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## GENERAL NOTICES

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### NOTICE 1539 OF 2008

#### DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

#### EXHUMATION POLICY: CASES OF MISSING PERSONS REPORTED TO THE TRUTH AND RECONCILIATION COMMISSION (TRC)

#### 1. INVITATION TO SUBMIT COMMENTS ON PROPOSED EXHUMATION POLICY ON CASES OF MISSING PERSONS REPORTED TO THE TRC

1.1 Interested parties are hereby invited to submit to the Director-General: Justice and Constitutional Development in writing on or before Friday 20 February 2009, comments on the proposed Exhumation Policy, set out in the Annexure hereto. Comments must be marked for the attention of Dr M.J. Seekoe, Chief Director: TRC Unit; and –

- (a) if forwarded by post, be addressed to –  
The Director-General: Justice and Constitutional Development  
Private Bag X81  
PRETORIA  
0001
- (b) if delivered by hand, be delivered at –  
Momentum Building, Room 1439, East Tower  
c/o Pretorius Street and Prinsloo Street  
PRETORIA
- (c) if faxed, be faxed to 012 – 357 8570.

- (d) if sent by e-mail, be sent to [vijacobs@justice.gov.za](mailto:vijacobs@justice.gov.za)  
[mseekoe@justice.gov.za](mailto:mseekoe@justice.gov.za).

1.2 This invitation and the attached Exhumation Policy will also be published in the *Gazette* in isiZulu and Sesotho towards the end of January 2009.

## **2. BACKGROUND INFORMATION**

The following background information is hereby furnished in order to assist interested parties to comment on the proposed Exhumation Policy.

The Promotion of National Unity and Reconciliation Act, 1995 (Act No. 34 of 1995), mandated the TRC to make recommendations to the President. The TRC recommended, among others, the establishment of a task team to investigate the nearly 500 cases of missing persons that were reported to the TRC, but remained unsolved. The President endorsed this recommendation in April 2003, upon tabling the TRC's Final Report in Parliament.

A Missing Persons Task Team was established in the Priority Crimes Litigation Unit (PCLU) in the National Prosecuting Authority (NPA) in 2004. The Task Team has since been conducting investigations into cases of missing persons who disappeared in political circumstances between 1 March 1960 and 10 May 1994. To date 54 exhumations have taken place.

The need was identified to develop a policy to ensure that the exhumation process in respect of the cases of missing persons reported to the TRC, is conducted in a coordinated, regulated manner within the framework of the service providers' mandates and the relevant legislation.

**DR MJ SEEKOE  
CHIEF DIRECTOR: TRC UNIT  
DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

**ANNEXURE****EXHUMATION POLICY:  
CASES OF MISSING PERSONS REPORTED TO THE  
TRUTH AND RECONCILIATION COMMISSION****1. GLOSSARY**

**cases of missing persons** means the cases of persons reported to the Truth and Reconciliation Commission (TRC) as disappeared or missing;

**DNA** means the deoxyribonucleic acid or deoxyribose nucleic acid that carries the genetic information in a cell and which is a widely used investigative tool in the field of forensics;

**forensic anthropology** means the application of the science of physical anthropology to the legal process and includes the identification of skeletal, badly decomposed, or otherwise unidentified human remains;

**forensic archaeology** means the application of archaeological techniques and approaches in the legal field, particularly the enforcement of criminal law;

**Freedom Park Trust** means the body charged with the development of Freedom Park, a National Legacy Project legislated by the National Heritage Resources Act, 1999 (Act No. 25 of 1999), with the vision to articulate an overall, multi-faceted heritage, which will be brought together to represent, in a visible, experiential and interactive manner, South Africa's developing national consciousness and identity;

**National Director of Public Prosecutions (NDPP)** means the National Director of Public Prosecutions appointed in terms of section 179(1)(a) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) (the Constitution);

**National Intelligence Agency (NIA)** means the National Intelligence Agency, the establishment of which is regulated by the Intelligence Services Act, 2002 (Act No. 65 of 2002);

**National Prosecuting Authority (NPA)** means the National Prosecuting Authority established in terms of section 179 of the Constitution and regulated by the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998);

**National Treasury** means the National Treasury established and regulated by the Public Finance Management Act, 1999 (Act No. 1 of 1999) (as amended);

**Priority Crimes Litigation Unit (PCLU)** means the Priority Crimes Litigation Unit established in the Office of the NDPP and headed by a Special Director in terms of Proclamation No. 46 of 23 May 2003 in *Government Gazette* No. 24876;

**South African Heritage Resources Agency (SAHRA)** means the organisation established by section 11 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999) to coordinate the identification and management of the national heritage resources;

**South African National Defence Force (SANDF)** means the single Defence Force that was established by section 224(1) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993) and regulated by the Defence Act, 2002 (Act No. 42 of 2002);

**South African Police Service (SAPS)** means the single Police Service established as provided for in section 199(1) of the Constitution. The Service is regulated by the South African Police Service Act, 1995 (Act No. 68 of 1995);

**Truth and Reconciliation Commission (TRC)** means the Commission that was established in terms of the Promotion of National Unity and Reconciliation Act, 1995 (Act No. 34 of 1995), with the specific purpose of promoting national unity and reconciliation in a spirit of understanding, which goes beyond the conflicts and divisions of the past.

## 2. PURPOSE

- 2.1 The purpose of this policy is to ensure that the exhumation process in respect of the cases of missing persons reported to the TRC, is conducted in a coordinated, regulated manner within the framework of the service providers' mandates and the relevant legislation.

