



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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PROCLAMATION

by the

PRESIDENT OF THE REPUBLIC OF
NAMIBIA

No. 2

1996

COMMISSION OF INQUIRY INTO LEGISLATION FOR THE MORE EFFECTIVE COMBATING OF CRIME IN NAMIBIA

Under the powers vested in me by section 1 of the Commissions Act, 1947 (Act 8 of 1947), I hereby declare the provisions of the said Act to be applicable with reference to the Commission of Inquiry into Legislation for the more effective Combating of Crime, the appointment of which was made known by me by Government Notice 75 of 1996, and hereby make the regulations set out in the Schedule with reference to that Commission.

Given under my Hand and the Seal of the Republic of Namibia, at Windhoek this 8th day of March, One Thousand Nine Hundred and Ninety-six.

SAM NUJOMA

President

BY ORDER OF THE PRESIDENT-IN-CABINET

SCHEDULE

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

"chairperson" means the chairperson of the Commission;

"Commission" means the Commission of Inquiry into Legislation for the more effective Combating of Crime in Namibia;

"document" includes any book, pamphlet, note or record (including any tape or other mechanical recording of anything or any transcription of any such note, 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;

"officer" means any person designated under regulation 2 to assist the Commission;

"Minister" means the Minister of Justice;

"premises" includes any land or any building or structure or any part of any building or structure or any vehicle, vessel, aircraft, or other means of transport.

2. The administrative functions of the Commission shall be performed by officers in the public service designated by the Permanent Secretary: Justice for that purpose, and who shall perform their duties subject to the control and directions of the Secretary to the Commission.

3. The Minister may, on such terms and conditions as the Minister may determine -

- (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 the provisions of regulation 11.

4. The chairperson shall determine the procedure to be followed at any proceedings of the Commission.

5. All meetings of the Commission shall be held at such times and places as may be determined by the Commission provided that any meetings outside Namibia shall be authorised by the Minister.

6. The Secretary to the Commission shall by notice in the *Gazette*, and in such other manner as the Commission may direct, announce the times when and places where public sittings of the Commission will be held for the purpose of hearing evidence and addresses in relation to matters pertaining to its terms of reference. Gen N. 77/94

7. Written submissions to the Commission shall, if and where possible:

- (a) be prepared in the official language;
- (b) be typewritten or word-processed on A4-size paper;
- (c) bear the name, address and telephone or fax number of the author;
- (d) be submitted in tenfold.

8. No shorthand notes or mechanical records of the proceedings of the Commission shall be transcribed except by order of the chairperson.

9. (1) Every person employed by or assisting with the functions of the Commission, including any person employed in accordance with regulation 8 to transcribe the proceedings of the Commission, shall 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 the said functions, except in so far as the disclosure of such proceedings, documents, matter or information shall be necessary for the purposes of the Commissioners' report or in terms of an order of a competent court, and every such person, except a member of the Commission, shall at the outset take an oath or make an affirmation of fidelity and secrecy before the chairperson or an officer generally or specifically authorised thereto by the chairperson in the following form:

"I, declare under oath/affirm and declare that, except in so far as it may be necessary for the purposes of the report of the Commission of Inquiry into Legislation for the more effective Combating of Crime in Namibia, or in terms of an order of a competent court, I shall not communicate to any person any matter or information which may come to my knowledge in connection with the inquiry of the said Commission, or the performance of my duties in connection therewith, and that I shall not suffer or permit any person to obtain access to any document of the said Commission, including any note, record or transcription of the proceedings of the

said Commission in my possession or custody or in the possession or custody of the said Commission or any officer."

(2) No person shall, except in so far as it may be necessary in the execution of the terms of reference of the Commission or in terms of an order of a competent court, publish or furnish or communicate to any person the report of the Commission or a copy or any part thereof or an extract therefrom or any finding, recommendation or information contained therein, unless and until the President has made the report available for publication.

10. The chairperson, or any officer authorised by the chairperson and acting in the presence of the chairperson, shall administer an oath to or take an affirmation from any witness appearing before the Commission.

11. (1) No person, other than a member of the Commission or a person designated under regulation 3(b), nor the legal representative of any person, shall have the right to cross-examine any witness appearing before the Commission, unless the chairperson permits such cross-examination because the chairperson deems it necessary in the interests of the inquiry.

(2) The chairperson may, when he or she permits the cross-examination of any witness in terms of subregulation (1), limit such cross-examination to the subjects and in the manner which he or she deems necessary in the interests of the inquiry.

12. 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 other person, including, if he or she so desires, a person designated by the Permanent Secretary: Justice for that purpose.

