

**BLACK SASH**

**SUBMISSION**

**UN GENERAL ASSEMBLY**

**ON**

**DIGITAL TECHNOLOGY,**

**SOCIAL**

**PROTECTION**

**AND**

**HUMAN RIGHTS**

**17 May 2019**



## 1. INTRODUCTION TO BLACK SASH

- 1.1 The Black Sash welcomes the opportunity to respond to the invitation of the Special Rapporteur to make submission(s) on the human rights impact of the introduction of digital technologies in the implementation of national social protection.
- 1.2 The Black Sash works towards the realisation of socio-economic rights, as outlined in the South African Constitution (1996), with emphasis on social security and social protection for the most vulnerable particularly women and children. It also works towards exploring options to significantly reduce poverty and inequality<sup>1</sup>. The Black Sash implements three programmes: namely 1) advocacy in partnership; 2) Community Based Monitoring; and 3) education, training and research.
- 1.3 Our submission will focus on the impact of digital technologies on the national social assistance programme with reference to the collection, storage and use of biometric information of social grant beneficiaries. We will do this in part by referring to our experiences of the national implementation of biometric digital technologies from 2012.

## 2. SOCIAL PROTECTION IN SOUTH AFRICA

- 2.1. The Constitution of South Africa recognises the right to social security. Section 27 of the Bill of Rights asserts that: *"Everyone has the right to have access to social security, including, if they are unable to support themselves and their dependents, appropriate social assistance, and the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights"* <sup>2</sup>.

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<sup>1</sup> For more information on Black Sash's activities, see <https://www.blacksash.org.za/>.

<sup>2</sup> The Constitution of the Republic of South Africa, Section 27.1.c, 1996, <http://www.justice.gov.za/legislation/constitution/SACConstitution-web-eng.pdf>, (accessed on 12<sup>th</sup> of March 2019).

- 2.2. This report will focus on social assistance (social grants or cash transfers) provided by government, to people who are unable to take care of themselves and their families in the form of food, shelter, healthcare, education and basic services<sup>3</sup>.
- 2.3. South Africa's population is 57,7 million.<sup>4</sup> The South African social grant system is one of the largest in the world, with 30% of the population receiving social grants. Over 17 million South Africans receive social grants in the 2018/19 financial year including 12.4 million on child support grants, 3.5 million older person's grants, 1 million disability grants, 345,000 foster care grants, 215,000 on Grant-in-Aid and 150,000 on the Care Dependency Grant.<sup>5</sup> Other grant types include war veterans grant and social relief of distress.<sup>6</sup>
- 2.4. Social grants are gendered and impact directly on the lives of women, the caregivers of children. Social grants are non-contributory and means tested. Social grants are fundamental lifeline to grant beneficiaries and provide for their basic needs including food, healthcare, shelter and education. Any disruption to beneficiaries receiving their social grants poses a threat of life or death for many.
- 2.5. The South African Social Security Agency (SASSA) was established in terms of the SASSA Act 9 of 2004 supported by the Social Assistance Act 13 of 2004 as the legal framework for administering grants. SASSA functions under the Department of Social Development (DSD) responsible for social development, protection, and welfare services to the public.
- 2.6. SASSA is legally responsible to administer social assistance in term of the SASSA Act and perform any function delegated to it under the Act:
- 2.3.1 to administer information necessary to pay social security,

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<sup>3</sup> The Black Sash, *Social Assistance: A Reference Guide for Paralegals*, The Black Sash, Cape Town, 2010.

<sup>4</sup> Statistics South Africa, *Population*, <http://www.statssa.gov.za/>, (accessed on 9<sup>th</sup> May 2019).

<sup>5</sup> National Treasury, *Estimates of National Expenditure*, Communication Directorate, Pretoria, 2018, p. 339.

<sup>6</sup> South African Social Security Agency, *Social Grants*, <http://www.sassa.gov.za/index.php/social-grants> (accessed on 9<sup>th</sup> May 2019).

- 2.3.2 to manage transfer of funds, in a national data base of all beneficiaries of social assistance;
- 2.3.3 to establish a compliance and fraud mechanism to ensure that the integrity of the social security system is maintained;
- 2.3.4 to promote and protect the human dignity of applicants for and beneficiaries of social security; and
- 2.3.5 to protect confidential information held by the Agency.

