Historical Aspects of the Statutory Regulation of Financial Inclusion for the Poor and Low-Income Earners in South Africa[1]

Howard Chitimira[2]

Abstract: The article discusses the regulation of financial inclusion for the poor and low-income earners prior to, and after democracy in South Africa. Therefore, relevant practices and regulatory measures that were adopted in a bid to curb financial exclusion of the poor and low-income earners in South Africa, particularly after the attainment of democracy are examined. Furthermore, the article explores whether the poor and low-income earners are still financially excluded from accessing basic financial products and financial services in South Africa. Accordingly, various statutes such as National Credit Act 34 of 2005 as amended by the National Credit Amendment Act 7 of 2019 (NCA), the now repealed Usury Act 73 of 1968 (Usury Act), the Credit Agreements Act 75 of 1980 (Credit Act), the now repealed Financial Services Board Act 97 of 1990 (FSB Act), the South African Reserve Bank Act 90 of 1989 (SARB Act), the Banks Act 94 of 1990 (Banks Act), the Consumer Protection Act 68 of 2008 (CPA) and the Financial Sector Regulation Act 9 of 2017 (FSRA) are discussed. To this end, the gaps and flaws in the relevant practices and regulatory measures that were adopted under these and other related statutes to promote financial inclusion of the poor and low-income earners in South Africa are outlined and discussed.

Keywords: financial inclusion; poor and low-income earners; financial exclusion; stokvel; regulation

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1. Introductory Remarks

Financial exclusion of the poor and low-income earners has continued to exist in South Africa since the early 1600s to date (Byrnes, 1997, pp. 5-87). Notably, financial inclusion entails, *inter alia*, the promotion, development and provision of affordable financial products and financial services to all persons by the relevant

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[2] Research Professor and Professor of Securities and Financial Markets Law, Faculty of Law, North West University, Address: Private Bag X2046, Mmabatho, 2735, South Africa, Corresponding author: Howard.Chitimira@nwu.ac.za.

government, banks and/or other role-players in any country (Mohieldin, Iqbal, Rostom & Fu, 2011, pp. 1-55). Conversely, financial exclusion refers to the inability of certain persons to access and use formal financial services and financial products at reasonably cheap and affordable prices in their countries (Warsame, 2009, pp. 16-46; Chitimira & Ncube, 2020, pp. 25-26). It appears that not any currency was used in South Africa around 1600s. The article discusses the historical aspects of the regulation of financial inclusion for the poor and low-income earners prior to, and after democracy in South Africa. Thus, for the purposes of this article, the historical and regulatory aspects of the financial inclusion of the poor and low-income earners in South Africa are traced from 1652 to 2020. The Dutch East India Company arrived in South Africa in 1652 and seized land from the local Koi Koi people to establish supply stations of fruits, vegetables and fresh water for resale to other countries (Byrnes, 1997, pp. 5-87). Thereafter, financial inequalities developed between the poor and the Dutch settlers who relied on the local South African Koi Koi people for cheap labour while excluding them from land ownership and the formal financial sector (Byrnes, 1997, pp. 5-87; Nanziri, 2015, pp. 30-45).

The arrival of the British colonisers in 1800 exacerbated the struggle for land at the expense of the local South African people (Byrnes, 1997, pp. 5-87). This intensified the financial-related inequalities between the European settlers and the poor and low-income earners of South Africa who were financially excluded from accessing most basic financial products and financial services in their own country. The arrival of the British also introduced the use of pence, pounds and shillings as a medium of exchange but this money was rarely accessible to the poor and low-income earners in South Africa (Bronkhorst, 2012; South African Reserve Bank, 2020; Byrnes, 1997, pp. 24). The use of pence, pounds and shillings increased when South Africa became a British colony after in 1800 (Bronkhorst, 2012; Byrnes, 1997, pp. 18-24). No adequate financial inclusion legislation was enacted in South Africa during the period between 1652 and 1968. As a result, most of the poor and low-income earners were financially excluded from accessing basic financial services and financial products in South Africa (National Planning Commission, 2012, pp. 1-217). For instance, during the mid-1800s, no factories for the production of goods and services were established in South Africa and this gave rise to poverty, social exclusion and financial exclusion of the poor and low-income earners in the entire country (Nanziri, 2015, pp. 30-45). Accordingly, most of the poor and low-income earners were forced to rely on informal financial sector practices such as stokvels in South Africa (Nanziri, 2016, pp. 109–134; Finmark Trust, 2010, pp.1-8).

