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Managing a Consumer Debt Crisis[1]

The main argument of this article is that despite a public recognition of the dangers of *reckless lending* and *rampant borrowing* a damaging tendency towards private over-indebtedness disseminates in South Africa.[2] This tendency is enhanced by two main reasons: First of all, in times of high underemployment and unemployment the political promotion of easy access to consumer credit offers the maintenance of seemingly private participation in consumption and wealth despite a reverse economic development. Secondly, the economics of consumer credit fortify this tendency as lenders earn more money with loans that are attached with a higher risk of payment default.

An extensive restriction of access to consumer credits would be problematic, though, as the availability of loans is more crucial for people without assets in order to be able to realize economic potentials or to equate a temporary lack of money. For those with property and income problems to get a loan would not occur to begin with.

Instead, the tendency should be answered by development of a compulsory set of rules for credit counselling by the option of debt relief in the National Credit Act No. 34 (2005) as well as by a renunciation from convenient but disastrous political feints.

When a Loan Turns Into Debt, a Contract Turns Into Force

At the heart of the problem lies the close connection between money, debts and contracts. Although the practice of borrowing money in return for interest is older than the culture of scripturality (cf. Graeber 2011: 64) the extreme shift in the relation between moneylender and borrower that is caused by a default of repayment is not understood very well till this day. Therefore I will continue by outlining an explanation in reference to the anthropological approach of David Graeber.

It is the extreme alteration from reciprocity to hierarchy within the contractual relationship that has to be explained in this context. In the beginning of a loan contract there seems to be parity. "What makes debt different is that it is presumed on an assumption of equality. [...] In the case of debt, we are dealing with two individuals who begin as equal parties to a contract. Legally, at least as far as

1 I would like to thank Tara Rahimi, University of Giessen, for her comments on this article.
2 Neither the problem nor possible solutions are specific South African and may be better understood within a frame of international comparison but such a comparison goes beyond the scope of this article.

the contract is concerned, they are the same." (Graeber 2011: 86) But this *legal* equality is an *economic* deception which becomes clear when a default of repayment occurs: “[T]hese two parties *ought* to be equals, but one had failed to honour the bargain.” (Graeber 2011: 87) For Graeber, the resulting shift from legal equality to economic force is an ideological problem of a society that construes all its social relations in terms of economic reciprocity. Therefore “all human interaction can best be understood as a kind of exchange. If so, then debt really is at the root of all morality, because debt is what happens when some balance has not yet been restored." (Graeber 2011: 91) The benefit of this assumption is that people are always able to walk away from each other because when the balance is squared there are no ties left. (Cf. Graber 2011: 92)

But Graeber outlines three different modes of interaction, all of them present in economic relations. The first one is the way of putting all effort into a *common* project, without compensating the particular contributions of different amount. "The reason is simple efficiency: [I]f you really care about getting something done, the most efficient way to go about it is obviously to allocate tasks by ability and give people whatever they need to do them.” (Graeber 2011: 96) Graeber stresses that this mode of economic action is revived especially in times of catastrophes and fundamental societal crisis. (Cf. Graber 2011: 96)

The second mode is exchange. As already shown, its main benefit is that of being able to quit the relation after the deal: "What marks commercial exchange is that it's impersonal.” (Graeber 2011: 103) This is the reason why it was mostly practised between strangers or even enemies in former times (cf. Graber 2011: 102-108) but for the very same reason it may turn out to be an inadequate practice in a democratic society which *continues*. Nonetheless, for the contractual relation of a loan, the mode of exchange seems to be a matching practice: "Exchange allows us to cancel out our debts. It gives us a way to call it even: hence, to end the relationship." (Graeber 2011: 104) The explanation for this is that in trade both sides of the deal are conceptualised as equal, the objects of exchange as well as the trading persons. “This in turn implies autonomy.” (Graeber 2011: 108) In this respect, autonomy is the opposite pole of confinement. Graeber emphasizes that this freedom caused suspicion amongst autocratic rulers but he peculates that this also was a point of departure for a political aspiring bourgeoisie (cf. Habermas 1990). According to Graeber, the reason for on-going acts of exchange despite the possibility of an immediate break-up lies in an incongruity of the relation: “Actually, there's something of a paradox here: each side in each case is trying to outdo the other, but, unless one side is utterly put to rout, it's easiest to break the whole thing off when both sides consider the outcome to be more or less even." (Graeber 2011: 103) So there seems to be a constant urge to enter the situation in order to gain benefit on the one hand and to leave the situation for preventing losses on the other hand simultaneously.