- 2.2 The absence of proper, clear policy to guide the exhumation process resulted in a number of problems and challenges arising, including:
- (a) Uncertainty surrounding the roles/mandates of the NPA and the SAPS in respect of:
    - (i) managing and directing the investigation into the cases of missing persons and the exhumation of mortal remains; and
    - (ii) the actual conducting of the investigation into the cases of missing persons and the actual exhumation of mortal remains.
  - (b) A lack of clarity surrounding the roles of the various departments/bodies whose services are required at specific phases of the exhumation process.
  - (c) Unclear delegations in respect of financial responsibility regarding specific services.
  - (c) A lack of coordination of the activities of the service providers, resulting in practical and logistical difficulties.
- 2.3 The Minister for Justice and Constitutional Development (the Minister), as political head of the department mandated to monitor the implementation of the TRC recommendations and report to Cabinet and Parliament on an ongoing basis, consequently set in motion a process to develop proper, clear policy to guide the process.
- 2.4 Under the guidance of the Minister, a series of consultative meetings were held between the DoJ and CD and the relevant role-players. This policy is the result of this process.

### 3. BACKGROUND

- 3.1 In terms of section 4(f), (g) and (h) of the Promotion of National Unity and Reconciliation Act, 1995 (Act No. 34 of 1995) the TRC was mandated to make recommendations to the President. On 21 March 2003, the TRC handed over to the President the Codicil to its interim report and thereby brought finality to its specific processes. On 15 April 2003, the President tabled the report in the Joint Sitting of Parliament, stating, amongst other things, that the Department of Justice and Constitutional Development (DoJ and CD) will monitor the implementation of all these programmes, and that it will report to Cabinet on an ongoing basis.
- 3.2 The President also stated that the NDPP and relevant departments will be requested to deal with matters relating to people who are unaccounted for, *post mortem* records and policy with regard to the burial of unidentified persons.
- 3.3 On 23 May 2003 a Special Director was appointed by Proclamation to head the PCLU and to manage and direct the investigation and prosecution of crimes against humanity, genocide and war crimes, as contemplated in the Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002), and serious national and international crimes, which include acts of terrorism and sabotage, high treason, sedition, foreign military crimes committed by mercenaries, or such other priority crimes to be determined by the NDPP.
- 3.4 In terms of the Prosecution Policy (as amended) of the NPA, the PCLU shall be responsible for overseeing investigations and instituting prosecutions in respect of crimes arising from conflicts of the past. The PCLU shall be assisted in the execution of its duties by a senior designated official of the following state departments:



- (a) The NIA
- (b) The Detective Division of the SAPS
- (c) The DoJ and CD

3.5 The PCLU commenced its work in respect of the cases of missing persons in late 2004. Upon locating the burial sites and obtaining the necessary permits from the SAHRA, the exhumations of the remains were conducted. Thereafter forensic testing, including DNA-testing, was conducted by local and international forensic anthropologists/archaeologists to identify the remains. Following this process the mortal remains were handed over to the families for reburial.

#### 4. OBJECTIVES OF THE POLICY

The objectives of the policy are to -

- (a) provide an all-encompassing, inclusive framework within which the exhumation process must take place;
- (b) identify service providers in the exhumation process and clarify duties to ensure that the service providers operate within the ambit of their particular mandates;
- (c) coordinate the activities and responsibilities of all service providers;
- (d) provide for the establishment of an Exhumation Committee, comprising the key service providers, to coordinate the exhumation process;
- (e) ensure that sound heritage principles are promoted, through various forms of memorialisation of exhumed mortal remains;
- (f) ensure that the dignity of mortal remains is preserved throughout the exhumation process, in line with international best practice guidelines.
- (g) ensure that the families involved are interacted with throughout the exhumation process;

- (h) facilitate healing and closure for the families involved through appropriate handing over of the remains and any other assistance identified by the Exhumation Committee;
- (i) ensure that the exhumation process, including identification and actual exhumation, is conducted in accordance with international best practices and all relevant legislation; and
- (j) regulate expenditure in respect of the exhumation process.

## 5. SCOPE OF APPLICATION

- 5.1 The policy covers the exhumation process in respect of the remains of the disappeared and missing persons whose cases were reported to the TRC but remained unsolved.
- 5.2 The TRC divided these cases of missing persons into five categories. For purposes of this policy, the following four are applicable:
  - (a) Enforced disappearances.
  - (b) Missing in exile.
  - (c) Missing during periods of unrest.
  - (d) Cases of indeterminate cause.

## 6. THE EXHUMATION PROCESS

The exhumation process comprises the following main phases:

- (a) Investigation into the circumstances surrounding the disappearance of the missing person.
- (b) Location of the burial site.
- (c) Pre-digging preparations.
- (d) Conducting of the actual exhumation.
- (e) Identification of the mortal remains through forensic testing.
- (f) Handing over of the mortal remains to the families concerned.

- (g) Reburial of the mortal remains by the families.
- (h) Memorialisation of the old and new burial sites and ongoing conservation.
- (i) Referral of cases to the relevant prosecution committee to make decisions regarding prosecution.

## 7. IDENTIFIED SERVICE PROVIDERS

7.1 The service providers identified and recorded in this policy do not constitute a closed list, as the services of other service providers shall be requested if and when necessary.

### 7.2 The Exhumation Committee

7.2.1 The Exhumation Committee shall support and assist the *ad hoc* service providers in the carrying out of their activities.

7.2.2 The Exhumation Committee (the Committee) shall comprise the following key service providers:

- (a) The DoJ and CD.
- (b) The PCLU of the NPA.
- (c) The SAPS.
- (d) The Department of Arts and Culture.
- (e) The SAHRA.
- (f) The Freedom Park Trust.

7.2.3 The Committee shall be chaired by the DoJ and CD, as the department mandated to monitor the implementation of the TRC recommendations and report to Cabinet and Parliament on an ongoing basis.

