



HELENSUZMAN
FOUNDATION

For attention: Dr Maureen Mogotsi

Department of Social Assistance

Email: SAREGS@dsd.gov.za

29 July 2022

Dear Dr Mogotsi

Submission 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.

We attach our written submission in response to the notice of intention to amend 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.

We would like to confirm our interest in making oral representations at a later convenient date.

Should you have any queries, it would be appreciated if you could contact me at the following email address: nicole@hsf.org.za .

Yours sincerely

Nicole Fritz

Director



HELENSUZMAN FOUNDATION

1. Introduction

- 1.1. This submission is a response to an invitation to interested individuals and organisations to submit written comments on the Amendments to the Regulations Relating to Covid-19 Social Relief of Distress Grant Issued in Terms of Section 32, Read with Section 13 of the Social Assistance Act (“**amendments**”), by 29 July 2022.
- 1.2. The Helen Suzman Foundation (“**HSF**”) is a non-governmental organisation whose aim is to promote constitutional democracy and the rule of law. To this end the HSF carries out legal, social, economic and political research, and it litigates from time to time on matters with constitutional significance.
- 1.3. The HSF makes this submission recognising that the widespread economic devastation following the Covid-19 pandemic has merely accentuated the long-standing need to provide income support to the poorest South Africans. Indeed, the HSF views the initial introduction of the Social Relief of Distress Grant (“**SRDG**”) as far more than a necessary temporary measure in response to the economic crisis precipitated by the Covid19 pandemic.
- 1.4. Rather, the HSF submits that the SRDG should be treated as the first step toward progressively realising permanent basic income support (“**BIS**”), on a fiscally sustainable basis, for South Africans who are structurally prevented from entering the labour market to earn an income for themselves.
- 1.5. The HSF sees such action as an integral part of a functioning constitutional democracy and a necessary response to the guidance of section 27(1)(c) of the Constitution, which enshrines for *everyone* the right to have access to, among other things, “social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.”
- 1.6. While the HSF stresses the importance of careful, deliberative engagement with the economic affordability of these measures and ways in which we might sustainably finance them, such engagement cannot be divorced from the absolutely compelling moral and legal imperatives to protect South Africans from the indignities and devastation of extreme poverty.
- 1.7. Without a nuanced debate about BIS along these lines, we risk falling short in a crucial aspect of realising our Constitution’s transformative vision.

1.8. In summary the HSF submits that –

- 1.8.1. The amendments are welcome to the extent that they raise the eligibility threshold for the SRDG to the food poverty line (“**FPL**”) and remove some of the barriers to the SRDG’s efficient distribution to those who qualify for it.
- 1.8.2. Even with these positive changes the SRDG is still delivered inefficiently.
- 1.8.3. The SRDG’s inefficient distribution is a result of an eligibility assessment process that is exclusionary in its design and its implementation. It is administratively burdensome, costly and labour intensive.
- 1.8.4. While we are not opposed to significantly reforming this system to mitigate its exclusionary effects, we recognise that strict eligibility systems inevitably have exclusionary effects. As such, government should make concerted efforts to explore a more broadly delivered SRDG, accompanied with appropriate measures to ‘claw back’ amounts paid to persons who can support themselves via adjustments to the tax system.
- 1.8.5. Whatever system of delivery that the Minister chooses, the amendments should introduce the following three reforms, given the South African Social Assistance Agency’s (“**SASSA**”) dismal past performance in administering the SRDG:
 - 1.8.5.1. a detailed forensic reporting obligation in the event that grants are not paid out when they are due, in order to enable SASSA and the Department of Social Services (“**Department**”) to properly account to the public for its failure;
 - 1.8.5.2. an obligation on SASSA to provide meaningful prior warning mechanisms in the event that grants will not be paid timeously, in order to allow recipients to properly plan their affairs; and
 - 1.8.5.3. the creation of a “credible, independent, transparent and effective complaints procedure” that will allow people who have not received their SRDG to raise their concerns and for them to be dealt with effectively and timeously.¹
- 1.8.6. The SRDG should be kept in place beyond March 2023, at a minimum R350 for those falling below at least the FPL, as a permanent form of BIS that is appropriately funded by a mix of reallocated public funds and progressive income and corporate taxes.

