



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 581

Pretoria, 29 November 2013

No. 37097

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GOVERNMENT NOTICE

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

No. 929

29 November 2013

PROMOTION OF NATIONAL UNITY AND RECONCILIATION ACT, 1995: REGULATIONS RELATING TO COMMUNITY REHABILITATION

The President has, under section 40(1) of the Promotion of National Unity and Reconciliation Act, 1995 (Act No. 34 of 1995), and in consultation with the Minister of Justice and Constitutional Development and the Minister of Finance, 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 has the meaning so assigned and, unless the context otherwise indicates—

“**accounting officer**” means the officer appointed by the Minister under section 42(6) of the Act as accounting officer in respect of the Fund;

“**community**” means a community listed in the Annexure;

“**community rehabilitation project**”, in respect of each community, means the project contemplated in regulation 2(2);

“**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;

“**Independent Development Trust**” means the Independent Development Trust listed in Schedule 2 to the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“**organ of state**” means an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996;

“**responsible authority**” means the authority referred to in regulation 4(1);

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

Allocation of amounts of money for community rehabilitation

2. (1) (a) Subject to paragraph (b), an amount of R30 million is allocated from the Fund towards community rehabilitation in respect of each of the communities listed in the Annexure.

(b) The amount referred to in paragraph (a) must be increased automatically with 6% annually in respect of every community project identified but which is to be provided for in a community rehabilitation agreement referred to in subregulation (2), and the first increase must take effect one year after the date of commencement of these Regulations and the subsequent increases on the same date of every consecutive year.

(2) The amount of money allocated to each community may only be utilised for the implementation of its community rehabilitation project identified and provided for, subject to subregulation (3), in a community rehabilitation agreement entered into by the accounting officer with the responsible authority, in consultation with the Minister and, after compliance with regulation 4(3)(a).

(3) For the purposes of subregulation (2), a community rehabilitation project must be aimed at healing the divisions of the past caused by human rights violations and establishing a society based on democratic values, social justice and fundamental human rights, and improving the quality of life of the people of that community, and may include one or more of the following community-based activities or services:

- (a) Infrastructure development;
- (b) school construction and improvement;
- (c) health and social services;
- (d) skills development support; or
- (e) any other activity aimed at promoting the healing and recovery of a community that has been affected by human rights violations.

Community rehabilitation agreement

3. (1) The community rehabilitation agreement contemplated in regulation 2(2) must identify and contain full details of the community rehabilitation project, including the terms and conditions of payment and sanctions for non-compliance with contractual obligations.

(2) The total cost for the completion of the community rehabilitation project may not exceed the allocated amount.

Responsible authority

4. (1) The Independent Development Trust is the authority responsible for the implementation of the community rehabilitation project of each community.

(2) The responsible authority must consult any organ of state that may be affected by the implementation of a community rehabilitation project.

(3) The responsible authority must, in accordance with a community participation plan contemplated in regulation 6, ensure community participation in—

- (a) the determination of the nature and scope;
 - (b) the implementation; and
 - (c) the administration,
- of its community rehabilitation project.

Steps in ensuring achievement of purpose of community rehabilitation project

5. The accounting officer may enter into an agreement with any relevant organ of state referred to in regulation 4(2) and, where necessary, with any appropriate non-governmental organisation to ensure that the purpose of the community rehabilitation project is achieved.

Community participation plan

6. (1) The responsible authority must prepare a community participation plan providing for—

- (a) the organisational or institutional arrangements and proposed structures for community participation;
- (b) the mechanisms for community participation in establishing the needs of a particular community;
- (c) the mechanisms for dissemination of information in relation to the implementation of community rehabilitation project; and
- (d) the mechanisms for dispute resolution, including deadlock-breaking mechanisms.

(2) The community participation plan must be approved by the Minister.

Payments from Fund

7. (1) The amount allocated in terms of regulation 2(1) in respect of each community rehabilitation project must, subject to subregulations (2), (3) and (4), be paid to the responsible authority.