### 3. PRIVATISATION AND UNLAWFUL DEDUCTIONS

- 3.1. In 2012, SASSA contracted a single service provider to distribute social grants nationally. Cash Paymaster Services (CPS) was contracted, for R10 billion over five years, to annually distribute on average R160 billion to 17 million plus beneficiaries.
- 3.2. CPS is a subsidiary of Net1; the parent company is listed on the Johannesburg and New York stock exchanges. SASSA allegedly appointed CPS, supported by Net1, for its biometric and digital capability.
- 3.3. However, in 2013/14 the CPS/SASSA contract was declared unlawful by the Constitutional Court which ordered a re-run of the tender. The Court argued that the biometric component was introduced late in the tender process, and was set up to benefit one service provider only.<sup>7</sup> The declaration of invalidity was suspended to ensure that grant beneficiaries receive their grants until a new service provider was appointed. The Constitutional Court advanced jurisprudence on the interpretation of an organ of state whereby any public or private entity, fulfilling a state obligation must abide with the Constitution and be open to public scrutiny. *“When CPS concluded the contract for the rendering of public services, it too became accountable to the people of South Africa in relation to the public power it acquired and the public function it performs”*<sup>8</sup>.

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<sup>7</sup> All Pay vs SASSA and CPS, 2013, ZACC 42, Judgment (All Pay1), Constitutional Court of South Africa.

<sup>8</sup> All Pay & Others vs SASSA & Others CCT 48/13, 17 April 2014 p.27.

- 3.4. CPS registered grant beneficiaries by collecting biometric information: finger prints and voice recordings. The voice recordings were deemed unreliable and later jettisoned.
- 3.5. The biometric data was not checked against the database of the Department of Home Affairs to verify that the right person is being paid. Despite paying for the services, SASSA did not have the supporting IT infrastructure nor the card readers to access the biometric data. All the biometric information was collected and stored by CPS, Net1 and Grindrod Bank.
- 3.6. Grant beneficiaries, issued with the SASSA Grindrod Bank account and associated cards, used biometrics or a pin to authorise transactions, including making cash withdrawals.
- 3.7. CPS and parent company Net1 advanced the notion of “Banking the Unbanked” as a means of financial inclusion. They did so through a two-pronged approach, to market expansion<sup>9</sup>:
  - 3.5.1 “*First Wave*”: identify an application for which there is demonstrated and immediate need in a particular territory and then sell and implement its technology. The intended result would be the deployment of the required technological infrastructure and the registration of a critical mass of cardholders/customers.
  - 3.5.2 Once infrastructure has been deployed and a critical mass of customers is achieved, Net1 then focuses on the “*second wave*” – enabling them to use this infrastructure to provide users, at an incremental cost, with a wide array of financial products and services for which fees are charged based on the value of the transactions performed.

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<sup>9</sup> Net1, *Strategy direction: Our strategy*, [website], 2012, <http://www.net1.com/about/strategic-direction-our-strategy/>, (accessed on 12<sup>th</sup> of January 2019).

- 3.8. Through evidence collected by the Black Sash and its community based partners, it was apparent from the first year of the SASSA/CPS contract that Net1 enabled other subsidiaries and others in its network to sell financial and other products to social grant beneficiaries accruing large profits in addition to the R10 billion<sup>10</sup>.
- 3.9. SASSA had no oversight over the SASSA branded Grindrod bank accounts. The products sold by subsidiaries included: Manje Mobile (advanced airtime and electricity), Moneyline and Finbond (loans) and Smartlife (funeral policies). In June 2015, the Easy Pay Everywhere (new bank account similar to SASSA Grindrod Account) was launched, operated by Moneyline and Grindrod Bank. Beneficiaries also experienced deductions for water (a free commodity in poor neighbourhoods) and for prescribed debt.
- 3.9.1 These deductions were executed through a debit order facility and/or a USSD platform link on the SASSA Grindrod Bank account as well as the illegal sharing of grant beneficiaries' confidential biometric data collected during registration.
- 3.9.2 The profit motive of parent Net1 superseded the constitutional obligation of CPS the subsidiary. The company in effect supported multiple and unexplained unlawful and fraudulent deductions. These actions threatened the right to social security including social assistance. In addition, CPS and Net1 had the function of providing recourse mechanisms for beneficiaries, but beneficiaries struggled to refer any queries or disputes regarding the payment of their grants, thus impeding their right to administrative justice. At present, years later, many beneficiaries are yet to receive recourse and/or refunds.

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<sup>10</sup>*Black Sash Community Monitoring and Advocacy Project (CMAP 2009 - 2013*  
<https://www.blacksash.org.za/index.php/sash-in-action/community-based-monitoring/cmap>.