¹ The Expert Panel on Basic Income Support Final Report, December 2021 (“**Expert Panel Report**”) at page 235 – available [here](#).

- 1.8.7. The Minister of Social Development (“**Minister**”) and Minister of Finance should not be the sole arbiters of whether eligibility for the SRDG falls below the FPL – or increases above it.
- 1.8.8. The SRDG must be accompanied with an evaluation and surveillance regime that provides government with the opportunity to conduct evidence-based assessments of any adjustments to the SRDG framework.
- 1.8.9. The R44bn set aside for the SRDG, is insufficient to deliver a monthly grant of R350 to the roughly 18.3 million South Africans that fall below the FPL.²
- 1.8.10. The SRDG must be accompanied with a renewed commitment to an economic policy that ensures economic growth and, in particular, job opportunities for grant recipients.³

2. The Amendments are Generally Positive Because They Facilitate Inclusion into the SRDG.

- 2.1. The most encouraging aspect of the amendments is that they increase the maximum income for eligibility to the FPL and abolish the requirement that applicants for the SRDG need to meet this income criteria on a three-monthly basis, or else lose their grant.
 - 2.1.1. Broadening eligibility for the SRDG in this way must be premised on a recognition that in order to progressively realise the right to social assistance for “*those who cannot support themselves,*” government must eventually initiate a gradual increase of eligibility thresholds for the SRDG – and the value of the SDG itself – on a fiscally sustainable basis.
 - 2.1.2. This is not only because the effects of inflation will naturally erode the SRDG’s purchasing power over time but because income poverty plainly affects persons who earn more than R624 per month.
 - 2.1.3. As such, the FPL cannot be the terminus for BIS eligibility if government’s ultimate goal is a full realisation of section 27(1)(b) of the Constitution.
 - 2.1.4. Given the importance of keeping the SRDG at least at the FPL – and the imperative to eventually raise the level of eligibility and the value of the SRDG itself over time – the HSF notes with concern that subsection 5A of the amendments would allow the Minister, with the concurrence of the Minister of Finance, to amend the income eligibility threshold from time to time.

² Ibid at page 231.

³ Ibid at page 236.

2.1.5. This framework of consultation misses the moral and legal complexity inherent in the debate around BIS in South Africa. Any change to the eligibility level for BIS should at the very least involve broad consultation with relevant stakeholders, including the many civil society actors that have contributed to the debate around BIS in South Africa.

2.1.6. It is also important that any decision related to revising the SRDG framework be made rationally and with the relevant information before the Minister. As such, the HSF submits that government diligently monitor and evaluate the impact of the SRDG on its recipients and only allow evidence-based assessments thereof to influence adjustments to the SRDG framework.⁴

2.2. The HSF also welcomes the fact that the amendments delete the provision which provides for bank verification as the overriding criterion for determining “insufficient means” as a basic eligibility requirement for the SRDG.

2.2.1. This is an important revision, because as the Institute for Economic Justice (“IEJ”) and the Socio-economic Rights Institute (“SERI”) have rightly pointed out, bank verifications can be a blunt measure of an applicant’s income level.⁵ Bank balances often do not reflect the economic reality of an applicant’s income stream and must be assessed wholistically in the context of a person’s employment status and personal circumstances.⁶

2.2.2. Without this requirement — that bank verification has the final say — a more comprehensive assessment of applications for the SRDG should, at least in principle, follow.

2.3. Despite these positive changes, the HSF wishes to bring the Minister’s attention to some serious flaws that plague both the design and implementation of the system by which SASSA judges eligibility for – and ultimately pays out – the SRDG.

3. The HSF’s Concerns About the Eligibility Verification for the SRDG.

3.1. In order to qualify for the SRDG, an applicant must satisfy SASSA that they fall below the FPL.⁷

3.1.1. To do this, one needs to make an application on an ‘electronic platform’ contemplated in the Regulations. SASSA has designed several online platforms, which include an SMS

⁴ Ibid.

