



THE KENYA GAZETTE

Published by Authority of the Republic of Kenya

(Registered as a Newspaper at the G.P.O.)

Vol. CXIII—No. 34

NAIROBI, 8th April, 2011

Price Sh. 50

GAZETTE NOTICE NO. 3929

OFFICE OF THE PRIME MINISTER

ESTABLISHMENT OF POLICY STEERING COMMITTEE ON
PERFORMANCE MANAGEMENT

NOTIFICATION

IT IS notified for general information that the Prime Minister of the Republic of Kenya, has established a Policy Steering Committee on Performance Management in the Government consisting of the following:

Permanent Secretary, Office of the Prime Minister—(*Chairman*);

Members:

Permanent Secretary, Office of the Deputy Prime Minister and Ministry of Finance;

Permanent Secretary, Office of the Deputy Prime Minister and Ministry of Local Government;

Permanent Secretary, Ministry of Planning, National Development and Vision 2030;

Permanent Secretary, Ministry of State for Public Service;

Permanent Secretary, Performance Contracting Department;

Secretary, Public Service Commission;

Director General, Vision 2030 Delivery Secretariat;

Registrar of the High Court;

Clerk of the National Assembly;

James Ongwae, Chairman Panel of Experts on Review of Performance Contracting;

Patrick Obath, Kenya Private Sector Alliance;

Wanjiru Gikonyo, The Institute for Social Accountability;

Joint Secretaries:

Secretary Administration, Office of the Prime Minister;

Dan Omino, Consultant

Functions of the Policy Committee on Performance Management:

The Policy Steering Committee on Performance Management will have overall responsibility in the management and co-ordination of Performance Management in the entire Government including Performance Management tools such as Performance Contracting and Performance Appraisal Systems. It will also provide policy direction

and strategic leadership in the improvement of performance in the three arms of Government.

More specifically, the Policy Steering Committee on Performance Management shall:

- (a) Provide oversight and coordination in the development and implementation of Performance Management in the three arms of Government including all Performance Management tools such as Performance Contracting and Performance Appraisal Systems;
- (b) Co-ordinate the process of Performance Contracting in the Public Service including development of its policy framework in the Government;
- (c) Ensure linkages of Performance Management processes in the three branches of the National Government and the devolved Governments
- (d) Develop an appropriate policy framework to facilitate implementation of Performance Management in the Public Service;
- (e) Advise Government on enabling legal and institutional framework to support implementation of Performance Management;
- (f) Submit quarterly progress reports on the development and implementation of Performance Management in the Public Service to the Rt. Hon. Prime Minister;
- (g) Commission any Research and Development and liaise with other bodies locally or internationally to pursue improvement in the Performance Management system in Government;
- (h) Carry out any other duties as may be prescribed to the committee from time to time.

Meetings:

In the performance of its functions the Policy Steering Committee on Performance Management shall:

- (a) Hold such number of meetings at such places as it shall deem appropriate;
- (b) Regulate its meetings as it shall deem appropriate;
- (c) Co-opt members as it shall deem appropriate.

Technical Implementation Committee:

The Steering Committee shall be supported by a Technical Implementation Committee based at the Office of the Prime Minister

and shall be headed by a Chairman, which shall be responsible to the Committee for:

- (a) General administration of the Committee's Secretariat;
- (b) Preparing reports on behalf of the Committee
- (c) Implementing and assisting the Committee to carry out its functions; and
- (d) Undertaking any other functions incidental to the foregoing.

The Technical Implementation Committee will comprise of personnel drawn from public and private practice as may be deemed appropriate.

This notice supersedes Gazette Notice No. 2431 of 2005 on the Establishment of Performance Contracting Steering Committee and Gazette Notice No. 3171 of 2007 on the Establishment of a National Performance Management Steering Committee.

Dated the 22nd March, 2011.

