

SUBMISSION ON THE SOCIAL ASSISTANCE AMENDMENT BILL

13 December 2019

Trustees: Yasmin Turton (Chairperson), Mary-Jane Morifi (Deputy Chairperson) Sibongile (Bongi) Mkhabela, Mieke Krynauw, Janeen de Klerk, Maleshini Naidoo, Nolundi Luwaya and Matilda Smith. **Patron:** Maria (Mary) Burton, **National Director:** Lynette Maart

About the Black Sash Trust

1. The Black Sash Trust (“Black Sash”) is a non-party political and non-profit organization registered as a trust in terms of the laws of South Africa. Black Sash’s vision is the realisation of human rights and its mission is to work towards a South Africa in which: human rights are recognized in law and respected in practice; the government is accountable to all its people and attends to their basic needs; members of society (individuals and the private sector) also take responsibility for reducing inequality and extreme poverty; the Constitution of the Republic of South Africa, 1996 (“Constitution”) is upheld by all; and social and economic justice is recognized as fundamentally important.
2. 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. Black Sash implements three programmes: namely 1) advocacy in partnership; 2) Community Based Monitoring; and 3) education, training and research
3. The Black Sash appreciates the opportunity to make submissions on the Social Assistance Amendment Bill (SAAB) by the Portfolio Committee on Social Development.
4. We would like to place on record two issues: the timing (27 November 2019) of the invitation to make submissions and the short timeframes for replies (13 December 2019). Both these issues limit the ability of civil society to comment on the amendments comprehensively.
5. The Bill seeks to amend the Social Assistance Act, 2004, as follows:
 - insert new definitions;
 - provide for additional payments linked to social grants;
 - provide for payment of benefits to a child-headed household; to provide for social relief of distress in the event of a disaster;
 - repeal the internal reconsideration process;
 - provide for an Independent Tribunal to consider appeals against decisions of the Agency;
 - provide for the establishment of the Inspectorate as a government component.
6. We hope that our submissions will be duly considered and we are available to make oral submissions if the Portfolio Committee deems it necessary.

Rationale for submission

7. Black Sash seeks to ensure that the poor, vulnerable and marginalized people who are the recipients of social grants are treated with dignity, efficiently and with due regard to their constitutional and statutory rights.
8. Our submission is informed by our work with the Department of Social Development (DSD) and South African Social Security Agency (SASSA) as well as our involvement in various court proceedings, education and related community monitoring and advocacy programmes.
9. Our submission is informed by the Black Sash's understanding of leadership and governance, particularly within SASSA, which has had an adverse impact on the administration and payment of grants. Beneficiaries are exposed to reduced access to payment channels, deductions, fraud, additional costs and indebtedness and the right to the protection of personal information is compromised.
10. The right to Social Security, particularly social assistance, is set out in section 27 of the Constitution. Social assistance is a lifeline, government provides to a poor and vulnerable. Currently almost 18 million people or a third of the South African population receive social grants.
11. The current value of the social grant is insufficient to sustain basic living needs. For example, the current Child Support Grant of R430, falls below the food poverty or extreme poverty line¹. Yet, in 2015, 61,3% of poor households were supported by child support grants². Whilst we acknowledge the extension of the Child Support Grant policy, albeit very narrowly; there is a need for the grant to be increased as a matter of urgency. Government must provide increased funding for social assistance going forward.
12. International law emphasizes the obligation of the State. After about two decades of signing the International Covenant on Economic, Social and Cultural Rights (ICESCR), South Africa finally ratified

¹ In 2017, the food poverty line was adjusted from R441 (in 2015) to R531 per month (see Statistics South Africa, Poverty Trends in South Africa (p.8). Statistics South Africa, *Poverty Trends in South Africa: An Examination of Absolute Poverty between 2006 and 2015* (2017) p. 14, available at <http://www.statssa.gov.za/publications/Report-03-10-06/Report-03-10-062015.pdf>. On poverty lines used in SA, Stats SA employed an internationally recognised approach – the cost-of-basic-needs approach – to produce three poverty lines, namely the food poverty line (FPL), the lower-bound poverty line (LBPL), and the upper-bound poverty line (UBPL). These lines capture different degrees of poverty and allow the country to measure and monitor poverty at different levels. The FPL is the rand value below which individuals are unable to purchase or consume enough food to supply them with the minimum per-capita-per-day energy requirement for adequate health. The LBPL and UBPL are derived using the FPL as a base, but also include a non-food component. Individuals at the LBPL do not have command over enough resources to purchase or consume both adequate food and non-food items and are therefore forced to sacrifice food to obtain essential non-food items. Meanwhile, individuals at the UBPL can purchase both adequate levels of food and non-food items.' (p. 7)

² Ibid, p. 37.

this instrument in January 2015. The South African government submitted its first report in April of 2017. Black Sash is a member of South Africa's ratification Campaign of the ICESCR Coalition, which submitted a shadow report aimed to provide a civil society perspective on Economic, Social and Cultural Rights (ESCR) in South Africa as well as to raise questions on each selected issue as a means of promoting greater accountability. Moreover, it reported on the compliance status of the Government with regard to the ICESCR.³

13. In its concluding observations the United Nations Committee on Economic, Social and Cultural Rights considered the initial report of South Africa on the implementation of the International Covenant on Economic, Social and Cultural Rights⁴. It adopted the concluding observations at its 58th meeting, held on 12 October 2018.