⁵ IEJ and SERI Joint Submission on Amendments to the Regulations Relating to Covid-19 Social Relief of Distress Issued in Terms of the Social Assistance Act, dated 27 July 2022 (“IEJ and SERI Submission”) at page 3 – available [here](#).

⁶ Ibid.

⁷ Regulation 2(3).

line, a WhatsApp number, an email address and an invitation to follow the process on SASSA's website.⁸

3.1.2. When assessing an application, SASSA may consider four sources of information about the applicant:

3.1.2.1. a declaration attesting to their income level;

3.1.2.2. a screening questionnaire;

3.1.2.3. checks against data bases (like UIF or SARS) that may indicate income or alternative financial assistance; and

3.1.2.4. verification of insufficient means with banks.

3.2. This is the sort of administrative process that inevitably follows any system of BIS that is distributed according to a means test.

3.3. The rationale for distributing BIS along the lines of a means test is, on the face of it, well-meaning. Means tests, in principle, aim to target vulnerable population groups as grant recipients, while avoiding distributing valuable resources to those who can support themselves.

3.4. The trouble, however, is that the *administration* of means tests are notoriously difficult and inevitably result in large-scale exclusion of eligible grant recipients.⁹

3.5. Nowhere are the short-comings of administering means tests clearer than in the current South African context, where SASSA's system for verifying eligibility for the SRDG suffers from a host of shortcomings.

3.5.1. Requiring that grant applications take place via the electronic platforms suggested by SASSA immediately excludes potentially eligible grant recipients who do not have access to the required devices, mobile data or who are not digitally literate.¹⁰

3.5.2. The exclusionary nature of electronic modes of application is only compounded by the fact that across SASSA's options for electronic applications, instructions and questionnaires are only available in English.¹¹

⁸ Regulation 3(3). The electronic options are laid out here: <https://www.gov.za/covid-19/individuals-and-households/social-grants-coronavirus-covid-19>.

⁹ The Expert Panel Report at page 235.

¹⁰ IEJ and SERI Submission at page 10.

¹¹ Ibid. The exclusionary complexity of the questionnaire is laid bare in the application process itself, available [here](#).

- 3.5.3. SASSA’s questionnaire, which forms a part of all modes of electronic application, allows for the possibility of “self-exclusion” on the basis of giving unsatisfactory answers.¹² Given the fact that an online application requires proficiency in English and familiarity with complex digital platforms, SASSA’s questionnaire is inevitably exclusionary.
- 3.5.4. SASSA’s use of SARS and UIF databases to confirm income status assume that the information contained therein is current and accurate. This is often not the case.¹³
- 3.6. Even if one could fix the abovementioned design flaws and eradicate failures in implementation, means tests in all their forms carry the risk of creating the incentive for potential beneficiaries to avoid seeking income opportunities out of fear that they fall foul of the means test.¹⁴
- 3.7. Therefore, given government’s proven track-record of designing an exclusionary means test, the inevitable failures in its implementation and the high stakes for an inefficiently distributed SRDG, the HSF submits that government should make concerted efforts to explore a more broadly delivered SRDG that prioritises inclusion.
- 3.8. A broader distribution mechanism would provide a SRDG payment to more people within the relevant age bracket by substantially expanding and simplifying eligibility criteria. This would temper the very serious problem of inefficiently distributing the SRDG. The greater cost of such a mechanism – and any distribution to persons with means enough to support themselves – can be “clawed-back”, so to speak, through appropriate adjustments to the tax system.¹⁵
- 3.9. In effect, therefore, a broadly distributed BIS can still be targeted at economically vulnerable populations to the exclusion of higher income groups and on a fiscally sustainable basis. This means that it is no meaningful objection to this way of distributing BIS that it unjustly benefits higher income groups.

¹² Ibid.

¹³ Ibid.

¹⁴ The Expert Panel Report at page 13.

¹⁵ Ibid.

4. The Department Must Improve the Reach of the SRDG Payment System.

4.1. Whether the SRDG is universally distributed or not, SASSA still needs to provide for modes of payment that have a reach wide enough to maximise delivery to eligible recipients.

