

**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 50125**

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

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 notes the public invitation 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), but would like to point out with regret that despite comments by civil society there have been no significant changes to the regulations which speak to the consistent concerns raised.
4. We will proceed to comment and repeat the submissions we have made since the Regulations were first implemented given that the challenges continue.

Rationale for submission

5. 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.
6. The right to social security, particularly social assistance, is set out in section 27 of the Constitution¹. 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.
7. In his Budget Speech for 2024 the Finance Minister indicated that:

“We are sensitive to the increase in the cost of living for the nearly 19 million South Africans who rely on these grants to make ends meet. In this regard, we have done as much as the fiscal envelope allows. Work is currently underway to improve the COVID-19 Social Relief of Distress Grant by April this year. National Treasury will work with the Department of Social Development in ensuring that improvements in this grant are captured in the final regulations”².

¹ The Constitution of the Republic of South Africa, Section 27.1.c, 1996 <http://www.justice.gov.za/legislation/constitution/SACConstitution-web-eng.pdf>

² <https://www.treasury.gov.za/documents/national%20budget/2024/speech/speech.pdf>

8. However, the draft regulations that were published just a week before the Budget Speech, show no signs of improving the grant (monetarily and in terms of access by those in need)
9. On the contrary, the regulations introduce amendments which only benefit government and not the most vulnerable in our society.

Proposed amendments

Recovery of monies by SASSA

10. SASSA has the responsibility to pay the grant to the right person. SASSA should first investigate the reason for the incorrect payment.
11. We recognise that this provision is in line with other grant type overpayment recovery regulations whose purpose is to deter government officials and/or those with financial means from trying to defraud the social grant payment system. In these instances, we feel SASSA should be able to recover the monies.
12. Given the flawed administrative system to determine eligibility by only using government databases which are not up to date, SASSA should absorb the cost of the erroneous payment.
13. Incurring expenses to recover such a meagre amount, does not mitigate the cost and SASSA's budget would be better spent to put measures in place to address administrative challenges to ensure that eligible applicants receive their grant.

Forfeiting claim to grant

14. Inserting a provision whereby beneficiaries lose their right to the grant if they fail to claim their grant monies within 90 days, is punitive in nature and fails to acknowledge the lived realities of social grant beneficiaries.
15. The problem of notifying "the last known phone number" is that it prejudices applicants that relied on the goodwill of local community members or organisations to assist them with applications due to a lack of resources and the online nature of the application procedure.
16. Forfeiture is linked to communication and the agency receiving no responses to notices within 90 days. Given the vulnerability of the applicants who have limited resources, it begs the question whether successful applicants had in actual fact received the notices to be able to calculate 90 days.

Administrative Challenges and an Appeal process:

17. Since its inception, the SRD Grant has been plagued with challenges vis-a-vis administration, technical glitches, obstacles to applying 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.

18. 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 since its inception and making substantive comments to the draft regulations in 2022 and 2023 - DSD and SASSA have failed to sufficiently take cognisance of our concerns.
19. The SRD Grant is not a handout nor a favour by government to its people. Instead, it is 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.
20. 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 grant recipients. 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.
21. 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.
22. 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.
23. 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.
24. 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 payment system, albeit to a limited extent

and we hoped the regulations would respond to all the challenges raised in our court action.³

25. We had hoped that DSD would take this opportunity to consider the regulations through a human rights lens and make progressive 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.
26. The persistent failure to address the concerns with the SRD Grant compelled civil society to turn to the courts again in July 2023 whereby the Institute for Economic Justice (IEJ) and #PayTheGrants (#PTG), through their lawyers at the Socio-Economic Rights Institute (SERI), filed court papers challenging regulations that unlawfully and unconstitutionally exclude millions of people living in poverty from receiving the SRD Grant⁴. Black Sash supports the application.

Budgeting implications

27. It is important to recognise that the “fiscal constraints” influence the budget allocation for the SRD Grant and how it is regulated in terms of how government implements the SRD Grant.
28. The Minister of Finance allocated a budget of R44 billion in anticipation of 10.5 million beneficiaries qualifying for the grant in 2022, which was reduced to R36 billion in 2023 and now further reduced to R33,6 billion in 2024. This begs the question of how the grant will be improved and reach those who need it most with a further reduced budget, especially when more and more in South Africa are struggling to find work.
29. The budget allocated determines the number of applicants who qualify. Given the further constrained budget, the intended consequence of being exclusionary by default will continue to limit who will qualify for the grant despite the need.
30. This is confirmed given that as of January 2024, 84 934 30 million beneficiaries were approved to receive the SRD Grant compared to the 15 912 410 applicants who applied for the grant.
31. This demonstrates how the regulations have failed to fulfil their purpose by providing a buffer for the unemployed against hunger and poverty given, the disparity between those who have applied for the grant and those who were successful.
32. We are further dismayed that National Treasury continues to fail to respond to the South African context by decreasing the budget allocated for the SRD budget, being guided by the slow uptake of the grant despite civil society consistently showing that the slow uptake illustrates the defective administrative systems in place to restrict applicants from

³<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>

⁴ <https://www.iej.org.za/srd-court-case-litigating-the-right-to-social-assistance/>
<https://www.iej.org.za/srd-court-case-litigating-the-right-to-social-assistance/>

receiving the grant because of the budget allocation, rather than responding to the demand in a context of high unemployment.

