

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

No. R. 356 7 May 2010

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 have been 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 having disappeared or gone 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 having disappeared or gone 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 respect of 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) Economy class 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 allowances 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, 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 is 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)

- (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; and
- (b) inform the requester orally, if his or her contact particulars are available, 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 substantiating 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 the representations personally to the office of the Accounting Officer; or
- (c) by facsimile or e-mail 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 working 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, if his or her contact particulars are available, 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.

Application of Regulations

14. These Regulations are applicable in respect of an exhumation, reburial or symbolic reburial conducted in South Africa.

Short title

15. These regulations are called the Regulations on 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 RM.

- (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

1. Your personal details

- (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? _____

2. Your contact details

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 in respect of 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 R17 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:

<p>I. EXHUMATION</p> <p>The remains of _____, the missing person, *were/are to be exhumed on _____ (date) at _____ (place of exhumation). (*Delete whichever is not applicable.)</p> <p>1. <u>Transport and subsistence allowance for the requester</u></p> <p>(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 _____</p>	
<p>(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:</p> <p>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: _____</p>	
<div style="border: 1px solid black; width: 150px; height: 50px; margin: 0 auto;"></div> <p>BANK STAMP</p>	
<p>2. <u>Transport and subsistence allowance for the recipients</u></p> <p>(a) <u>First recipient</u> Surname: _____</p>	

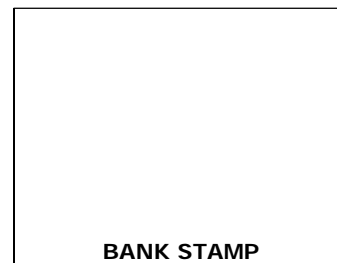
Full names: _____
Title: _____

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: _____



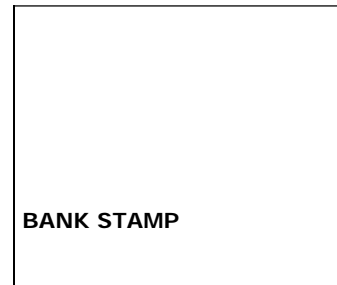
(b) **Second recipient**

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: _____



(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: _____

BANK STAMP

II. APPLICATION FOR ORDER PRESUMING THE DEATH OF MISSING PERSON

Paragraphs (1), (2) and (3) must be completed by the requester and paragraph (4) must be completed by the Fund Administrator

- (1) It is intended to bring an application to the High Court, _____for an order presuming the death of _____, a person who was reported to the Truth and Reconciliation Commission as missing and who is believed to have disappeared or who went missing during the period 1 March 1960 and 10 May 1994 as a result of the conflicts of the past. Assistance provided for in regulation 3(2)(b) of the Regulations is requested for the purposes of the application to the High Court.
- (2) The person went missing _____(state the date on which or period during which the person went missing) at or near _____(state the place where the person is believed to have gone missing).
- (3) State the circumstances under which the person went missing and indicate why it is believed that the person went missing as a result of the conflicts of the past:

(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: _____

BANK STAMP

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.)