



REPUBLIC OF NAMIBIA

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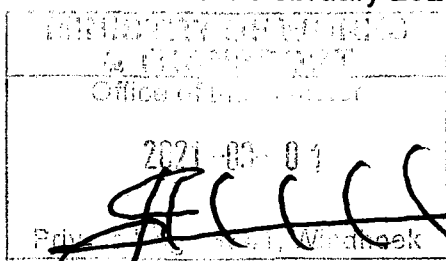
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APPOINTMENT OF MEMBERS OF THE TRANSPORTATION COMMISSION OF NAMIBIA (TCN): A CLARIFICATION OF SOME ISSUES: POLICY STATEMENT BY JOHN MUTORWA, MP, AND MINISTER OF WORKS AND TRANSPORT (MWT), MONDAY, 1 MARCH 2021, WINDHOEK, NAMIBIA.

- 1. The term of Office of the previous Transportation Commission of Namibia (TCN), officially and practically expired on 31 August 2020.
2. The Transportation Commission of Namibia, is a Statutory Body, as per the Road Traffic and Transport Act, 1999 (Act Number 22 of 1999), as amended. Section 3(1) (a) of the aforementioned Act, provides that: the Commission shall consist of: "a Chairperson and a Vice-Chairperson, appointed by the President, from amongst persons, who are enrolled as Legal Practitioners, under the Legal Practitioners Act, 1995 (Act Number 15 of 1995) and who have practised, as such, for a period of at least Five years," (my own underlining for emphasis).
3. Furthermore, Section 3 (b), of the Road Traffic and Transport Act, 1999, provides the following: "not more than three other Members, appointed by the President, from amongst persons, who have experience of and shown ability, in connection with transportation, industrial, commercial or financial matter or in the conduct of public affairs," (my own underlining for emphasis).

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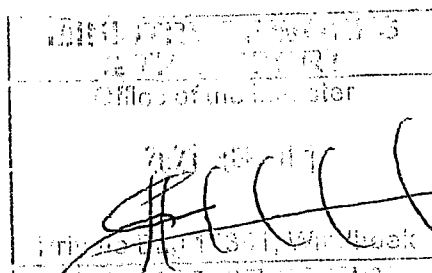
4. With regard to the term of office of the Commission, Section 4(1) of the Road Traffic and Transport Act, 1999, is unambiguously crystal clear, when the following is stated: "a Member of the Commission shall hold Office, for such period, not exceeding Five (5) years, as the President may determine, at the time of his or her appointment, but may be re-appointed, at the expiration of that period," (my own underlining for emphasis).
5. After, the Ministry of Works and Transport (MWT), through its Department of Transport (DoT), has finalized all the legally required internal administrative procedures and necessary recommendations, H.E. the President of the Republic of Namibia, appointed the following FIVE (5) persons, as the new Members of the Transportation Commission of Namibia; with effect from 1 September 2020 to 31 May 2025:
 - 5.1 Ms Rachel NATHANIEL-KOCH (Chairperson);
 - 5.2 Dr James VICTOR WILLIAM (Deputy Chairperson);
 - 5.3 Mr Johannes N. THIKUSHO (Member);
 - 5.4 Dr Helvi N. PETRUS (MEMBER);
 - 5.5 Mr J.N. SHIPEPE (Member).
6. Thereafter, and in order to scrupulously fulfil the specific requirements of Section 3 (5) of the Legal Practitioners Act, 1995 (Act number 15 of 1995), the MWT submitted all the Five (5) Names, of the newly appointed Members of the Transportation Commission of Namibia (TCN), to the Directorate of Legislative Drafting (DLD), within the Ministry of Justice (MoJ), for the purpose of having the said FIVE (5) Names of the Members of the said Transportation Commission of Namibia (TCN), gazetted in the Government Gazette.
7. Upon numerous enquiry, about the progress of the gazetting process of the duly and validly appointed FIVE (5) Members of the Transportation Commission, a letter, dated 1 February 2021, was received from the Legislative Drafting Directorate of the Ministry of Justice. Paragraph 3 of the mentioned 1 February 2021 letter, pertinently states the following: "on the



presumption that: the appointed Four (4) Members of the Commission, have been validly appointed, kindly find attached hereto, the notice, as requested, together with a certified copy, for publication purposes,” (my own underlining for emphasis). The referred to FOUR (4) Members of the Commission are the following persons:

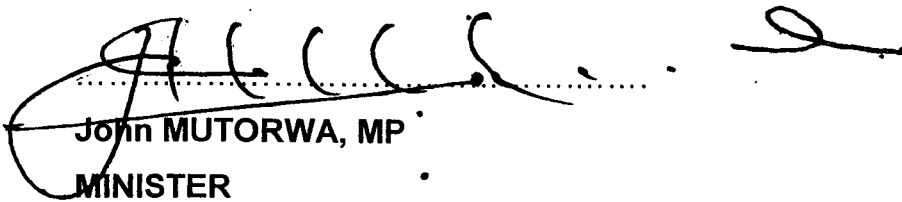
- 7.1 Dr James VICTOR WILLIAM (Deputy Chairperson);
- 7.2 Mr Johannes N. THIKUSHO (Member);
- 7.3 Dr Helvi N. PETRUS (MEMBER);
- 7.4 Mr J.N. SHIPEPE (Member).

- 8. Furthermore, and after a verbatim quotation of SECTION 6 (1) of the Road Traffic and Transport Act, 1999, the same 1 February 2021 letter, categorically states the following in its PARAGRAPHS 5 and 6, respectively: “This means that only the Chairperson can convene a meeting of the Commission and the gazetted Members of the Commission, will not be able to convene legally valid Meetings of the Commission. Furthermore, we advise your office, to approach the Office of the Attorney General, who is the principal Government Advisor, for further advice on this matter;” (quoted from Paragraphs 5 and 6: 1 February 2021 Legislative Drafting’s letter).
- 9. In the meantime, it has been confirmed and established that: the FOUR (4) Names, mentioned in PARAGRAPH 7 (a), (b), (c) and (d) of this, 1 March 2021, Policy Statement, was announced and gazetted in the Government Gazette of the Republic of Namibia, on 15 February 2021, Number 7459, Government Notice 19.
- 10. The Attorney General of the Republic of Namibia is currently finalizing his Legal Advice with regard to the correct interpretation of Section 6(1) of the Road Traffic and Transport Act, 1999. The question is: whether the Deputy Chairperson of the Transportation Commission of Namibia is legally empowered “to convene legally valid Meetings of the Commission?”



11. With regard to the issue whether Ms Rachel NATHANIEL-KOCH has fulfilled the applicable requirements of the Legal Practitioners Act, 1995; particularly SECTION 3(5), thereof, the MWT 's advice was and still is: Ms NATHANIEL-KOCH must urgently clarify the issues at stake, directly with the relevant Authorities, within the Ministry of Justice; and revert back to the MWT, at least by 15 March 2021.

12. I thank you all!



John MUTORWA, MP
MINISTER

MONDAY, 1 MARCH 2021, 11H00, WINDHOEK, NAMIBIA

