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TO: THE MINISTER OF SOCIAL DEVELOPMENT
Honourable Minister Lindiwe Zulu
Care of: Ms Zama Kumalo; Ms Monica Zabo; Ms Lumka Olifant
By email: ZamaK@dsd.gov.za; MonicaZ@dsd.gov.za; LumkaO@dsd.gov.za

COPIED TO: THE SOUTH AFRICAN SOCIAL SECURITY AGENCY (SASSA)
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AND TO: PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA
His Excellency, President Cyril Ramaphosa,
Per email: presidentrsa@presidency.gov.za; media@presidency.gov.za

AND TO: THE MINISTER OF FINANCE
Honourable Minister Enoch Godongwana
Care of: Mary Marumo
By email: mary.marumo@treasury.gov.za; minreg@treasury.gov.za

AND TO: PARLIAMENTARY PORTFOLIO COMMITTEE ON SOCIAL DEVELOPMENT
Chairperson: Honourable Mvana
Care of: Committee Secretary: Ms Lindiwe Ntsabo
Email: Lntsabo@parliament.gov.za

AND TO: PARLIAMENTARY PORTFOLIO COMMITTEE ON COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS
Chairperson: Honourable Muthambi
Care of: Committee Secretary: Ms Shereen Cassiem
By email: scassiem@parliament.gov.za



AND TO: PARLIAMENTARY STANDING COMMITTEE ON FINANCE
Chairperson: Honourable Maswanganyi
Care of: Committee Secretary: Allan Wicomb
By email: awicomb@parliament.gov.za ; tsepanya@parliament.gov.za

24 November 2021

Dear Madams / Sirs

SOCIAL ASSISTANCE POLICY AND THE CONTINUED FAILURE TO PROVIDE COMPREHENSIVE SOCIAL SECURITY

1. We act for the Black Sash Trust ("**Black Sash**"). Black Sash is a non-party political and non-profit organisation registered as a trust in terms of the laws of South Africa.
2. Since the advent of South Africa's constitutional democracy, Black Sash has worked towards the full and equitable realisation of the right to social security including social protection and social assistance, as set out in the Constitution. In doing so, Black Sash seeks to ensure that the poor, vulnerable and marginalised people who are eligible to and do receive social grants, are treated equally – with dignity, efficiency and due regard to their constitutional and statutory rights.
3. Black Sash is accordingly well-placed to assess the multitude of commitments made, steps taken and policies implemented in the course of the State's provision of social assistance over the past two decades. Similarly, Black Sash is able to identify those promises which have not been fulfilled, and those policy discussions which – without formalisation and implementation – have not furthered the promotion and protection of the constitutional rights of South Africa's most vulnerable persons.
4. In providing for the right of "access to social security, including appropriate social assistance" as contained in section 27(1)(c) of the Constitution of the Republic of South Africa, 1996 ("**the Constitution**"), we note that the State's conduct over the years can be briefly summarized as follows:
 - 4.1. The appointment of the Lund Committee on Child and Family Support and its Report in 1996, which advocated for social assistance and focused particularly on the



provision of a child support grant, but ultimately also focused on strategies based on wage labour as being complementary to social assistance;

- 4.2. The Department of Welfare and Population Development's 'White Paper for Social Welfare: Principles, Guidelines, Proposed Policies and Programmes for Developmental Social Welfare in South Africa' (1997), which adopted an approach of 'developmental social welfare' which depicted 'welfare dependency' as pathological, disempowering and financially unsustainable and limited social assistance to those vulnerable persons who were unable to enter the labour market;
- 4.3. The Presidential Jobs Summit convened by the National Economic Development and Labour Council ("**NEDLAC**") in October 1998, at which the labour unions campaigned for the State to introduce a Basic Income Grant ("**BIG**") in fulfilment of the 'comprehensive social security system' referred to in Chapter 7.26 of the 1997 White Paper. In response, the State elected to delay any decision on a BIG to a future overall reform of social security emanating from the Job Summit's recommendations;
- 4.4. The establishment of the Interdepartmental Task Team into an Integrated, Comprehensive Social Security System and the report titled 'Social Security in South Africa: A Proposal for Reform' (July 1999) which recommended dividing grant beneficiaries into three categories reflecting socio-economic divisions. The Interdepartmental Task Team's view was that income grants had to be limited to beneficiaries living below the poverty line, and it failed outright to make any recommendations on a BIG;
- 4.5. NEDLAC's establishment of its own Social Security Task Team to investigate principles of a future comprehensive social security system, and the reports titled 'Draft Report of the Working Group on Social Security, Social Wage and the Social Plan' (April 1999); 'Draft Conceptual Framework for Developing a Comprehensive Social Security System in South Africa' (July 1999); and 'Draft Report of the Social Security Task Team Meeting' (March 2000). The latter Report incorporated a proposal for a BIG under the 'safety net' programme;
- 4.6. The January 2000 statement by the new Minister of Welfare and Population Development, Zola Skweyiya, titled 'Mobilising for a Caring Society: People First For



