was set down for hearing for the period 11 to 13 October 2010.</p> <p>The criminal case was part-heard and had been postponed for further hearing to 7 – 11 March 2011, 11-15 April 2011 and 30 May – 3 June 2011.</p>
26 August 2010	<p>The MC, after considering FRR's responses, found FRR guilty of the misconduct charges and resolved to advise the minister to provisionally suspend FRR with immediate effect pending the outcome of an investigation into his fitness to hold the office.</p>
4 November 2010	<p>The Minister provisionally suspended FRR as from 4 November 2010 and submitted a report to the parliament for consideration.</p>
	<p>A written notice containing the allegations concerned (a charge of misconduct) dated 17 November 2010 was served on FRR.</p>
18 and 24 November 2010	<p>Suspension was confirmed by both houses of parliament.</p>
9 February 2011	<p>At the misconduct inquiry, which was set down for 9 February 2011, FRR requested the Presiding Officer to postpone the inquiry until the criminal case against him has been finalized since the criminal charge(s) preferred against him form the basis of the disciplinary proceedings against him.</p> <p>The Presiding Officer postponed the misconduct inquiry to 8 April 2011. He requested both parties to address him on whether he should postpone the misconduct inquiry <i>sine die</i> pending the finalization of the criminal case against FRR.</p>

Date/Time Period	Nature of Development
24 February 2011	The MC issued a progress report on FRR's suspension from office to the parliament.
8 April 2011	FRR had instructed an attorney to represent him in the misconduct inquiry. However, he applied for the proceedings to be postponed without his attorney being present. FRR indicated that he wanted to be furnished with further particulars in respect of the misconduct charge against him. The Presiding Officer granted his request for a postponement, provided that FRR's counsel should appear before him on the remand date and that he should formally request the MC to be furnished with further particulars in writing.
20 June 2011	Counsel appeared on behalf of FRR at the misconduct inquiry. No further particulars were requested from the MC at that stage. The defence again requested a postponement pending finalization of the criminal matter against FRR. They indicated that the criminal case would likely be concluded in October 2011. The Presiding Officer postponed the inquiry until 12 September 2011
07 February 2013	The MC was formally informed about the withdrawal of FRR's attorney and that instructions to counsel were cancelled. FRR was subsequently served with a notice of hearing afresh. A new date for the inquiry to continue was set for 25 March 2013.
	On 25 March 2013 FRR confirmed on record that he placed his attorney in funds and that counsel was still on record. This was disputed by the MC. The Presiding Officer gave FRR an indulgence until 13 May 2013 to see to it that both his attorney and counsel were present. FRR instructed another attorney to act on his behalf. The Presiding Officer was acting in the High Court during that period and the inquiry was, by mutual agreement, postponed to 15 July 2013.
	On 15 July 2013 FRR's newly instructed attorney requested to be furnished with all documents relating to the complaints levelled against FRR since his predecessor did not furnish FRR with any of the documents to enable him to prepare for the inquiry. The inquiry stood postponed to 4 and 5 November 2013 for trial.
21 October 2013	The MC was advised that the person appointed to lead the evidence at the inquiry was unable to attend to the matter since he was appointed to act in the Regional Court and had to attend to a full court roll on both those days. The inquiry was by mutual agreement between the parties postponed to 9 and 10 December 2013 for pre-trial.
5 November 2013	Copies of all documents required by FRR's newly appointed attorney were furnished.
9 December 2013	A pre-trial was held to determine the issues in dispute. A date for the hearing to commence was set for 17 February 2014.

