



#PayTheGrants

STATEMENT

IEJ and #PTG file response to government's defence in the SRD grant court case

15 April 2024

On 26 March this year, the Institute for Economic Justice (IEJ) and #PayTheGrants (#PTG) filed our replying affidavit in the Social Relief of Distress (SRD) grant court case. The replying affidavit responds to arguments put forward by the state parties in opposition to our case.

We initially launched the case in the High Court in July 2023. The respondents originally cited were the Department of Social Development (DSD) and the South African Social Security Agency (SASSA). Subsequently, National Treasury, on behalf of the Minister of Finance, applied to intervene in the case, to oppose aspects of the relief sought. Thus, our replying affidavit responds to arguments put forward by these three parties.

The legal action is an attempt to rectify the unfair and irrational systems of administration for the SRD grant, which have served to exclude up to 50% of the people (around 8 million) who are living in food poverty with no other access to social assistance, and who should qualify for the SRD. Despite many attempts to engage constructively with government on this issue over a long period, we ultimately had no choice but to turn to the courts when exclusionary approaches were deliberately retained in successive versions of the relevant regulations.

In opposing our case, government has chosen to varyingly deny that the issues exist in the first place; misrepresent the issues and the relief we seek; acknowledge that there are problems that undermine peoples' rights but claim that it is not within government's power to fix these (either because it is impractical, or unaffordable); or acknowledge that there are problems that undermine peoples' rights but claim that fixing them is not a priority.

The result is a confusing and contradictory defence which fails to appreciate the gravity of the issues at stake and the government's responsibility to those who are suffering dire hunger and economic exclusion.

At the heart of our application is the right to social assistance for all those unable to support themselves, enshrined in Section 27 of the Constitution. The government is obligated to progressively realise this right.

According to IEJ Executive Director Dr Gilad Isaacs,

“In the face of government inaction, the plight of grant applicants and beneficiaries remains dire, with hunger and economic exclusion persisting. Our court action seeks to remedy unlawful and unfair procedures and regulations in the SRD grant, underpinned by the Constitutional right to social assistance, and the government's obligation to progressively realise that right. Our replying affidavit lays bare the flaws in the contradictory policy choices and exclusionary administration of the SRD grant, and challenges government's inadequate response. It's not just about numbers; it's about real people struggling to put food on the table.”

Our [founding affidavit](#) detailed, with extensive supporting evidence, the complex barriers which have served to exclude people in need from accessing the grant. These include the fact that the grant can only be applied for online, alongside the inaccurate systems of verification of eligibility employed by SASSA—namely checks on people's bank accounts, and checks on government databases. In addition, the appeals process for the grant is woefully unfit for purpose, as it simply entails repeating the flawed verification process which is the reason for the vast majority of appeals in the first place. Supporting affidavits from #PTG members who have been negatively impacted by these barriers, filed alongside the founding affidavit, bolster the claims made.

The replying affidavit responds to the government's arguments about why the administration of the SRD grant does not need to, or cannot be improved. Interested parties are encouraged to read the full replying affidavit on [IEJ's website for a complete overview of the issues canvassed](#). For convenience, [a summary of selected thematic points](#) is provided at the end of this statement.

Shortly after the signing of our replying affidavit, government adopted amendments to the regulations governing the SRD grant. Far from addressing the issues raised in our case, these amendments, in many ways, double down on the strategy of exclusion and retrogression by introducing new punitive measures, that, in the context of an already exclusionary system, are likely to lead to more exclusion and hardship, including giving the government the ability to recover monies already paid to beneficiaries if they are later deemed ineligible. This is concerning since systems of verification of eligibility are *known to be flawed*, and recovering monies could cause significant hardship to beneficiaries. The regulations further provide for the cancellation of pending payments if beneficiaries are not traceable. However, many SRD grant beneficiaries are 'untraceable' not as a result of their own neglect, but because of the systems

of administration of the SRD grant which limit people's ability to provide and maintain personal contact details, particularly in cases where they use somebody else's device to apply.