Therefore, relevant practices and regulatory measures that were adopted in a bid to curb financial exclusion of the poor and low-income earners in South Africa, particularly after the attainment of democracy are examined. Furthermore, the article explores whether the poor and low-income earners are still financially excluded from accessing basic financial products and financial services in South Africa. Accordingly, various statutes such as National Credit Act 34 of 2005 as amended by the National Credit Amendment Act 7 of 2019 (“NCA”, see ss 3; 4; 60-66; 72), the now repealed Usury Act 73 of 1968 (“Usury Act”, see sections 2-5), the repealed Credit Agreements Act 75 of 1980 (“Credit Act”, sections 4 and 7), the repealed Financial Services Board Act 97 of 1990 (“FSB Act”, see ss 2-29), the South African Reserve Bank Act 90 of 1989 (“SARB Act”, see ss 3-38), the Banks Act 94 of 1990 (“Banks Act”, sections 3-92), the Consumer Protection Act 68 of 2008 amended (“CPA”, see ss 3; 4 & 8-78) and the Financial Sector Regulation Act 9 of 2017 (“FSRA”, see ss 57(b) & 58) are discussed. To this end, the gaps and flaws in the relevant practices and regulatory measures that were adopted under these and other related statutes to promote financial inclusion of the poor and low-income earners in South Africa are discussed below.

2. The Regulation of Financial Inclusion between 1652–1948

The unlawful and unfair financial exclusion of the poor and low-income earners in South Africa dates back to the early 1600s. This status *quo* was worsened by the Dutch East India Company in 1652 when it settled in Cape Town and unlawfully seized land from the indigenous South African people (Feinstein, 2005, pp. 2-276). Land was the main source of production in 1652 but the indigenous people were unfairly and unlawfully excluded from land ownership by the European colonial settlers (Byrnes, 1997, pp. 8-87). Moreover, the scramble for land and the clashes between the Dutch and British settlers exacerbated the financial exclusion of the local poor people and low-income earners in South Africa (Byrnes, 1997, pp. 8-87).

2.1. The Stokvel Practice

The ownership of the means of production was placed in the hands of the Dutch and the British settlers by 1800, while the indigenous South African people were excluded from the formal financial sector. This perpetuated and increased the financial exclusion of the poor and low-income earners in South Africa (Byrnes, 1997, pp. 8-87). The poor and low-income earners had no recourse and access to any financial services and financial products in South Africa. Consequently, the black people, especially the poor and low-income earners introduced and relied on stokvel practices in a bid to find redress and ameliorate their financial exclusion challenges in South Africa (Kritzinger, 1996, pp. 109-129; Irving, 2005, pp. 5-50). It is now important to unpack the meaning of the term “stokvel”. Stokvel refers to a savings and/or an investment scheme where members regularly contribute an agreed amount that is later distributed equitably to all the contributing members. In other words, stokvels are informal financial clubs that operates as rotating credit unions or saving schemes where members contribute some money to a central fund for future distribution among the relevant members. Stokvels enable a group of people to mutually contribute a fixed amount of money to a shared pool in varied durations such as weekly, fortnightly or monthly, in order to combat poverty, encourage saving and promote financial inclusion. In other words, stokvels are rotational savings and credit associations (ROSCAs) that are mutually run by poor persons and low-income earners in a bid to curb financial exclusion (Verhoef, 2001, pp. 259-296). The term “stokvel” is also reportedly a distortion of the word “stock fairs”, which refers to a British system of rotating cattle auctions so as to provide some finances to those that are part of the stock fairs (Matuku and Kaseke, 2014, pp. 504-515; Lukhele, 1990, pp. 3-60). Stokvels are an initial giant step that was taken by the poor and low-income earners to curb poverty and financial exclusion in South Africa.