The third economic mode is that of hierarchy. “In practice, hierarchy tends to work by a logic of precendent” (Graeber 2011: 109), and with this Graeber means that tributes to authorities as well as donations to subordinates are often caused by a single or occasional – possibly imagined – event that turned into a custom or even into a rule. "Whenever the lines of superiority and inferiority are clearly drawn and accepted by all parties as the framework of a relationship, and relations are sufficiently ongoing that we are no longer simply dealing with arbitrary force, then relations will be seen as being regulated by a web of habit or custom. Sometimes the situation is assumed to have originated in some founding act of conquest. Or it might even be seen as ancestral custom for which there is no need of explanation." (Graeber 2011: 110) This moral rendering of a perpetual material transfer is construed as the root of politics of identity that, according to Graeber, always is connected to hierarchical transmissions because “a certain action, repeated, becomes customary; as a result it comes to define the actor's essential nature. Alternately, a person's nature may be defined by how others have acted towards him in the past.” (Graeber 2011: 111f.) But with this connection between perpetual hierarchy and identity the material exchange becomes an everlasting process that can't come to an end: “When objects of material wealth pass back and forth between superiors and inferiors as gifts or payments, the key principle seems to be that the sorts of things given to each side should be considered fundamentally different in quality, their relative value impossible to quantify – the result being that there is no way of even to conceive of a squaring of accounts.” (Gaeber 2011: 112) The exception to this rule is redistribution as a way of low hierarchy in which things are exchanged on an equal level. (Cf. Graeber 2011: 113) So this principle of exchange could be summarized as followed: Whenever there is a constant exchange it takes place in a hierarchical order and will most likely be explained with ascriptions of identity; it tends to be everlasting.

All three modes of interaction are present at all times simultaneously: “These principles get tangled up in each other and it's thus often difficult to tell which predominates in a given situation […]. Still, this means that some degree of reciprocity can be detected as potentially present in any situation; so a determined observer can always find some excuse to say it's there.” (Graeber 2011: 115). And, even worse, the different modes convert into each other; for instance, the first, communistic mode may easily generate the awareness of gratitude on one side, resulting in gift-giving and therefore slipping into hierarchy. (Cf. Graber 2011: 116) And a favour so big that it can't be paid back properly turns into everlasting payment of tribute due to regular favours. In the next step of his argument Graeber considers what happens if these kinds of benefits turn into a contracted relation and he comes to the conclusion that it is in fact an agreement between *otherwise* equals to enter a hierarchical relation in *this* respect. “It seems to me that this agreement between equals to be no longer equal (at least for time) is critically important. It is the very essence of what we call *debt*.” (Graeber 2011: 120) Despite the fact of an alleged equality the relation between the two parties of a loan contract immediately turns into hierarchy: “During the time the debt remains unpaid, the logic of hierarchy takes hold.” (Graeber 2011: 121) As long as this situation continues the two parties are bound to each other. For an observer, the relation may be obscure, though. Before entering a loan contract, there may be the perception of distribution of money according to the principle of "from each according to their abilities, to each according to their needs" (Graeber 2011: 94) because the creditor has more cash than he needs and the borrower has a purpose for it. And during the duration of the contract each repayment by instalments is a step towards restoring equality and cancellation of the relation. But with Graeber's revealing of a deception it becomes clear what happens in case of a default of repayment: The assumption of a temporary hierarchical relation becomes *unlimited*. The perception of a fundamental equality of both participants vanishes and is replaced by authority of the economic superior.Therefore the relations between creditors and debtors have to be regulated in order to restore at least legal equality in an economic power relation. This is especially important for the cases of over-indebtedness when debtors lost the ability to recreate their capacity to pay in medium term; in this case the law has to save the rights of the weak.

The South African Landscape of Indebtedness

The following description is restricted to monetary indebtedness for two interconnected reasons. Monetary lending, i.e. a loan that can only be paid back with money, usually takes place between strangers. So this kind of loans creates societal relations that wouldn't exist otherwise. For exactly the same reason these connections can be suspended by balancing the account; this wouldn't be the case within the own family or with friends, neighbours or employers.