At the last minute before our filing, the government announced that the grant value would be increased from R350 to R370 per month and was included in the final amended Regulations. This had not been proposed in the Budget Speech or the initial draft amendments to the regulations. Unfortunately, over the time the SRD grant has been in place the food poverty line has increased from R585 to R760 due largely to high food inflation. The meagre R20 increase does not, therefore, reverse the retrogression that the grant has been subject to. The SRD grant still has much less purchasing power in 2024 than it did in 2020, and is much less able to protect beneficiaries against hunger. If the SRD grant had merely kept pace with inflation it would have reached approximately R440 in April 2024.

These issues will be argued before the Court, and we now await a hearing date and eagerly anticipate the resolution of these matters in the interests of the most vulnerable in our society who continue to suffer the retrogression of their right to sufficient food and water, and to social assistance.

[ENDS]

The affidavits filed to date can be accessed below:

- [IEJ and #PTG's founding affidavit](#)
 - [DSD's answering affidavit](#)
 - [SASSA's supporting affidavit](#)
 - [Minister of Finance's answering affidavit](#)
 - [IEJ and #PTG's replying affidavit](#)
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Notes | Selected thematic points made in our replying affidavit

National Treasury is overstepping its mandate in breach of the separation of powers

In its answering papers and its conduct related to the SRD grant, National Treasury is exceeding its constitutional mandate, and usurping the powers of other government departments. It does so by purporting to speak for government as a whole on social development policy matters; by dictating social development policy (including the value of the grant) to DSD and SASSA; imposing retrogression in coverage and value of the grant; and by purporting to determine finally and exclusively the budget for the SRD grant, when this is a decision for parliament.

National Treasury is known to be at loggerheads with other government departments in respect of their policies on the SRD grant, and its management, and yet presents its own preferences as the position of government. The conditions placed by National Treasury on the management of the grant are intended to exclude people in need of social assistance from accessing it. National Treasury's obstructionism of stated government policy—detailed and evidenced in our replying affidavit—directly and severely impacts the most vulnerable in our society.

Claims about budget constraints and the unaffordability of our relief are misleading

The thrust of National Treasury's opposition to our case is that the relief we seek is unaffordable and will have dire consequences for the fiscus. Treasury attempts to claim that we are asking the Court to dictate matters of budget allocation which are the purview of the government. This is misleading—we are simply asking for unlawful procedures and provisions to be amended, and that the Court direct the respondents to implement a plan to remedy the retrogression of constitutional rights. As such, we are not asking the Court to be prescriptive as to what the value of the grant should be, or what the overall budget allocation for the grant should be. Even if, as National Treasury alleges, government faces severe budgetary constraints, that cannot justify the undermining of the government's policy through the arbitrary and unlawful exclusion of otherwise eligible beneficiaries from social assistance, and a retrogression in the delivery of the grant.

However, in our replying affidavit we also take issue with National Treasury's characterisation of the country's current fiscal constraints, showing that this in itself is misleading. National Treasury

makes bald assertions about the unaffordability of the SRD grant, yet puts up no factual evidence to support these claims. Indeed, the affordability of a single government programme can only be understood in the context of the budget as a whole, and the SRD grant is no more or less affordable than any other government programme.

Moreover, the budget is not a god-given or immutable constraint, but an expression of government policy—or decisions made about how resources should be raised and distributed. National Treasury’s assertions about constraints that exist outside their control should not be taken at face value. The IEJ has, in multiple fora, shown definitively how National Treasury has failed [at various points](#) to raise and mobilise available resources for the realisation of constitutional rights, and has used the justification of ‘fiscal constraints’ to support its programme of austerity (or reduction of spending on public services). These are policy choices, and cannot be invoked as objective constraints over which the government has no control.

