COMMENTS ON AMENDMENTS TO THE REGULATIONS TO THE SOCIAL ASSISTANCE ACT, 2004 (Regulation Gazette No. 11396; 22 February 2022)

13 March 2022

The opportunity to comment on official regulations for the implementation of the social relief of distress grant (hereafter SRD), outside of the State of Disaster regulations, is welcome. However, the current draft amendments fail in certain places to reflect serious recognition of and response to the long-standing administrative issues and accessibility barriers of the SRD. A number of concerns raised in this submission around issues of fairness in administration of the SRD grant could render these regulations vulnerable to legal challenge, if these concerns are not addressed.

Amendment of regulation 9 of the Regulations

- 9. (1) (b) (ii) indicates that a person who has insufficient means (and is between the ages of 18-60) will qualify for social relief of distress.
    - We await the further clarification of how "insufficient means" is defined, including in the Procedure Manual. We advocate for this threshold to be indexed to an objective and scientific measure of poverty, rather than an arbitrary threshold. The current means test is too low and unfairly excludes many living in poverty. Available options for a means testing threshold include the Food Poverty LIne (FPL) of R624, the lower bound poverty line (LBPL) of R890 or the Upper Bound Poverty Line (UBPL) of R1335. Civil Society partners have recommended that this grant should be means-tested at the Upper Bound Poverty Line in order to reach all in South Africa currently living in poverty.
        - We will continue to advocate for the expansion of the SRD grant to all people living below this line, as well as the increase of the grant above the current wholly inadequate level of R350p/m, to the level of the Food Poverty Line in the short to medium term. In the long term, we propose that this grant be transitioned into a Universal Basic Income at the level of the Upper Bound Poverty Line. We note that this regulatory framework and the anticipated procedure manual has the potential to form an administrative foundation for a UBI, and we welcome this step towards institutionalising comprehensive social protection.

- 9. (1) (b) (iii) states that a person qualifies for social relief of distress if they do not "unreasonably refuse to accept employment or educational opportunities".
    - We request clarity as to how this clause will be interpreted, operationalised, and verified. Without clear parameters for this requirement there is an extremely high risk of this clause being deployed in an unfair and coercive way against grant

recipients, with perverse outcomes. It also carries the risk of supporting predatory and exploitative employment practices.

- Various documented barriers exist to persons living in poverty to accessing work and educational opportunities, including the costs of transport, data, and printing. Where offered work or educational opportunities are likely to impose unreasonable costs on recipients compared to benefits, where they are characterised by unsafe and precarious conditions and do not adhere to decent work standards, and in a number of other scenarios, grant recipients should have the right to refuse such work. The regulations should therefore define such conditions under which it is reasonable for beneficiaries to refuse an employment opportunity.
- If the state creates conditions whereby workers are unable to refuse offered work, this heavily distorts labour market power relations and gives rise to predatory and exploitative labour practices on the part of employers, who are able to coerce workers into accepting exploitative or unsafe working conditions.
- It is also extremely unclear as to how this clause will be monitored and enforced; will it be through public reporting, through the gathering and surveillance of applicants' personal information by SASSA or another agency, or will SASSA be responsible for offering work or educational opportunities to SRD applicants? We do not support the inclusion of this clause in its current formulation unless the significant risks to applicant/recipient welfare, as well as administrative issues are adequately mitigated and addressed, including through a clear and considered definition of "reasonable" in this context.

- 9. (1) (c) states that a person qualifies for social relief of distress if they are awaiting payment of an approved social grant. Furthermore 9. (3) states that "Where a person has received both social relief of distress and a social grant for the same period, the value paid for social relief of distress must, subject to the provisions of sub-regulation (5), be recovered from any social grant payment, including an arrear payment."
  - More clarity is needed in the Regulations and the final Procedure Manual around the circumstances under which SRD payments may be recovered from a recipient. In particular;
    - Recovery of monies paid must not have a direct impact on the recipient receiving their full level of monthly entitlements from their approved grant; i.e. the approved grant must be effectively back-paid to the date of initial application, in order to recover the SRD payments without impacting the recipients' ongoing income. This should be made clear in the regulations and Procedure Manual.
    - There should be no provision or scenario whereby a grant recipient is in debt to DSD, where debt is either recoverable through future grant payments, or out of the recipient's pocket. This will result in hardship.
    - If payments are recovered through deductions from ongoing grants (which we do not recommend), the level of deduction (as a percentage of income) and timeframe for repayment must be stipulated in the Procedure Manual.