#### 7.2.4 The duties of the Committee are to -

- (a) coordinate, monitor and support activities carried out in respect of the exhumation process;
- (b) convene regular meetings between the Committee members, as well as between the Committee and the *ad hoc* service providers, with a view -
  - (i) to facilitate dialogue between the various service providers;
  - (ii) to provide the platform for problems to be discussed and solved.
- (c) intervene where necessary to ensure procedures and roles identified are adhered to;
- (d) identify problem areas and recommend solutions timely to ensure smooth running of the process;
- (e) monitor the implementation of said solutions;
- (f) make decisions in respect of matters in dispute;
- (g) receive progress reports from service providers;
- (h) compile submissions to the Minister for Justice and Constitutional Development (the Minister) with a view to obtain direction in respect of sensitive/problematic cases;
- (i) report to the Minister on an ongoing basis regarding progress on implementation of the policy; and
- (j) report to the Minister on his or her request, on specific matters related to the exhumation process.

### 7.3 **The *ad hoc* service providers**

7.3.1 The *ad hoc* service providers shall render the necessary services at the relevant phases of the exhumation process.

7.3.2 The *ad hoc* service providers are -

- (a) The Department of Social Development.
- (b) The Department of Home Affairs.
- (c) The Department of Health.
- (d) The National Treasury.
- (e) The NIA.
- (f) The Department of Foreign Affairs (in cases where burial sites of missing persons are in a foreign country).
- (g) The SANDF.

## 8. AREAS OF RESPONSIBILITY OF THE SERVICE PROVIDERS

8.1 The relationship between the service providers should be one of efficient and close cooperation, with mutual respect for the distinct functions and operational independence of each profession.

8.2 Each service provider shall present a progress report in respect of its areas of responsibility to the Chairperson of the Exhumation Committee, on a time schedule as determined by the Committee.

8.3 The **DoJ and CD** shall:-

- (a) ensure that reparations in the form of a once-off individual grant are paid from the President's Fund to the families, where applicable;
- (b) liaise with the families of the missing persons;
- (c) monitor the progress on the implementation of the policy and report to the Minister; and
- (d) report annually through the Minister to Cabinet and Parliament on the implementation of the TRC recommendations.

8.4 The **PCLU of the NPA** shall manage and direct the investigation into the cases of missing persons and institute prosecutions, where appropriate in terms of its prosecution policy.

8.5 **The SAPS** shall -

- (a) under the management and direction of the PCLU -
  - (i) conduct investigations into the cases of missing persons;
  - (ii) conduct the exhumations through the appropriate forensic specialists; and
  - (iii) facilitate the forensic testing and identification of the mortal remains by the appropriate forensic specialists;
- (b) following identification and the conclusion of further forensic testing for crime investigation purposes, prepare the mortal remains for transfer to the Department of Arts and Culture;
- (c) liaise with the Department of Arts and Culture to facilitate the handing over of the remains to the families for reburial;
- (d) facilitate the issuing of death certificates by the Department of Home Affairs;
- (e) in the instance that investigations reveal the location of burial sites of missing persons in a foreign country, follow the mandated course of action in conjunction with the NPA, the Department of Foreign Affairs and SAHRA; and
- (f) ensure that all involved in the exhumation process respect the relevant legislation, professional ethics and best international practices that are applicable to the management, exhumation and identification of mortal remains.

8.6 The **Department of Arts and Culture** shall organise and conduct the handover of the mortal remains to the families, which includes facilitating the provision of associated undertaker services.

8.7 The **SAHRA** shall -

- (a) receive and process applications for exhumations;
- (b) issue permits for exhumations in terms of their mandate;
- (c) inspect the exhumed site with a view to memorialisation, in consultation with the Freedom Park Trust;
- (d) consider providing and erecting a memorial marker on both the old and new burial sites in consultation with the Freedom Park Trust;
- (e) conserve the burial site(s); and
- (f) in instances of exhumations of missing persons in a foreign country, the SAHRA shall follow the mandated course of action in conjunction with the NPA, the Department of Foreign Affairs and the SAPS.

8.8 The **Freedom Park Trust** shall -

- (a) inspect the exhumed site with a view to memorialisation, in consultation with the SAHRA;
- (b) provide an appropriate venue for the handover of remains to bereaved families;
- (c) facilitate the handover ceremony in a dignified manner;
- (d) consider providing and erecting a memorial marker on both the old and new burial sites in consultation with the SAHRA;
- (e) ensure memorialisation of the missing person in keeping with the mandate of the Freedom Park Trust, where applicable;
- (f) assist the Department of Social Development in providing grief or trauma counseling throughout the exhumation process; and
- (g) make recommendations with regard to the conservation of artifacts/objects found during the exhumation process.

8.9 The **Department of Social Development** shall -

- (a) provide grief or trauma counseling services throughout the exhumation process, to the bereaved family of a missing person whose remains are to be exhumed;
- (b) provide any other social benefits appropriate under the circumstances; and
- (c) provide support and post-trauma counseling services to the bereaved family to ensure a complete healing process.

8.10 The **Department of Home Affairs** shall –

- (a) assist during the investigation process in respect of, e.g. the tracing of any movements of persons and the provision of ID photographs; and
- (b) issue death certificates in respect of the exhumed mortal remains upon positive identification thereof.

8.11 The **Department of Health** shall -

- (a) provide an environmental health practitioner to attend the exhumation, if necessary; and
- (b) provide the necessary services and facilities in respect of exhumed mortal remains, if necessary.

8.12 The **National Treasury** shall receive and process the applications for Special Pension benefits by the surviving spouse or, if there is no surviving spouse, the surviving dependant of the missing person; on condition that these benefits are only payable if a person qualifies in terms of the Special Pensions Act, 1996 (Act No. 69 of 1996).



8.13 The **NIA** shall provide access to the PCLU and the SAPS to any records that may assist in the investigation into the cases of missing persons.

8.14 The **Department of Foreign Affairs** shall make the necessary consular intervention in cases where burial sites are located outside South Africa's borders.