Stokvel savings are used to provide some subsistence to the poor and low-income earners in South Africa (Verhoef, 2001, pp. 519-542). Stokvels provide services and functions that are normally performed by formal financial institutions such as banks which include, *inter alia*, tendering of credit and precautionary saving mechanisms to the relevant members at relatively cheap and affordable costs (Matuku & Kaseke, 2014, pp. 504-515; Kritzinger, 1996, pp. 109-129). There are different types of stokvels such as burial stokvels, savings stokvels, grocery stokvels and investment stokvels that are utilised in South Africa to curb financial exclusion and provide some socio-economic benefits to the relevant stokvel members (Kritzinger, 1996, pp. 109-129). It is submitted that although the arrival of the Dutch and British settlers in South Africa led to the establishment of the formal financial sector, the growth of modern cities and the creation of business opportunities, these opportunities, financial services and financial products were not accessible to the poor and low-income earners in South Africa (Louis and Chartier, 2017, pp. 170-196). Put differently, although formal banking institutions and other financial services were introduced by the Dutch and British settlers in South Africa by mid-1800s, the poor and low-income earners were marginalised and excluded from accessing any benefits of such institutions, services and products (Louis and Chartier, 2017, pp. 170-196). Therefore, the poor and low-income earners were relegated to informal financial services such as stokvels from as early as the 1800s (Matuku and Kaseke, 2014, pp. 504-515). Stokvels are still widely used as an informal banking system by the poor and low-income earners in South Africa to date (FinMark Trust, 2018, pp. 1-103).

3. The Usury Act 37 of 1926 and the Credit Act

It appears that financial inclusion was not adequately and statutorily regulated in South Africa between 1600 and the early 1900s (Louis and Chartier, 2017, pp. 178-196). This gap enabled many private creditors to provide loans and credit agreements at exorbitant interest charges to the detriment of the poor and low-income earners in South Africa. Consequently, it was very difficult for the poor and low-income earners to access credit loans and other financial services from the formal banking and related institutions in South Africa (Moorcroft, 2014, pp. 41-43). These flaws prompted the policy makers to enact the Usury Act 37 of 1926 (Usury Act 1926). The Usury Act 1926 was mainly aimed at addressing the challenges of high interest charges on loans and credit agreements which were being charged by private creditors (section 2 of the Usury Act 1926; Prather, 1960, pp. 181-196). The Usury Act 1926 also targeted excessive financial charges that were imposed on people by macro and micro-lenders and other credit providers so as to protect the poor and low-income earners from abuse by such creditors and lenders in South Africa. The Usury Act 1926 did not effectively promote financial inclusion of the poor and low-income earners because it failed to curb the high interest charges of micro-lenders and other credit providers. For instance, the micro-lenders and other credit providers were profiteering at the expense of the poor and low-income earners in South Africa (Prather, 1960, pp. 181-196). Moreover, the Usury Act 1926 was not applicable to banking institutions that provided credit at cheaper interest rates, hire purchase contracts and other transactions where the money lender was not a party to the contract (section 14(2)-(4) of the Usury Act 1926). In other words, the Usury Act 1926 was only applicable to money lending transactions and it did not expressly provide for the curbing of financial exclusion of the poor and low-income earners in South Africa. Owing to these and other related flaws, the Franzsen Committee was appointed by the Finance Minister to explore the gaps in the Usury Act 1926 and provide viable recommendations in respect thereof. The Franzsen Committee Report recommended, among other things, the repeal of the Usury Act 1926. Accordingly, the Usury Act 1926 was repealed and replaced by the Limitation and Disclosure of Finance Charges Act 73 of 1968 (Charges Act). The Charges Act abolished the charging of interests by financial institutions and empowered all such institutions to utilise finance charges in respect of all their financial transactions.

It further important to note that the Credit Act was enacted after the Usury Act 1926 to regulate some transactions in which movable property or goods were purchased or leased on credit and to repeal the Hire Purchase Act 36 of 1942 (sections 2 and 29 of the Credit Act). However, the Credit Act did not restrict the fees charged by credit providers and it was mainly applicable to movable goods or property. This Act did not provide for the financial inclusion of the poor and low-income earners in South Africa.

