



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Proclamation

by the

PRESIDENT OF THE REPUBLIC OF NAMIBIA

No. 20

2012

**ANNOUNCEMENT OF APPOINTMENT OF COMMISSION OF INQUIRY INTO
ACTIVITIES, AFFAIRS, MANAGEMENT AND OPERATIONS OF MINISTRY OF
HEALTH AND SOCIAL SERVICES AND ITS TERMS OF REFERENCE, AND
REGULATIONS WITH REFERENCE TO COMMISSION**

In terms of the powers vested in me by Article 32(8) of the Namibian Constitution I make known that I have under section 1 of the Commissions Act, 1947 (Act No. 8 of 1947) -

- (a) appointed a Commission of Inquiry into the Activities, Affairs, Management and Operations of the Ministry of Health and Social Services referred to in Schedule 2 of the Public Service Act, 1995 (Act No. 13 of 1995), consisting of the following members:
- (i) Hon. Justice Simpson Victor Mtambanengwe (Chairperson);
 - (ii) Dr Edward Tlholwe Maganu; and
 - (iii) Dr John Keiseb,

and have also appointed Mrs. Celine Usiku as Secretary to the Commission, and the Chairperson may, after consultation with the Secretary to Cabinet, co-opt additional persons from time to time to assist the Commission in an advisory capacity in the performance of its assigned tasks.

Terms of Reference

1. The terms of reference of the Commission are as follows:
 - 1.1. To inquire and report generally upon the activities, affairs, management and operations of the Ministry of Health and Social Services and, more particularly, but without derogating from the generality of the aforesaid, to inquire and report upon -
 - (a) the quality of patient care in the public health facilities of Namibia;
 - (b) the status of maternal, newborn, child and adolescent health;
 - (c) the quality of training of doctors and nurses, including training infrastructure, curriculum, training materials, tutors, duration, quality, adequacy and relevance of residence and internship;
 - (d) the quality of public health facilities infrastructure;
 - (e) the status of available medical equipment and eventual needs for upgrading;
 - (f) the availability of medicines in public hospitals, health centres and clinics;
 - (g) the human resources adequacy (both in quality and quantity), attraction, motivation and retention factors (such as availability of accommodation, career promotion and allowances for remoteness);
 - (h) the conduct, ethnics and professionalism of health professionals, and their attitude *vis-a-vis* patients;
 - (i) the adequacy of transport for referral of patients;
 - (j) the need for waiting shelters for expectant mothers near hospitals and health centres, especially in rural areas; and
 - (k) the adequacy of the proposed restructuring of the Ministry of Health and Social Services.
 - 1.2. To undertake a desk reviews, key informants' interview, individual and group consultations and visit health facilities and relevant institutions in Namibia.
 - 1.3. To report to the President, as and when the Commission considers fit, any act, by commission or omission, of intimidation of any witness, potential witness or sources of information regarding any matter relevant to the investigations by the Commission.
 - 1.4. To report to the President on its findings and make relevant recommendations as it may consider necessary in light of the findings.
 - 1.5. To submit an interim report on the terms of reference within 3 (three) months of the date of appointment of the Commission and its final report within 1 (one) month of submission of its interim report or such further period as the President, at the request of the Commission, may determine.

2. Interested persons wishing to submit written representations to or give evidence before the Commission are requested and required to send or submit, in the manner prescribed in the regulations set out in the Schedule, written submissions in which those representations or a summary of that evidence is set out, to:

The Secretary
Commission of Inquiry: Ministry of Health and Social Services
c/o The Secretary to Cabinet
State House, Windhoek
Tel No: (061) 2707814
Facsimile: (061) 226189
Private Bag 13339
Windhoek

3. The deadline for the submission of written representations must be set by the Commission which is entitled to hear any representation by any person or persons during any time of the existence of the Commission;
- (b) declared the provisions of that Act to be applicable with reference to that Commission; and
- (c) made the regulations with reference to that Commission as set out in the Schedule.

Given under my Hand and Seal of the Republic of Namibia at Windhoek this 8th day of August, Two Thousand and Twelve.

HIFIKEPUNYE POHAMBA

President

BY ORDER OF THE PRESIDENT –IN-CABINET

SCHEDULE

REGULATIONS WITH REFERENCE TO COMMISSION

Definitions

1. In these regulations, unless the context otherwise indicates –

“Chairperson” means the Chairperson of the Commission;

“Commission” means the Commission of Inquiry referred to in paragraph (a) of this proclamation;

“document”, includes any book, register, correspondence, pamphlet, note, record (including any tape or other mechanical recording of anything or any transaction of any such notice, record, tape or other mechanical recording), list, circular, plan, placard, poster, publication, drawing, photograph or picture;

“inquiry” means the inquiry conducted by the Commission in the execution of its terms of reference;

“premises”, includes any land, building, structure, or any part of any building or structure or any vehicle, vessel, aircraft, or other means of transport;

“staff member” means any person designated under regulation 2(1) to assist the Commission;

“terms of reference” means the terms of reference of the Commission as set out in item 1 of paragraph (a) of this proclamation.

Administrative functions

2. (1) The administrative functions of the Commission are performed by staff members in the public service designated for that purpose by the Secretary to Cabinet.