The data in this section is gathered by registered credit bureaux according to National Credit Act No. 34 (2005), henceforth NCA, section 70 (2). The purpose, application and the shortcomings of the NCA will be outlined in the following section.

The officially estimated population of South Africa was 50.59 million people in 2011 (Statistics South Africa 2011: 4). The registered credit bureaux held data of 42.05 million individuals (National Credit Regulator 2012a: 2) which include foreigners with South African bank accounts, too, but it shows that data from a very high portion of the population is gathered by these bureaux. 46,3% of all these individuals had an active credit record at the beginning of 2012, showing an increase of nearly 4% over the foregoing year. 46.4% of the 19.49 million credit active consumers had impaired balances. The figures of customers in a good standing and that of customers with debts increased mostly in consonance during the last 20 months, (National Credit Regulator 2012a: 2), showing that a certain amount of indebtedness is somewhat natural (cf. Burton 2008: 115).

But all these impaired accounts are differentiated into three categories by the National Credit

Regulator (NCR), into those with adverse listings (i.e. accounts with adverse classifications such as *handed over* or *written off*), those with Judgement and Administration orders and, finally, those with arrears of three months and longer. But only the last category shows a slight but constant increase over the last 20 months, from 16.8% to 19.9% since June 2009 (National Credit Regulator 2012a: 2). So under otherwise stable conditions there is a constantly increasing amount of people with debts as a longer lasting condition. When it comes to the number of bank accounts instead of the number of individuals, much more – 74.9% – of all are in a good standing (National Credit Regulator 2012a: 3), allowing the conclusion that people with assets tend to have more than one bank account while indebted consumers usually only have one. The figures for impaired accounts show very similar tendencies, i.e. slightly decreases with adverse listings and judgements/administration orders but a constant increase of long-term indebtedness. Within the first quarter of 2012, more than 310 million enquiries into these consumer records were undertaken, mostly by banks and financial institutions. The two figures that significantly increased are of interest here: The amount of enquiries due to a consumer credit request increased by 21% within a year, and more than 18 million enquiries within a three month period were caused by debt collection purposes, increasing by 8.6% within a year. (National Credit Regulator 2012a: 4) The number of enquiries made by debt collecting agencies was 7.66 million, the figures fluctuating during 2011/12 but being significantly lower than those of 2010. (National Credit Regulator 2012a: 5)

These facts show that banks became more careful with the granting of loans by increasing their research efforts and that matters of debt collection gained higher importance because these efforts only have to be undertaken after the willingness and/or ability of debtors to pay their instalments vanishes.

Basically, the long-term figures of the Credit Bureaux Monitor from June 2007 till March 2012 show three things. First of all, the number of credit active consumers is constantly increasing. Secondly, the relation of accounts in a good standing and of impaired accounts was with slight fluctuation constantly tending towards impaired accounts but these figures indicate a stabilisation during the last one and a half year. But, thirdly, the figure for accounts with longer lasting arrears of three months and more is still constantly increasing and is now affecting every fifth account. (National Credit Regulator 2012c). The conclusion that can be drawn from this is that there are no alarming signals for rapidly increasing numbers of new debtors but that already existing debtors perpetually seem to get into deeper trouble.

For a thicker description of the registered consumer credit landscape of South Africa, in the following I will display the figures mainly from four different reports: June 2008, December 2008, December 2011 and March 2012, in order to show longer term changes as well as short term variances. The Consumer Credit Report includes only credit providers with more than 100 credit agreements or more than R500,000 outstanding debt, according to NCA sections 40 (1) and 42 (1). (National Credit Regulator 2008a: 2).

The report from June 2008 was the first one delivered by the NCA, so older data is not available. The second one from December 2008 gives an overview of the credit landscape in the aftermath of the climax of the world financial crisis after the bankruptcy of Lehman Brothers Ltd. on the 15th of September 2008. The third consulted report triggered a public discourse on unsecured lending (see below). The fourth one shows the latest available figures and, possibly, reactions to the public discourse.

Credit Supply

The first Consumer Credit Market Report covered the three quarter period from October 2007 to the end of June 2008. The second report covers data from a four quarter period of the whole year of 2008. The other two reports cover the period of the preceding quarter each.