R. A. ODINGA,
Prime Minister.

GAZETTE NOTICE No. 3930

THE TRUTH, JUSTICE AND RECONCILIATION ACT

(No. 6 of 2008)

THE TRUTH JUSTICE AND RECONCILIATION (HEARING PROCEDURE) RULES

PURSUANT to section 29 of the Truth, Justice and Reconciliation Act, 2008, the Truth Justice and Reconciliation Commission makes the following Rules to govern the procedure at its hearings:

1. These Rules may be cited as the Truth, Justice and Reconciliation (Hearing Procedure) Rules.

2. These Rules shall come into force on the date of publication in the Gazette.

3. In the Rules, unless the Context otherwise requires—

“Act” means the Truth, Justice and Reconciliation Act, 2008;

“Commission counsel” means counsel appointed by the Commissioners to assist the Commissioners;

“Commission offices” means the headquarters of the Commission located in Nairobi and any other office that the Commission may designate as its office either generally or for a particular purpose;

“Commission staff” means staff hired by the Commission or with the authority of the Commission are performing functions of the Commission;

“document” means any record made or stored in physical or electronic form and include written, electronic, audiotape, videotape, digital reproductions, photography, maps, graphs, microfiche or any other data and information recorded or shared by means of any device;

“interested person” includes participant, party or witness

“participant” means any person or organization who is given the right by the Commission to participate in hearings held by the Commission;

“person” means a natural person;

“witness” means all persons and organizations giving evidence or testifying before the TJRC, including survivors, victims, experts and perpetrators;

“organization” means any group, institution, government or agency or other representative entity that is not a natural person;

“party” means a person granted full or partial standing as a party by the Commissioners.

4. The Commission shall conduct the following types of hearings—

- (a) individual hearings, which shall focus on individual cases, and the experience of individuals relating to violations being investigated by the Commission.

(b) institutional hearings, which shall focus on the role played by an institution or institutions relating to violations being investigated by the Commission.

(c) thematic hearings, which shall focus on types of violations and other broad themes relating to the mandate of the Commission.

5. (1) Subject to the Act, the conduct of and the procedure to be followed during the hearings shall be under the control and discretion of the Commission.

(2) The Commission shall sit on such days, at such times and venue, as it may determine and shall conduct its hearings in accordance with these rules.

6. (1) The languages of the Commission shall be Kiswahili or English.

(2) The Commission shall, taking into account all the circumstances, provide competent interpreters for spoken or sign language, as the case may be, for parties or witnesses appearing before it.

7. (1) Any person or organization wishing to participate in the hearings shall make an application in the prescribed form to the Commission at least fourteen days before the date of the hearing they wish to participate in:

Provided that the Commission may where the circumstances of any particular case demand, allow an application to be made within a shorter time limit.

(2) The Commission may upon scrutiny of statements and questionnaires completed by the public, invite persons or organizations to participate in its hearings.

(3) The Commission may summon any person, including a serving or retired officer, whether adversely mentioned or not, to appear in person and testify, produce any document, thing or information relevant to the Commission's mandate.

(4) The Commission shall determine any special conditions under which a person or organization may participate in its hearings and the parts of the hearings that a person or organization may participate in.

(5) The Commission shall set the priority for participation based on—

(a) whether the person or organization is directly and substantially affected by the matters covered by the Commission's mandate; or

(b) the relevance of the testimony in relation to the mandate of the Commission.

(6) The Commission may in the interests of justice revoke the right of a person or organization to participate in its hearings.

8. (1) A witness shall give his evidence or testimony under oath or upon affirmation unless otherwise directed by the Commission.

9. (1) The Commission shall ensure that it preserves the integrity of witnesses at its hearings and maintains its standing as a non-judicial, non-retributive and non-adversarial form to foster truth, justice, healing and national reconciliation.

(2) The witnesses who are to testify before the Commission may be accompanied by a friend or family member of their choice during the proceedings, subject to reasonable limitations imposed by the Commission.

(3) The Commission may request witnesses and other participants to advise the Commission on the names and particulars of any other persons whom they believe have relevant information relating to the mandate of the Commission.

10. (1) The hearings of the Commission shall be conducted by a hearing panel and the Chairperson and Vice-Chairperson shall determine the composition of each hearing panel.

(2) A hearing panel shall consist of not less than three Commissioners, of whom one shall be an international Commissioner, and not less than one third of the composition of each panel shall be of either gender:

Provided that the Chairperson and Vice-Chairperson, may constitute a hearing panel whose composition differs from that

specified herein as long as the other Commissioners and all witnesses appearing before the panel are informed in writing of the reason for such deviation.

