

Tuesday, 15 November 2016

Honorable Members of Committee
Via: Mr. Andre Hermans – Committee Secretary

Portfolio Committee on Trade and Industry

Parliament of South Africa

 Email: ahermans@parliament.gov.za

Dear Chairperson, Honorable JL Fubbs (MP) and Honorable Members

Re: Black Sash Submission – debt relief measures to deal with over-indebtedness

Communication from your office dated 9 November 2016 is reference. Thank you for the invitation to discuss debt relief measures and possible solutions, including legislation.

We wish the subcommittee responsible to explore options for debt-relief to address over-indebtedness well in its deliberations and plans. We are keen to engage the Committee further on the subject of finding solutions to over-indebtedness going forward.

Background

In 2008 the Black Sash published "Debt and Credit" a Reference Guide for Paralegals". It was our first attempt towards formally commenting and providing information on this important topic. As the Black Sash, our mission includes among other, to work towards a South Africa in which human rights are recognised in law and respected in practice; the government is accountable to all its people and attends to their basic needs; for both members of society (individuals and the private sector) also take responsibility for reducing inequality and extreme poverty; the Constitution is upheld by all; and social and economic justice is recognised as fundamentally important.

We aim to assist in enabling all, with the emphasis on women and children, to recognise and exercise their human rights, particularly their social and economic rights; and to create a society which has effective laws and delivery systems, including comprehensive social protection for the most vulnerable. In this regard, the Black Sash views the National Credit Act, and its amendments, an important law that will create a fair non-discriminatory environment in which people borrow and lend money, while at the same time protecting people from reckless lending and accessing credit they cannot afford to pay it back.

Trustees: Sibongile (Bongi) Mkhabela (Chairperson), Yasmin Turton (Deputy Chairperson), Maria (Mary) Burton, Jennifer De Tolly, Margaret (Dolly) Khumalo, Mary Kleinenberg, Thembi (Nyami) Mbhele, Mary-Jane Morifi, Diana (Di) Oliver, Yasmin Sooka, Hilary Southall, Woineshet Bischoff

Indebtedness – a millstone around our necks that prevents the above from being realised

Early in 2014, we also made submissions to this Committee on the National Credit Amendment Bill and also, prior to this, to the Department of Trade and Industry in mid-2013, on the Draft National Credit Amendment Bill 2013 and the Draft National Credit Act Policy Review Framework 2013.

Previous submissions in summary held that:

- The impact of the credit market on the quality of life of the poor has for decades been a vexing and deeply concerning issue.
- The impact of the lack of access to credit, and/or the exploitation by those with economic power on people who either struggle to access credit, or are struggling to cope with debt repayments, has been phenomenal and unprecedented.
- This was the case both pre and post 1994 – but in our view, with devastating effects on households in the past decade.

The work of Hawkins et al (Feasibility Studies) on the cost, volume and allocation of credit in this regard bears testimony to its impact, especially on those living in Living Standard Measure LSM 1-4. Their work demonstrated vividly how the burden of interest repayments and administration fees disproportionately impacts on the poor in a negative manner.

Many of the provisions in the National Credit Act (2005) have certainly contributed to a significant lessening of the risks regarding access to credit. However, there has been unprecedented increase in the provision of unsecured credit recently (as indicated in 2012). This, in part, was due to dwindling opportunities for lending to the “market.”

The current situation

Unfortunately, the situation has become more dire. In particular, since 2013 the Black Sash and its partners have learnt and documented many cases where the newly banked, i.e. SASSA beneficiaries’ (amounting to 16.7 million beneficiaries through approximately 10 million plus), have been victim to unauthorised, unlawful, sometimes illegal, often fraudulent deductions from their SASSA bank accounts.

