

**COMMENT ON THE AMENDMENTS TO THE REGULATIONS  
RELATING TO COVID-19 SOCIAL RELIEF OF DISTRESS ISSUED IN  
TERMS OF  
SECTION 32, READ WITH SECTION 13, OF THE SOCIAL ASSISTANCE  
ACT,  
2004 (ACT NO. 13 OF 2004), AS AMENDED**

**NO. R 3038**

**BLACK SASH  
07 March 2023**

**Trustees:** Nolundi Luwaya (Chairperson), Janeen de Klerk, Mieke Krynauw, Tintswalo Maggie Mofokeng, Maleshini Naidoo, Anastasia Peters, Thembisile Sehloho, Matilda Smith. **Patron:** Maria (Mary) Burton. **Executive Director:** Rachel Bukasa

## **AMENDMENTS TO THE REGULATIONS TO THE SOCIAL ASSISTANCE ACT, 2004**

### **About the Black Sash Trust**

1. Black Sash is a non-profit organisation with a vision of a South Africa in which human rights are recognised in law, respected, and implemented in practice, where government is accountable to its people, basic needs are met in a participatory and dignified manner, and where the Constitution is protected, promoted, and fulfilled by all.
2. Black Sash therefore works towards the realisation of socio-economic rights that seeks to reduce poverty and inequality, with an emphasis on social security and social protection for the most vulnerable, particularly women, youth, and children.
3. Black Sash appreciates the opportunity to comment on the amendments to the regulations relating to the COVID-19 Social Relief of Distress (SRD) Grant issued in terms of Section 32, read with Section 13 of the Social Assistance Act 2004 as amended issued by the Department of Social Development (DSD).

### **Rationale for submission**

4. Our submission is informed by our ongoing engagements with the Department of Social Development (DSD) and the South African Social Security Agency (SASSA). Black Sash works to ensure the right to social assistance is delivered in an unhindered manner to all those who qualify in South Africa.
5. The right to social security, particularly social assistance, is set out in section 27 of the Constitution<sup>1</sup>. Social assistance is a crucial lifeline which the government, through its Constitutional mandate, provides to protect the poor and vulnerable. Currently more than 18 million people or a third of the South African population receive permanent social grants and approximately a further 7.8 million people receive the SRD grant. It is incumbent on the government to ensure an effective and efficient social grant system which is transparent and at no cost to beneficiaries.

### **Administrative Challenges and an Appeal process:**

6. Since its inception, the SRD Grant has been plagued with challenges vis-a-vis administration, technical glitches, obstacles to apply for the grant through an exclusive online system, a threshold that does not take cognisance of the South African context and cost of living, a flawed eligibility criterion, a defective verification process and a fundamentally weak recourse and appeal process. The regulations do not sufficiently address these challenges, especially on a plan to improve the appeal process for unsuccessful applicants.
7. Black Sash is gravely concerned that despite our engagements with SASSA through the Recourse Forum and the SRD Forum, our active participation in a DSD Round table meeting wherein we illustrated and highlighted the challenges to access the SRD grants

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<sup>1</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>

since its inception, and making substantive comments to the draft regulations in 2022 - DSD and SASSA have failed to sufficiently take cognisance of our concerns.