The figures of the Consumer Credit Market Report from June 2008 show not only a limited scope of the market due to restrictions that had to be accepted for the initial report, they also show consequences of the world financial crisis that had its first peak on August 9th, 2007 (Bank for International Settlement 2008: 3, 6; Schraten 2011b; National Credit Regulator 2008a: 18).

The numbers of credit agreements shifted from 4.577 million over 3.599 million to 4.445 million during the three quarters of the report from June 2008. The total sum of credit granted decreased significantly from almost R102 billion to R86 billion. The amount of unsecured credit was 8.44%, 8.87% and 9.87%. (National Credit Regulator 2008a: 2f.) Despite the tendency to grant lower amounts of credit in the aftermath of first disorder of the world economy (cf. National Credit Regulator 2008a: 18) the drift towards more risky unsecured credit rose. The report from December 2008 showed another sharp decline in the amount of granted credit, caused by the world financial crisis, to R72 billion and then to R64 billion in the last quarter of 2008, a shortage of almost 23% within half a year, but the numbers of credit agreements began to rise again from a low 4.409 million to 4.905 million during the two quarters of the report. This means that more people took loans but of a smaller amount. This indicates the need to bypass a shorting of available money. The portion of unsecured credit climbed significantly to 11.83% and then 13.55%, (National Credit Regulator 2008b: 2f.) so the customers took higher interest and higher fees for smaller loans. The numbers of credit agreements fluctuated greatly since then but increased from a level between 3.500 million and 4.500 million in 2008-9 to more than 6 million in the fourth quarter of 2011, followed by a sharp decline in the first quarter of 2012. During the same period the total amount of credit granted in the aftermath of the world financial crisis turned down to R51 billion in the second quarter of 2009 – 49.75% of the amount of the fourth quarter in 2007 – and went up then continually with little fluctuation, but only in the fourth quarter of 2011 getting higher than in 2007, and falling behind that again in the first quarter of 2012. (National Credit Regulator 2009b; 2010; 2011b; 2012b) On the basis of, firstly, a temporary shortage of the total sum of granted credit, followed by a moderate increase, secondly, a slightly long-term increase of credit applications and, thirdly, a constant rate of rejections, the amount of unsecured credit continually rose: Starting from less than 10 percent of the whole of loans in 2007-8 it escalated to a quarter of all loans: During 2009 it increased from 14.89% to 17.63% (National Credit Regulator 2009b: 4), remained relatively stable during 2010 (National Credit Regulator 2010: 4), and exceeded 20 percent for the first time in the first quarter of 2011. Until the end of 2011 the share climbed to 24.58% (National Credit Regulator 2011b: 4), with a significant quarter-to-quarter descent in the beginning of 2012 to 23.10%. (National Credit Regulator 2012b: 4)

In the second quarter of 2009 a new figure was introduced into the Consumer Credit Market Report, unrolling the relation of rejected and received credit applications. These figures constantly moved round 43% or 44% of rejected applications, showing a significant downturn during the first three quarters of 2010 to 40%, climbing to 44% again. (National Credit Regulator 2009a, 2009b, 2010, 2011a, 2011b) In the first quarter of 2012 it rose sharply over 50% for the first time. (National Credit Regulator 2012b: 4) So the decrease of unsecured loans during the first quarter of 2012 was obviously caused by an increased rejection of applications and not by a cut of demand.