Date/Time Period	Nature of Development
17 February 2014	<p>FRR disputed all the allegations against him. FRR's argued that the recordings had been tampered with and/or not properly interpreted and requested a postponement for expert evidence in this regard. The inquiry was postponed to 10 March 2014 for this reason and for further evidence.</p> <p>FRR took the criminal proceedings against him on review to the North Gauteng High Court. Although the review application was dismissed, FRR filed an application for leave to appeal against the High Court's judgment. The misconduct hearing was in the midst of highly technical evidence and was, due the complexity thereof and the fact that FRR took the very same issues on review in respect of the criminal case against him, postponed <i>sine die</i>, pending the outcome of FRR's review/appeal application.</p>
11 July 2014	<p>The MC resolved to that the Officer Leading Evidence be replaced and appointed another Senior Magistrate to lead the evidence at the misconduct hearing.</p>
06 October 2014	<p>FRR tendered his resignation with immediate effect. Since he vacated the Office of Magistrate, the MC no longer had jurisdiction to proceed with the disciplinary hearing against him and therefore discontinued the hearing and closed its file on the matter.</p>

List of Documents Used:

- Ministry of Justice and Constitutional Development. Report on the Suspension of a Magistrate: Mr. F R Rambau, Regional Magistrate, Polokwane, addressed to Parliament for Consideration. 04 November 2010.
- Parliamentary Monitoring Group. NCOP Security and Justice. ATC101123: Report Provisional suspension from office of Magistrate F R Rambau. 23 November 2010.
- Parliament of the Republic of South Africa. Announcements, Tablings and Committee Reports. 5 November 2010.
- Hansard. Proceedings of the National Council of Provinces: Unrevised Hansard. 09 November 2010.
- Briefing Document: Magistrates Commission Reports: Disciplinary. 9 November 2010.
- Progress Report Dated 24 February 2011 to Parliament: Provisional Suspension from Office, Regional Magistrate F R Rambau, Limpopo.

- Progress Report Dated 29 June 2011 to Parliament: Provisional Suspension from Office, Regional Magistrate F R Rambau, Limpopo.
- Parliamentary Monitoring Group. National Assembly. Justice and Correctional Services Committee. ATC110629: Report on Magistrates Commission, dated 29 June 2011, on progress made in respect of inquiries against magistrates who have been suspended from office. 7 September 2011.
- Progress Report Dated 26 March 2012 to Parliament: Provisional Suspension from Office, Regional Magistrate F R Rambau, Limpopo.
- Progress Report Dated 27 December 2012 to Parliament: Provisional Suspension from Office, Regional Magistrate F R Rambau, Limpopo.
- Progress Report Dated 01 October 2013 to Parliament: Provisional Suspension from Office, Regional Magistrate F R Rambau, Limpopo.
- Progress Report Dated 12 February 2014 to Parliament: Provisional Suspension from Office, Regional Magistrate F R Rambau, Limpopo.
- Progress Report Dated 28 August 2014 to Parliament: Provisional Suspension from Office, Regional Magistrate F R Rambau, Limpopo.
- Progress Report Dated 29 December 2014 to Parliament: Provisional Suspension from Office, Regional Magistrate F R Rambau, Limpopo.

Timeline of Magistrate L SKRENYA Magistrate's Commission Process

Overview:

Magistrate L Skrenya (LS) is the former Magistrate and the Judicial Head at Cala in the Eastern Cape. LS was provisionally suspended as from 4 November 2010, pending the outcome of an investigation by the Magistrates Commission (MC) into his fitness to hold office. Both houses of parliament confirmed the suspension.

Charges:

The allegations forming the basis of the suspension stemmed from fraud charges.

Timeline of Key Dates and Developments in the Suspension Process

Date/Time Period	Nature of Development
24 April 2009	Fraud charge –it was alleged that, on this day, LS fraudulently claimed money from the Department for using his private vehicle for an official trip from Cala to Dordrecht when he in fact had used a government vehicle.
12 May 2009	A preliminary investigation to the complaints filed, found <i>prima facie</i> evidence that, on 12 May 2009, LS irregular conduct in a case resulted in the Minister for Justice and Constitutional Development being sued for damages.
05 August 2009	The Director of Public Prosecutions: Transkei directed that LS be prosecuted in the District Court for fraud.
18 September 2009	LS appeared in the Cala District Court and the matter was set down for trial on 21 and 22 September 2010.
04 October 2009	The misconduct inquiry commenced. LS requested a postponement to enable him to instruct an attorney. LS further requested the Presiding Officer in the inquiry to postpone the disciplinary proceedings pending the outcome of the criminal case against him. He made representations to the office of the Director of Public Prosecutions not to pursue the charge(s). The Presiding Officer postponed the inquiry to 9 and 10 December 2010.

