
GENERAL NOTICES • ALGEMENE KENNISGEWINGS

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**NOTICE 381 OF 2018****PART A****INVITATION FOR PUBLIC COMMENTS
ON****THE PROMOTION OF NATIONAL UNITY AND RECONCILIATION
ACT, 1995 : REVISED DRAFT 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 revised draft Regulations relating to Community Rehabilitation, as set out in Part B. The revised draft Regulations and a note, explaining the background of the proposed revised draft 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 revised draft Regulations must be submitted not later than **Wednesday, 15 August 2018**, marked for the attention of **Ms F Bhayat**.
- (a) if they are forwarded by post, be addressed to -
**The Director-General: Justice and Constitutional
Development
Private Bag X81
Pretoria
0001**
- (b) if they are delivered by hand, be delivered at -
**Salu Building, Room 23.09
315 Thabo Sehume Street
Pretoria**
- (c) if they are delivered by email, be emailed to -
fbhayat@justice.gov.za
- (d) if they are faxed, be faxed to **086 450 9474**
- 1.3 For further information, please do not hesitate to contact 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 revised draft Regulations.

- 2.1 Pursuant to the recommendations made by the Truth and Reconciliation Commission (the TRC) to the President in respect of measures which should be taken with regard 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, Parliament approved that measures be taken to rehabilitate communities that were subjected to intense acts of violence and destruction during the conflicts of the past.
- 2.2 Section 42 of the Promotion of National Unity and Reconciliation Act, 1995 (Act 34 of 1995) (the Act) deals with the President's Fund (the Fund), which was established for the purposes of providing resources to fund reparation measures for victims and communities. Section 42(2A) of the Act provides that all amounts payable by way of reparations towards the rehabilitation of communities as prescribed by the President by regulation under section 40 of the Act, must be paid from the Fund.
- 2.3 Section 40(1) of the Act empowers the President to make regulations regarding a number of matters, including any matter which may be necessary for the effective allocation of the amounts to be paid towards the rehabilitation of communities.
- 2.4 The Draft Regulations relating to Community Rehabilitation were published in the *Gazette* on 29 November 2013, inviting comments before 31 January 2014.
- 2.5 Comments on the draft Regulations were received. Due to the nature of the comments received, a consultative meeting with TRC-related Stakeholders was held on 26 September 2014 with a view to discussing the draft Regulations and the comments received on the draft Regulations. During the meeting a number of concerns were raised and suggestions made which necessitated the revision of the draft Regulations.
- 2.6 Significant changes have since been made to the draft Regulations necessitating further consultation with stakeholders.

PART B**GOVERNMENT NOTICE****DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

No. R.

2018

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

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 Correctional Services 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 affected by the conflicts of the past as envisaged in the Act and referred to in the Report of the Commission by means of an incident;

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

“Fund administrator” means an official designated by the Minister under section 42(5) of the Act;

“multi-stakeholder project team” means the multi-stakeholder project team referred to in regulation 3(3);

“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 5(1); and

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

Allocation of amounts for community rehabilitation

2. (1) The accounting officer must, subject to the availability of money in the Fund and subject to subregulation (2) and regulation 9, allocate from the Fund an amount not exceeding R30 million for the implementation of a community rehabilitation project.

(2) The accounting officer must, in determining the amount to be allocated in terms of subregulation (1), have regard to—

- (a) the amount available in the Fund for community rehabilitation;
- (b) the nature of the community rehabilitation project identified in terms of regulation 3;
- (c) whether communities have been combined as contemplated in regulation 3(1);
- (d) any contribution to be made by an organ of state or a non-governmental organisation towards the community rehabilitation project in terms of regulation; and
- (e) any contribution to be made by an institution or a person in the private sector towards the community rehabilitation project in terms of regulation.

(3) The money allocated in terms of subregulation (1) may only be used for the implementation of a community rehabilitation project identified in a community rehabilitation agreement, provided for in regulation 4.

Identification of community rehabilitation project

3. (1) (a) The accounting officer may combine two or more communities which are situated in close proximity to each other for purposes of identifying and implementing a community rehabilitation project.

(b) In deciding whether to combine the communities referred to in paragraph (a), the accounting officer may take into account any matter which he or she deems fit, including —

- (a) the nature of the atrocities suffered by these communities;
- (b) the extent to which rehabilitation measures and programmes have already been implemented in respect of these communities; and
- (c) efficiency and effectiveness.

