



**PERMANENT MISSION OF SOUTH AFRICA TO
THE UNITED NATIONS AND INTERNATIONAL ORGANIZATIONS**

97/2010

The Permanent Mission of the Republic of South Africa to the United Nations Office and other International Organisations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights – Independent Expert on the question of human rights and extreme poverty -, and has the honour to refer to Diplomatic Note Reference: POVERTY 2009 ER dated 20 November 2009.

The Permanent Mission of the Republic of South Africa has the further honour to submit herewith the response received from the Government of the Republic of South Africa.

The Permanent Mission of the Republic of South Africa to the United Nations Office and other International Organisations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights – Independent Expert on the question of human rights and extreme poverty - the assurances of its highest consideration.



Geneva, 15 April 2010

The Office of the United Nations
High Commissioner for Human Rights
Independent Expert on the question of human rights and extreme poverty
Palais des Nations
CH - 1211 GENEVA 10

OHCHR REGISTRY

16 AVR. 2010

Recipients :....**SPD**.....

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international relations & cooperation

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Ms Magdalena Sepulveda Carmona
Independent Expert on the question of human rights and extreme poverty
Office of the High Commissioner for Human Rights
Geneva
SWITZERLAND

Fax No: 022 917 90 06

Dear Ms Sepulveda Carmona

**Questionnaire on social protection of older persons addressed to Governments by the
Independent Expert on the question of human rights and extreme poverty**

The Office of the Director-General, on behalf of the Department of International Relations and Cooperation (DIRCO), Republic of South Africa acknowledges receipt of your questionnaire sent to States regarding your research project on "Social protection of older persons".

In response to your letter on the above subject, please find attached document with background information on South Africa's Social protection of older person's policies, programmes and interventions dealing with issues relating to your research project. It should be noted that the information provided is in line with the Government policy positions related to social protection of older persons.

My Department otherwise remains at your service and would like to be informed of any developments regarding your proposed research.

For any queries, please contact Mr SP Rankhumise, +2712 3511390,
rankhumises@foreign.gov.za or Ms Y Naidoo, +2712 3511974, naidooy@foreign.gov.za

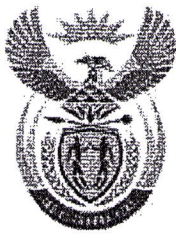
Yours sincerely,

Dr A Ntsaluba
Director-General

Date:

16/3/2010

Ref: 10gbb3010225a



international relations & cooperation

Department:
International Relations and Cooperation
REPUBLIC OF SOUTH AFRICA

RESPONSE TO A QUESTIONNAIRE ON THE SOCIAL PROTECTION OF OLDER PERSONS ADDRESSED TO GOVERNMENTS BY THE INDEPENDENT EXPERT ON THE QUESTION OF HUMAN RIGHTS AND EXTREME POVERTY

i. Legal and Institutional Framework

The Constitution of Republic of South Africa Act, 108 of 1996, chapter two, Bill of Rights, lays the foundation on socioeconomic rights of individual in the country. The Department of Social Development, through the Social Assistance Act, 13 of 2004 (the Act), and its Regulations of 2008, develops criteria for accessing social grants for a range of people, including older persons. The South African Social Security Agency, through the South African Social Security Agency Act, 9 of 2004, administers the payment of the social grants, including the old age grant.

Over and above the old age grant, a grant-in-aid is paid to an older person who requires regular attendance by another person due to a disability he or she may have or acquire.

1. The legal framework by which the programme had been established:

- (a) General eligibility criteria for Older Person's grant are as follows:
- The applicant and spouse must meet the means test¹;
 - The applicant must not be a beneficiary/recipient of a social grant;
 - The applicant must not be maintained in an institution funded by the state; and
 - The applicant is resident in the Republic of South Africa.

¹ The Means Test is an income and assets test used to determine eligibility of a beneficiary/spouse.

A person is, subject to the above criteria, eligible for an older person's grant if:

- In the case of a woman, she has attained the age of 60 years, and
- In the case of a man, he has-
 - After 1 April 2008, attained the age of 63;
 - After 1 April 2009, attained the age of 61; or
 - After 1 April 2010, attained the age of 60².