- 9. (8) states, “The Agency may limit disbursements to the budget made available for this benefit.”
    - This clause is highly problematic as it clearly suggests an arbitrary cap being placed on the number of successful applicants. Treasury in the 2022/3 budget has provided for 10.5 million applicants to receive a SRD grant over the financial year ending March 2023 at R350 per month (totalling a R44 billion allocation). This clause suggests that even if a higher number of applicants qualify for the SRD grant, the number of recipients will remain capped. This could be implemented either through an arbitrary cut-off; or deliberate tightening of qualifying criteria and administrative requirements to artificially constrain eligibility. In either event this would be grossly unfair and probably unlawful.
    - This provision needs to be seen in the context of the fact that as at 1 March, a total of 15 544 890 applications have been received by SASSA, while slightly less than 10.5 million have been approved (SASSA report as at 1 March 2022). As indicated—and accepted by SASSA itself—many people have been excluded based on inaccurate databases particularly in relation to UIF and PAYE, which incorrectly reflect applicants as employed. Therefore many (and possibly the majority) of the more than 5 million applicants whose applications have been rejected in the latest SRD round, have been falsely excluded. This provision will entrench and exacerbate unfair exclusions.
    - The ‘available’ budget is not a static, fixed amount but has needed to be repeatedly adjusted to address the depth of the crisis which the SRD grant is attempting to ameliorate. Unplanned extensions of the SRD grant have happened on multiple occasions, and the funding has duly been found. There can be no justification for arbitrarily excluding applicants who otherwise qualify, on the basis of budget allocation decisions. This provision would not in our view sustain a legal challenge, and we call for its deletion.
    - The Government has an obligation to continue to progressively fund social protection and assistance which has been enshrined in practice and in legislation. This is in keeping with the Government’s constitutional obligation to progressively realise social protection and assistance. The SRD grant must be provided for all those who need and are eligible for it, in the current as well as in future budgets and adjustment budgets. As recent experience has shown, with the political will the necessary resources are able to be found. But it would be particularly objectionable for government to refuse to assist South Africans who have no other means of support, and are facing dire hunger and distress, in the context of current large revenue overruns.
    - Further it is bad policy to plan based on one budget allocation. As we have seen previously, the stop-start approach to the SRD grant has caused multiple social and administrative problems, including for DSD and SASSA’s ability to effectively administer the grant. Therefore a provision which implies that this is a temporary intervention, when the President has clearly communicated the need for a permanent response to the crisis, is confusing and creates further uncertainty. <u>This clause should be removed from the regulations.</u>

Amendment of regulation 11 of the Regulations

- Regulation 11 (7) indicates that applications for the social relief of distress can be made by electronic and other means of communication. We welcome the flexibility this appears to provide in terms of means of application.
    - However, we are aware of high barriers to access to electronic systems including digital exclusion and digital illiteracy which are likely to disproportionately affect grant applicants. An inability to access or navigate electronic systems must not disadvantage applicants or cause delays compared to applicants who can access and navigate electronic systems. This is especially of concern where applicants may need to travel to access other assistance in order to apply for the grant. We recommend that a commitment to equity and inclusion in the context of digital barriers should be reflected in the regulations and/or in the Procedure Manual.
    - Moreover, we recommend that the regulations and/or the Procedure Manual should deal explicitly with the cost of access to electronic systems (data costs, mobile phone costs, etc.) which could serve as a barrier to access to the SRD. The provisions should ensure that these costs are not a barrier to an individual applying for or receiving their entitlements.

- Regulation 11 (8) lays out the various third parties which the Agency may use to verify applicants' eligibility for social relief of distress grant.
    - We note that there have been significant issues caused by the use of out-of-date, flawed and incorrect databases to verify eligibility for SRD, which according to researchers at SALDRU, may unfairly exclude up to one third of SRD applicants. In light of these administrative issues, we wish to stress the following:
    - Where verification takes place (both for new applications or for those who have received or are currently receiving the SRD), it is important that the verification process; (1) is not onerous towards the recipient/applicant, (2) is not unreasonably intrusive on the privacy of the recipient/applicant, (3) adheres to high standards of transparency, consent and security when accessing personal data, (4) does not result in delays to the applicant/recipient receiving entitlements which they expect and rely upon, (5) does not present a direct or indirect cost to the applicant/recipient (such as the cost of transport or data), (6) does not rely on databases which are known to be out of date, flawed and erroneous.
    - We recommend that the above commitments are reflected in the regulations and Procedure Manual, along with clear steps to achieving them.

Amendment of regulation 14 of the Regulations

- Regulation 14A (1) (b) prohibits appellants from submitting new or additional evidence.
    - The continuation of this clause discriminates against appellants unjustly rejected on the basis of outdated or incorrect databases continuing to be used for verification, or unique circumstances.

- Appellants must be given the ability to submit new or additional evidence.

- No provision within this section clarifies whether successful appeals entail payment from month of appeal being approved, or from month of initial application or rejection.
    - The Procedure Manual must stipulate that payment is due from the date of the initial application.

Amendment of regulation 16 of the Regulations

- Regulation 16 (2) states that the social relief of distress may not be paid for a period exceeding three months without confirmation that the person is still in need of assistance.
    - It is unclear whether this clause means that recipients must re-apply after three months. If this is the case, it constitutes a punitively short timeframe which will place pressure on the capacity of the Agency and entail an unreasonable administrative burden and stress for the applicant.
    - The confirmation that the person is still in need of assistance should be a less arduous process than the initial application with fewer steps and requirements, and should never result in the delay of an entitled payment, or entail costs to the recipient.