8.15 The **SANDF** shall provide the necessary assistance and services in relevant cases, i.e. where a military burial is warranted.

## 9. **FUNDING**

All activities or duties shall be funded from the relevant service providers' budgets.

**NOTICE 1540 OF 2008****DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT****PROMOTION OF NATIONAL UNITY AND RECONCILIATION ACT, 1995:  
REGULATIONS ON EXHUMATIONS, REBURIALS AND SYMBOLIC  
BURIALS OF DECEASED VICTIMS****1. INVITATION TO SUBMIT COMMENTS ON PROPOSED  
REGULATIONS ON EXHUMATIONS, REBURIALS AND SYMBOLIC  
BURIALS OF DECEASED VICTIMS IN TERMS OF THE PROMOTION OF  
NATIONAL UNITY AND RECONCILIATION ACT, 1995**

1.1 Interested parties are hereby invited to submit to the Director-General: Justice and Constitutional Development in writing on or before Friday 20 February 2009, comments on the proposed Regulations set out in the Annexure hereto. Comments must be marked for the attention of Dr MJ Seekoe, Chief Director: TRC Unit; and –

- (a) if forwarded by post, be addressed to –  
The Director-General: Justice and Constitutional Development  
Private Bag X81  
PRETORIA  
0001
- (b) if delivered by hand, be delivered at –  
Momentum Building, Room 1439, East Tower  
c/o Pretorius Street and Prinsloo Street  
PRETORIA
- (c) if faxed, be faxed to 012 - 357 8570.

- (d) if sent by e-mail, be sent to [inbotha@justice.gov.za](mailto:inbotha@justice.gov.za) / [mseekoe@justice.gov.za](mailto:mseekoe@justice.gov.za)

1.2 This invitation and the attached Regulations will also be published in the *Gazette* in isiZulu and Sesotho towards the end of January 2009.

## 2. BACKGROUND INFORMATION

The following background information is hereby furnished in order to assist interested parties to comment on the proposed regulations:

The Promotion of National Unity and Reconciliation Act, 1995 (Act No. 34 of 1995) (the Act), established the Truth and Reconciliation Commission (the TRC). The Act, among others, mandated the TRC to make recommendations to the President with regard to the policy which should be followed or measures which should be taken relating to the granting of reparation to victims or the taking of other measures aimed at rehabilitating and restoring the human and civil dignity of victims. The TRC completed its mandate, whereafter it was dissolved in March 2002.

In compliance with section 27 of the Act, a Joint Committee was established to consider the recommendations of the TRC regarding reparation to victims. The decisions of the Joint Committee were approved by Parliament. The decisions of the Joint Committee are dealt with under the following four headings: Symbols and monuments; rehabilitation of communities; medical benefits and other forms of social assistance; and lastly, final reparation. In terms of section 27 of the Act, these decisions must be implemented by the President by making regulations. All amounts payable to victims by way of reparation must be provided for in the regulations and must be paid from the President's Fund, which was established in terms of the Act.

The attached Regulations fall within the scope of 'medical benefits and other forms of social assistance', while also serving as symbolic reparation, i.e.

'symbols and monuments'. The purpose of these Regulations is to assist the families of persons who went missing and died as a result of the conflicts of the past and who were reported to the TRC as being unaccounted for. These families will be able to attend exhumation procedures and will receive financial assistance with the reburial of the remains of such persons if they are found through investigations. The investigations conducted by the Missing Persons Task Team in the National Prosecuting Authority (NPA) have already led to the discovery of the remains of a number of missing persons.

It is believed that the dignity of the victims will be restored and healing will be promoted by means of the assistance provided to family members of the victims, as envisaged in the Regulations.

**DR MJ SEEKOE**  
**CHIEF DIRECTOR: TRC UNIT**  
**DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

## ANNEXURE

## GOVERNMENT NOTICE

## DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

No. R.

2008

## PROMOTION OF NATIONAL UNITY AND RECONCILIATION ACT, 1995

REGULATIONS ON EXHUMATION, REBURIAL OR SYMBOLIC  
BURIAL OF DECEASED VICTIMS

The President has, under section 27(2) of the Promotion of National Unity and Reconciliation Act, 1995 (Act No. 34 of 1995), and after the procedures prescribed in sections 4(f)(i) and 27(1) and (2) of the said Act were complied with, made the Regulations in the Schedule.

## SCHEDULE

## Definitions

1. In these Regulations, any word or expression to which a meaning has been assigned in the Act shall bear the meaning so assigned and, unless the context indicates otherwise-

“**assistance**” means the assistance provided for in regulation 3, read with regulations 4, 5 and 6 of the Regulations;

“**Accounting Officer**” means the officer appointed by the Minister under section 42(6) of the Act;

“**deceased victim**” means a person who was reported to the Commission as disappeared or missing and who, according to information at the disposal of the prosecuting authority obtained during an investigation into the disappearance, died

during the period 1 March 1960 to 10 May 1994 as a result of harm suffered as referred to in the definition of “victim” in section 1 of the Act.