8. The SRD Grant is not a handout nor a favor by government to its people. Instead it's a constitutional imperative which aids economic growth. It is an investment in our collective future given its proven positive benefits. We believe that income support leads to better nutritional and educational outcomes, social cohesion, job seeking behaviour and stimulates local economies. It encourages economic activity and helps to empower women who bear the burden of unpaid Caregiving work and Gender-Based Violence.
9. In April 2022 Government passed regulations which decreased the qualifying threshold for the SRD grant from R595 to R350 in an attempt to reduce the budget for grants. What this meant was that a beneficiary could not have more than R350 a month in their bank account (regardless of where this came from), otherwise they were considered "too rich" for the SRD grant and would be disqualified from receiving the grant..
10. In June 2022, Black Sash, represented by the Centre for Applied Legal Studies (CALs), launched an urgent application to the High Court in Pretoria, challenging the arbitrary and exclusionary nature of this new qualifying requirement, amongst other grounds of review.
11. Our litigation raised various issues, including the use of exclusively digitised/ online systems for applications for the SRD grant (which persists today); privileging bank verification information above other information from applicants to verify their eligibility; the impossibly low-income threshold of R350; and the fact that the Regulations prohibited any new information and evidence from being provided when beneficiaries appealed rejections of an SRD grant application.
12. On 16 August 2022, and in direct response to the court challenge instituted by Black Sash, DSD announced amendments to the SRD grant Regulations that addressed two of the key issues raised in our litigation in June, namely:
  - Increasing the income threshold for qualification for the SRD from R350 to the lower bound food poverty line; and
  - Removing the privileging of bank verification information when assessing an application for the SRD grant.
13. It is disheartening that it took a legal challenge for DSD to change its course and adopt a human rights-based approach to the grant system, albeit to a limited extent and we hoped the regulations would respond to all the challenges raised in our court action.<sup>2</sup>
14. We had hoped that DSD would take this opportunity to consider the regulations through a human rights lens and make amendments accordingly to ensure that those who are unemployed will be provided with some support while looking for work in a challenging context where jobs are scarce.

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<sup>2</sup><https://www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-management/research-entities/cals/documents/programmes/bhr/in-court/2.%20Founding%20Affidavit%2017.6.2022.pdf>

## **Budgeting implications**

15. It is important to recognise that the “fiscal constraints” influences the budget allocation for the SRD Grant and how it is regulated in term of how government implements the SRD Grant.
16. The Minister of Finance allocated a budget of R44 billion in anticipation of 10.5 million beneficiaries qualifying for the grant in 2022.
17. However, the stringent eligibility criteria introduced with the Regulations under the Social Assistance Act to ensure that the number of applicants who qualify are limited within the constraints of the budget had the intended consequence of being exclusionary by default.
18. This is confirmed given that as of January 2023, 7 487 351 million beneficiaries received the SRD grant compared to the 13 474 520 million applicants who applied for the grant<sup>3</sup>.
19. This demonstrates how the regulations have excluded the unemployed from qualifying which has left millions destitute.
20. We are further dismayed that National Treasury continues to fail to respond to the South African context. Despite the acknowledgement by the Minister of Finance in his opening remarks with Budget Speech that the 2023 Budget is being “tabled in a difficult domestic and global economic environment where households are under pressure from the rising cost of living, and unemployment remains stubbornly high” this cut the budget for the SRD grant by almost 25% from R44 billion to R36 billion<sup>4</sup>.
21. Black Sash is disappointed that National Treasury fails to support DSD to fulfil its mandate to alleviate poverty by providing a budget for the SRD Grant to ensure that all the unemployed in South Africa receive the grant.

## **The Regulations and International obligations**

22. The Regulations fail to properly address concerns raised in by the United Nations Committee for the International Covenant on Economic, Social and Cultural Rights (ICESCR) on our international social security obligations.
23. The Committee expressed concern in its 2018 report on South Africa’s implementation of social assistance about the government’s introduction of austerity measures which have resulted in significant budget cuts in the health, education and other public service sectors. This, they believed may further worsen inequalities in the enjoyment of the rights under the Covenant<sup>5</sup>.

