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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF HIGHER EDUCATION AND TRAINING

NO. 618

29 APRIL 2019

HIGHER EDUCATION ACT, 1997 (Act No. 101 of 1997)**APPOINTMENT OF AN ADMINISTRATOR FOR THE UNIVERSITY OF FORT HARE**

I, **Dr GNM Pandor, MP**, Minister of Higher Education and Training, in accordance with Section 49B of the Higher Education Act (Act 101 of 1997, as amended) hereby appoint Professor Loyiso Nongxa as Administrator for the University of Fort Hare, following information that I have received that reveals maladministration and serious undermining of the effective functioning of the University. The terms of reference of the Independent Assessor are attached in the Schedule.


Dr GNM Pandor, MP

Minister of Higher Education and Training

Date: 26-4-2019

TERMS OF REFERENCE

MINISTER OF HIGHER EDUCATION AND TRAINING

THE ADMINISTRATOR FOR THE UNIVERSITY OF FORT HARE

BACKGROUND

According to Section 49B (1) of the Higher Education Act (Act 101 of 1997, as amended) (the Act), notwithstanding any other provision of the Act, the Minister may appoint a person as administrator, if any of the following circumstances occur:

- (a) An audit of the financial records of a public higher education institution or the report by an independent assessor or any other report or information reveals financial or other maladministration of a serious nature or serious undermining of the effective functioning of the public higher education institution;
- (b) In the event that the Minister has reasonable grounds to believe that the council of the public higher education institution concerned has failed to comply with the directive within the stated period, or the steps taken, fail to remedy the deficiency within a reasonable period of time;
- (c) the council of the public higher education institution requests such appointment; or
- (d) if the council of the public higher education institution is deemed to have resigned as contemplated in section 27 (8).

Section 49(B)(1A) requires that the Minister **must**, before appointing an administrator,

- (a) give written notice that complies with section 42 (3) to the council of the higher education institution concerned of his or her intention to make such an appointment;
- (b) provide the council of the higher education institution concerned with the reasons for the appointment;
- (c) give the council of the higher education institution a reasonable opportunity to make written representations; and
- (d) consider the representations contemplated in paragraph (c).

Notwithstanding the above provisions, and given the urgency of the situation, within the context of Section 3(4)(a) and (b) of the Promotion of Administrative Justice Act, No 3 of 2000, which gives effect to the provisions of Section 33 of the Constitution, the conditions, circumstances and the state of governance at the institution is such that it is reasonable and justifiable to depart from the provisions of providing a notice, receiving and considering the representations in that:

- a) Although the objective of Section 49(B)(1A) is to provide notice, it is not feasible in this case, since the Council in question has had difficulties in convening meetings and conducting its business effectively;

- b) The nature and purpose of the administrative action is to stabilise the institution immediately and to ensure that efficiency, good governance and a conducive academic environment is in place, including ensuring that the institution as an organ of state is able to comply with the provisions of section 217 of the Constitution, *inter alia*, in relation to procurement processes in that it must act in accordance with a system which is fair, equitable, transparent, competitive and cost-effective;
- c) The anticipated effect of the appointment of the administrator would be to stabilise the institution, promote good governance and efficient administration, as that is in the public interest;
- d) Taking into account such circumstances and threats against the security of employees of the institution, and the collapse of governance at the university, it is desirable that the matter is treated with urgency. In this regard, it is vital to waive the requirement of a notice, receipt of written representation and consideration of same.

Furthermore, Sections 49BA and 49F provides for the publication of appointment of an administrator; and the role, powers, functions and duties of the administrator, respectively.

I, Dr GNM Pandor, the Minister of Higher Education and Training, based on the information that has come to my attention which reveals very serious governance challenges, which have begun to seriously undermine the effective functioning of the University of Fort Hare, as well as the inability of the Council to resolve such matters, and its descent into conflict among its members, have decided to appoint Professor Loyiso Nongxa as an Administrator for the University.

The appointment of the Administrator dissolves the Council of the University from the date of publication of the Government Gazette announcing the appointment.

TERMS OF REFERENCE

The general and specific terms of reference for the Administrator are to:

1. Take over the role, powers, functions and duties of the University of Fort Hare Council for a period of 12 months.
2. Initiate processes and initiatives that will restore proper governance at the University.
3. Ensure that an independent investigation is conducted into the affairs of the University particularly in light of, amongst other things, the resignations, suspensions and dismissals that have taken place; alleged financial irregularities and other related matters that have contributed to the current state of affairs; and the collapse of governance at the University.
4. Implement the process of reviewing and revising the current Statute of the University in terms of Section 32 of the Act and its approval in terms of Section 33;
5. Review the Office of the Registrar, identify and initiate processes to address any deficiencies to ensure its optimal functioning in order to support the Governance and Management delivery of the University.
6. Reconstitute the Council in terms of the new Statute.

The Administrator may, with my approval, appoint any other person with suitable knowledge and experience to assist him in the performance of these functions.

REMUNERATION

In terms of Section 49D of the Act, *the Minister, in consultation with the Minister of Finance, must determine the remuneration and allowances to be paid to*

- (a) *the administrator appointed in accordance with section 49B or 49G; and*
 - (b) *any other person appointed in accordance with section 49C.*
- (2) *All costs associated with the appointment of an administrator appointed in accordance with section 49B or 49G; and any other person contemplated in subsection (1) (b), are for the account of the public higher education institution concerned.*

COMPLETION AND REPORT

The Administrator will report to the Minister of Higher Education and Training, or any delegated officials. Besides any other forms of communication or interaction with the Minister or the Department, the Administrator must at the completion of the appointment period, submit a written report to the Minister within 30 days.

The Administrator will commence duties on the date of publication of this notice.



Dr GNM Pandor, MP

Minister of Higher Education and Training

Date: 26-4-2019

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