Date/Time Period	Nature of Development
26 October 2009	<p>LS was informed that the Ethics Committee of the MC was contemplating making a recommendation to the Minister that he be provisionally suspended from his office (with or without remuneration) pending the outcome of an investigation into his fitness to hold office.</p> <p>LS was asked to make written representations to the Ethics Committee setting out reasons why he should not be provisionally suspended.</p>
6 November 2009	<p>In his response, he argued that it was not possible for him to interfere with the criminal or misconduct investigations.</p>
26 August 2010	<p>The MC, after considering LS's response, resolved to advise the Minister to provisionally suspend LS in terms of section 13(3)(a) of the Act, pending the outcome on an investigation into his fitness to hold office.</p>
	<p>The MC was informed that the Director of Public Prosecutions decided to proceed with the prosecution against LS. The criminal case has been set down for trial for 13 and 14 September 2010.</p>
4 November 2010.	<p>The Minister provisionally suspended LS.</p>
18 and 24 November 2010	<p>Both Houses of Parliament confirmed LS's provisional suspension from office.</p>
9 December 2010	<p>The misconduct inquiry was further postponed by mutual agreement and a new date set for 4 July 2011.</p>
	<p>The MC was informed that the Director of Public Prosecutions decided to proceed with the prosecution against LS. The criminal case was set down for trial for 24 and 25 February 2011.</p>
24 February 2011	<p>The MC issued a progress report on LS's suspension from office to the parliament.</p>
09 December 2011	<p>The misconduct inquiry was by mutual agreement of the parties, further postponed <i>sine die</i>. A date for the inquiry to continue will be arranged with LS's attorney shortly after the conclusion of the criminal case.</p>

List of Documents Used:

- Ministry of Justice and Constitutional Development. Report on the Suspension of a Magistrate: Mr. L Skrenya, Magistrate, Cala, addressed to Parliament for Consideration. 04 November 2010.
- Parliament of the Republic of South Africa. Announcements, Tablings and Committee Reports. 5 November 2010.
- Briefing Document: Magistrates Commission Reports: Disciplinary. 9 November 2010.
- Progress Report Dated 24 February 2011 to Parliament: Provisional Suspension from Office, Magistrate L Skrenya, Cala.
- Progress Report Dated 29 June 2011 to Parliament: Provisional Suspension from Office, Magistrate L Skrenya, Cala.
- Hansard. Proceedings of the National Assembly. 16 August 2011.
- Parliamentary Monitoring Group. National Assembly. Justice and Correctional Services Committee. ATC110629: Report on Magistrates Commission, dated 29 June 2011, on progress made in respect of inquiries against magistrates who have been suspended from office. 7 September 2011.
- Hansard Proceedings of the National Council of Provinces. 17 November 2011.

Timeline of Magistrate XB Stuurman's Magistrate's Commission Process

Overview:

Magistrate XB Stuurman (MXS) was appointed to the office of Magistrate on 5 May 2003. She was convicted on seventeen counts of misconduct on 12 December 2016. The matter was postponed to 16 January 2017 for purposes of sanctions. The Select Committee on Security and Justice and the Select Committee on Justice and Correctional Services reported concurred with the suspension and recommended that the National Assembly confirm MXS's suspension.