(2) The accounting officer must determine the conditions for the payment of the amount allocated, or any part thereof, and the intervals at which any such payment must be made to the responsible authority.

(3) The amount allocated in respect of a community rehabilitation project must be paid by the fund administrator to the responsible authority in accordance with the conditions and at the intervals determined by the accounting officer.

(4) No payment may be made from the Fund in the absence of, or contrary to the terms and conditions contained in, a community rehabilitation agreement referred to in regulation 3.

Reporting

8. (1) Despite the terms and conditions of any community rehabilitation agreement referred to in regulation 3, the responsible authority must report to the accounting officer on –

- (a) the progress made in the implementation of a community rehabilitation project—
 - (i) when requested by the accounting officer; and
 - (ii) at the intervals specified by the accounting officer; and
 - (b) the expenses incurred in respect of the implementation of a community rehabilitation project—
 - (i) when requested by the accounting officer; and
 - (ii) at intervals specified by the accounting officer.
- (2) A report referred to in paragraphs (a) and (b) must be accompanied by supporting documents.
- (3) The accounting officer must submit to the Minister, twice every year or when requested by the Minister, a report on –
- (a) the progress made on community rehabilitation projects; and
 - (b) the expenses incurred.

Short title and commencement

9. (1) These Regulations are called the Regulations relating to Community Rehabilitation, 2013.
- (2) These Regulations come into operation on

ANNEXURE

Communities entitled to community rehabilitation

Regulation 2(1)

Alexandra
Athlone
Balfour
Beaufort West
Bhambayi Settlement
Bisho
Crossroads
Duncan Village
Galeshewe
Ga-Nchabaleng
Lulekani
Mamelodi
Mmabatho
Mphopomeni
Nelspruit
Swanieville
Tumahole
Welkom

GENERAL NOTICE

NOTICE 1178 OF 2013

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

INVITATION FOR PUBLIC COMMENTS

ON

THE PROMOTION OF NATIONAL UNITY AND RECONCILIATION ACT, 1995 : REGULATIONS RELATING TO COMMUNITY REHABILITATION

1. INVITATION

- 1.1 The Department of Justice and Constitutional Development invites interested parties to submit written comments on the proposed draft Regulations which are attached. The draft Regulations and a note, explaining the background of the proposed regulations, are also available on the website of the Department at the following address: <http://www.justice.gov.za>.
- 1.2 The comments on the draft Regulations must be submitted not later than **31 January 2014**, marked for the attention of Ms **I Botha** or Ms **F Bhayat**, and –
- (a) if they are forwarded by post, be addressed to –
The Director-General: Justice and Constitutional Development
Private Bag X276
Pretoria
0001
 - (b) if they are delivered by hand, be delivered at –
Salu Building, Room 23.23 or 23.09
315 Thabo Sehume Street
Pretoria
 - (c) if they are delivered by email, be emailed to inbotha@justice.gov.za or fbhayat@justice.gov.za
 - (d) if they are faxed, be faxed to **086 648 2289** or **086 754 8493**
- 1.3 For further information, please do not hesitate to contact Ms I Botha at 012 406 4756 or Ms F Bhayat at 012 406 4771.

2. BACKGROUND NOTE

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

- 2.1 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 regards 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 made recommendations relating to individual reparation and community rehabilitation. The TRC completed its mandate, whereafter it was dissolved.

- 2.2 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 TRC pointed out that it is important that communities which have been affected by gross human rights abuses must also benefit from reparation and rehabilitation measures. The TRC recommended that rehabilitation programmes be set up at both national and levels. 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 final reparation. 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 regulations in respect of community rehabilitation are to be made in terms of section 40 of the Act. In terms of section 40(1) of the Act, the President is empowered to make regulations regarding a number of matters, including the matters required to be prescribed for the proper application of the Act, any matter relating to the affairs of the Fund and any matter which may be necessary for the effective allocation of the amounts to be paid towards the rehabilitation of communities.
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