33. Black Sash is disappointed that National Treasury fails to support DSD to fulfil its mandate to alleviate poverty with the reduced budget for the SRD Grant which fails to ensure that all the unemployed in South Africa receive the grant.

The Regulations and International obligations

34. The Regulations fail to properly address concerns raised by the United Nations Committee for the International Covenant on Economic, Social and Cultural Rights (ICESCR) on our international social security obligations.
35. 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 Covenant⁵.
36. 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.
37. 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.
38. It is important to flag that the State Report to the Committee has failed to be submitted on its due date (October 2023) and is yet to be received by the United Nations.

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

Validating insufficient means

39. 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. We submit that the questionnaire should be removed from the regulations.

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

40. 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 updated database in real-time.
41. 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 because 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 current government databases and bank systems. We propose that the Regulations make allowances to accept the version of the applicant in the absence of evidence to the contrary.
42. 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 information⁶.
43. 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

44. 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 R760. 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

45. The exclusive **electronic platform** is exclusionary by default.
46. The COVID-19 pandemic provided the opportunity for digital transformation to advocate for access to social assistance against a backdrop of hard lockdown with limited movement and social distancing through digital platforms.
47. 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 challenged with administrative problems and technical challenges which places an onus on DSD and

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

SASSA to address this to ensure that the “right grant is paid to the right person at the right time”.

48. 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.
49. This provides a paradox 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 platforms in English, given the rural and urban divide and rich and poor divide and that South Africa has 12 official languages.
50. 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.
51. We highlight that there is a very real 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.
52. We, therefore, submit that the application process must make provision for assistance by SASSA to assist with applications if it continues to be exclusively digital and/or allow for a hybrid system to make provision for other methods of application that are not exclusively online.
53. Failure to do so will mean that struggling SRD Grant applicants will continue to bombard SASSA officials for assistance at SASSA-driven community outreach events, rather than receiving the required support at local SASSA offices through the Queue Management System (QMS).

Date of application and consent by the applicant for information sharing

54. 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 the required information 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.
55. 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. 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. The amendments refer to communication and notice to applicants of which the form of communication or issue of notice is not clearly defined.

56. Regarding consent, 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 the time of application.

Amount and period of payment

57. Black Sash strongly objects to the amount of the grant based on the grant amount being far below the food poverty line of R760 and is too little to provide a lifeline against hunger with the high cost of living. We submit that the grant amount be at par with the food poverty line of R 760.

58. Key data from the February 2024 Household Affordability Index shows that⁷:

- In February 2024: The average cost of the Household Food Basket is R5 277,30.
- Year-on-year: The average cost of the Household Food Basket increased by R348,96 (7,1%), from R4 928,34 in February 2023 to R5 277,30 in February 2024.

59. We submit that the SRD Grant should be made permanent with a policy framework in place to work towards universal basic income.

Appeal against the decision of the Agency

60. 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.

61. 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.

62. 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 the Regulations must place an onus on the Appeal Tribunal to resolve an appeal within specific time frames.

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

Conclusion and further recommendations

64. Government has a constitutional and international obligation to provide financial support for those between 18 and 59 years who earn no or little income.

65. At the end of 2023, Black Sash did a docu-series which highlights the importance of supporting the call for #BasicIncomeSupport. The stories offer a glimpse of the struggles of many who live in South Africa, providing a platform for the most vulnerable in our society to use their own voice to talk about their lived reality, and their daily struggle to

⁷ https://pmbejd.org.za/wp-content/uploads/2024/02/February-2024-Household-Affordability-Index-PMBEJD_21022024.pdf

survive. We urge government to consider the lived realities on the ground and learn more: bit.ly/basicincomesupport and watch the series on YouTube: bit.ly/watchBIS

66. It is important for government to consider the regulations through a human rights lens and recognise that a grant for the unemployed working towards Universal Basic Income is an investment which will stimulate the local economy.
67. We are concerned about the low number of successful beneficiaries whose applications were approved compared to the number of applications received, as well as the amount of payments made.
68. It is important to note that the number of applicants who apply for the grant is not a reflection of the need. Many unemployed cannot apply because of the exclusive online platform which is only English which excludes a significant part of the population. Applicants are disillusioned with the administrative processes and suffer from physical and psychological fatigue (of applicants) from failed attempts to apply despite being eligible for the grant. There are delays with payments. There is a backlog with appeal processes which make it extremely difficult for those who are not sure where their next meal is coming from.
69. 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.
70. 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.
71. 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.
72. 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 on addressing poverty if it is complemented by job creation.
73. Black Sash will intensify advocacy efforts to urgently increase the value of the grant to at least match the Food Poverty Line (currently R760) with firm policy plans for the amount to be at the Upper Bound Poverty Line of R1558 and address its administrative and design flaws so that beneficiaries can access the grant in an efficient and dignified way.
74. Black Sash is advocating for Basic Income Support for those 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 R760.
- Implement permanent social assistance for those aged 18 to 59, valued at the upper-bound poverty line, currently R1,558 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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