Sustainable Development' which underscored the urgency of the social crisis and emphasised the State's commitment to tackling it;

4.7. The establishment in March 2000 by Cabinet of the 18 member Committee of Inquiry into a Comprehensive System of Social Security for South Africa chaired by Professor Vivienne Taylor ("**the Taylor Committee**"), the mandate of which included investigating, making recommendations for and budgeting on an integrated set of policies related to social security.

4.7.1. Contrary to the 1997 White Paper, the Taylor Committee preferred a concept of 'income poverty', emphasising how persons in formal employment could also be socially excluded and marginalized, and broadening social assistance to incorporate and cover these "working poor".

4.7.2. The Report titled 'Transforming the Present – Protecting the Future' (2002) had as its mainstay the notion of 'comprehensive social protection' defined as

"The basic means for all people living in the country to effectively participate and advance in social and economic life, and in turn to contribute to social and economic development. Comprehensive social protection is broader than the traditional concept of social security and incorporates developmental strategies and programmes designed to ensure, collectively, at least a minimum acceptable living standard for all citizens." (Report, p 41.)

The Report included in its social protection package the notion of universal non-work related provisions, among them the BIG, while acknowledging that the conditions for immediate provision thereof were not yet in place;

4.7. The 2004 enactment of the Social Assistance Act 13 of 2004 ("**SAA**") and the South African Social Security Agency Act 9 of 2004 to replace the Social Assistance Act of 1992. These Acts consolidated the legislation on social assistance, with section 4 of the SAA providing for *inter alia* the following social grants: child support grant; care dependency grant; foster child grant; disability grant; and an older person's grant. No BIG or other form of income support grant was introduced. Ultimately therefore, this constituted a consolidation rather than restructuring of the social assistance system;



4.8. The establishment by Cabinet in 2007 of an Inter-Ministerial Committee to make recommendations for reforming the social security system, which in turn appointed an Inter-departmental Task Team on Social Security and Retirement Reform ("**IDTT**") "to provide technical advice and make recommendations for consideration by Cabinet".

4.8.1. The IDTT concluded a discussion document titled 'Comprehensive social security in South Africa' (March 2012) which made proposals for the reformation of social security delivery. Those proposals were however again focused primarily on the provision of social assistance to persons outside of the labour market, and emphasized a reliance on the labour market as the means to access a dignified life, including through improving short-term unemployment insurance benefits;

4.9. Cabinet ultimately only accepted the Taylor Committee's Report in 2016, but did not take further steps in respect of a BIG;

4.10. The resuscitated NEDLAC Task Team on Comprehensive Social Security produced a draft Report in March 2019, which identified areas for further research including the feasibility of a BIG;

4.11. Following the South African Government's ratification of the International Covenant on Economic, Social and Cultural Rights ("**ICESCR**") in 2015 – Article 9 of which enshrines a "right of everyone to social security, including social insurance" – the Committee on Economic, Social and Cultural Rights' ("**CESCR**") issued Concluding Observations and recommendations to South Africa on 12 October 2018.

4.11.1. Paragraph 48 of the Concluding Observations recommends that the State *inter alia* –

"(b) Raise the levels of non-contributory social assistance benefits to a level that ensures an adequate standard of living for recipients and their families;

(c) Ensure that those between the ages of 18 and 59 with little or no income have access to social assistance,"

for implementation by 31 October 2023.



4.11.2. The State was obligated to update the CESCR on steps it has taken to implement these recommendations by October 2020.

4.11.3. In its Report, submitted in May 2021, the State advised that –

"The Department of Social Development has commenced policy work for income support for those between the ages of 18 to 59 with little or no income, including the consideration of a universal Basic Income Grant. A discussion paper on income support for unemployed people between 18-59 years of age has been drafted and initial consultations have commenced. Social partners within the National Economic Development and Labour Council (NEDLAC) have also commenced their own work on the matter with the view to persuade government to include this in the Comprehensive Social Security Reform proposals";

4.11.4. In the CESCR's follow up report dated 10 November 2021, it advised that the State's progress towards providing access to social assistance for those aged 18-59 was "insufficient", in that –

"[T]he Committee notes that, according to information received, this policy work remains insufficient and the State party does not provide detailed information.