Debts

Another look has to be taken at the gross debtors book because a significant amount of the credit sum consists of accommodated credit facilities (cf. Section 8 (3) of NCA No. 34, 2005) and loans, while on the contrary the debtors book shows the amount of loans that has been used. The amount of used loans continually grew during the period between October 2007 and June 2008 from R1.049 billion to R1.117 billion (National Credit Regulator 2008a: 3), confirming the tendency of rising debt, despite a restraint against credit agreements by the lenders. The highest share of these debts had mortgages. Fundamentally unsecured loans are interesting in regard of indebtedness because there are no securities the lender could seize in case of a default of repayment. (National Credit Regulator 2008a: 12) So the default of repayment is not compensated by a security and therefore immediately leads to indebtedness. The amount of unsecured credit in the debtors book was 3.90%, 3.87% and 4.05% in the quarters respectively. (National Credit Regulator 2008a: 2f.) The quantity of unsecured loans that had been made use of rose from R40.947 billion to R41.928 billion to R45.232 billion between October 2007 and June 2008. (National Credit Regulator 2008a: 14) Most of these unsecured loans had repayment periods between 19 months and five years, roughly a third of all had a repayment period between 25 and 36 months; in the second quarter of 2008 this was the case for 34.68% of the granted money and 27.53% of the numbers of agreements. 795,595 unsecured loans where granted in the second quarter of 2008. More than 70% of this credit was granted in favour of loans for more than R10,000. (National Credit Regulator 2008a: 12f.) Approximately a third of unsecured loans were made to people with an average monthly income below R3,500 and less than a fifth towards persons with a monthly income higher than R15,000. (National Credit Regulator 2008a: 21)

At the beginning of the work of the National Credit Regulator a summary of the picture shows an increasing amount of used loans despite a shortage of credit. Within the amount of used loans the portion of unsecured lending rose disproportionally. The repayment periods were mid-range. The difference between the height of credits and the height of loans, as well as the time frame in which the credits had to be paid, was of highest concern.

The second report half a year later showed a continued tendency towards a higher amount of used loans, despite the decline of the total amount of credit, stating first R1.131 billion and then R1.147 billion of used loans. The amount of unsecured credit in the debtors book rose to 4.08% and 4.18%. (National Credit Regulator 2008b: 3) Compared to half a year before, the number of accounts with unsecured debt rose by 4.41% . (National Credit Regulator 2008b: 4) The gross debtors book records a total of R47.922 billion, which was an increase of 5.95%. (National Credit Regulator 2008b: 12-14) The number of unsecured loans with a repayment period between 25 and 36 month rose significantly and had a percentage of 36.87% in December 2008. 870,110 unsecured loans were granted in the last quarter of 2008, which shows an increase of 9.37% within half a year. The second report of the National Credit Regulator still demonstrates that most of the loans contained more than R10,000 but there was a significant increase of loans of the category between R3,100 to R5,000. This also is a sign for an economic crisis: More people took an unsecured loan but lenders and borrowers got more careful concerning the amount. These customers run out of money first and consequently the tendency of giving unsecured loans to people with an average monthly income lower than R3,500 significantly rose again (National Credit Regulator 2008b: 21).

Most of these dispositions continued until the last quarter of 2011. Meanwhile, the value of the gross debtors book had grown to R108 billion, 9.04% more than a year before. The unsecured credit had a share of 8.72% of the whole sum, R112.989 billion in total. (National Credit Regulator 2011b: 5) The number of unsecured loans rose to 1,547,980 by the end of 2011 (National Credit Regulator 2011b: 24), which was 195% the amount of the second quarter of 2008. A significant change took place in terms of repayment periods in 2009 and 2010: The received loans got prolonged repayment periods, making it common to grant repayment periods between 3.1 and 5 years (cf. National Credit Regulator 2009b: 13; National Credit Regulator 2010: 14). By the end of 2011 the majority of 55.91% of used unsecured loans had a repayment period between 3.1 and 5 years. Another 20.25% had durations of between 25 and 36 months. (National Credit Regulator 2011b: 14) At the same time there was a tendency to boost the sum of the loan. Loans of more than R15,000 had a share of 55.18% in September 2009 (National Credit Regulator 2009b: 14), and of 66.75% a year later (National Credit Regulator 2010: 15) up to 75% in the last quarter of 2011 (National Credit Regulator 2011: 15). The extension of a credit often is a reaction by the lender to the inability to pay back the already granted sum by the debtor: "Often, consumers add to their debt by taking the opportunity to take more credit and extending the term of their loan, thus accruing more interest." (Burton 2008: 75) The disposition to give unsecured credit to people with a monthly income lower than R3,500 remained. In this category, 425,927 applicants got R2,947,568,709 as unsecured loans in the last quarter of 2011. (National Credit Regulator 2011b: 23f.)

The Contradiction of the Economics of Consumer Credit and Social Policy

The publishing of the Consumer Credit Market Report for the fourth quarter of 2011 was accompanied by a press release of the National Credit Regulator and followed by a short public debate on the outlined tendencies.