11. (1) Any interested person may, at least seven days prior to a hearing, request a member of the hearing panel to disqualify himself from the hearing and set forth the reasons for the request, and provide supporting documents, where applicable.

(2) Upon receipt of a request for disqualification, the Chairman shall establish a panel of three Commissioners to consider the request, but the panel shall not include the Commissioner who is the subject of the request, and shall include at least one international Commissioner and a Commissioner of the other gender.

(3) In the case of a request for disqualification of the Chairman, the Vice-Chairperson shall constitute the panel to determine such a request.

(4) When determining whether to grant a request for disqualification, the panel constituted under paragraph (3) shall consider the interests and comfort of witnesses appearing before the Commission, and actual and perceived conflicts of interest, and shall be guided by a commitment to fairness and impartiality.

(5) The decision of the panel determining requests for disqualifications shall be final.

12. (1) The Commission may examine and consider any source or type of information it considers relevant to its inquiries.

(2) The Commission may make site visits to any location to ascertain and clarify any fact, issue or other matter arising out of its processes.

(3) The Commission shall have access to any site of relevance to its work, and collect information from such sites, subject to the negotiation for permission under the Protected Areas Act.

(4) The Commission may request the assistance of the police and other Government officials to facilitate its work and enforce its powers under this provision.

13. (1) The Commission shall arrange with the relevant Government agencies for protection for persons placed in danger by reason of their testimony (whether already given or not), or other interaction with the Commission.

(2) Any individual or representative of an individual or organization may make an application in writing to the Commission for protection.

(3) A person who requires protection may present himself to the Commission offices and make a request for protection, setting forth the reasons for such request, to an officer of the Commission.

(4) The Commission shall make arrangements to address any concerns of witnesses arising out of their testimony, including the need to receive counselling before or after their testimony, or both before or after giving their testimony.

14. (1) Upon application, and in accordance with section 25(2) of the Act, the Commission may order that no person shall publish the identity for any witness.

(2) For the purposes of the hearing, an order under paragraph (1) may include the right of any person to have his identity disclosed only by way of non-identifying initials, and, if the Commission so orders, the right to testify before the Commission *in camera*, together with any other privacy measures which the Commission may grant.

(3) In making such a determination under paragraph (2), the Commission shall consider the reasonable privacy and security concerns of such a person, as well as the need for the Commission's proceedings to be public and transparency.

(4) The media shall ensure that any reports relating to a person granted personal confidentiality or allowed to testify anonymously, avoid references that might reveal the identity of the person.

(5) No photographic or other reproduction of a person granted the right to testify anonymously shall be made by any person or organization other than the Commission, except with the express written permission of such person.

(6) The Commissioners and staff shall not disclose the identity of protected witnesses or information included in a personal

confidentiality order, and any disclosure shall cause disciplinary or termination proceedings against that Commissioner or staff member.

(7) Proceedings under paragraph (6) shall not be a bar to criminal or civil proceedings against the offending Commissioner or staff member.

(8) Any person who testifies anonymously shall take an oath or make affirmation to tell the truth using the non-identifying initials given for the purpose of their testimony and such an oath shall be regarded as equivalent to an oath given using that person's full and proper name.

(9) Any participant or witness may apply to the Commission to have financial or personal information which is not relevant to the subject matter of the hearing removed from documents proposed to be introduced into evidence.

(10) When determining whether to remove such information, the Commission shall balance the legitimate privacy and personal interests of the applicant against the general principle that Commission proceedings shall be public and transparent.

15. (1) A person may apply to the Commission to be considered for amnesty in accordance with Part III of the Act.

(2) An application for amnesty shall—

(a) be in writing;

(b) state the violation for which the amnesty is sought;

(c) state the reasons why the applicant believes he or she should be considered for amnesty; and

(d) state any other relevant information that the applicant may wish to bring to the attention of the Commission regarding the application for amnesty.

(3) The Commission may request an applicant to provide additional information where it considers it necessary.

16. (1) A person may apply to the Commission to be considered for reparation in accordance with Part IV of the Act on such terms as prescribed by the Commission.

(2) An application for reparation shall—

(a) be in writing; and

(b) state the violation for which the reparation is sought.

17. (1) The Commission may convene public and private consultations to hear submissions relating to any matter raised at any phase of the public or *in camera* hearings.