The Committee therefore assesses that the progress is insufficient in relation to the implementation of these recommendations. The Committee requests the State party to provide, in its next periodic report, detailed information on further measures taken to implement this recommendation."

4.12. With the advent of the COVID-19 pandemic in early 2020, the State introduced *inter alia* the Social Relief of Distress grant of R350.00 ("**the COVID-19 SRD grant**") for the first time in April 2020 (with subsequent extensions). This is the first social grant which caters to persons who do not qualify for any other form of social assistance, being predominantly unemployed individuals between the ages of 18 and 59. The grant was reintroduced from August 2021 to end March 2022 and extended to also cover persons otherwise receiving a Child Support grant;

4.13. The Department of Social Development ("**DSD**") released a further discussion paper titled 'Income support for the unemployed aged 18-59' in November 2020, which took into account the policy and socio-economic developments necessitated by the



COVID-19 pandemic. DSD then held consultations with civil society on that discussion paper at the end of 2020, at which DSD officials advised that a further draft of the policy would be released early in 2021;

4.14. In presenting her departmental budget speech on 25 May 2021, the Minister of DSD, Lindiwe Zulu, acknowledged that the need to introduce a BIG had become an urgent consideration for the State. The DSD had by then finalised a BIG discussion document which it was circulating and consulting on, *inter alia* at NEDLAC;

4.15. At a Mandela Day memorial lecture on 18 July 2021, President Ramaphosa acknowledged that the State was investigating introducing a BIG, and recognized that a BIG would –

“[V]alidate our people and show them that we are giving serious consideration to their lives . . . We are giving active consideration to the grinding poverty that we continue to see in our country. We need to address the structural inequalities in our economy”;

4.16. In August 2021, NEDLAC submitted its Report of the Comprehensive Social Security and Retirement Reform Task Team to Cabinet. The Report includes a study on the feasibility of a BIG, assessing its “costs, macroeconomic impact, distributional impact and fiscal feasibility”;

4.17. The DSD then gazetted the Green Paper on Comprehensive Social Security and Retirement (GN 741, *Government Gazette* 45006 of 18 August 2021) for public comment. Constituting a clear proposal for the full restructuring of social security (including social assistance), the Green Paper proposed the introduction of a BIG and provided for three possible forms thereof, but failed to decide between a universal or means-tested grant.

4.17.1. The Green Paper was withdrawn by the State on 31 August 2021, to “provide better clarity on some of the matters entailed in the paper”. DSD nevertheless undertook that it “expects to release the paper as soon as these issues have been addressed”; and

4.18. Finally, DSD convened a webinar entitled ‘Basic Income Support (BIS) for the Unemployed aged 18-59’ on 26 October 2021, which –



"[F]ollows a range of longstanding discussions on income support for working-age people who are unemployed and without any means of support. The conversation will draw on available research conducted by various experts with a view to shaping the BIS debate.

In the current economic space of low growth and even negative growth in many countries, exacerbated by the COVID-19 pandemic, the need for protecting those in the working-age group of the population has become a greater necessity. This is necessary because the impact of the COVID-19 will undoubtedly continue to be felt for a long time to come, especially by the poor and unemployed.

These conversations will enable government and relevant stakeholders from all sectors to interrogate available evidence on the Basic Income Support. The calls for a BIS have grown following the COVID-19 Pandemic and the debate presents an opportunity to engage these calls based on scientific evidence".

5. While the State has, in some form or another, been discussing the notion of an income support grant, alternatively a BIG, for over 25 years, no formal policy in this regard has been adopted, and the messaging from the State continues to be incongruent, at best.
6. In the IDTT's 2012 discussion document 'Comprehensive social security in South Africa' it was noted that –

"[T]he social grants system is likely to be subject to further reform over the long term. It will remain Government's principal poverty reduction programme. As the economy develops and South Africa's demographic, health and social profiles change, different categories of income vulnerability may emerge. The social assistance system will adapt in response, either through amendments to grant entitlements, or through adjustments to discretionary relief measures." (Discussion Document, p 31.)