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<sup>3</sup> 15 February 2023 Briefing by SASSA to Portfolio Committee on Social Development [230215PC StatusonGrantPaymyents 15Feb23 d2.pptx \(live.com\)](#)

<sup>4</sup> <https://www.gov.za/speeches/minister-enoch-godongwana-2023-budget-speech-22-feb-2023-0000>

<sup>5</sup> [12 October 2018E/C.12/ZAF/CO/1 United Nations Social and Economic Council Concluding observations on the initial report of South Africa](#)

24. The Committee recommended that the government increase the level of funding in the areas of social security, health and education. The Committee acknowledged that social grants have been an important instrument in reducing poverty in the country but remains concerned that the poverty ratio in the country is unacceptably high. The Committee recommended that South Africa raise the levels of government social assistance benefits to a level that ensures an adequate standard of living for recipients and their families; ensure that those between the ages of 18 and 59 with little or no income have access to social assistance; and consider the possibility of introducing a universal basic income grant.
25. By failing to make provision for a more inclusive system, that reduces the qualifying threshold and criterion, and by not creating a pathway to converting the SRD grant into a more permanent Basic Income Support, the Regulations fail to properly consider South Africa's international social assistance obligations.

## **Persons eligible to receive the Covid-19 Social Relief of Distress Grant**

### **Validating insufficient means**

26. Black Sash objects to the use of a **screening questionnaire** as per regulation 2(3)(b) whereby we have submitted a complaint to the Information Regulator. We have lodged an appeal which is pending. Kindly find attached the relevant documentation relating to the complaint. We submit that the questionnaire should be removed from the regulations.
27. Black Sash has consistently reported to both DSD and SASSA in different forums that using government databases, as per Regulation 2(c)(i) as a means of testing eligibility has proven unworkable and problematic given the inaccurate and outdated information on these databases. This has resulted in many qualifying applicants being disqualified as the data used is outdated. We continue to call on the government to have an intergovernmental communications system with a single database.
28. The Regulations must make allowances for these outdated databases, or create an alternative to assure that those in need and who qualify for the grant do not have their application hindered as a result of government's failure to properly ensure the accuracies of their databases. Black Sash submits that DSD and SASSA must seek to use reliable and accurate systems to determine eligibility. It must acknowledge that there is room for error with the use of government databases and banks systems. We propose that the Regulations make allowances to accept the version of the applicant in the absence of evidence to the contrary.
29. In the first special report of the Auditor General on the financial management of Government's COVID-19 initiatives, it noted that the information technology systems used in government were not agile enough to respond to the changes required. The lack of validation, integration and sharing of data across government platforms resulted in people (including government officials) receiving benefits and grants they were not entitled to, and applicants being unfairly rejected as a result of outdated information<sup>6</sup>.

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<sup>6</sup> Auditor General of South Africa First Special Report on the financial management of government's Covid-19 initiatives p.5

30. Below is the story of an applicant who turned to Black Sash for assistance which illustrates the challenges with bank verifications:

*"I have been declined for the new period, their reason being alternative income.*

*My mother-in-law passed away December 2020. In February 2021 he (father in law) asked me and my 2 children if we could move in with him to help him sort everything in the house. It helped me because I have been unemployed since February 2017.*

*The problem is that he sometimes pays money into my account so that I can go buy things that he needs or pay accounts because he doesn't have internet banking and he doesn't want it because he doesn't understand it, he is 63 years old. The reference he uses every time he does that on my bank statement is "Dad".*

*Because of that I have now been declined and when I put in an objection, it doesn't allow you to explain anything, all I could do is click on alternative income sourced. I don't see how that helps if I cannot explain to Sassa where the money comes from and what it is for because I am still responsible for my children. Even though he assists with food, I used to use the R350 for our toiletries and anything that my children needed because he cannot afford to help us with everything.*

*How can one explain to Sassa about the money?*

31. It is Black Sash's submission that applicants be given an opportunity to present proof to mitigate against their 'ineligibility' in cases where there is a dispute about information received from government or bank databases. The continued failure to provide this mechanism means that SASSA is deliberately turning a blind eye to lived realities in the name of cost saving.

### **Income threshold**

32. While we appreciate that the **income threshold** was increased with amended Regulations in August 2022, it is not aligned with the current Food Poverty Line of R663. But nevertheless, the income threshold should not be determined by the bare minimum you need to survive but rather by what you need for an adequate standard of living.