“**Department**” means the Department of Justice and Constitutional Development;

“**Fund**” means the Fund established under section 42(1) of the Act;

“**Fund Administrator**” means the officer designated by the Minister under section 42(5) of the Act;

“**missing person**” means a person who was reported to the Commission as disappeared or missing and who allegedly disappeared or went missing during the period 1 March 1960 to 10 May 1994 as a result of the conflicts of the past;

“**prosecuting authority**” means the National Prosecuting Authority established in terms of section 179 of the Constitution of the Republic of South Africa, 1996, and as determined in the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998);

“**reburial**” means the burial of the physical remains of a deceased victim, which have been exhumed;

“**recipient**” means a person designated for purposes of regulations 4, 5 and 6 of the Regulations by the requester after consultation with the other relatives of the missing person or deceased victim;

“**relative of the missing person or deceased victim**” means-

- (a) a parent of, or a person who exercised parental control over, a missing person or deceased victim;
- (b) a person who was married to a missing person or deceased victim under any tradition, or a system of religious, personal or family law;
- (c) a child of a missing person or deceased victim, irrespective of whether or not the child was born in or out of wedlock or was legally adopted;
- (d) a person to whom a missing person or deceased victim had a duty of support in terms of the common law, customary law or legislation; or
- (e) a person who was a blood relation of a missing person or deceased victim;

“**requester**” means a relative of a missing person or deceased victim who requested assistance in terms of regulation 7 after having been designated by the other relatives of the missing person or deceased victim for this purpose;

“**request form**” means the form referred to in regulation 7;

“**symbolic burial**” means a ceremony during which the life and death of the deceased victim, whose physical remains cannot be found, are honoured; and

“the Act” means the Promotion of National Unity and Reconciliation Act, 1995 (Act No. 34 of 1995).

### **Authority responsible for application of Regulations**

2. (1) The Accounting Officer is responsible for the application of the Regulations.

(2) The Fund Administrator must, within one month after the commencement of the Regulations, submit to the Accounting Officer for approval in writing, administrative measures that will ensure adequate financial controls regarding the payment of assistance.

### **Forms of assistance**

3. (1) (a) A relative of a missing person may request the assistance as provided for in subregulation (2)(a) and (b).

(b) A relative of a deceased victim may request the assistance as provided for in subregulation (2)(c).

(2) The assistance provided for in subregulation (1) may -

- (a) be in the form of the allowances provided for in regulations 4 and 5 as a contribution towards the travel and subsistence expenses incurred in connection with the attendance of the exhumation procedures relating to a missing person;
- (b) be in the form of legal or financial assistance for the purpose of an application to the High Court for an order presuming the death of a missing person as provided for in regulation 6; and
- (c) be a once-off grant of-
  - (i) R17 000,00 for each reburial as a contribution towards the expenses incurred in connection with the reburial of a deceased victim; or
  - (ii) R8 500,00 for each symbolic burial as a contribution towards the expenses incurred in connection with the symbolic burial of a deceased victim.

(3) A relative of a deceased victim who has-

- (a) reburied a deceased victim prior to the commencement of the Regulations;  
and
- (b) not received the assistance provided for in subregulation (2)(c)(i),  
may request the assistance provided for in subregulation (2)(c)(i).

#### **Transport and travelling allowances in connection with exhumation**

4. (1) The requester and not more than three recipients may, at the expense of the Fund, make use of private or public transport provided for in subregulations (2), (3) and (4) in order to attend the exhumation procedures in connection with a missing person.

(2) The requester and the recipient are each entitled to the following allowance:

- (a) In the case of private transport, R3,00 per kilometre calculated along the shortest route; or
- (b) in the case of public transport, an amount equal to the fare for the least expensive transport along the shortest route.

(3) Air transport may be used by the requester and the recipient only if the Fund Administrator-

- (a) is satisfied that the use thereof is warranted; and
- (b) has in writing approved the use thereof prior to the journey.

(4) On submission of satisfactory proof, the requester and the recipient are entitled to be reimbursed for any reasonable actual expenses incurred in respect of parking and toll fees.

(5) (a) The requester and not more than three recipients are entitled to transport and travelling allowances at the rates and subject to the conditions set out in subregulations (2), (3) and (4) for purposes of further exhumation procedures in respect of the missing person if-

- (i) further exhumation procedures are required by the prosecuting authority; and
- (ii) the Fund Administrator is satisfied that the transport and travel costs are warranted.

(b) Regulations 7 to 13 of the Regulations shall apply with the necessary changes in respect of a request for transport and travelling allowances in respect of further exhumation procedures.



**Subsistence allowance in connection with exhumation**

5. (1) The requester and not more than three recipients are, for the purposes of attending the exhumation procedures in connection with the missing person, each entitled to the following subsistence allowances:

- (a) A maximum amount of R800,00 for each period of 24 hours of absence from his or her residence if it is, in the opinion of the Fund Administrator, necessary to hire accommodation, subject to a total maximum of 72 hours of absence; or
- (b) A maximum amount of R250,00 for each period of 24 hours of absence from his or her residence if it is not necessary to hire accommodation, subject to a total maximum of 72 hours of absence; and
- (c) R60,00 for incidental expenditure for each period of 24 hours, or part thereof, of absence from his or her residence if the Fund Administrator is satisfied that the expenditure was necessary and reasonable.

(2) The allowance provided for in subregulations (1)(a) and (b) must be utilised for accommodation, all meals and refreshments.

(3) (a) The requester and not more than three recipients are entitled to subsistence allowances at the rates and subject to the conditions set out in subregulations (1) and (2) for purposes of further exhumation procedures in respect of the missing person if-

- (i) further exhumation procedures are required by the prosecuting authority; and
- (ii) the Fund Administrator is satisfied that the subsistence allowances are warranted.

(b) Regulations 7 to 13 of the Regulations shall apply with the necessary changes in respect of a request for subsistence allowances in respect of further exhumation procedures.

**Assistance in respect of applications for orders presuming the death of missing persons**

6. (1) The Fund Administrator must, in respect of a request for assistance provided for in regulation 3(2)(b), decide on the form of assistance by taking into account the following factors:

- (a) The complexity of the case;
- (b) the extent to which legal assistance, if any, can be provided by an organ of state as defined in section 239 of the Constitution of the Republic of South Africa of 1996;
- (c) the possibility of a conflict of interest;
- (d) the amount of the legal costs if outside counsel is to be briefed; and
- (e) any other relevant factor.

(2) The Fund Administrator must, before deciding that an organ of state must provide legal assistance to the requester, obtain the approval of the organ of state which is to provide the legal assistance.