4. The Usury Act

The Charges Act was amended and renamed the Usury Act in 1968. The Usury Act was mainly aimed at combating the high fee charges and related problems that were perpetrated by financial institutions, which culminated in the financial exclusion of the poor and low-income earners in South Africa (see sections 2-5). The Usury Act was further aimed at extending credit to people who were previously unable to obtain credit loans from commercial banks and other formal financial institutions due to their low-income. In relation to this, the Usury Act introduced micro-lending in an attempt to provide adequate access to credit loans to the poor and low-income earners in South Africa (Whittaker, 2008, pp. 561-582). It appears the Usury Act was also anchored on consumer protection. For instance, the Usury Act prohibited the charging of exorbitant interest rates by money lenders and other financial institutions so as to promote financial inclusion of the poor and low-income earners in South Africa (sections 2-10 of the Usury Act; Mohane, Coetzee & Grant, 2000, pp. 730-738). However, the Usury Act was still flawed because it failed to effectively curb financial exclusion challenges of the poor and low-income earners in South Africa (Kelly-Louw, 2008, pp. 200-226). This could have been worsened by the fact that the interest rate caps which were introduced by the Usury Act somewhat impeded the financial inclusion of the poor and low-income earners since most financial institutions were now reluctant to give credit loans at lower interest rates, especially to the poor and low-income earners (Schoombee, 2004, pp. 581-603; Nanziri, 2015, pp. 30-45; Mohane, Coetzee & Grant, 2000, pp. 730-738; Porteous and Hazelhurst, 2004, pp. 77-225). Most micro-lenders were probably reluctant to advance loans or other credit to the poor and low-income earners due to the fears that they could default in the repayment of such loans or credit (Schoombee, 2004, pp. 586-603). In this regard, it is submitted that if micro-lending providers charge low interest rates, all financial inclusion efforts could be defeated since most credit providers will be deterred from providing any financial services and financial products to the poor and low-income earners (Whittaker, 2008, pp. 561-582). Therefore, micro-lending is key to the provision of access to credit to the poor and low-income earners who are usually excluded from such access due to their lack of assets and/or lack of collateral for loans that are provided by the formal financial institutions (Mohane, Coetzee & Grant, 2000, pp. 732-738).

5. The 1992 Usury Act Exemption

The Department of Trade and Industry (DTI) issued the Usury Act Exemption Notice of 1992 in a bid to open up the credit market to the poor and low-income earners (GN R3451 in GG 31 December 1992, "1992 Exemption"). The 1992 Exemption removed the interest rate restrictions in order encourage micro-lenders to extend the provision of credit to the poor and low-income earners. The 1992 Exemption empowered all credit providers to charge unregulated interest on small loans which did not exceed R6000 and which did not exceed a repayment period of 36 months (Whittaker, 2008, pp. 570-571). This was meant to promote and extend micro-lending to small and medium-sized enterprises in South Africa. As a result, micro-lending increased exponentially in South Africa. Nonetheless, micro-lending services were still not easily accessible to the poor and low-income earners because they were more accessible to the middle and high-income earners in South Africa (Whittaker, 2008, pp. 570-571). Thus, the 1992 Exemption boosted the micro-lending industry at the expense of other consumers such as the poor and low-income earners in South Africa (Mashigo, 2006, pp. 2-19; Goodwin-Groen and Kelly-Louw, 2006, pp. 12-73). Furthermore, the DTI and Minister of Trade and Industry realised around the mid-1990s that exorbitant high interest rates were being imposed on the poor and low-income earners in South Africa (Whittaker, 2008, pp. 570-571). Owing to this, the Minister of Trade and Industry reportedly wanted to revoke the 1992 Exemption (Whittaker, 2008, pp. 570-571). Consequently, the DTI established the Microfinance Regulatory Commission (MFRC) in 1999, in an attempt to ameliorate and combat the high interest rates and abusive practices that were rampantly employed in micro-lending markets against the poor and low-income earners in South Africa. The MFRC introduced some incentives for ethical conduct and transparency on the part of the micro-finance providers and other related financial creditors (Whittaker, 2008, pp. 570-571). Accordingly, micro-finance providers that failed to register with approved regulatory authorities were disqualified from utilising the 1992 Exemption and subjected to the Usury Act interest rates. Any such micro-finance providers or companies that engaged in unethical conduct were deregistered and disqualified from utilising the 1992 Exemption. It is important to note that the MFRC found that the Usury Act did not provide adequate consumer protection for the poor and low-income earners who were excluded from accessing financial credit and/or loans due to high transaction costs and other reckless practices of credit providers (Whittaker, 2008, pp. 570-571; Kelly-Louw, 2008, pp. 200-226).