### **Procedure for application for the covid relief of Distress Grant**

33. The exclusive **electronic platform** is exclusionary by default.

34. The COVID-19 pandemic provided the opportunity for digital transformation to advocate for access to social assistance against a backdrop of hard lock down with limited movement and social distancing through digital platforms.

35. We acknowledge that the online platform provided the widest reach in the quickest time during Covid, but since its introduction in 2020 the platform has been challenging with administrative problems and technical challenges which places an onus on DSD and SASSA to address this to ensure that the “right grant is paid to the right person at the right time”.
36. Grant beneficiaries were not consulted about what works for them nor was a needs assessment done, without due consideration being taken of the cost implications for beneficiaries to use digital platforms and the need to consider the disparity between rural and urban areas.
37. This provided an irony to introduce a grant for the unemployed who have no income but are expected to have the tools and knowledge to be able to use digital online platform given the rural and urban divide and rich and poor divide.
38. There is a disparity between urban and rural areas with access to digitisation<sup>7</sup>. The number of people in urban areas was close to double the amount that used the internet as compared to in rural areas and those in urban areas had more smartphones than in rural areas. Although this might seem on the face of it, a positive increase of the use of smartphones, there is not much that is stated regarding access to other tools such as interconnectivity and digital literacy. It cannot be implied that 33% of people living in rural areas is enough justification to fully transition to digitised payments of social grants, while there is more than 60% who do not have access to smartphones.
39. In the context of the emerging Fourth Industrial Revolution -which is an era where people are using smart, connected, and converged cyber, physical and biological systems and smart business models to define and reshape the social, economic and political spheres; and the technological reliance during the COVID-19 pandemic, it is increasingly important that the South African government includes a plan for developing technological infrastructure in poor and rural communities.
40. We highlight that there is need for a balance between face-to-face and digital options which is necessary to deliver the constitutional mandate of social security to the poorest of the country.

### **Date of application and consent by applicant for information sharing**

41. The date of application should be considered as the date when the applicant started the process of applying. As shared above, using a digital only platform requires an applicant to be literate and have access to data and all their required information in order to complete an application. This may not necessarily be the case for all applicants who may need to open bank accounts or require assistance in completing the form. Using the date when all information is fully submitted may prejudice applicants who need support to complete the application.
42. We also note that when information is missing from the application, applicants have shared with us that they are not contacted by SASSA to provide the missing information.

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<sup>7</sup> According to Research ICT Africa’s 2012 ICT Access and Use Survey

Instead, the onus lies on the applicant to keep checking their status online to ascertain what is holding up the approval or payment of the grant.

43. With regard to section 4(2), consent must be informed consent with an applicant understanding how this information will be used and the onus is on government to ensure that this information is correct and updated at time of application.

### **Amount and period of payment**

44. Black Sash strongly objects to the amount of the grant. The grant amount is far below the food poverty line of R663 and is too little to provide a lifeline against hunger with the high cost of living.

45. Key data from the February 2023 Household Affordability Index shows that:

- In February 2023: The average cost of the Household Food Basket is R4 928,34.
- Month-on-month: The average cost of the Household Food Basket increased by R10,91 (0,2%), from R4 917,42 in January 2023 to R4 928,34 in February 2023.
- Year-on-year: The average cost of the Household Food Basket increased by R572,64 (13,1%), from R4 355,70 in February 2022 to R4 928,34 in February 2023<sup>8</sup>.

46. We submit that the SRD Grant should be made permanent.

### **Appeal against decision of the Agency**

47. The Appeal process has little credibility if the same outdated and unreliable databases are used to reconsider the application; and using bank verification is flawed because incoming funds reflected cannot be determined to be for the benefit of the account holder of the bank account.

48. Not making provision for an appellant to submit any additional evidence or information to mitigate his/her appeal makes it highly unlikely that an application will be overturned.