The respondents admit to prioritising the exclusion of eligible beneficiaries over the inclusion of eligible beneficiaries

In their answering affidavits, the state parties make clear that they are willing to accept a large magnitude of ‘exclusion errors’, to prevent people who are not eligible for the grant, from receiving it. Exclusion errors refer to cases in which people who are legally entitled to the grant are prevented from benefiting from it. Evidence suggests that the number of exclusion errors are far greater than the number of inclusion errors for the SRD grant. This means the government has put highly restrictive barriers in place aimed at preventing people who are not entitled to benefit from benefiting, but they are also preventing a comparatively much greater number of people who *are* entitled to benefit from benefiting.

DSD itself has acknowledged, in a briefing given to parliament on 3 June 2022 and appended to our replying affidavit, “we are well aware that exclusion errors are far larger than inclusion errors”. Yet overall, the respondents appear at best resigned to, and at worst, comfortable with the extent of exclusion errors, and the suffering they bring. Leaving aside the legality and reasonableness of barring eligible people from getting the grant, they also do not appear to have made any effort to consider whether the gains reaped by over-exclusion are in any way proportionate to its cost.

The respondents willfully misconstrue and obfuscate the nature and purpose of the SRD grant

The state parties attempt to justify the unfair and irrational treatment of SRD grant beneficiaries by claiming that the SRD grant is, and always was, intended to be temporary. They assert its temporariness in two respects: First that it was introduced as a response to the Covid-19 lockdowns which resulted in a loss of livelihoods and was never intended to be permanent; and

second that the financial distress experienced by SRD grant beneficiaries itself is more temporary than that faced by recipients of other grants, because SRD grant beneficiaries are able-bodied and of working age and can thus be employed at any time.

These arguments completely ignore the structural nature of unemployment and poverty in South Africa. 77.1% of unemployed people who have not given up looking for a job have been unemployed for over a year. Over the last decade, the likelihood of an unemployed person finding a job within a year has decreased significantly. This is the result of the structure of our economy and labour market—it is not the fault of individual job seekers. 18% of all economically inactive people in South Africa are “discouraged work seekers” (people who have given up looking for a job). The majority of this group lives in food poverty.

The government’s arguments are at odds with their publicly stated policy positions

The state parties assert in their papers that aspects of the SRD grant administration cannot be improved without precipitating the “collapse” of the grant (as more applicants than there are funds for would then be approved for the grant) and that their hands are tied with respect to addressing issues of exclusion and retrogression—by practical and fiscal constraints. However, this is inconsistent with statements made publicly by the President, the Minister of Social Development, and other officials, and inconsistent with government’s own policy.

In the 2024 State of the Nation Address, Cyril Ramaphosa laid out the state’s policy position with respect to the SRD grant: “We have seen the benefits of this grant and will extend it and improve it as the next step towards income support for the unemployed.” However, the respondents seem to show no interest in extending access to, or meaningfully improving the value of, the grant and maintain that the grant does not constitute a step in the progressive realisation of income support.

This is strange given that DSD in a presentation to civil society organisations in July 2023 called for many of the same measures that are advanced by us, the applicants, in the case, noting:

“The current amount of R350 has not been adjusted to keep pace with inflation since the introduction of the grant in 2020. In real terms this implies a decrease in the grant value individuals are receiving of around 16%. Increasing the grant to R500 or R663 a month would have a significant effect on poverty [...] The Department therefore recommends the following:

1. Extending the allocation for the SRD grant for the next two financial years.
2. Increasing the amount of the grant from R350.
3. Increasing the current means test threshold from R624”

The position subsequently taken by DSD in response to our court case however is completely contrary to these recommendations.

Finally, on 21 November 2023, the Minister of Social Development [stated](#) in response to a Parliamentary question that the department's intention remained to progressively improve the SRD grant into a more comprehensive system of basic income support: "Given the extent of unemployment, and the current economic climate, we have chosen to take a prudent approach of progressive realisation of the basic-income support policy through incremental changes to the SRD grant over time."

It is thus striking that government would so ardently oppose the implementation of their own policy and policy recommendations in response to our court case.