Timeline of Key Dates and Developments in the Suspension Process

Date/Time Period	Nature of Development
12 July 2013, 7 November 2013 and 3 December 2014	MXS was charged with 18 counts of misconduct, contained in three separate charge sheets dated; 12 July 2013, 7 November 2013 and 3 December 2014.
	The Magistrates Commission's (MC's) Person to Lead the Evidence (PLE) at the misconduct hearing withdrew charge 2 contained in the first charge sheet. MXS 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.
13 March 2015	The misconduct inquiry commenced.
30 June 2015	The Presiding Officer found no merits in the points raised by MXS and therefore dismissed her special pleas. MXS further maintained that the complaints against her were not dealt with in a manner consistent with natural justice as required in the Van Rooyen case.
12 December 2016	MXS was convicted on seventeen counts of misconduct charges. The matter was postponed to 16 January 2017 for purposes of sanctions.

Date/Time Period	Nature of Development
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 MC in terms of Regulation 26(17) (b) of the Regulations for Judicial Officers in the Lower Courts, 1994 that MXS be removed from office as contemplated in Section 13(4) (a)(i) of the Magistrates Act, 90 of 1993.
01 November 2017	The Select Committee on Security and Justice, concurred with the suspension and recommended that the National Council of Provinces confirms MXS's suspension from the Office of Magistrate.
15 November 2017	The Committee on Justice and Correctional Services reported that it concurred with the suspension and recommended that the National Assembly confirms MXS's suspension from the Office of Magistrate.

List of Documents Used:

2013-2014

- Charge Sheets dated 12 July 2013, 7 November 2013 and 3 December 2014.
- Report in terms of section 13(4) of the Magistrates Act, 90 of 1993: Suspension/Removal from Office on the Ground of Misconduct: Ms XB Stuurman, Additional Magistrate East London. 3 December 2014.

2016

- Judgment by Senior Magistrate M Dawray. 12 December 2016.

2017

- Sanctions based on the judgment. 17 January 2017.
- Ms Stuurman representations with the Commission. 17 February 2017.
- Additional Reasons/ Comments to Ms Sturman's representations. 17 February 2017.
- 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)(a)(i) and (b) of the Magistrates Act, 1993 (Act No 90 of 1993). 18 August 2017.

- 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). 1 November 2017.
- Parliamentary Monitoring Group Meeting Summary. ATC171115: Report of the Portfolio Committee on Justice and Correctional Services on the suspension from office of Magistrate XB Stuurman, Additional Magistrates at East London. 15 November 2017.

Timeline of Magistrate Judith van Schalkwyk’s Magistrate’s Commission Process

Overview:

Magistrate van Schalkwyk (MvS) is the former Chief Magistrate of the Kempton Park Magistrate’s Court in Ekurhuleni. She held this position from 2004 up until her provisional suspension in 2013. She was provisionally suspended pending the result of an investigation by Magistrates Commission (MC) to determine her fitness to hold office. The allegations forming the basis of the suspension stemmed from various patterns and acts of misconduct and abuse of power during the period of 2010 to 2013. Her remuneration was suspended in 2018 due to evidence of her tactics to delay the misconduct hearings process. The misconduct investigation has not yet been concluded.

Timeline of Key Dates and Developments in the Suspension Process

Date/Time Period	Nature of Development
23 April 2013	The MC drafts a letter to MvS informing her of the nature of her suspension, and providing her an opportunity to appeal.
2 May 2013	MvS responds in writing to the MC.
11 May 2013	The Executive Committee of the MC deliberates over MvS’s response and decides to recommend that she be provisionally suspended per section 13(3)(a) of the Magistrates Act, 1993.
13 May 2013	Judge M F Legodi, Chairperson of the MC issues a letter to Minister Jeff Radebe (then Minister of Justice and Constitutional Development). The letter sets out the MC Executive Committee’s reasons for resolving to recommend the provisional suspension of Magistrate van Schalkwyk. The letter asks the Minister to recommend the provisional suspension.