The following are additional eligibility criteria applicable for older persons' grants, in terms of **Regulation 2**. A person is eligible for an older person's grant if he or she-

- is a person contemplated in section 10 of the Act;
- meets the requirements of the financial criteria set out in Annexure A;
- subject to regulation 5, does not derive a benefit for himself or herself from any other social grant;
- is not maintained in any institution funded by the State; and
- is a permanent resident.

No, The programme does not take into account if the nature of the beneficiary' occupation as it is a non-contributory programme.

- (b) Yes, the qualifying age is a restriction together with the administering of a Means Test (See Annexure A regarding the means test). Apart from the age requirements described in (a) above, the only other condition applicable after approval of the grant is any change in the beneficiary's mean. If the financial status of the beneficiary changes, that will affect the amount the individual is entitled to. This may result in reduced or increased (up to the maximum amount).

A review of all grants is done in accordance with the prescribed legislation and beneficiaries are required to present themselves with all prescribed documents within a timeframe in order for SASSA to determine eligibility based on changed circumstances of means.

The eligibility criteria do not take into account the nature of the occupation of the potential beneficiaries but the means test is applied.

- (c) This programme is a non-contributory poverty alleviation programme initiated by government to provide cash to individuals who qualify to receive such social assistance from government as set out in the applicable legislation.

The programme is non-contributory (Read in conjunction with the definition of the institution funded by the state). See Chapter 4 (4.2) of the manual regarding permanent residents

² From 1 April 2010, in an effort to equalise the qualification age for both men and woman, the grant is available to all eligible beneficiaries from age 60 years.

2. The programme is established by law in terms of Act No 13 of 2004: Social Assistance Act of 2004 and the Social Assistance Regulations of 22 August 2008.
3. (a) The Institutional Framework to implement the programme is multi-level and multi-dimensional and each stakeholder has a specific role to play. The Ministry of Social Development is responsible for the Programme Design and Development of policy whilst SASSA as a national entity is responsible for the programme implementation whilst Civil Society act as the watchdog.
 - Government (National) represented by the Ministers and Government (Provincial) represented by the Member of the Executive Council (MEC) responsible for Social Development and Social Services.
 - Other Government Departments such as the National Treasury from which the budget for the Programme is appropriated.
 - External to the programme and not necessarily directly involved is Civil Society, Non-Governmental Organisations and Faith Based Organisation (Churches).
- (b) Yes, Civil Society was and still is an integral part of the consultation process both during the elaboration of the legal framework (the South African policy development process is a consultative and all-inclusive process) and in the implementation and monitoring of the programme. Details are outlined below:
 - The public participation process followed the consultative process that is enshrined in both the Constitution (Bill of Rights) and the Batho Pele Principles³. During the planning stage there was broad consultation with civil society groupings and representatives such as the Black Sash, Human Rights Commission, etc.
 - Monitoring is an integral part of implementation of government's programmes. The function has been institutionalised within the Agency and there are also a number of channels available to the public to give feedback on the implementation of the programme. On one hand, the Agency continuously receives feedback, from public, through call centre, letters and general complaints and complements and, on the other hand, organised civil society continuously engage with the Agency on issues pertaining to the implementation of the programme. These engagements are utilised to enrich the implementation of the programme. Such organised civil society, included among other, the Black Sash, LRC, Aids in Action or others who represent specific interest and lobbying groups from all walks of life.
 - Further, consultations with civil societies occur during processes of policy review, which are coordinated by the Department of Social Development.

³ The Batho Pele Principles are a set of standards for public servant in their dealings with the public.

- ° Civil Society further influence the process through class action through the various South African courts which results in legislative amendments and ultimately in policy changes. Furthermore, the management of SASSA and the Political Head (Minister of Social Development) and other Ministries also hold imbizos⁴ with the public. In addition, all Ministries providing related and interdependent services are represented in a cluster which addresses issues of mutual interest.

ii. Programme costs and coverage

4. The annual number of **older persons'** grants and the gender breakdown thereof, as of 22 December 2009 is as follows:

Region	No. of males	No. of females	Total no. of beneficiaries
Eastern Cape	151,228	310,665	461,893
Free State	47,199	103,821	151,020
Gauteng	215,698	100,630	316,328
Kwazulu-Natal	139,159	375,631	514,790
Limpopo	108,809	276,589	385,398
Mpumalanga	54,725	118,350	173,075
North West	74,963	140,032	214,995
Northern Cape	24,057	41,747	65,804
Western Cape	71,163	134,887	206,050
Total SA	887,001	1,602,352	2,489,353

5. South Africa consist of nine (9) Provinces and the programme is rolled out in all Provinces.
6. Annual budget of the programme: The programme's budget is presented in two categories (Administration and Cash Transfer).