- 3.10. Exploitative financial practices led to a partial or total loss of beneficiaries' grants. These practices are particularly insidious because deductions or debits were made electronically from a beneficiary's account, before the beneficiary was even able to access the account. These practices also occurred with no risk to the creditor (whether the deduction was authorised by the claimant or not) since the money was automatically transferred out of the account the moment a beneficiary's grant entered their account. In most instances, Net1 subsidiaries had their debit orders transferred before other creditors could access the SASSA branded accounts.

#### **4. THE PROTECTION OF PERSONAL INFORMATION AND OTHER INTERVENTIONS**

- 4.1. The Minister of Social Development amended Sections 21 and 26 of the Regulations to the Social Assistance Act to protect social grants from unlawful deductions and exploitation by third party commercial predators that prevented grant beneficiaries from receiving the full value of their grant (sections 20(3) and 32 of the Act)
- 4.2. The South African Constitution provides that everyone has the right to privacy<sup>11</sup>. The right to privacy includes the right of protection against the unlawful collection, retention, dissemination and use of personal information; the State must respect, protect, promote and fulfill the rights in the Bill of Rights.
- 4.3. To ensure compliance with the Constitution, the State passed the Protection of Personal Information Act 4 of 2013 (the POPI Act). The POPI Act establishes the Information Regulator to regulate the protection of personal information, empowered to monitor and enforce compliance by public and private bodies with the provisions of the Promotion of Access to information Act 2 of 2000 and the POPI Act<sup>12</sup>.

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<sup>11</sup> The Constitution of the Republic of South Africa, Section 14, 1996, <http://www.justice.gov.za/legislation/constitution/SACConstitution-web-eng.pdf>, (accessed on 12<sup>th</sup> of March 2019).

<sup>12</sup> Information Regulator South Africa, <http://www.justice.gov.za/infoereg/>, (accessed 8<sup>th</sup> May 2019).

- 4.4. In 2017, following widespread unlawful and immoral deductions, the Constitutional Court ordered SASSA to protect the confidential data of grant beneficiaries:

*“It is declared that SASSA is under a duty to ensure that the payment method it determines:*

*10.1 contains adequate safeguards to ensure that personal data obtained in the payment process remains private and may not be used for any purpose other than payment of the grants or any other purpose sanctioned by the Minister in terms of section 20 (3) and (4) of the Social Assistance Act”<sup>13</sup>.*

- 4.5. While CPS’s contract with SASSA ended on the 30<sup>th</sup> of September 2018; CPS, Net1 and Grindrod Bank have refused to return grant beneficiaries’ confidential data to SASSA citing Banking Act<sup>14</sup> to justify the retention of the information.
- 4.6. Grant beneficiaries were never given a choice between providing their biometrics and receiving a grant or not. Personal Information that grant beneficiaries entrusted to government remains available to Net1 subsidiaries and other companies in their network and they continue to profit.

## **5. THE MANAGEMENT OF BIOMETRIC DATA UNDER THE SOUTH AFRICAN POST OFFICE (SAPO) CONTRACT**

- 5.1. In 2018 SAPO entered into a government partnership with SASSA to help facilitate the payment of grants. The new agreement is aligned to the POPI Act whereby the personal information of grant beneficiaries should only be used for the purpose of processing grant payments<sup>15</sup>.

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<sup>13</sup>Black Sash & Others v Minister of Social Development & Others CCT48/2017, Constitutional Court Order dated 17 March 2017, p.4.

<sup>14</sup> The National Credit Act 34 of 2005 (NCA), read together with its Regulations requires a credit provider to maintain records of all applications for credit, credit agreements and credit accounts for a period of 3 years after the end of the credit agreement.

<sup>15</sup> Ibid. p.80.

- 5.2. In terms of its obligations, SASSA is responsible to ensure the protection of the personal information of beneficiaries; and where it enters into any agreement with other parties (with the concurrence of the Minister), to ensure effective payment of grants; those agreements must contain provisions to ensure the protection of confidential information held by SASSA<sup>16</sup> as well to protect all from the risk of fraud<sup>17</sup>.
- 5.3. The Service Level Agreement signed in September 2018 explicitly states that
- 5.3.1 “Two finger prints must be collected as part of the on-boarding process. It does not require all ten finger prints nor voice recordings<sup>18</sup>.”
- 5.3.2 SAPO “must ensure that all on-boarding equipment is at all times fully capacitated and functional to capture all the relevant data and that staff are adequately trained”. In other words, the means and materials used to collect biometric data must be operational in every on-boarding centre of the country, in this case these are Post Offices<sup>19</sup>.
- 5.4. The implementation of biometric enrolment under the new agreement has had its challenges. The transition to SAPO means that SASSA staff had access to SAPO systems and be trained, and that SAPO staff had to be trained.
- 5.5. In October 2018, SASSA officials initiated a strike. The National Education, Health and Allied Workers’ Union (NEHAWU), one of the biggest trade unions in South Africa, argued that the biometric enrolment operation, as it was presented by SASSA to its staff, contained many grey areas that would result in a lack of cooperation and accurate coordination within the agency itself<sup>20</sup>. As a result this