Date/Time Period	Nature of Development
2013 (exact date not specified, uncertain when and where letter actually submitted)	Per the terms of section 13(3)(c) of the Magistrate Act, Minister Radebe tables a report to Parliament for its consideration of Magistrate van Schalkwyk's provisional suspension.
4 June 2013 (this is referred to in other documents)	The Minister provisionally suspends Magistrate van Schalkwyk.
29 July 2013	MC Secretary Johannes Meijer briefs the National Council of Provinces (NCOP) Select Committee on Security and Constitutional Development on the provisional suspension of MvS. The Committee recommends that Parliament endorse the suspension.
31 July 2013	Date of the NCOP's Select Committee on Security and Constitutional Development's report on the provisional suspension of MvS. The Committee concurs with the recommendations of the MC and the Minister and recommends that the NCOP confirm MvS's provisional suspension.
1 August 2013	Counsel for MvS acknowledges receipt of the MC's charge sheet, setting out 24 counts of misconduct. This was issued following MC's preliminary investigation.
18 September 2013	MC appoints a Presiding officer and person to lead evidence for the MC at the misconduct hearing. MvS informed of this in writing.
7 October 2013	<p>Counsel for MvS files a written objection with the MC opposing the appointment of Magistrate Nair (Chief Magistrate, Pretoria) to lead evidence at the hearing. MC responds informing MvS's Counsel of the procedures adhered to in appointing Nair. Later on, on behalf of MvS her counsel makes filings to the High Court.</p> <p>A 30 August 2018 Parliament report (p 3) summarizes the resulting scenario as follows: <i>"The misconduct inquiry was postponed several times at the request of the defence and to allow the defence an opportunity to file an application at the High Court challenging the validity of the Regulations for Judicial Officers and the Code of Conduct for Magistrates and for the State to oppose same. The misconduct inquiry against Ms Van Schalkwyk was kept in abeyance pending the finalization of the application."</i></p>
30 October 2013	In light of the MC report and Minister of Justice and Constitutional Development's recommendation, the Portfolio Committee on Justice and Constitutional Development recommends that the National Assembly confirm MvS's provisional suspension.
12 November 2013	The National Assembly considers the report of the Portfolio Committee on Justice and Constitutional Development on the provisional suspension of MvS. The House upholds the Committee's request to uphold the provisional suspension. The House adopts the report and confirms the provisional suspension.

Date/Time Period	Nature of Development
16 October 2014	MvS case argued before the Presiding Officer. One count in MvS's application is successful (not sure about the exact nature of this). Hearing postponed twice after due to lack of documents.
29 December 2014	MC progress report to Parliament on MvS's provisional suspension.
16 January 2015	Date the 16 October 2014 proceedings are postponed to by the Presiding Officer for a hearing.
23 February 2015	Hearing date scheduled. MvS informs the Tribunal on that day that her mother has passed, and requests a postponement.
18 March 2015	MC reports to the NCOP Select Committee on Security and Justice on the provisional suspension of MvS.
20 & 21 April 2015	Dates set for misconduct hearings rescheduled from 23 February 2015.
2 August 2015	Date of (MC) progress report to Parliament on MvS's provisional suspension.
8 September 2015	NCOP proceedings. The Minister of Justice and Correctional Services tables the 2 August 2015 progress report on MvS's provisional suspension.
10 September 2015	NCOP Proceedings. The 2 August 2015 progress report on MvS's provisional suspension is referred to the Select Committee on Security and Justice for consideration.
2015	High Court matter underway. It appears the application was filed in September or October (but not certain, based on documents available).
7 October 2015	National Assembly. 2 August 2015 (MC) progress report on MvS's provisional suspension referred to the Portfolio Committee on Justice and Correctional services for consideration.
29 February 2016	Date of (MC) Progress report on the provisional suspension of MvS.
23 March 2016	National Assembly and NCOP. The Minister of Justice and Correctional Services tables the (MC's) 29 February 2016 progress report on MvS's provisional suspension.
5 April 2016	NCOP. The 29 February 2016 (MC) progress report on MvS's provisional suspension is referred to the Select Committee on Security and Justice for consideration.
18 September 2016	Date of (MC) Progress report to Parliament on MvS's provisional suspension.
27 September 2016	NCOP. The Minister tables the 18 September 2016 progress report on MvS.
10 October 2016	NCOP proceedings. The 18 September 2016 progress report on the provisional suspension of MvS is referred to the Select Committee on Security and Justice.