R thousand	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11
Current expense	2,140,470	3,090,821	3,655,048	4,519,774	4,540,175	4,881,728	5,203,740
Compensation of employees	336,561	570,745	710,684	1,090,832	1,168,281	1,248,892	1,323,826

⁴ Imbizos is a community meeting where the ordinary citizen is afforded an opportunity to engage the leadership.

Goods and services of which:	1,803,909	2,520,076	2,944,364	3,428,942	3,371,894	3,632,836	3,879,914
Payment contractors	1,447,490	2,131,301	2,015,056	2,189,941	2,420,964	2,687,531	2,956,153
Consultants, contractors and special services	82,356	169,977	175,413	183,114	148,765	160,666	173,519
Travel and subsistence	33,135	57,018	80,820	109,032	111,332	120,238	129,857
Total expense	2,177,800	3,323,665	3,818,656	4,520,247	4,540,917	4,882,522	5,204,590

Note: The above figures are inclusive of costs for the entire programme and not just the Old Person's Grant. **The Older Persons Grant in the 2009/2010 Fiscal Year amounted to R30,238 million and this constitute 1.24% of GDP..**

7. The programme receives its funding from the National Treasury, which is a national allocation from taxes and these are public funds. It is not possible to provide a breakdown of the costs because the allocation is made at the beginning of the financial year guided by a Medium Term Expenditure Framework (A three (3) year allocation based on projections).
The programme does not receive funding from external sources (i.e. outside of government funding)
8. It is not possible to answer this question accurately because SASSA work on projections comprising of mainly statistics based on historical data as well as data derived from the national census data. SASSA does however actively market its services in rural and deep rural areas to reach potential beneficiaries that might be have been excluded All indications are that this grant has reached its saturation point and SASSA is currently dealing with the age equalisation process whereby all males above sixty years who had been excluded will also qualify for the grant from the age of sixty (60) years. This incremental process was introduced over a period of three years and by April 2010 all eligible sixty year would qualify.
9. The older persons grant is calculated with the use of a means test which is based on annual income thresholds. The current threshold for married persons are R58,224 per annum and for single persons R29,112 per annum. It is important to note that this is not a contribution based pension fund, but is completely funded from a tax base and therefore acts more as a poverty relief program providing a safety net to older persons. The current older persons grant is R1010, which will increase to R1080 during the new financial year. It is

estimated that the average salary is around R2000 per month. When looking at the ratio between old age grant and average salary, the grant provides only 55% of the average salary.

iii. Implementation Procedures

10. There are two main types of methods of payment currently in used, i.e. **ACB** (electronic payment through the existing banking infrastructure, including Postbank) or **cash payment** (at a designated pay point) by an appointed service provider. The pay points are halls utilised for the purpose of payment which need to meet predetermined compliance criteria such as availability of electricity, toilets, water seating, etc.

During the application process, each beneficiary is asked given a choice as to which payment method is preferred. Beneficiaries who choose the ACB method will have their grants deposited directly into their bank accounts on a monthly basis, compared to the Cash payment method where beneficiaries have to collect their grants at a designated pay point on a predetermined date. In terms of the existing legislation (Section 4 of the SASSA Act), social assistance must be paid monthly by the Agency or a person appointed by the Agency for that purpose.

11. The Agency employs a number of channels to communicate information about the programme such as:

- **Print**

Information leaflets are developed and printed on ongoing basis. The pamphlets are reviewed and update to ensure that they reflect the updated information on grants. Such review is necessitated by factors such as amendment of the legislation, e.g. Age Equalization for Older persons' grants. The pamphlets are written in languages mostly spoke in the specific region.

- **Electronic media**

The Agency utilizes both television and radio to advertise the services rendered through the programme. Television as a medium is not utilised as frequently as possible (due to exorbitant cost). However, the Agency at Regional levels utilises Regional and community radio stations to share information regarding the programme with the public. Some of the Regional Offices have standing slots on certain programmes, where information is shared with the public and where the public is able to phone in and lodge complaint, enquire about something and raise service delivery related issues. Further, officials at Head Office are invited to appear on national radio stations/television to present information on the programme.