It is important to note that these deductions are facilitated off the SASSA-CPS-Grindrod_MasterCard Bank account. Cash Paymaster Services (CPS) is owned by Net1. Net1 also owns Moneyline, Manje Mobile Solutions, EasyPay, Smartlife and other companies. These and others benefit from these

disputed deductions. The nature of the bank account is such that all SASSA beneficiaries are at risk from these deductions.

Furthermore, the SA Reserve Bank recently indicated that Net1 has a conflict of interest given the secondary financial services offered through its companies. Recent engagement with SASSA, and our own research and cases written up in partnership with our community organisations, as part of the Hands Off our Grants Campaign, learnt that there are many cases where SASSA beneficiaries are forced, or with no informed consent or scant or no affordability tests are transferred to the EasyPay Everywhere Bank account for the main purposes of facilitating loans – fuelling indebtedness of SASSA beneficiaries in what appears to be an unsustainable and debt-spiralling pattern.

In this regard, we propose:

1. Viable debt measures not provided for in the National Credit Act (2005)

In conjunction with other government entities, in particular the National Treasury and Dept Social Development, the Committee works towards preventing reckless lending, especially where no affordability tests and other NCA violations are taking place. Furthermore those on social grants, particularly those who are receiving child support grants and any temporary grants are not eligible for loans and that credit providers are held criminally responsible. Grants are meant to supply food and alleviate poverty and may not be ceded, transferred or encumbered (Section 20 of the Social Assistance Act).

2. Legal and other challenges that may arise in its implementation

The National Credit Regulator needs more capacity to ensure the effective implementation of the National Credit Act. It is unable to monitor the activities of 17 million grant beneficiaries. The emphasis must therefore shift to tackling the commercial and other companies responsible for reckless lending. The Social Assistance Act may need to change to place strong emphasis on grants may not be used as collateral for loans.

3. Criteria that should inform a debt relief measure

a. Target group of debtors (who will be eligible)

We have limited our input almost exclusively to persons who technically should either not have had access to this type of credit, i.e. if her/his sole access to money is in the form of a social grant. This is particularly applicable to recipients of child support grants and temporary grants. Recently the outcome of the Flemix case is reference. We also wish to make the Honorable Members aware that

this target group of debtors, who technically are indebted, but who may not have been eligible to have had access to credit. There are many extremely poor families that are dependent of social grants that have become trapped in debt and have to engage in consumptive lending in order to survive. We therefore argue that, in situation. In the event of reckless lending, the outstanding debt must be written off.

Period in respect of which the debt relief measure will apply;

As per previous arguments, the Black Sash is of the view that those persons trapped in debt as a result of fraudulent, illegal, and in some cases unlawful practices, should have the debt written off .

Furthermore, for those persons seeking debt relief, they should be supported with debt counselling and financial literacy opportunities. Dependent on the extent of the indebtedness, it may be required that debt relief needs to be applied for a period of 3-5 years, in particular for those agreeing to repay debts incurred at a rate that enables them to pay off the agreed to debt owed.

b. Type of debt to which the debt relief measure will apply;

As described above, this group we refer to is a new cohort of indebted persons. As indicated, many of these beneficiaries were given loans in violation of the Social Assistance Act, often under conditions that may violate the National Credit Act.

c. Manner in which the debt relief measure will be effected;

We propose that, where it is demonstrated that the loans were given recklessly, the outstanding amount be written off and interest and charges refunded.

4. Possible impact should the measures be implemented

Based on the above recommendations from the Black Sash, the possible impact/s may be that some businesses may litigate and claim that the interference of the State by businesses to provide access to credit, amongst other impedes their right of freedom to trade, as per Section 22 of the Constitution. The Black Sash however views the rights to dignity and basic needs, in particular Section 27 rights as more fundamental to this s22 right, and we are therefore of the view, that the practice of this trade, should be and must be regulated by law, given the harm that the shortcomings of the law, and non-implementation of existing laws have had on society, in particular with regard to mitigating the harmful effects of indebtedness amongst lower income category earners.

Thank you.

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