The 1992 Exemption indirectly gave rise to the growth of the informal micro-lending industry which allowed micro-lenders to charge exorbitant interest rates and force clients, especially the poor and low-income earners into over indebtedness (Mohane, Coetzee & Grant, 2000, pp. 730-738). The reliance on poor legislation and the imposition of inadequate penalties against the offenders contributed to the continued charging of excessive interest rates by the credit providers (Meagher, 2005, pp. 1-14). Furthermore, the lack of robust financial education policies that were consistently enforced by the regulatory bodies worsened the financial exclusion of the poor and low-income earners in South Africa (Coetzee, *et al*, 2005, pp. 5-106; Meagher and Wilkinson, 2002, pp. 1-52). As a result, most financial consumers were forced to live in abject poverty and in a state of extreme over-indebtedness (Okurut, 2006, pp. 1-33).

6. Usury Act Exemption Notice of 1999 and the Integration of Usury Laws Act 57 of 1996

Some efforts were made in 1999 to extend credit and financial services to the poor and low-income earners in South Africa (Meagher, 2005, pp. 1-14). For example, the Usury Act Exemption Notice of 1999 (GN R713 in GG 20145 of 1 June 1999, "1999 Exemption"), was introduced by the DTI in South Africa. As indicated earlier, both the 1999 Exemption and the MFRC were established in 1999 to improve the South African micro-lending markets and other credit-related markets that were dominated by pawn-broking, reckless lending and profiteering credit providers. The 1999 Exemption provided that all money lending transactions not exceeding R10 000 which had a repayment period of not more than 36 months were exempted from the statutory interest rates that were stipulated under the Usury Act. Nonetheless, credit card schemes and/or overdrafts on a checking account were excluded from the ambit of the 1999 Exemption. Moreover, the 1999 Exemption provided that all credit providers and micro-lending institutions that registered with approved regulatory authorities were exempted from the interest rate provisions of the Usury Act (Meagher & Wilkinson, 2002, pp. 5-8). This means that such credit providers and micro-lending institutions were free to determine their own interest rates. The 1999 Exemption stipulated that an authorised regulatory institution was a legal entity that had a board of directors which was approved by the relevant Minister (Meagher & Wilkinson, 2002, pp. 5-8). An authorised regulatory institution was obliged to ensure that its directors were equally balanced between the industry and consumers. Such institution was further required to have adequate mechanisms to register micro-lenders and ensure their compliance with the relevant regulations and provisions of the 1999 Exemption and the Usury Act (Meagher and Wilkinson, 2002, pp. 5-8).

The 1999 Exemption was generally aimed at promoting financial inclusion of the poor and low-income consumers in South Africa through the introduction of less interest rate restrictions and interest rate exemptions (sections 15; 15A and 16 of the Usury Act; Meagher and Wilkinson, 2002, pp. 5-8). The 1999 Exemption empowered the MFRC to formalise the micro-lending industry and monitor the operations of the micro-lenders in South Africa to ensure their compliance with the relevant laws and regulations (Meagher & Wilkinson, 2002, pp. 5-8; Schoombee, 2004, pp. 586-603). Precisely, the MFRC was responsible for the regulation of the credit markets and micro-finance markets in South Africa so as to protect the financial consumers, particularly the poor and low-income earners from exorbitant interest rates that were charged by micro-lenders (Meagher and Wilkinson, 2002, pp. 5-8; Mohane, Coetzee & Grant, 2000, pp. 732-738). The MFRC was obliged to promote financial consumer protection through the adoption of effective measures for financial education and the combating of reckless and predatory lending (Meagher, 2005, pp. 1-14; Meagher and Wilkinson, 2002, pp. 5-8). The MFRC introduced the national loans register in order to curb over-indebtedness among all financial consumers in South Africa (Meagher & Wilkinson, 2002, pp. 5-8). Moreover, the MFRC introduced and enforced some disclosure mechanisms so as to encourage financial education and combat reckless lending in micro-lending markets in South Africa (Meagher & Wilkinson, 2002, pp. 5-8; Schoombee, 2004, pp. 586-603).