14. More specifically in relation to Social Security, it noted:

The Committee notes that social grants have been an important instrument in reducing poverty in the State party and that significant progress has been made in this regard in recent years. It remains concerned, however, that, while the poverty ratio in the State party stands at an unacceptably high level of 55.5 percent in 2018:

- *There is no composite index on the costs of living, providing the State party with a benchmark to adequately set the levels of social benefits consistent with the requirement to ensure an adequate standard of living to all;*
- *The levels of all non-contributory social assistance benefits are too low to ensure an adequate standard of living for recipients and their families;*
- *Those with no or little income between the ages of 18 and 59 are capable of working are not covered by existing schemes;*
- *The coverage of the Unemployment Insurance remains low and excludes workers in the informal economy, seasonal workers and the self-employed; and*
- *Data and bank accounts belonging to social grant recipients have been misused and a large number of unauthorized deductions from social benefits have been recorded. (arts.9, 10 and 11).*

The Committee recommends that the State party:

- *Design and regularly update a composite index on the costs of living;*
- *Raise the levels of non-contributory social assistance benefits to a level that ensures an adequate standard of living for recipients and their families;*
- *Ensure those with no or little income between the ages of 18 and 59 have access to social assistance;*
- *Establish a social protection floor in line with the rights-based definition provided under the ILO Social Protection Floors Recommendation, 2012 (No.202);*

³ SA CSO CampaFINAL Joint Submission to UNCESCR (64th Session 24 September - 12 October 2018) 15 August 2018

⁴ E/C.12/ZAF/1) at its 42nd, 43rd and 44th meetings (E/C.12/2018/SR.42, 43 and 44) held on 2nd and 3rd October 2018

- *Expand the coverage of the Unemployment Insurance to all workers, regardless of their status;*
- *Consider the possibility of introducing a universal basic income grant;*
- *Rectify the situation brought about by the outsourcing of the social grants payment system and ensure that all the payments are made in a timely manner during the transition period.*
- *The Committee draws the attention of the State party to its general comment No. 19 (2008) on the right to social security and to its statement on social protection floors: an essential element of the right to social security and of the sustainable development goals (E/C.12/54/3⁵).*

15. It is therefore important to consider the amendments in the context of South Africa's constitutional and international obligations. The State is due to report to the United Nations Council by October 2020 on its progress towards following the recommendations.

New Definitions in the Act

16. Black Sash agrees that using the definition provided for in the Disaster Management Act for disaster and disaster management is useful.
17. The reference to "appointed by the Minister" in the definition of "Independent Tribunal" should be deleted as no substantive law should be created in a definition. The appointment issue is in fact provided for in section 18(2)(b) of the SAA.
18. Black Sash supports the inclusion of extending the definition to also include the head of the household, for Social Relief of Distress.
19. Black Sash supports expanding the definition of *social assistance* by including additional payments as contemplated in Section 12A.

Provide for additional payments linked to social grants

20. In its presentation to the Portfolio Committee, the Department of Social Development indicated that one of the main objectives of the amendments was to empower the Minister, with the concurrence of the Minister of Finance, to make additional amounts available for social grants to:
 - a) Implement the extended Child Support Grant policy which was approved by Cabinet in December 2016; and
 - b) Regularize the practice of paying additional amounts on the Old Age Pension Grant for those over 75 years⁶.

⁵ United Nations Economic and Social Council E/C.12/ZAF/CO/1

⁶ November 2019 Presentation by the Department of Social Development to the Portfolio Committee on Social Development

21. Black Sash supports the amendment for the Minister to be empowered to consider an increase in the amount of social grants to be paid.

Provide for payment of benefits to a child-headed household; to provide for social relief of distress in the event of a disaster;

22. Black Sash supports the extension of the Child Support Grant to include child headed households.

Repeal the internal reconsideration process

23. The DSD argues that the current reconsideration mechanism within SASSA allows for an administrative review of the decision making process and does not add substantial value as SASSA has its own quality control processes.⁷
24. While the Black Sash understand the rationale for removing the internal reconsideration to appeal directly to the Tribunal (i.e. for a grant application or review with SASSA), we have concerns the Tribunal will have the additional burden to resolve small issues.

Provide for the establishment of the Inspectorate as a government component

25. Section 24 of the Social Assistance Act provides for the establishment of an Inspectorate for Social Assistance. While staff was recruited by DSD the Unit was unable to implement this function.
26. Black Sash supports the establishment of the Inspectorate that functions independently of both the DSD and SASSA.
27. Black Sash recommends that the skills and expertise of the Inspectorate must include but not limited to at least one retired member of the judiciary with suitable expertise and experience in law and at least one person with experience or expert knowledge of forensic auditing and risk management.
28. Currently there is no proper and adequate oversight mechanism in place to monitor and protect the integrity of the national social assistance payment system. The payment system as administered by SASSA and SAPO is not properly and adequately insulated from fraud and corrupt activities. We anticipate that amendments to the SASSA Act should make provisions to:
 - a) Compel SASSA and SAPO to submit regular performance reports including reports involving fraud

⁷ November 2019 Presentation by the Department of Social Development to the Portfolio Committee on Social Development

and corrupt activities to the Inspectorate; and

- b) Compel SASSA and SAPO to ensure that the national social assistance payment system data base is not used for commercial gain.

Conclusion

- 29. The Black Sash generally supports the amendments as it will enhance the realization of social security rights.

ENDORSEMENTS:

1. Adelaide Advice Office and Development Centre
2. Berlin Advice Office
3. Bomvana Community Advice Centre
4. Care for Alicedale (social welfare NPO and advice giving organization)
5. Daliwe (Cathcart) Advice Office
6. Elliot Paralegal Advice Centre (Elliot)
7. Interchurch Local Development Agency

- 8.** Karoo Paralegal Centre (Cradock)
- 9.** Middleburg Advice Office
- 10.** Peddie Advice Office
- 11.** Refugee Social Services Durban Kwazulu Natal