- **Public Meetings and Imbizos**

Information is also shared through outreach programmes, which are sometimes conducted in conjunction with the political Heads of the programme. These may be in the form of meetings with communities, where only officials are invited, or imbizos, where the political leadership provides information to the public and where an opportunity is created to respond to communication issues relating to the programme.

All these initiatives accommodate language preferences in the areas where they are conducted (both verbal and written). The prevailing and preferred languages are used when engagements of this nature takes place.

12. As part of a comprehensive social security system, beneficiaries of social grants receive other state-subsidised services such as free basic health care at state health institutions, free basic municipal services (water and electricity, waste removal, etc) at the local government level if the beneficiary is classified as indigent. The Department of Social Services also provide a basket of services customised to address the emotional, physical and the needs of individuals and that of specific communities.

13. Yes, refer to answer provided above.

iv. Monitoring mechanisms and complaints

14. The responsibility for the monitoring and evaluation of the programme is vested in the National Ministry and Department of Social Development. In addition, SASSA also has an established internal branch (called the Monitoring and Evaluation Department) which is responsible for a number of monitoring functions. In this regard, the following is evident:

- The SASSA Head Office is responsible for developing a monitoring system which is implemented at Regional and Local levels. The M&E Department has the overall responsibility for collecting, collating and analysing data and preparing statistical information for dissemination to the Ministry, Department of Social Development, Oversight bodies such as Parliament and the portfolio Committee on Social Development, Executive Management and Senior Management of the Agency, Civil Society and other stakeholders on timely basis.
- The M&E Department has an oversight role and implements and manages a structured monitoring and evaluation system within SASSA by:
 - a. The setting of standards and principles for monitoring and evaluation;
 - b. Provision of guidance, advice on best practices and support in the effective utilisation of monitoring and evaluation as a management tool;
 - c. Coordination, promotion and use of evaluation findings to improve quality of SASSA's programmes/interventions;
 - d. Assessment of monitoring and evaluation capacity within SASSA on a systematic basis;

- e. Conducting of periodic capacity development on M&E to build and inculcate a culture of learning among staff, programme/project managers and senior management;
 - f. Conducting of thematic/strategic evaluations that cover cross-cutting themes or issues pertinent to SASSA;
 - g. Conducting of evaluations with significant implications for national policy and other strategic evaluations requested by Social Cluster, Executive Management of SASSA/Social Development and the Minister;
 - h. Conducting of other non-strategic evaluations and rapid appraisals in special circumstances where an independent assessment is requested, through the Minister;
- The above functions are located in four Units within this Department, as follows:

(a) Strategic Monitoring Support

This unit ensures the following:

- i. Identification of input gaps and trends across social security;
- j. Identification of output gaps and trends across social security grants;
- k. Preparation of a gap analysis with respect to outcomes for each of the social security grants;
- l. Maintenance of a centralised database of key statistical indicators and indicator dashboards;
- m. Collection and maintenance of information for strategic priorities for each social security grant;
- n. Strategic support to the executives;
- o. Coordination of monitoring & evaluation reports;
- p. Publications etc.

(b) Institutional Monitoring

This unit focuses on the following:

- q. Assessing the capacity of SASSA to deliver on its mandate on mainstream policies implemented through services and programmes;
- r. Analysis of the Agency's performance indicators and performance reports against strategic objectives and priorities;
- s. Assessing the alignment between inputs, outputs and Key Performance Areas (KPA's) and strategic and operational plans;
- t. Analysis and assessments of the information collection;
- u. Internal and external performance reporting information;
- v. Focus on the inputs and outputs into policy and strategic planning development;
- w. Assessment and review of organisational structures and mechanism for effective implementation.

(c) Service Delivery Monitoring

This Unit focuses on the following:

- x. Assessing the effectiveness and efficiency of social assistance service delivery according to the legislative requirements and recommending necessary action to enhance and develop service delivery performance indicators;
- y. Analysis and assessment of the information gathered;
- z. Reporting on the service delivery performance indicators;
- aa. Assessment and review of the performance indicators on stipulated time frames;
- bb. Monitoring of the quality of service provision at pay points;
- cc. Monitoring the implementation of norms and standards set for service delivery to beneficiaries;
- dd. Monitoring the payment service; identification of bottlenecks in the implementation processes to provide adequate scope for remedial measures;
- ee. Measure progress made in implementation in line with budgetary allocations for programmes and projects and to follow-up on the implementation of crucial recommendations made.