Date/Time Period	Nature of Development
15 March 2017	The High Court hears MvS's application.
1 August 2017	The High Court dismisses MvS's application with costs.
29 August 2017	MvS files Notice of Application for leave to appeal
8 November 2017	High Court hears both parties.
10 November 2017	High Court dismisses the application, with costs.
29 November 2017 (sometimes listed as 24 November)	Date of MC report, as tabled by the Minister, on their decision to withhold MvS's remuneration.
March 2018	The Supreme Court of Appeal dismisses MvS petition, with costs.
April 2018	MC inquiry process against MvS meant to resume. Postponed.
23 May 2018	The Select Committee on Security and Justice confirms that MvS's remuneration should be withheld, based on a report from the MC. The MC had informed the Committee about the various delays due to the numerous applications submitted by MvS, and reported that it was working to conclude the matter quickly.
13 June 2018	The NCOP considers the Select Committee on Security and Justice report on withholding MvS's remuneration (based on the MC's and Minister's recommendations). The NCOP adopts the report.
July 2018	MC inquiry hearing rescheduled to this date. Postponed again as MvS new legal counsel is not available.
27 September 2018	MC hearing scheduled for this date postponed again.
28 August 2018	Report of the Portfolio Committee on Justice and Correctional Services on the withholding of remuneration of MvS.
30 August 2018	The National Assembly tables the Portfolio Committee on Justice and Correctional Services' report on the withholding of remuneration for MvS. In regards to delays in the case, the report before the Committee (which is based on an MC report to the Minister) outlines MvS deliberate tactics to delay the misconduct hearing. It also states (p 4) that: <i>"Ms van Schalkwyk is still receiving the remuneration of a Chief Magistrate, whilst the disciplinary proceedings are pending against her. More than four (4) years have gone by and not a single piece of evidence has been placed before the disciplinary inquiry. The Person Leading Evidence has been requested, in consultation with the Presiding Officer at the misconduct inquiry, to set the inquiry down to continue without any further delay."</i> The NA resolves to consider the Committee's report, which recommends that it confirm the MC and Minister's determinations to withhold MvS's salary.

Date/Time Period	Nature of Development
October 2018	Evidence (assuming presented by MC) heard in the MC inquiry process.
25 October 2018	National Assembly Proceedings: The House considers a report of the Portfolio Committee on Justice and Correctional Services on the withholding of remuneration of MvS. This was filed due to her deliberate tactics to delay the disciplinary process. The House supports the report of the Committee - which includes the recommendation that a withholding of Magistrate van Schalkwyk's remuneration be approved.
December 2018	MvS misconduct hearing continues.
January 2019	MvS misconduct hearing continues. After death of her counsel, MvS elects to proceed.
29 January 2019	Hearing continues. The MC's first witness concludes her presentation of evidence. MvS requests a postponement to permit her to instruct and brief new legal counsel.
12 March 2019	Date of MC's quarterly progress report on MvS's provisional suspension.
April 2019	MvS Misconduct hearing proceeds.
June 2019	Misconduct hearing proceeds. MvS has fired her counsel and plans to defend herself. Hearing postponed.
6 November 2019	The NCOP Select Committee on Security and Justice considers the MC's progress report, dated 12 March 2019.
13 November 2019.	NCOP proceedings. The Council considers and adopts a report by the Select Committee on Security and Justice on the MC's quarterly progress report regarding MvS's suspension.

List of Documents Used:

- Magistrates Commission. M F Legodi, Chairperson, letter to Minister Jeff Radebe (then Minister of Justice and Constitutional Development). 13 May 2013.
- Department of Justice and Constitutional Development. Minister J Radebe. Report to Parliament on the Provisional Suspension of Magistrate J F van Schalkwyk. 2013.
- Parliamentary Monitoring Group Minutes. National Council of Provinces. Select Committee on Security and Justice. ATC130819: Report of the Select Committee on Security and Constitutional Development on the Provisional Suspension of Magistrate Ms J F Van

Schalkwyk, Chief Magistrate at Kempton Park. 13 July 2013.