13. In any proceedings before the Commission the chairperson of the Commission shall not be bound by the rules of law relating to the admissibility of evidence.

14. Any member of the Commission or any officer may, for the purposes of the inquiry at any reasonable time enter and inspect any premises and there carry out any investigation which he or she deems necessary and demand and peruse or seize or copy or make extracts from any document which is or is kept in custody upon such premises.

15. No person shall 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.

16. Any person who -

(a) contravenes or fails to comply with any provision of these regulations or any order of the chairperson made thereunder; or

- (b) wilfully hinders, resists or obstructs the Commission, the chairperson or any officer in the exercise of any power or duty referred to in these regulations,

shall be guilty of an offence and liable on conviction to a fine not exceeding N\$1 000,00 or to imprisonment for a period not exceeding six months.

Government Notice

OFFICE OF THE PRESIDENT OF THE REPUBLIC OF NAMIBIA

No. 75

1996

APPOINTMENT OF COMMISSION OF INQUIRY INTO LEGISLATION FOR THE MORE EFFECTIVE COMBATING OF CRIME IN NAMIBIA

It is hereby made known for general information that the President has appointed a Commission of Inquiry into Legislation for the more effective Combating of Crime in Namibia, with due consideration to the need not only to ensure that an innocent person should not be punished, but that a guilty person does not escape punishment, as well as the need not only to protect the fundamental rights of accused and/or convicted persons, but also those of the victims of crime.

The Commission shall consist of Mr Justice Bryan O'Linn, who shall be the Chairperson and, for the purposes of paragraph 6 of the Commission's terms of reference, one other person designated by the Minister of Prisons and Correctional Services.

The Chairperson may also, in consultation with the Minister of Justice, co-opt additional persons from time to time to assist the Commission in an advisory capacity in the performance of its assignment tasks.

The Commission's terms of reference are as follows:

- "1. To enquire into, make recommendations and where deemed by the Commission to be necessary or appropriate, to draft concept legislation on an urgent basis relating to:
 - 1.1 The granting of bail and the conditions of bail, if any.
 - 1.2 The procedure to be followed when considering applications for bail.

- 1.3 The matters to be considered by presiding judicial officers when considering applications for bail.
 - 1.4 The right of the State to appeal on an urgent basis against decisions granting bail.
 - 1.5 Prescribed minimum sentences for certain defined serious crimes.
 - 1.6 The extension *mutatis mutandis* of the requirements of openness and discovery applicable to the prosecution in criminal cases, also to the defence at least at the plea stage.
2. To enquire into, make recommendations and where deemed by the Commission to be necessary or appropriate, draft concept amendments to the Criminal Procedure Act, 1977 (Act 51 of 1977), or any other relevant enactment.
 3. To enquire into, make recommendations and where deemed by the Commission to be necessary or appropriate, to draft concept legislation to amend the common law in regard to common law crimes and defences.
 4. To enquire into and make recommendations on the need to retain certain forms of punishment now being imposed and the need to introduce new forms of punishment as well as the need to reintroduce punishment not competent at present and to make recommendations in this regard.
 5. To enquire into the reasons for the long delays between the arraignment of accused persons and the final determination of cases in court and to make recommendations to obviate these delays as far as possible.
 6. To enquire into, make recommendations and where deemed by the Commission to be necessary and appropriate, to draft amendments to the Prisons Act, 1959 (Act 8 of 1959), its regulations or any other related legislation with a view to ensuring that sentences imposed by Courts of Law are effective."

The Commission shall submit a first interim report on the terms of reference in paragraph 1 within four months of the date of the appointment of the Commission, and its final report within 12 months of that date or such further period as the President may, on the request of the Commission, determine.

Interested persons and bodies wishing to submit written representations to or give evidence before the Commission are requested to send or submit, in the manner prescribed in the regulations set out in the Schedule to Proclamation 2 of 1996, written submissions in which those presentations or a summary of that evidence is set out, to the Secretary, Commission of Inquiry into Legislation for the more effective Combating of Crime in Namibia, c/o The Registrar of the High Court, Private Bag 13179, Windhoek or the Office of the Registrar, High

Court Building, Lüderitz Street, Windhoek or Fax 061 221233 or 221615, as soon as possible, but not later than -

- (i) in the case of representations relating to part 1 of the terms of reference, 15 May 1996;
- (ii) in the case of representations relating to paragraph 2 to 6, inclusive, of the terms of reference, 31 May 1996.

(The Commission may in appropriate cases accept and entertain later representations.)