(d) Social Security Evaluations

This Unit focuses on the following:

- ff. To determine the impacts of programmes and services on the beneficiaries at large;
- gg. To quantify the effectiveness of the Social Security Interventions and to determine best practice models.

15. The following pieces of legislation provide for mechanisms to lodge complaints against the programme:

(a) Constitution of the Republic of South Africa, Act 108 Of 1996

(i) Section 23 - Bill of Rights states that

"Every person has the right to-

- (a) lawful administrative action where any of their rights or interests is affected or threatened;
- (b) procedurally fair administrative action where any of their rights or legitimate expectations is affected or threatened;
- (c) be furnished with reasons in writing for administrative action which affects any of their rights or interests unless the reasons for that action have been made public; and

(d) administrative action which is justifiable in relation to the reasons given for it where any of their rights is affected or threatened.”.

(ii) Section 33 - Just administrative action

(1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

(2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.

(3) National legislation must be enacted to give effect to these rights, and must- (a) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;(b) impose a duty on the state to give effect to the rights in subsections (1) and

(2); and (c) promote an efficient administration.

(iii) Social Assistance Act, 13 of 2004

Section 18. (1) If an applicant disagrees with a decision made by the Agency in respect of a matter regulated by this Act, that person or a person acting on his or her behalf may, within 90 days of his or her gaining knowledge of that decision, lodge a written appeal with the Minister against that decision, setting out the reasons why the Minister should vary or set aside that decision.

(2) The Minister may, after considering the appeal and the Agency's reasons for the decision-

(a) confirm, vary or set aside that decision; o r

(b) appoint an independent tribunal to consider the appeal in accordance with such conditions as the Minister may prescribe by notice in the Gazette, and that tribunal may, after consideration of the matter, confirm, vary or set aside that decision or make any other decision which is just.

(iv) Regulations Social Assistance Act, Act 13 of 2004

Chapter 3 of the Regulations provide for the Agency to put in place an appeals procedure to deal with applicants who feel aggrieved by the Agency's decision:

18 (1). An applicant or beneficiary who is aggrieved by a decision of the Agency shall, within 90 days of gaining knowledge of such a decision, lodge an appeal in writing to the Minister setting out the grounds on which the appeal is based, and submit a copy thereof to the Agency;

(v) *Promotion of Administrative Justice Act, 2000 (Act 3 of 2000)*

The purpose of this Act is to give effect to the right to administrative action that is lawful, reasonable and procedurally fair and to the right to written reasons for administrative action as contemplated in section 33 of the Constitution of the Republic of South Africa, 1996; and to provide for matters incidental thereto.

16. Yes; numerous legal actions on the administration of social assistance were/are instituted (both prior and post the establishment of SASSA) against the programme.

Legal actions instituted against the programme were/are based, *inter alia*, on the following:

- (a) Alleged failure or delay to determine applications in respect of social grants.
- (b) Alleged cancellation of the beneficiaries grants without proper notification.
- (c) Alleged unjustified rejection of the Applicants' applications for social grants.
- (d) Alleged failure by SASSA or the Department to defray payment of the beneficiaries' grants in respect of arrear payments (social grant which accrued from the date of application to the date of approval).
- (e) Alleged failure or delay in the disposing of Applicants appeals against the decisions imposed by SASSA on applications for social grants.
- (f) The implementation or invoking of certain provisions of the legislation governing the administration of social grants (i.e. cancellation of social grants in respect of persons treated or institutionalised in a public institution; the requirement to furnish an identity document [and other specified documents] as proof of identity, earnings and so forth by neglecting the exercising of the discretion to accept alternative documentation).

v. Existing Studies and evaluation of Cash Transfers Programmes

17. Provided as part of the questionnaire answered in 2009.

18. Among others (which was provided as part of the questionnaire answered in 2009), the following studies were conducted to evaluate the programme:

- (a) The Social and economic impact of South Africa's Social Security System
- (b) Assessment of the Effectiveness and Efficiency of Social Security Service Delivery at National and Provincial Level
- (c) Evaluation and Impact Assessment Directorate Completed Studies