The work of the National Credit Regulator is dedicated to "promote and support the development [...] of a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market and industry" (Section 13 (a) NCA No. 34, 2005) and, additionally, to "monitor [...] and report [...] levels of consumer indebtedness and the incidence and social effects of over-indebtedness" (Section 13 (c) NCA No. 34, 2005). Significant for this law is that it reveals a difference between the commitment to "support the development" (Section 13 (a) NCA No. 34, 2005) of a credit market but only to "report" (Section 13 (c) NCA No. 34, 2005) on social damage caused by it. This in mind, it was an outstanding warning signal when the National Credit Regulator titled its press release of March 2012 "strong growth in unsecured personal loans" (National Credit Regulator 2012d) and ended it with a call for further investigation: "The NCR has embarked on an extensive research regarding the rapid growth in the unsecured personal loans market." (National Credit Regulator 2012d) Taking the restriction of its legal purposes into account this "rapid growth" (ibid.) may be interpreted as a strong danger signal.

The press release noted a significant increase in unsecured loans by 24,69% on a quarter-to-quarter comparison while the granting of new mortgages declined "rapidly". (National Credit Regulator 2012d) The press release also stressed the already reported fact of a sharp increase in unsecured credit from 7.81% to 24.58% between 2007 and 2011. This is remarkable, seeing as mortgages are usually granted to persons of higher income and therefore higher capability to serve instalments; in the fourth quarter 2011 over 80% of the mortgage customers had a monthly income higher than R15,000. (National Credit Regulator 2011b: 7) Mortgages are secured against an immovable object and a permanent default of repayment may result in the loss of a house but not in desperate over-indebtedness. Obviously, this is different with credit facilities (mainly consisting of credit cards, store cards and bank overdrafts, cf. National Credit Regulator 2012d) that were granted in 68.52% of all cases to individuals with an income lower than R10,000 (National Credit Regulator 2012b: 12), and with unsecured credit that was received by a 63.90% share of persons with an income lower than R10,000 (National Credit Regulator 2012b: 15).

Important in this respect is the fact, that a money lender earns much more with bank account overdrafts and unsecured credit than with mortgages and secured loans. "On unsecured debt, you will be charged interest of between 20 percent and 30 percent. On a mortgage bond, you will pay between 10 percent and 15 percent." (Pretoria News from 17 March 2012, p. 15) The newspaper also reported that the tendency was caused by business strategy of the institutional money lenders: "Personal Finance [i.e. a rubric of the newspaper] is receiving an increasing number of complaints from readers who are being forced by banks into unsecured personal loans when they have the security to take out secured loans, or even to extend their home loans. [...] And it does not end there. When granting unsecured personal loans, the banks insist that you have consumer credit assurance to cover the loan in case you are unable to pay the loan because of death, being unable to work due to disability, or retrenchment." (Pretoria News, 17 March 2012, p.15)

The development of a diversified credit market that has been promoted by the NCR, consisting of many different forms of secured as well as of unsecured credit, also caused the opportunity of lending institutions to make a financial benefit from it. "The move to risk-based pricing has meant that the higher risk a consumer presents, the higher the price of credit becomes. Furthermore, considerable variations exist in pricing strategies across products and institutions." (Burton 2008: 69) A bank or financial institution that aims at strengthening its competitiveness – according to the purpose of section 13 (a) of the NCA No.34, 2005 – will develop an intrinsic interest in selling unsecured credit instead of secured loans or mortgages. "However, under some circumstances consumers included in mainstream credit markets are not the most profitable consumers." (Burton 2008: 70f.) So the development of a competitive market according to section 13 (a) contradicts the commitment to observe the over-indebtedness according to section 13 (c) of the NCA No.34, 2005 somewhat. "It has become clear that some of the most profitable consumers are the ones that have a high risk attached to them. It has long been recognized that the most profitable customers are those who pay the minimum monthly payment each month and continue to pay high interest rates on outstanding balances. Customers who pay off their balances each month are not profitable [...]." (Burton 2008: 58)