(3) The Fund Administrator must, if financial assistance is to be provided, determine a maximum amount for this purpose, taking into account the fees as arranged from time to time between the State Attorneys, appointed in terms of section 2 of the State Attorney Act, 1957 (Act No. 56 of 1957), and the General Council of the Bar of South Africa.

**Request for assistance**

7. (1) A request for assistance as provided for in regulation 3 must be made in the form of the request form contained in the Annexure.

(2) The request form must be completed and signed by the requester and be countersigned-

- (a) by another relative of the missing person or deceased victim, as the case may be, who is over the age of 21 years; or
- (b) by a person over the age of 21 years who knows the requester, if another relative of the missing person or deceased victim, as the case may be, is not available.

(3) The request form must be available at the office of the Fund

Administrator.

- (4) The request form must, when submitted as provided for in subregulation (6), be accompanied-
- (a) by a certified copy of the identity document of the requester;
  - (b) by a certified copy of the identity document of the recipient;
  - (c) by a certified copy of the identity document of the person countersigning the request form;
  - (d) by a document confirming the identity of the missing person or deceased victim, if possible;
  - (e) by a document confirming that the disappearance of the missing person was reported to the Commission, if possible;
  - (f) by a document confirming that the person deceased is a deceased victim, if possible;
  - (g) by a document confirming the circumstances of the disappearance of the missing person, if possible;
  - (h) by a document confirming the death and date of death of the deceased victim, if assistance as provided for in regulation 3(2)(c) is requested; and
  - (i) in the case of regulation 10(1)(c), by a certified copy of the identity document of the person, other than the requester or the recipient, in whose bank account the assistance provided for in the Regulations are to be paid.

(5) The banking details in the request form must be confirmed by the bank by affixing the official stamp of the bank on the request form.

(6) The request form must, after completion by the requester, be submitted to the Fund Administrator.

#### **Processing of request for assistance**

8. (1) On receipt of the completed request form the Fund Administrator must-

- (a) forthwith, for the purposes of the speedy processing of the request and rendering of assistance, obtain any further information or documentation, clarify any uncertainties with regard to the information in the request form or consult an organ of state in the case of a request for assistance as provided for in regulation 6;

- (b) satisfy himself or herself that-
  - (i) the requester is a relative of the missing person or deceased victim, as the case may be, who has been designated by the other relatives of the missing person or deceased victim as provided in regulation 1 of the Regulations;
  - (ii) the assistance requested is in respect of a missing person or deceased victim;
  - (iii) the assistance requested is in connection with an exhumation of a missing person or for the purpose of an application provided for in regulation 3(2)(b) or for a reburial or symbolic burial of a deceased victim; and
  - (iv) the requirements or conditions provided for in regulation 7 have been complied with;
- (c) make arrangements with relevant persons and institutions to facilitate the payment or rendering of the assistance, where applicable; and
- (d) make the payment in accordance with the directions of the requester, as indicated in the completed request form.

(2) The assistance provided for in regulation 3(2) must be paid by the Fund Administrator if-

- (a) the requirements or conditions as provided for in regulation 7 have been complied with; and
- (b) the Fund Administrator is satisfied with the aspects provided for in subregulation (1)(b).

#### **Decision on request for assistance**

9. (1) The Fund Administrator must, after the procedural requirements and conditions provided for in regulation 7 have been complied with, make a decision on a request for assistance.

(2) The Fund Administrator must-

- (a) record his or her reasons for the decision in writing;
- (b) inform the requester orally and in writing of the decision and the right of the requester to lodge representations should the requester not agree with the decision.

(3) If the Fund Administrator decides that no assistance is to be rendered or if he or she decides that the assistance to be rendered is less than the assistance requested, the Fund Administrator must inform the requester orally and in writing of the reasons for the decision.

#### **Payment of allowances and grants**

**10.** (1) The payment of assistance provided for in regulation 3(2) must be made-

- (a) from the Fund;
- (b) by electronic transfer;
- (c) in the case of assistance as provided for in regulation 3(2)(a) or (c), to the requester or the recipient or a person appointed in writing by the requester or recipient, in which case proof of identity of the person appointed is required; and
- (d) in the case of financial assistance as provided for in regulation 3(2)(b), to the person who rendered the legal assistance.

(2) The Fund Administrator must-

- (a) inform the requester when the payment has been made; and
- (b) retain proof of the payment.

#### **Representations by aggrieved persons**

**11.** (1) A requester who is aggrieved by a decision of the Fund Administrator regarding assistance may make representations to the Accounting Officer.

(2) The representations referred to in subregulation (1)-

- (a) may be made at any time, but not later than 60 calendar days after receipt of the notification of the decision of the Fund Administrator;
- (b) must be in writing;
- (c) must indicate the reasons why the person is aggrieved; and
- (d) must, where possible, be accompanied by documents as proof for the reasons why the person is aggrieved.

(3) The representations referred to in subregulation (2) may be

submitted to the Accounting Officer in one of the following ways:

- (a) By registered post;
- (b) by handing it personally to the office of the Accounting Officer; or
- (c) by facsimile transmission, the proof of which must be retained and the original thereof must be submitted by registered post.

### **Processing of representations**

12. (1) The Fund Administrator must, immediately upon notification by the Accounting Officer of representations received, submit to the Accounting Officer the documents in his or her possession that relate to the matter, together with his or her reasons for the decision.

(2) The Accounting Officer may, in order to make a finding regarding the representations, make any enquiries he or she deems fit.

(3) The Accounting Officer must, as soon as possible but not later than five calendar days from the date of receipt of representations, make a finding in regard to the representations and inform the person who made the representations orally and in writing of his or her findings.