The Integration of Usury Laws Act 57 of 1996 (Usury Act 1996), was enacted to extend the application of the Usury Act to national territories and certain former states such as Transkei, Bophuthatswana, Venda and Ciskei as well as former self-governing territories such as Gazankulu, KaNgwane, KwaNdebele, KwaZulu, Lebowa and Qwaqwa (section 1 of the Usury Act 1996). The Usury Act 1996 repealed certain laws relating to usury that were applicable to some of the aforesaid territories (section 2 of the Usury Act 1996). Nonetheless, the Usury Act 1996 did not specifically provide for the promotion of financial inclusion of the poor and low-income earners in South Africa.

7. The NCA, the FSB Act, the Banks Act and the CPA

It is important to note that the now repealed FSB Act established the Financial Services Board (FSB) in 1991, following the recommendations from the Van der Horst Committee. The FSB was empowered to, *inter alia*, supervise the South African non-banking financial services industry between 1991 and 2018. It was statutorily empowered to supervise and regulate the non-banking financial services industry of South Africa in the public interest (sections 2-3 of the FSB Act). Nevertheless, the FSB did not effectively promote consumer protection and the combating of financial exclusion of the poor and low-income earners in South Africa.

Likewise, the SARB Act and the Banks Act are currently not directly involved in consumer protection. Put differently, both the SARB Act and Banks Act do not have specific provisions for consumer protection and the promotion of financial inclusion for the poor and low-income earners in South Africa. On the other hand, the CPA is directly responsible for the promotion of consumer protection in South Africa (see sections 3; 4 & 8-78). The CPA provides various consumer rights in respect of consumer products and services that are offered in the South African consumer markets (sections 8-78). It seeks to promote fair and accessible consumer markets that provide affordable good quality consumer products and services in South Africa (sections 8-10; 53-61). Furthermore, the CPA seeks to establish best practices, norms and standards for consumer protection in the South African consumer markets. The CPA outlaws unfair marketing practices such as direct marketing, unconscionable conduct, false, misleading or deceptive representations, fraudulent schemes, pyramid schemes and unfair, unreasonable and unjust contract terms in order to promote responsible consumer behaviour and enhance consumer protection in South Africa (sections 32; 40-43 and 48). The CPA established the National Consumer Commission (NCC) to increase consumer protection and the enforcement of consumer rights in South Africa (sections 85; 92-101). The NCC is empowered to investigate consumer complaints and any non-compliance with the provisions of the CPA (sections 72-75 of the CPA). The NCC may also refer a matter to the Tribunal, the courts or the National Prosecuting Authority (NPA), for further adjudication (sections 75-78 of the CPA). While this is commendable, the CPA does not expressly provide for the financial inclusion of the poor and low-income earners in South Africa. Moreover, the enforcement of consumer rights and the general compliance with the provisions of the CPA has remained flawed and inconsistent to date.

The NCA repealed the Usury Act, including all its exemptions and it seeks to promote fair and non-discriminatory consumer credit markets in South Africa (sections 39-59). In this regard, the NCA provides for the general regulation of consumer credit markets in order to enhance consumer information and related standards in South Africa. The NCA also promotes the equitable participation of all persons in the South African consumer credit industry (sections 39-77 of the NCA). The NCA further prohibits unfair credit and credit-marketing practices so as to promote responsible credit lending and combat reckless credit lending in the South African consumer credit markets (sections 3; 60-106). This is done to discourage over-indebtedness, reckless credit lending and encourage debt re-organisation in cases where there is over-indebtedness (sections 67-73; 78-88 of the NCA). The NCA regulates credit information and the registration of credit bureaux, credit providers and debt counselling services in South Africa (sections 39-59 of the NCA). It also seeks to establish best practices, norms and standards for consumer credit markets in order to promote the consistent enforcement of the consumer credit regulatory framework under the NCA (sections 3; 12-34; 60-88; Shettar, 2016, pp. 37-44). The NCA promotes fair, transparent, competitive, responsible and effective credit markets so as to protect consumers against abusive debt collection measures and predatory micro-lending activities in South Africa (section 3; 39-59; Schoombee, 2004, pp. 586-603; *Gundwana v Steko Development CC and Others* (CCT 44/10) [2011] ZACC 14 paras 4-65 "*Gundwana* case"). For instance, the NCA prohibits abusive activities of credit providers, especially in relation to the repayment of loans as indicated in *Sebola and Another v Standard Bank of South Africa Ltd and Another* (CCT 98/11) [2012] ZACC 11 paras 4-177 (*Sebola* case). Thus, credit providers should adopt less abusive measures against their consumers, such as issuing warnings and/or default notices to the relevant consumers prior to any legal proceedings against such consumers (sections 129-133 of the NCA; Iqbal and Sami, 2017, pp. 644-656; Shettar, 2016, pp. 37-44). In *Kubyana v Standard Bank of South Africa Ltd* (CCT 65/13) [2014] ZACC 1 paras 2-100, the court correctly held that credit providers should notify the relevant consumers of their default before approaching the courts to enforce a credit agreement in terms of section 129 of the NCA. In this regard, Mhlantla AJ correctly held that a credit provider must deliver a default notice to the relevant consumer while drawing their attention to the applicable rights in accordance with section 129 of the NCA prior to any legal proceedings in respect thereof. Thus, credit providers must take relevant steps to bring the default notice to the attention of the relevant consumers prior to any legal proceedings.