(2) The Secretary to the Commission and staff members referred to in subregulation (1) perform their duties subject to the control and direction of the Commission.

(3) The Commission, on such terms and conditions as the Secretary to Cabinet may approve, may -

- (a) appoint any person to assist the Commission in or in connection with the execution of its inquiry;
- (b) designate one or more persons to be present at the inquiry and to present evidence and arguments which have a bearing on the inquiry and to cross-examine witnesses appearing before the Commission, subject to regulation 8.

Procedure at proceedings

3. The Chairperson must determine the procedure to be followed at any proceedings of the Commission.

Sittings of Commission

4. All sittings of the Commission are held at such times and places as may be determined by the Commission.

Written submissions to Commission

5. Written submissions to the Commission must -

- (a) be prepared in the official language, if possible, or in any other language approved by the Secretary to the Commission;
- (b) if and where possible be typewritten or word-processed on A4-size paper;
- (c) bear the name, address and telephone or fax number and e-mail address of the author and; and
- (d) be submitted in tenfold.

Notes and records of proceedings

6. A person may not transcribe shorthand notes or mechanical records of the proceedings of the Commission, except by the order of the Commission.

Preservation of secrecy

7. (1) A person employed for, or assisting with, the performance of the functions of the Commission, including a person employed to transcribe the proceedings of the Commission, must preserve and aid in preserving secrecy with regard to the functions, proceedings and documents of the Commission and any matter or information which may come to his or her knowledge in the performance of his or her duties in connection with such functions, except in so far as the disclosure of such proceedings, documents, matter or information is necessary for the purpose of -

- (a) the report of the Commission;
- (b) a criminal investigation or prosecution; or
- (c) the requirement of an order of a competent court.

(2) A person referred to in subregulation (1) must at the outset take an oath or make an affirmation of fidelity and secrecy before the Chairperson, or a staff member authorised thereto by the Chairperson, in a form determined by the Commission.

(3) A person may not publish or furnish or communicate to any person the report of the Commission or a copy or any part thereof or an extract there from or any finding, recommendation or information contained therein, unless the President has made the report available for publication, except in so far as it may be necessary –

- (a) in the execution of the terms of reference;
- (b) for the purposes of a criminal investigation or prosecution; or
- (c) in terms of an order of a competent court.

Permission for cross-examination of witness

8. (1) A person, other than a member of the Commission or a person designated under regulation 2(3)(b), or the legal representative of any person, has no right to cross-examine any witness appearing before the Commission, unless the Chairperson permits such cross-examination when it is necessary in the interest of the inquiry.

(2) When the Chairperson permits the cross-examination of any witness under subregulation (1), the Chairperson may limit such cross-examination to the subjects and in the manner which he or she considers necessary in the interests of the inquiry.

Assistance of witness by any person

9. Any witness appearing before the Commission may, in the discretion of the Chairperson and in the manner determined by him or her, be assisted by a legal practitioner or by any person, including, if such witness so desires, a person designated by the Chairperson for that purpose.

Chairperson not bound by rules of evidence

10. In any proceedings before the Commission, the Chairperson is not bound by the rules of laws relating to the admissibility of evidence.

Disclosure of identity may be prohibited

11. If, at the time of any person giving evidence before the Commission, members of the general public are or have been excluded from attendance of the proceedings of the Commission, the Chairperson may, on the request of such person, direct that no person may disclose in any manner whatsoever the name or address of that person or any information likely to reveal his or her identity.

Power to enter premises

12. For the purpose of the inquiry, a member of the Commission or staff member authorised thereto in writing by the Commission may at any reasonable time -

- (a) enter any premises and carry out any investigation which he or she considers necessary; and
- (b) demand, inspect, seize or take copies of, or make extracts from any book, account or document found on such premises and which the member or staff member believes may have a bearing on any matter relating to the inquiry.

Submission of proof of authorisation

13. When exercising the powers conferred by regulation 12, a member of the Commission or a staff member must show a written authorisation referred to in regulation 12 to any person in relation to whom the power is exercised and who requires proof of such authorisation.

Offences in relation to members of Commission

14. A person may not insult, disparage or belittle the Chairperson or any other member of the Commission or prejudice, influence or anticipate the proceedings or findings of the Commission.

Penalties for offences

15. A person who contravenes or fails to comply with -

- (a) regulation 6 or 7, or any order of the Chairperson made there under; or
- (b) regulation 14,

commits an offence and is liable -

- (i) in the case of an offence referred to in paragraph (a), to a fine not exceeding N\$200 or imprisonment for a period not exceeding six months; or
- (ii) in the case of an offence referred to in paragraph (b), to a fine not exceeding N\$1 000 or imprisonment for a period not exceeding 12 months.

Indemnity from liability

16. During and after the existence of the Commission –

- (a) a member of the Commission;
- (b) the Secretary to the Commission;
- (c) a staff member; or
- (d) a person appointed or designated to perform any task on behalf of the Commission,

is not liable in respect of –

- (i) anything done or omitted in good faith in the exercise of power or the performance of a function conferred or imposed by or under the Act or these regulations; or
 - (ii) anything reflected in any public hearing, report, finding, point or view, or recommendation, of the Commission made or expressed in good faith, and submitted or made known in terms of the Act or these regulations.
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