(2) The participants in the consultations under paragraph (1) shall include any persons whom the Commission considers may contribute to the process.

(3) The Commission may invite or grant leave to a person, organization or state agency to submit, in writing or orally, any observations on any issue it considers desirable for the proper understanding or a particular issue the discovery of truth, the fulfillment of justice, or in the furtherance of national unity or reconciliation.

18. (1) The hearings of the Commission shall be open for media coverage, including live television coverage, except in respect of hearings the Commission decides to hold *in camera*.

(2) The media may contact the Commission to make prior arrangements for coverage.

(3) The Commission may bar the media from the testimony of a witness granted confidentiality status, taking into account the reasonable interests of the witness, the public and the general principle that the Commission's proceedings shall be public and transparent.

(4) Whenever the Commission decides to proceed *in camera*, or issue an order forbidding publication, disclosure or broadcasting of its proceedings, it shall issue an order in writing to all media outlets which have been permitted to cover proceedings under this Rule.

(5) Media representatives shall abide by these Rules relating to confidentiality.

(6) The Commission shall deal with a breach of the rules relating to confidentiality as it sees fit, which may include exclusion from part of or an entire hearing, or exclusion from some or all future hearings.

19. (1) The Commission shall not be bound by the provisions of the Evidence Act but shall be guided by the ordinary rules of evidence and procedure, including the rules of natural justice.

(2) The Commission may recommend the prosecution of any person in any matter which in its view should be handled by the courts, and in so doing shall be guided by existing statutes and support the recommendation with evidence showing that there are reasonable grounds to believe that a crime was committed by that person.

20. (1) The Commission shall call and examine witnesses during a hearing.

(2) When examining the witnesses, the Commission shall—

(a) consider the need to preserve the integrity of the witnesses and their testimony;

(b) be sensitive to the concerns of the victims; and

(c) maintain the non judicial, non adversarial, and national reconciliatory nature of the process of the Commission.

(3) Subject to compliance with rule 7(1), interested parties, including adversely mentioned persons or their representatives, shall at the individual, thematic and institutional hearings have a right of reply.

(4) Cross examination of the victims or witnesses for the victim shall be limited to hearings relating to applications for amnesty or requests for reparation.

(5) The cross examination under paragraph (4) shall, in any case, be limited to the actual interest of the person or organization requesting for amnesty or being requested for reparations.

(6) The Commission shall not allow the cross examination of witnesses in circumstances other than those set out in paragraph (4).

(7) Notwithstanding paragraph (4), the Commission may, suspend or limit the cross examination during a hearing, if it has reasons to believe that—

(a) a person is conducting the cross examination in bad faith;

(b) the witness being cross examined is being unduly stressed or otherwise suffering harm as a result of the cross examination; or

(c) it is prudent and in the interest of truth, justice and reconciliation to limit or suspend the cross examination.

21. (1) A participant or witness shall provide the Commission with any documents which he intends to submit as an exhibit or otherwise refer to during the hearings not less than seven days before the hearing.

(2) The Commission may make copies of any relevant documents produced by a witness.

(3) The Commission shall inform any person adversely mentioned in a document submitted as evidence to the Commission for the purpose of a hearing and allow the person reasonable time to study and respond on the document before the hearing.

22. A member of staff of the Commission may interview any person who has information or documentary evidence relating to the subject matter of a hearing, and may recommend to the Commission that such person be given the right to participate or testify at a hearing.

23. (1) All participants and their representatives shall abide by these Rules.

(2) The Commission shall deal with a breach of these Rules as it considers fit, including, but not limited to, revoking the right of participation, and imposing restrictions on the further participation in or attendance at (including exclusion from) the hearing by any participant, representative, individual, organization or members of the media.

(3) The Commission may cite for contempt any person or organization refusing to fully comply with a summons to appear, or to produce information, or otherwise obstructs the work of the Commission in any manner.

(4) The Commission may request the assistance of the police and other Government agencies and officials, including the judiciary, in enforcing relevant sanctions against any persons conducting themselves contrary to the provisions of these Rules.

24. The Truth Justice and Reconciliation (Hearing Procedure) Rules published on the 20th August, 2010 are revoked.

Made on the 6th April, 2011.

T. N. WANJALA,
*Acting Chairperson,
Truth, Justice and Reconciliation Commission.*