49. The Tribunal adjudicated a total of 910 307 appeals for the month of April 2022<sup>9</sup>.

50. A total of 177 770 (representing 19% of appeals received for April 2022) were approved for payment by SASSA<sup>10</sup>.

51. Applicants seek the grant because they are unemployed and require financial support to survive. We object to the tedious process with appeals in terms of how long it takes and submit that it is imperative that the Regulations place an onus on the Appeal Tribunal to resolve an appeal within specific time frames.

52. Black Sash submits that this process is contrary to just administrative justice.

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<sup>8</sup> [February-2023-Household-Affordability-Index-PMBEJD\\_28022023.pdf](#)

<sup>9</sup> 15 February 2023 Briefing by SASSA to Portfolio Committee on Social Development 230215PC\_StatusonGrantPaymyents\_15Feb23\_d2.pptx (live.com)

<sup>10</sup> Ibid



## Conclusion and further recommendations

53. Government has a constitutional and international obligation to provide financial support for those between 18 and 59 years who earn no or little income.
54. We are concerned about the low number of successful beneficiaries whose applications were approved compared to the number of applications received. As of January 2023, a total of 13 474 520 applied for the grant, but only 748 7351 were approved to receive the grant due to the stringent and narrow eligibility<sup>11</sup>. This illustrates the psychological fatigue of applicants who are challenged with an online system which is difficult to access, is only in English (which is not necessarily in their mother tongue), are confronted with administrative obstacles, combined with the uncertainty of the application outcome as well as the ever-shifting payment dates.
55. We submit that the current system is designed to be exclusionary by default namely, the exclusive online portal for the SRD grant, the “optional” questionnaire which serves as a deterrent for applications, the administrative glitches with the use of outdated databases and inaccurate bank verifications, challenges with the payment system, the backlog with applications, and appeals.
56. Black Sash submits that DSD and SASSA must ensure that the provisions are inclusive rather than exclusionary by default to ensure that those who struggle to find employment have a buffer from hunger and starvation.
57. Given the crisis with unemployment it is prudent for the government to acknowledge the vulnerability of the unemployed and fulfil its constitutional obligation to provide the unemployed with financial support when they are able bodied to work but there are no jobs.
58. According to Stats SA consumer inflation hit its highest level in 13 years during 2022 with transport and food & non-alcoholic beverages (NAB) had the biggest impact on overall inflation<sup>12</sup>.
59. The value of the Rand is of much less value and implore the government to increase the amount of the SRD grant, have less onerous criteria for eligibility, provide accessibility and ensure an efficient administrative and payment system for the SRD grant so that those who are struggling to find employment can afford basic needs and have means to look for work. This will have a significant impact to addressing poverty if it is complemented by job creation.
60. Black Sash will intensify advocacy efforts to increase the value of the grant to at least match the Food Poverty Line (currently R663) with firm policy plans for the amount to be at the Upper Bound Poverty Line of R1417 and address its administrative and design flaws, so that beneficiaries can access the grant in an efficient and dignified way.

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<sup>11</sup>[https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fstatic.pmg.org.za%2F230215PC\\_StatusonGrantPayments](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fstatic.pmg.org.za%2F230215PC_StatusonGrantPayments)

<sup>12</sup> [2022: A rocky road for product prices | Statistics South Africa \(statssa.gov.za\)](https://www.statssa.gov.za/news/2022/02/2022_A_rocky_road_for_product_prices.html)

61. Black Sash is advocating for Basic Income Support for 18 to 59 years who earn no or little income campaigning for the following demands:

- Increase the reinstated R350 Covid-19 SRD grant to at least the Food Poverty Line, currently R663.
- Implement permanent social assistance for those aged 18 to 59, valued at the upper-bound poverty line, currently R1,417 per month.
- Reinstate and make the COVID-19 increases of R250 per month permanent for all social grants;
- Ensure that these provisions apply to refugees, permanent residents, asylum seekers and migrant workers with special permits; and
- Work towards a universal basic income for all.

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