### **Cession, assignment or attachment of assistance**

13. Despite any law to the contrary, the allowances and grants provided for in regulation 3 shall not-

- (a) be capable of cession or assignment by the requester or recipient to whom it has been granted;
- (b) be capable of attachment under a judgment of a court of law; or
- (c) form part of the estate of the requester or recipient, should such estate be sequestrated.

### **Short title**

14. These regulations are called the Regulations on Exhumation, Reburial or Symbolic Burial of Deceased Victims.

**ANNEXURE**  
**REQUEST FORM**  
**REQUEST FOR ASSISTANCE IN RESPECT OF EXHUMATION,**  
**REBURIAL OR SYMBOLIC BURIAL OF DECEASED VICTIMS**

The information and documents requested in this form are required in order to provide assistance in respect of –

- (a) the exhumation of the remains of missing persons;
- (b) applications for orders for presuming the death of missing persons; and
- (c) the reburial or symbolic burial of deceased victims.

**PLEASE READ THE FOLLOWING NOTES BEFORE COMPLETING THE FORM.**

- (a) Use this form to request assistance in respect of the exhumation of the remains of persons reported as missing to the Truth and Reconciliation Commission (TRC) or an application for an order presuming the death of a missing person reported to the TRC or the reburial or symbolic burial of deceased victims.
- (b) Only a relative designated by the other relatives of the missing person or deceased victim may request assistance by completing this form.
- (c) You may only request assistance if you are –
  - (i) a parent of, or somebody who exercised parental control over, the missing person or deceased victim;
  - (ii) a person who was married to the missing person or deceased victim under any tradition or a system of religious, personal or family law;
  - (iii) a child of the missing person or deceased victim, irrespective of whether or not you were born in or out of wedlock or were legally adopted;
  - (iv) a person to whom the missing person or deceased victim had a duty of support in terms of the common law, customary law or legislation; or

- (v) a person who was a blood relation of the missing person or deceased victim.

**PART A**

**REQUEST FOR ASSISTANCE IN RESPECT OF THE EXHUMATION,  
REBURIAL OR SYMBOLIC BURIAL OF DECEASED VICTIMS**

**I. PERSONAL AND CONTACT DETAILS OF THE REQUESTER**

<b>1. Your personal details</b>
---------------------------------

- (a) Surname: .....
- (b) Full names: .....
- (c) Title: .....
- (d) Indicate any other surnames: .....
- (e) Identity Number: .....  
(Attach a certified copy of the identity document.)
- (f) Are you a relative of the missing person or deceased victim?  
Yes/No.....
- (g) How are you related to the missing person or deceased  
victim?.....

<b>2. Your contact details</b>
--------------------------------

Address to which mail may be sent:

- (a) Street Address: .....  
.....  
(Block/Street and Number, Township/Suburb, City, Province, Postal code,  
Country)

**OR**



(b) Postal Address: .....  
 .....

(Postal address, Suburb, City, and Postal code if street address is not to be used)

(c) Particulars of where you can be contacted:

\* Work telephone: Code (.....).....

\* Home telephone: Code (.....).....

\* Cell phone: .....

**NOTE: If you cannot be contacted directly, give the telephone particulars of a person through whom you can be contacted.**

**II. PERSONAL AND CONTACT DETAILS OF THE PERSON  
 COUNTERSIGNING THIS FORM**

**NOTE: The person countersigning this form may only do so if he or she is –**

**(a) another relative of the missing person or deceased victim who is over the age of 21 years; or**

**(b) a person over the age of 21 years who knows the requester, if another relative is not available.**

(a) Surname: .....

(b) Full names: .....

(c) Title: .....

(d) Indicate any other surnames: .....

(e) Identity Number: .....

(Attach a certified copy of the identity document.)

(f) In which capacity are you signing? (See note above, e.g. relative.)

.....  
(g) Particulars of where you can be contacted:

- \* Work telephone: Code (.....).....
- \* Home telephone: Code (.....).....
- \* Cell phone: .....

**NOTE: If you cannot be contacted directly, give the telephone particulars of a person through whom you can be contacted.**

## PART B

### FORM OF ASSISTANCE REQUESTED

**NOTE:**

1. **The following assistance is available:**
  - (a) **Travel and subsistence allowances for the purpose of attending the exhumation procedures relating to a missing person;**
  - (b) **legal or financial assistance for the purpose of an application for an order presuming the death of a missing person; and**
  - (c)
    - (i) **a once-off grant of R17 000,00 per reburial; or**
    - (ii) **a once-off grant of R8 500,00 per symbolic burial.**
2. **A relative of a deceased victim who has reburied a deceased victim prior to the commencement of the Regulations and who has not received a once-off grant of R15 000,00, may only request the assistance of a once-off grant of R15 000,00.**

3. Particulars about the assistance are contained in regulations 4, 5 and 6 of the Regulations. A copy thereof is obtainable from the Office of the Fund Administrator.
4. The banking details must be confirmed by the bank by affixing the official stamp of the bank on the form.

**ASSISTANCE REQUESTED:**

**I. EXHUMATION**

The remains of ....., the missing person,  
 \*were/are to be exhumed on ..... (date) at  
 ..... (place of exhumation).

(\*Delete whichever is not applicable.)

**1. Transport and subsistence allowance for the requester**

(a) A transport allowance is requested for ..... (requester)  
 who must travel on ..... (date) at ..... (time)  
 from ..... to .....  
 (place of exhumation).

(b) A subsistence allowance for ..... (requester) is  
 required for ..... nights, because.....  
 .....  
 .....

(Give reasons why and the period for which the accommodation is hired.)

(c) The allowances, if granted, must be paid into a bank account with the  
 following details:

Name of account holder: .....

Identity Number of account holder: .....

(Attach a certified copy of the identity document.)