This contradiction between the economics of consumer credit and the consumer economy that depends on consumption demand is revealed once again by the public discourse on this matter. This can be shown by some newspaper reports in the immediate aftermath of the press release of the NCR from March 2012. On 29 March 2012 *The New Age* delivered two contradicting articles. On the one hand it reported: "South African consumers appeared to be stuck in a rising debt trap as a number of impaired records increased by 100,000 to 8.93 million during the last quarter of the year, according to latest Credit Bureau Monitor's (CBM) 2011 fourth quarter report released yesterday by the National Credit Regulator (NCR). [...] Henry van Deventer, financial planning coach at Acsis, said these increasing levels of debts were extremely worrying for a country like SA, which had a very high unemployment rate." (The New Age, 29 March 2012, p.16) But just on the previous page it had referred to the business report of one of the fastest growing banks in South Africa, Capitec Bank, "which specialises in loans for low-income-earners in South Africa" (The New Age, 29 March 2012, p.15) According to their business report the number of their customers increased by 31% and their loan book boosted by 68%. This would result in a further expansion of their market share: "The bank is planning new card services, loan products and mobile banking functions and will add 565 new branches to its existing 507 to expand its client base, [the bank] said." (The New Age, 29 March 2012, p.15) The conclusion of their business report may be rooted in expectance of this growth, rather than in social concern: "*According to our analysis our clients are not over-indebted*, Capitec said." (The New Age, 29 March 2012, p.15)

This is once again supported by a statement of finance minister PJ Gordan, referred in the *Business Report* that is delivered with some newspapers in South Africa. On the one hand he pointed out a growing concern about the impact of unsecured credit. "Gordhan had a message for consumers: *Take it easy on the consumption side. Lower your levels of indebtedness. Distinguish between what you want and what you need.* He referred to the *significant growth* in unsecured lending. *And if that is feeding consumption rather than being used for investment purposes by households and businesses then it is a worse sign.*" (The Star, Business Report, 17 April 2012, p.13) But in the same statement he withdraws possible political consequences from his own assessment: "But he dismisses suggestions that the banking system was in a crisis due to an acceleration in unsecured lending." (The Star, Business Report, 17 April 2012, p.13) The statement of Pravin Gordon is not contradictory in itself, but the political conclusions that could be drawn from it are. Of course, the banks may be able to cope with a higher amount of credit default so they are not in a crisis. As long as their business as a whole is growing – and the plans of Capitec bank shows it is – they have no reason to worry. But there is another threat: A significant proportion of consumers losing their ability to pay at all due to over-indebtedness may result in a macroeconomic crisis as well. In that case we can not speak of a credit bubble but of an economic undermining of consumption demand because the reason for the economic problem does not concern the lending institutions but the demand side.

But perhaps the dunning report of the national Credit Regulator and the following public debate triggered by newspaper reports that urged the finance minister to his statement already had an impact on the banking business.

In the first quarter of 2012 a certain reversal of the trend took place. The rand value of unsecured credit granted declined by 17.02% and the number of credit agreements by more than 20%. This trend affected all categories. (National Credit Regulator 2012b: 14f.) Though it is very important to note, that the amount of unsecured credit in the gross debtors book still rose by 6.92% from the quarter before and took a share of 9.15% of the gross debtors book. So there is a certain procrastination concerning the drawdown of granted credit. If credit applications are rejected many consumers hedge, e.g. from a rejected credit application to a granted but yet unused credit card limit.

This tendency will have to be closely obeserved in the near future. According to another newspaper report the dangers of over-indebtedness have not been appropriately acknowledged by all actors. According to The Star from the 18th of April 2012 the Deputy Governor of the South African Reserve Bank, Lesatja “Kganyago pointed out that two years ago *we said to the banks you only want to lend to those who don't have security. So now they're lending to people who are unsecured*." (The Star, 18 April 2012, p.15)

The Purpose and the Impact of the National Credit Regulator

It is obvious that the problem of indebtedness has worsened since the National Credit Regulator (NCR) took up his work. The main question is what exactly the NCR had to regulate according to the law.

For a proper assessment I will take the theoretical reflection from the first chapter into account again. If the main problem of debt consists in an economic hierarchy between a creditor and a debtor the main purpose of a governmental ruling should be to re-establish at least a legal equality. The agreement on a loan is a private contract and its compliance subjects the debtor to a complex task: He has to make his living with a minimum of cash, he is compelled to earn money, he is barred from making savings at financial institutions and he has very limited resources to perform all these things. At the same time he is exposed to legal procedures which may prevent him from getting a job. So the main purpose of a Credit Act has to be to save the rights of the one who suffers from social disadvantage. This is not only in accordance with the constitution, it is also vital for a democratic progress. To put it clear: An over-indebted citizen not only has lost the possibility to participate in the wealth of the country, he also has lost incentives to strive for work effort or legal integrity because his earnings will be seized by a creditor and his signature is no trusted act of faith any more.