(2) (a) A community rehabilitation project must be identified in respect of each community or combined community through a consultative process involving the Department of Justice and Constitutional Development, local government, victims of past atrocities and violence in the particular community or combined communities, relevant organs of state and any other interested civil society formation or organisation.

(b) A community rehabilitation intervention must be aimed at giving preference to the members of a community most directly affected by incidents of past atrocities and violence.

(3) (a) A multi-stakeholder project team, hereinafter referred to as an MPT, must be established to advise and work closely with

the responsible authority in coordinating community participation, conceptualisation of and implementation of community rehabilitation interventions.

(b) An MPT must comprise of representatives of the Department of Justice and Constitutional Development, local government, victims of past atrocities and violence, participating organs of state and civil society organisations.

(4) The MPT and the responsible authority must, before a community rehabilitation project is identified, determine which projects are already planned by organs of state for the community or combined communities in question.

(5) In identifying a community rehabilitation project, the purpose of community rehabilitation as envisaged in the Act must be taken into account.

(6) The community rehabilitation project identified for each community or combined communities must be signed off by authorised members of the MPT representing different stakeholders at project level, including victims.

Community rehabilitation agreement

4. (1) The accounting officer must enter into a community rehabilitation agreement with the responsible authority after a community rehabilitation project has been identified in respect of a community or combined communities.

(2) The community rehabilitation agreement must contain full details of the community rehabilitation project, including—

- (a) the role and responsibilities of any organ of state or non-governmental organisation which is to make a contribution towards the identified project;
- (b) the contribution to be made by any organ of state or non-governmental organisation towards the identified project;
- (c) the contribution to be made by any institution or person in the private sector;
- (d) the contribution to be made from the Fund;
- (e) the terms and conditions of payment from the Fund; and
- (f) sanctions for non-compliance with any contractual obligations provided for in a community rehabilitation agreement.

(3) A community rehabilitation agreement must be approved by the Minister.

Responsible authority

5. (1) The accounting officer must, in writing, appoint an institution as the responsible authority for the implementation of a community rehabilitation project.

(2) The accounting officer may appoint different institutions as responsible authorities for the implementation of different community rehabilitation projects.

(3) The responsible authority must, when implementing a community rehabilitation project, consult the MPT to ensure that the intervention is aligned, responsive and complementary to the work of any organ of state that may be affected by the implementation.

(4) The responsible authority must, in accordance with a fair and transparent process, and in consultation with the MPT, ensure community participation in the implementation of a community rehabilitation project.

Steps in ensuring implementation of community rehabilitation projects

6. (1) The accounting officer must take the necessary steps to ensure that these Regulations are given effect to and that the community rehabilitation projects identified in terms of regulation 3 are implemented.

(2) The accounting officer may, for the purposes of subregulation (1), enter into an agreement with any organ of state referred to in regulation 5(3) and, where necessary, with any appropriate non-governmental organisation in order to ensure that the community rehabilitation projects identified are implemented.

(3) The accounting officer may, for the purposes of subregulation (1), enter into an agreement with any person or institution in the private sector in order to ensure that the community rehabilitation projects identified are implemented.

Payments from Fund

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

(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 4.

(5) The payments made from the Fund for a community rehabilitation project identified in a community rehabilitation agreement referred to in regulation 4 may not exceed the allocated amount referred to in regulation 2(1).

Reporting

8. (1) The responsible authority must report to the accounting officer on—

(a) progress made in the implementation of a community rehabilitation project—

- (i) when requested to do so by the accounting officer; and
- (ii) at the intervals specified by the accounting officer; and

(b) the expenses incurred and paid in respect of the implementation of a community rehabilitation project—

- (i) when requested to do so by the accounting officer; and
- (ii) at intervals specified by the accounting officer.

(2) A report referred to in subregulation (1)(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) progress made in the implementation of community rehabilitation projects; and

(b) the expenses incurred and paid in respect of the implementation of community rehabilitation projects.

Incremental implementation of community rehabilitation projects

9. The implementation of community rehabilitation projects must be done incrementally as and when money is available in the Fund.

Short title

10. These Regulations are called the Regulations Relating to Community Rehabilitation, 2018.