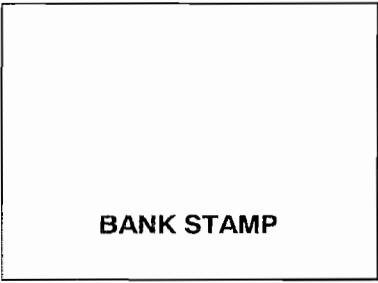
Name of the bank: .....

Branch: .....

Branch code: .....

Type of account: .....

Account number: .....



**2. Transport and subsistence allowance for the recipients**

(a) **First recipient**

Surname: .....

Full names: .....

Title: .....

Identity Number: .....

(Attach a certified copy of the identity document.)

Telephone number(s): .....

- (i) A transport allowance is requested for..... (first recipient) who must travel on ..... (date) at ..... (time) from ..... to ..... (place of exhumation).
- (ii) A subsistence allowance for ..... (first recipient) is required for ..... nights, because.....

(Give reasons why and the period for which the accommodation is hired.)

(iii) The allowances, if granted, must be paid into a bank account with the following details:

Name of account holder: .....

Identity Number of account holder: .....

(Attach a certified copy of the identity document.)

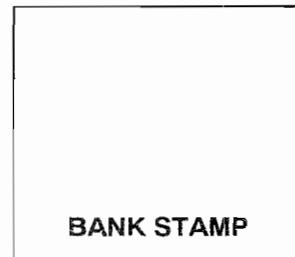
Name of the bank: .....

Branch: .....

Branch code: .....

Type of account: .....

Account number: .....



(b) Second recipient

Surname: .....

Full names: .....

Title: .....

Identity Number: .....

(Attach a certified copy of the identity document.)

Telephone number(s): .....

(i) A transport allowance is requested for .....(second recipient) who must travel on ..... (date) at ..... (time) from ..... to ..... (place of exhumation).

(ii) A subsistence allowance for ..... (second recipient) is required for ..... nights, because .....

.....

(Give reasons why and the period for which accommodation is hired.)

(iii) The allowances, if granted, must be paid into a bank account with the following details:

Name of account holder: .....

Identity Number of account holder: .....

(Attach a certified copy of the identity document.)

Name of the bank: .....

Branch: .....

Branch code: .....

Type of account: .....

Account number: .....

**BANK STAMP**

(c) Third recipient

Surname: .....

Full Names: .....

Title: .....

Identity Number: .....

(Attach a certified copy of the identity document.)

Telephone number(s): .....

(i) A transport allowance is requested for ..... (third recipient) who must travel on ..... (date) at ..... (time) from ..... to ..... (place of exhumation).

(ii) A subsistence allowance for ..... (third recipient) is required for ..... nights, because .....

.....  
(Give reasons why and the period for which accommodation is hired.)

(iii) The allowances, if granted, must be paid into a bank account with the following details:

Name of account holder: .....

Identity Number of account holder: .....

(Attach a certified copy of the identity document.)

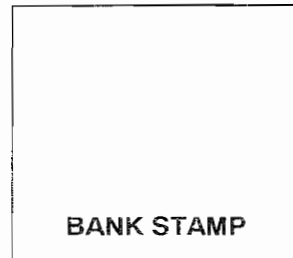
Name of the bank: .....

Branch: .....

Branch code: .....

Type of account: .....

Account number: .....







(4) If financial assistance in respect of the application is provided, it shall be paid directly into the bank account of the person, who rendered the legal assistance, with the following details:

Name of account holder: .....

Identity Number of account holder: .....

(Attach a certified copy of the identity document.)

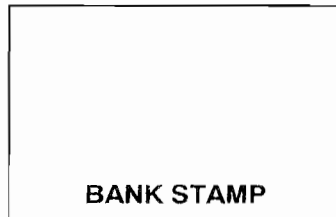
Name of the bank: .....

Branch: .....

Branch code: .....

Type of account: .....

Account number: .....



**III. REBURIAL/SYMBOLIC BURIAL**

(1)(a) The remains of ....., the deceased victim, \*were/are to be reburied on ..... (date) at ..... (place of burial) and therefore a once-off grant of R17 000,00 is requested.

(\*Delete whichever is not applicable.)

**OR**

(b) The remains of ....., the deceased victim, could not be found and therefore a once-off grant of R8 500,00 for a symbolic reburial is requested.

(2) The grant, if allowed, must be paid into a bank account with the following details:

Name of account holder: .....

Identity Number of account holder: .....

(Attach a certified copy of the identity document.)

Name of the bank: .....

Branch: .....

Branch code: .....

Type of account: .....

Account number: .....

**BANK STAMP**

**PART C**

**OATH/AFFIRMATION AND SIGNATURE OF THE REQUESTER**

I, .....

(Identity Number: .....), being the requester,

acknowledge that I –

- i. have consulted with the other relatives of the \*missing person/deceased victim; and
- ii. have been designated by the other relatives of the \*missing person/deceased victim to be the requester.

The requester has \*taken the oath/solemnly affirmed that the contents of the declaration are complete and true, before me at ..... on this ..... day of ..... 200.....

.....

COMMISSIONER OF OATHS

.....

REQUESTER

(\*Delete whichever is not applicable.)

**PART D**

**OATH/AFFIRMATION AND SIGNATURE OF THE PERSON**

**COUNTERSIGNING THE REQUEST FORM**

I, .....

(Identity Number: .....), being the person who is

countersigning this request form, acknowledge that I –

- i. \*am a relative of the \*missing person/deceased victim and I am over the age of 21 years;
- ii. \*am a person over the age of 21 years who knows the requester.

The person countersigning the request form has \*taken the oath/solemnly affirmed that the contents of the declaration are complete and true, before me at ..... on this ..... day of ..... 200.....

.....  
 COMMISSIONER OF OATHS

.....  
 PERSON COUNTERSIGNING THE  
 REQUEST FORM

(\*Delete whichever is not applicable.)

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