- Parliamentary Monitoring Group Minutes. National Council of Provinces. Suspension of Magistrate Judith van Schalkwyk: briefing by Magistrates Commission; Implementation of the Domestic Violence Act; briefing by Committee Researcher. 29 July 2013.
- Parliamentary Monitoring Group Minutes. National Assembly. ATC131030: Report of the Portfolio Committee on Justice and Constitutional Development on the Provisional Suspension of Magistrate J F van Schalkwyk, Chief Magistrate at Kempton Park. 30 October 2013.
- Hansard. Proceedings of the National Assembly. 12 November 2013.
- Magistrates Commission. Progress Report to Parliament on the Provisional Suspension From Office, Chief Magistrate JF van Schalkwyk, Kempton Park. 29 December 2014.
- Parliamentary Monitoring Group Minutes. National Council of Provinces. Select Committee on Security and Justice. Suspension of magistrates: Magistrates Commission progress report; KwaZulu- Natal Oversight Committee Report; International Study Tour preparation. 18 March 2015.
- Hansard. Proceedings of the National Council of Provinces. 22 September 2015.
- Hansard. Proceedings of the National Assembly. 21 October 2015.
- Hansard. Proceedings of National Council of Provinces. 3 May 2016
- Hansard. Proceedings of the National Council of Provinces. 11 October 2016.
- High Court of South Africa, Gauteng Division, Pretoria. Case 49476/15. 1 August 2017.
- Hansard. Proceedings of the National Council of Provinces. 13 June 2018.

- Parliament of the Republic of South Africa. Announcements, Tablings and Committee Reports. 30 August 2018.
- Hansard. Proceedings of the National Assembly. 25 October 2018.
- News24 Article. Magistrates use ‘every trick in the book’ to delay disciplinary hearings, Parliament hears. 29 August 2019.
- Parliamentary Monitoring Group Minutes. National Council of Provinces. Select Committee on Security and Justice on the quarterly progress reports of the Magistrates Commission as tabled in terms of section 13(3)(f) of the Magistrates Act, 1993 (Act No 90 of 1993). 6 November 2019.
- Hansard. Proceedings of the National Council of Provinces. 13 November 2019.

Timeline of Magistrate FK JASONE TWALA'S Magistrate's Commission Process

Overview:

Magistrate Jasone Twala (JT) was an acting additional Magistrate at the George District Court. She was still on probation when the misconduct inquiry commenced. The MC had suspended her from office and withheld her remuneration, a decision which was confirmed by the Minister. When the Magistrate's Commission (MC) appeared before the Justice and Correctional Services Committee in 2018, JT had already passed away.

Timeline of Key Dates and Developments in the Suspension Process

Date/Time Period	Nature of Development
17 August 2017	The MC resolved that JT be charged with misconduct.
12 October 2017	On 12 October 2017, JT was invited to furnish the MC with representations as to why it should not recommend that she be provisionally suspended from office and why the MC should not determine to withhold her remuneration.
24 October 2017	JT made her representations in correspondence dated 24 October 2017.
	Having considered JT's response dated 24 October 2017, the MC resolved to recommend that JT be provisionally suspended from office in terms of Section 13(3)(a) of the Act, pending the investigation into her fitness to hold office.
23 May 2018	The Select Committee on Security and Justice, having considered the Magistrates Commission's report dated 21 November 2017, as tabled by the Minister for Justice and Correctional Services, on the provisional suspension from office of JT, pending the outcome of a misconduct hearing into her fitness to hold the office of magistrate, confirmed JT's provisional suspension from the office of Magistrate. The Minister and the MC had decided to withhold the remuneration, pending the results of the investigation about her fitness to hold office, for a certain period leading up to the death of JT.
28 August 2018	Justice and Correctional Services Committee deliberated on the implications of JT's death and her pending disciplinary case. No decision was taken on the matter.

