



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

N\$6.00

WINDHOEK - 15 March 2019

No. 6858

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## Proclamation

by the

**PRESIDENT OF THE REPUBLIC OF NAMIBIA**

No. 5

2019

### DECLARATION OF APPLICABILITY OF COMMISSIONS ACT, 1947 TO COMMISSION OF INQUIRY INTO CLAIMS OF ANCESTRAL LAND RIGHTS AND RESTITUTION AND REGULATIONS WITH REFERENCE TO COMMISSION: COMMISSIONS ACT, 1947

Under the powers vested in me by section 1 of the Commissions Act, 1947 (Act No. 8 of 1947), I -

- (a) declare the provisions of that Act to be applicable with reference to the Commission of Inquiry into Claims of Ancestral Land Rights and Restitution appointed by me, the appointment and terms of reference of which was made known by Government Notice No. 59 of 2019; and
- (b) 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 21st day of February, Two Thousand and Nineteen.

**HAGE GOTTFRIED GEINGOB**

**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 appointed under Government Notice No. 59 of 2019;

“Commission” means the Commission of Inquiry into Claims of Ancestral Land Rights and Restitution;

“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;

“Secretary” means the Secretary to the Commission appointed under Government Notice No. 59 of 2019;

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

“terms of reference” means the term of reference of the Commission as set out in Government Notice No. 59 of 2019; and

“the Act” means the Commissions Act, 1947 (Act No. 8 of 1947).

**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 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.

### **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 within the Republic of Namibia.

### **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;
  - (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;
  - (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 functions, 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 take an oath or make an affirmation of fidelity and secrecy before the Chairperson, or a staff member authorised 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 of the report or an extract from the report or any finding, recommendation or information contained in the report, 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) a member of the Commission;
  - (b) a person designated under regulation 2(3)(b);
  - (c) 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 the Chairperson, 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 law 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 the 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 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 that regulation 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 an order of the Commission made under regulation 6; or
- (b) regulation 14,

commits an offence and is on conviction liable -

- (i) in the case of an offence referred to in paragraph (a), to a fine not exceeding N\$200 or to 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 to imprisonment for a period not exceeding one year.

**Indemnity from liability**

16. During and after the existence of the Commission -

- (a) a member of the Commission;
- (b) the Secretary;
- (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 of 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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## Government Notice

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### OFFICE OF THE PRESIDENT

No. 59

2019

#### APPOINTMENT OF COMMISSION OF INQUIRY INTO CLAIMS OF ANCESTRAL LAND RIGHTS AND RESTITUTION AND ITS TERMS OF REFERENCE

It is made known for general information that His Excellency Dr. Hage G. Geingob, President of the Republic of Namibia, has appointed a Commission of Inquiry into Claims of Ancestral Land Rights and Restitution, consisting of the following members:

- (a) Hon. Justice Shafimana Ueitele (Chairperson)
- (b) Mr. Phanuel Kaapama (Deputy Chairperson)
- (c) Hon. Chief Immanuel /Gâseb
- (d) Mr. R. Van Der Merwe
- (e) Dr. Helmke Jens Sartorius von Bach
- (f) Mr. Uhuru Dempers
- (g) Mr. Marius Kudumo
- (h) Prof. Lazarus Hangula
- (i) Rev. Willem Konjore
- (j) Mr. Neels Cooper
- (k) Mr. Josef Petrus Van der Westhuizen
- (l) Mrs. Anna Frederick
- (m) Mrs. Nadia M Le Hane
- (n) Ms. Jeaneth Kuhanga
- (o) Ms. Ingenesia Inge Murangi

Ms. Ndiyakupi Nghituwamata, Director: Regional Programme Implementation, Ministry of Land Reform has been appointed as Secretary to the Commission.

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**

The terms of reference of the Commission are as follows:

1. To inquire into and report generally on the claims of ancestral land rights and restitution to groups and individuals and, more particularly, but without derogating from the generality of the aforesaid, to inquire and report on -
  - (a) the generation of a common understanding and consensus on the definition of ancestral land rights and restitution;
  - (b) the commissioning of a study to identify communities who have lost ancestral land;
  - (c) the establishment of the sizes of ancestral land lost and boundaries;
  - (d) the determination of the limit of the pre-independence ancestral land claims;
  - (e) the incorporation of a special provision in the resettlement criteria to fairly address the situation of the most affected communities;
  - (f) the identification of alternative restorative measures to restore social justice and ensure economic empowerment of the affected communities;
  - (g) the use of reparation from the former colonial powers for restitution;
  - (h) the making of proposals regarding the right of servitude in the legislation in order to have access to burial sites in addition to expropriation;
  - (i) the ensuring of participation of the previously advantaged on land matters;
  - (j) the formulation of legislation to cater for ancestral land claims and restitution;
  - (k) the investigation of possible unintended consequences of ancestral land claims and restitution, as well as appropriate mitigation measures such as the issues related to perceived possible discrimination against other population groups;
  - (l) the determination of how the claim on ancestral land should be premised on the human rights principle and standards guaranteed in the Namibian Constitution as well as international and regional human rights instruments binding on Namibia;
  - (m) the differentiation of various forms of ancestral land claims;
  - (n) the recommended land allocation mechanisms that prioritises the most affected communities;
  - (o) the determination and recommendation on how the ancestral land claims could be used as an instrument to enhance national reconciliation;
  - (p) the invitation to communities and individuals to rename places with colonial names back to traditional original names where possible, where there are no controversies;
  - (q) the recommendation on how the empowerment and special recognition of women from the most affected communities could be promoted;
  - (r) the recommendation on how the affected communities could be included in structures created to address the issue of ancestral land;

- (s) the identification of alternative land in communal and commercial areas for the resettlement of communities to be repatriated from the diaspora;
  - (t) the recommendation for the erection of statues and monuments in parts of Namibia in remembrance of genocide victims and veterans of the liberation struggle; and
  - (u) the recommendation for dignified burial of the remains of the genocide victims and veterans of the liberation struggle.
2. To undertake desktop reviews, interview key informants, individual and group consultations and visit any part of Namibia and relevant institutions in Namibia.
  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.
  4. To report to the President on its findings and make relevant recommendations as it may consider necessary in light of the findings.
  5. To submit an interim report on the terms of reference within nine months of the date of appointment of the Commission and its final report within three months of submission of its interim report or such further period as the President, at the request of the Commission, may determine.

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 set out in the Schedule to Proclamation No. 5 of 2019, written submissions in which those representations or a summary of that evidence is set out, to:

The Secretary  
Commission of Inquiry: Ministry of Land Reform  
c/o The Secretary to Cabinet  
Office of the Prime Minister, Windhoek  
Tel No: (061) 2707814  
Facsimile: (061) 226189  
Private Bag 13338  
Windhoek.

The deadline for the submission of written representations must be set by the Commission and the Commission is entitled to hear any representation by any person or persons during any time of the existence of the Commission.

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