The main reasons for the Department of Trade and Industry for initiating the National Credit Act was, according to findings of a Technical Committee in 2003, to handle problems with “reckless behaviour by credit providers; exploitation of consumers by some microlenders, debt administrators and debt collectors; lending without regard for a borrower's ability to repay, leading to high levels of indebtedness; deceptive pricing; and abusive collection techniques.” (Goodwin-Groen 2006: 8).

The main task of the NCA No.34 (2005) is to promote a fair and non-discriminatory marketplace for access to consumer credit. It encourages more and diversified lenders to enter the market. It prohibits unfair credit and credit marketing practices. It establishes a National Credit Regulator and a National Consumer Tribunal. It put a focus on registering and monitoring credit providers. (Cf. Section 3 NCA No.34, 2005) Its main tool against social damage due to credit is the persecution of reckless lending (Sections 80, 81 NCA No. 34, 2005) that may result in the suspension of a credit agreement.

But there are two main critics that have to be made.

First of all, section 81 (2) a) (i) NCA No. 34 (2005) claims that a consumer must have a “general understanding and appreciation of the risk and cost of the proposed credit, and of the rights and obligations of a consumer under a credit agreement”. Problematic is not the construable term “general understanding” alone but the many factors that influence such an understanding as well. Although there are rules outlined for the calculation of a maximum interest rate in sections 101 to 106 of the NCA and section 40 of the National Credit Act Regulations (Government Gazette No. 28864, p.40-44) the understanding of the calculation is not easy to understand for everybody. Although there's a default formula in Section 40 (2) of the NCA Regulations and a mandatory way for calculating it, the impact of compounding – that is interest on an interest – is seldom understood and often not revealed by the lender. But compounding may have a serious impact of the total cost of a loan as it includes initiations fees (that may be levied more than once), administration fees and credit life assurances and includes all deferred obligations. Therefore, the effective interest is much higher than the nominal interest. As the small survey of a newspaper has shown, may banks only quote the nominal interest rate, not the effective interest rate. (Pretoria News, 28 July 2012, p.24)

Additionally, even if the real costs of a loan are well understood by a consumer the circumstances of affordability of a credit may be hardly understandable. Interest as well as cost of living may rise, wage may decrease and unforeseen expenses may occur.

Secondly, the NCA No.34 (2005) stresses the “fulfilment of financial obligations by consumers” (Section 3 a) (ii) NCA No.34, 2005) and “discouraging [...] contractual default by consumers” (Section 3 a) (iii) NCA No.34, 2005), resulting in the rulings of sections 86 to 88 that allow the re-arrangements of debts by a court but no debt relief. As long as a credit agreement is not declared unlawful the consumer has to pay off his debts – by smaller instalments, over a longer period but without mercy.

Possible Solutions for Increasing Over-Indebtedness

There are three main purposes that should be considered.

1. If over-indebtedness is inevitable companion of a credit driven consumer society in a liberal democracy, the legal option of debt relief should be taken into consideration. An international comparison shows the availability of at least three different models and a tendency to apply the German model that allows a once-in-a-lifetime debt relief after a period of six years of good financial conduct. (Cf. Kilborn 2007)
2. The NCA No. 34 (2005) puts a focus on debt counselling. But debt counselling will always be the regimen of a spread disease. Instead of this models of compulsory credit counselling should be taken into consideration, especially in order to prevent rampant borrowing. Voluntary financial education will never be able to ensure a sufficient understanding of the risk and cost of a credit.
3. Finally, there has to be public debate on political responsibility. Many actors that commented the worrying report of the National Credit Regulator seemed to be concerned with the business model of the credit providers but almost nobody considered the possible consequences of disseminated over-indebtedness. The political, economic and social threat does not consist of a credit bubble but of an economic undermining of consumption demand because the reason for the economic problem does not concern the lending institutions but the demand side.

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