List of Documents Used:

- Provisional Suspension from Office: Ms F K Jasone-Twala, Acting Additional Magistrate, George. November 2017.
- Parliamentary Monitoring Group Minutes. National Council of Provinces. Select Committee on Security and Justice. ATC180523: Report of the Select Committee on Security and Justice on the Provisional Suspension of Magistrate Ms F K Jasone-Twala, an Acting Additional Magistrate, George, in terms of section 13(4A)(b) of the Magistrates Act, 1993 (Act No 90 of 1993), dated 23 May 2018.
- Parliamentary Monitoring Group. National Assembly. Justice and Correctional Services Committee. Committee Reports on suspension of magistrates & withholding of remuneration. 28 August 2018.

Timeline of Magistrate M M TYULU's Magistrate's Commission Process

Overview:

Magistrate M M Tyulu (MMT) was appointed as Magistrate in 1994. Subsequently, an inquiry into his fitness to hold office was conducted. The Minister suspended MMT from office pending the result of an investigation by Magistrates Commission (MC) to determine his fitness to hold office. At the conclusion of the misconduct inquiry, MMT was found guilty of sexual harassment involving a female accused who appeared before him in a criminal case. The presiding officer recommended that MMT be removed from office. The MC concurred with this recommendation. The Committee on Justice and Constitutional Development also recommended that the National Assembly confirm MMT's removal from office.

Charges:

The charges against MMT stemmed from allegations of sexual harassment involving a female accused who appeared before him in a pending criminal case at the Cape Town Magistrate's Court.

Timeline of Key Dates and Developments in the Suspension Process

Date/Time Period	Nature of Development
17 October 2011	The Presiding Officer recommended that MMT be removed from office. The Presiding Officer also took into account that MMT had previously been found guilty of misconduct and that he was severely reprimanded at the time.
November 2011	The MC received representations in mitigation from MMT's representative. The Presiding Officer elected not to forward any additional reasons for his recommendation to the MC.
25 February 2012	The Executive Commission of the MC considered the findings and recommendation, as well as the representations received on MMT's behalf.

Date/Time Period	Nature of Development
	The MC resolved to recommend that MMT be removed from office 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).
	Having considered the MC's recommendation as contained in its letter to me dated 29 February 2012, to suspend MMT from office, the Minister, on 29 March 2012 suspended MMT from office and tabled a report in this regard in Parliament. MMT, through his legal representative, was invited to show cause why the MC should not determine to withhold his remuneration in terms of section 13(4A) (a) of the Act.
	Having considered MMT's representations, submitted by Messrs Le Roux Attorneys, on his behalf, the MC determined to withhold MMT remuneration in terms of section 13(4A) (a) of the Magistrates Act.
	A report on withholding MMT's remuneration was submitted to the parliament.
September 2012	The Committee on Justice and Constitutional Development recommended that the National Assembly confirm MMT's removal from office.
28 November 2012	Having considered the MC's reports on the suspension from office and on the withholding of MMT's salary, the NCOP Security and Justice Committee recommended that the National Council of Provinces confirms his suspension from office as a Magistrate and withholding of his salary.

List of Documents Used:

- Report in terms of Section 13(4A) (b) of the Magistrates Act, 1993: Withholding of Remuneration, Magistrate M M Tyulu. 2012.
- Report on the Removal from Office on the ground of misconduct: Mr. M Tyulu, Additional Magistrate at Cape Town. 13 April 2012.
- Parliamentary Monitoring Group. ATC120918: Report of the Portfolio Committee on Justice and Constitutional Development on the suspension from office of Magistrate M Tyulu, dated 18 September 2012.
- Parliamentary Monitoring Group. NCOP Security and Justice. ATC121129: Report of the Select Committee on Security and Constitutional Development on the Suspension from Office of Magistrate M Tyulu and Withholding of Remuneration for Magistrate M Tyulu, dated 28 November 2012.