7. Indeed, the South African population's need for social assistance has only increased, exacerbated *inter alia* by State austerity measures, poor service delivery, overwhelming unemployment and widespread corruption of state resources. It is clear that the long-standing policies – and the preference for a social security system centred on and tied to the formal wage economy – are failing to deliver lives of dignity and sustainable poverty alleviation for all South Africans.
8. In this regard, Black Sash considers the second iteration of the COVID-19 SRD grant from August 2021 to be a recognition by the State that the beneficiaries of the COVID-19 SRD



grant require permanent social assistance urgently to ensure a minimum level of dignified existence.

- 8.1. Given that the COVID-19 SRD grant covers persons who do not otherwise qualify as social grant beneficiaries, and moreover given that the COVID-19 SRD grant will subsist for the better part of two years, Black Sash submits that it serves a function beyond that intended for in section 13 of the SAA, which provides for an SRD grant.
- 8.2. In short, Black Sash submits that the COVID-19 SRD grant performs a function in the context of the general right to social assistance, and thereby furthers the protection of that right. The COVID-19 SRD grant must accordingly be recognized and assessed as part of the State's broader policy on social assistance. A failure to appreciate this would, our client submits, be overly formalistic.
9. The above brief timeline demonstrates that there has been much deliberation, opportunities for research and reconciliation of varying approaches to social assistance; Black Sash accordingly submits that the time for policy formalisation and implementation is now long overdue.
10. Black Sash submits further that the introduction of an income support grant, alternatively a BIG, is not only an increasingly urgent moral imperative, but constitutes a constitutional (as well as international) legal obligation which the State continues to fail to meet. The State's failure to adopt even a progressively realisable policy towards an income support grant, alternatively a BIG, underscores that failure.
11. This failure disproportionately disadvantages women; historically women's access to the formal workforce is curtailed, while they continue to work to provide unremunerated care and household labour which – despite being excluded from the formal labour market – forms the backbone of our social structure.
12. While the socio-economic rights enshrined in the Constitution's Bill of Rights are mandated to be provided for progressively and within the State's available resources, the State's conduct (as summarised in paragraph 4 above) demonstrates the extent to which the State has failed, and continues to fail, to meet even the minimum form of provision of the right to social assistance for those persons not currently covered by the social grants contained in section 4 of the SAA.



13. The legal obligation to progressively realise socio-economic rights within available resources necessitates positive conduct. The State's conduct to date has ultimately been limited to numerous discussions purportedly towards the development of a policy, without culminating in any formal policy adoption and attendant implementation. Until such time as a policy enshrining the implementation of an income support grant, alternatively a BIG, is both adopted and progressively implemented, Black Sash submits that the State is committing an ongoing constitutional violation.
- 13.1. Moreover, Black Sash submits that the *status quo* constitutes an unreasonable provision of the right to social assistance, in that it is *inter alia* not comprehensive; not coordinated; not transparent; and not participatory in the progressive achievement of the constitutional right.
- 13.2. The State's ongoing failure to finalise and implement a policy towards comprehensive social security thereby violates the constitutional standard of reasonableness in the provision of socio-economic rights, and is accordingly unlawful and unconstitutional.
14. Moreover, Black Sash submits that should the State allow the current iteration of the COVID-19 SRD grant to expire without replacing it with an income support grant, alternatively a BIG, this would constitute a further violation of the legal principle of non-retrogression in the delivery of socio-economic rights.
- 14.1. The expiry of the COVID-19 SRD grant without an adequate replacement which caters to the provision of comprehensive social security in a reasonable manner (including providing for urgent relief for the most vulnerable members of society) would furthermore constitute unreasonable – and thus unconstitutional – conduct on the part of the State.
15. In light of the above, we are instructed to request the following:
- 15.1. An update from the State on the current status of the provision of an income support grant for the unemployed, alternatively a basic income grant, including a timeline of the expected provision thereof reflecting both the adoption of the empowering policy and the roll-out of the grant;



- 15.2. Confirmation that the State does not intend to proceed with a family/household grant and/or a job seekers grant in place of an income support grant, alternatively a basic income grant to be provided to individuals; and
- 15.3. Confirmation that the State will not allow the current COVID-19 SRD grant to expire without providing for its immediate replacement with permanent social assistance for 18 to 59 year olds in the form of an income support grant, alternatively a basic income grant.
16. We would appreciate if you could provide the information requested in paragraph 15 above to the email address provided below by close of business on Wednesday 15 December 2021.
17. Please do not hesitate to contact the author on the email address below if you have any queries.
18. All our client's rights remain reserved.

Yours faithfully,



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