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<sup>16</sup> SASSA, *Act 9 of 2004*, Government Gazette, Vol. 468, N°26418, 2004, Section 4, p.8.

<sup>17</sup> South African Social Security Agency, *SASSA Annual Report 2017/2018*, Pretoria, 2018, p.8.

<sup>18</sup> Service Level Agreement, ‘Entered into between South African Social Security Agency and South African Post Office Soc Limited’, September 2018, Section 1.12.06, p.6.

<sup>19</sup> *Ibid*, p.19.

<sup>20</sup> NEHAWU, *Statement On The Programme Of Action And The Details Of The Impeding National SASSA Strike*, 2018, <https://www.nehawu.org.za/NEHAWUStatementOnTheProgrammeOfActionAndTheDetailsOfTheImpedingNationalSASSAStrike.html> (accessed on 15th of March 2019).

created challenges with the expedient transition of beneficiaries with SASSA and SAPO staff not receiving adequate training to on board beneficiaries, despite it being an explicit provision provided for in the Service Level Agreement ( SLA)<sup>21</sup>.

- 5.6. In a media release, NEHAWU stated that SASSA staff were not consulted in the process of carrying out biometric enrolment and thus, lacked the experience, the training and the material capability to perform such a task, resulting in both the inadequacy to provide efficient services to beneficiaries therefore jeopardising their access to grants on pay out days<sup>22</sup>.
- 5.7. With the challenge of the lack of equipment, SASSA and SAPO staff members were forced to bypass the collection of biometric information. They therefore act in direct violation of the SLA, and SOCPEN ( the social security pension system)<sup>23</sup>. The lack of equipment in rural areas also poses a threat to the credibility of the social grant system. Furthermore, both SASSA and SAPO staff are not properly trained to perform the on-boarding function.

## 6. CONCLUSION

- 6.1. The introduction of biometrics to ostensibly aid the administration of social assistance has had a negative impact on a third of the most vulnerable in South Africa.
- 6.2. Even though the initial rhetoric of introducing biometric technology was to counter fraud in the administration of social grants, a more complex reality unfolded that compromised grant money and prioritised profit making.
- 6.3. It appears that with a private entity fulfilling a state obligation, it continued to prioritise its profit incentive at the expense of grant beneficiaries.

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<sup>21</sup> Service Level Agreement between SASSA and SAPO September 2018, p 15

<sup>22</sup> Ibid.

<sup>23</sup> Parliamentary Monitoring Group, "Auditor-General's Report on Provincial Department Social Grants: Department response", *Meeting Report*, 2002, <https://pmg.org.za/committee-meeting/10042/>, (accessed on 14<sup>th</sup> March 2019).

- 6.4. An important aspect of the SASSA case study is to highlight the repurposing of this state institution for the purposes of reinforcing political support and power<sup>24</sup>. There appeared to be a concerted effort by politicians and government officials to ensure that CPS continue to administer social grants. The implementation of digital technologies should not be a gateway to redesign the role of the State for private entities to fulfil the state's function.
- 6.5. CPS, Net1 and Grindrod Bank collected and stored biometric data from grant beneficiaries on behalf of SASSA. However, this role was abused in order to advance sales of financial products and services by Net1 subsidiaries.
- 6.6. SASSA had no mechanism in place to protect, store and retrieve the biometric information which CPS was collecting on its behalf. Government invested in the infrastructure of a private company with proprietary rights. Grant beneficiaries are still at risk as CPS, Net1 and Grindrod Bank remain in possession of the confidential information.
- 6.7. Despite the good intentions of SASSA to introduce biometrics as a measure to combat fraud, beneficiaries have felt the brunt of having unlawful deductions made from their grants.

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<sup>24</sup> R. Foley and M. Swilling, "How can one word change the game: Case Study of State Capture and the South African Social Security Agency", Stellenbosch, Centre for Complex Systems of Transition, July 2018, p.2.

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