4.2. As matters stand, once SASSA has deemed an applicant as eligible, recipients will receive a R350 monthly payment either in their bank account or for collection at a major retailer or bank.¹⁶

4.3. The Post Office was once a part of this distribution network but has been removed. The HSF supports the IEJ's and SERI's call to reinstate the Post Office as a place to collect a SRDG, given that its reach goes beyond traditional banks and large retailers and, in particular, will help eligible rural residents collect their grants.¹⁷

5. Additional Amendments that Will Enhance SASSA's and the Department's Accountability.

5.1. During 2022 alone there have been two months (April and May) where the SRDG has not been paid to eligible recipients.

5.2. The Regulations do not provide for mechanisms that mitigate the effects of such nonpayment for recipients or that enable SASSA and the Department to be held accountable for their failures.

5.3. While there may be factors contributing to the situation which are out of the control of the Department, it can facilitate engagement with recipients in order to alleviate the distress inflicted upon them in the event that non-payment is unavoidable.

5.4. As such, the HSF proposes the following three further amendments to the Regulations:

5.4.1. First, a detailed forensic reporting obligation must be implemented in the event that grants are not paid out when they are due, in order to enable the Department to properly account to the public for its failure. The Minister could introduce a date by which the grants must be paid, failing which notice will be given and reasons for the delay be issued.

5.4.2. Second, meaningful prior warning mechanisms in the event that grants will not be paid timeously in order to allow recipients to properly plan their affairs.

¹⁶ Regulation 5(1).

¹⁷ IEJ and SERI Submission at page 11.

5.4.3. Third, the creation of a “credible, independent, transparent and effective complaints procedure” that will allow people who have not received their SRDG to raise their concerns and for them to be dealt with effectively and timeously.¹⁸

5.5. The effect of these reforms would ensure transparency from SASSA and the Department, as well as facilitate a meaningful form of public participation in the process of updating the SRDG. Those receiving the grant are among the most marginalised and vulnerable groups in South Africa. It is unconscionable that they be left for extended periods without access to the SRDG and without explanation or information as to the current status and future availability of this desperately needed social assistance.

6. How the SRDG Can be Funded.

6.1. The HSF is of the view that the SRDG – or any form of BIS in the future – should not take a form that imperils desperately needed economic growth.

6.2. Nevertheless, the HSF wishes to point out that according to National Treasury, there are 18.3 million South Africans who have a monthly income of less than R624.

6.3. Therefore, to fully fund the SRDG in terms of the amendments, R76.86bn would need to be allocated instead of the currently allocated R44bn.

6.4. As made clear in the Expert Panel Report, financing this sort of public expenditure is no easy task and the delicate balance of tax adjustments that would be required to do so responsibly will require careful, deliberative expertise and engagement.¹⁹

6.5. Nevertheless, the HSF recommends the Expert Panel’s Report Executive Summary at pages 16 to 20, which centres financing BIS into the future on a mix of adjustments to our system of taxation.²⁰

7. The Importance of Complementary Measures.

7.1. Without detracting at all from the urgency of introducing a stable form of BIS in the current economic climate in South Africa, the HSF wishes to close this submission by pointing out

¹⁸ The Expert Panel Report at page 235.

¹⁹ Ibid at page 210 to 211.

²⁰ The Expert Panel Report Executive Summary – available [here](#).

that BIS in any form must co-exist with credible policies that create economic growth and decent, sustainable jobs.²¹

8. Conclusion

8.1. In sum, the HSF has submitted that the Minister's action in broadening eligibility for the SRDG and partially simplifying the application process is cause for cautious optimism in government's progressive realisation of section 27(1)(c) of the Constitution.

8.2. However, given that appropriate social assistance for "those unable to support themselves" is a constitutional and moral imperative in South Africa, the HSF implores government to work diligently and urgently to design a system of BIS that is inclusionary, fiscally sustainable and the adjustment of which is based on empirically based assessments as to its efficacy in eliminating income poverty.

²¹ The Expert Panel Report at page 235.