Moreover, the NCA prohibits credit providers from making unlawful credit agreements which are prejudicial to consumers (sections 89-91). It is important to note that the NCA obliges all credit providers to provide consumers with adequate education about credit, consumer rights and adequate disclosure of standardised information in order for them to make informed decisions (section 3(e) of the NCA; *Rossouw v Firstrand Bank Ltd* 2010 (6) SA 439 (SCA)). The NCA also protects consumers from deception and fraudulent conduct by credit providers (section 3(e) of the NCA; Mashigo, 2006, pp. 2-19). In relation to this, the NCA established the National Credit Regulator (NCR) to enhance the protection of consumer rights and the enforcement of such rights in the South African credit markets (sections 12-25 of the NCA). In addition, the NCA established the National Consumer Tribunal (NCT) to, *inter alia*, adjudicate on all credit-related disputes, protect consumer rights and increase the compliance with the provisions of the NCA (sections 26-34 of the NCA; Pearson, Stoop and Kelly-Louw, 2017, pp. 2-41).

Notwithstanding these commendable efforts, the NCA does not have any provision that specifically prohibits financial exclusion of the poor and low-income earners in South Africa. In other words, the NCA does not expressly provide for the promotion of financial inclusion in South Africa (Varghese and Viswanathan, 2018, pp. 1935-1942).

8. FSRA

The FSRA was enacted in 2017 to, *inter alia*, establish a twin peaks model of financial regulation that is dually and mainly enforced by the Prudential Authority (PA) and the Financial Sector Conduct Authority (FSCA) to promote market integrity, public investor confidence and enhance financial stability in the South African financial markets (sections 4; 11-72 of the FSRA). The FSCA replaced the FSB on 1 April 2018 and it is currently a market conduct regulator of financial institutions that provide financial products and financial services as well as financial institutions that are licensed under the relevant financial sector laws of South Africa (sections 56-58; 125-128 of the FSRA). The FSCA seeks to enhance the efficiency and integrity of the financial markets and it promotes fair treatment of all customers by financial institutions in South Africa (sections 56-58 of the FSRA). It also provides financial education and promotes financial literacy so as to increase financial inclusion and financial stability in the financial markets. The FSCA provides oversight on the regulation and provision of financial products and financial services such as banking, credit lending and the buying and selling of securities on the regulated markets in South Africa (sections 56-58 read with sections 7 and 17 of the FSRA).

The FSRA obliges the South African Reserve Bank (SARB) to maintain and enhance financial stability through the PA (sections 32-55 of the FSRA). The PA regulates banks, insurers, cooperative financial institutions, financial conglomerates and certain market infrastructures in South Africa (sections 32-55 of the FSRA). The FSRA also established the Financial Stability Oversight Committee (FSOC), the Financial Sector Contingency Forum (FSCF) and the Financial Services Tribunal (FST) to improve the supervision of financial services providers and enhance the general enforcement of good market conduct so as to protect financial customers in South Africa (sections 20-25 and 219-227 of the FSRA). The FSRA encourages good co-ordination, co-operation, collaboration and effective consultation between the SARB, the PA, the FSCA, the NCR, the Financial Intelligence Centre (FIC), the Financial System Council of Regulators (FSCR) and other organs of state in order to promote financial stability in the South African financial markets (sections 20-25; 79-82 and 219-227 of the FSRA). It is important to note that the FSRA expressly provides for the promotion of financial inclusion in South Africa (section 7(1)(f); 34(1)(e) and 58(1)(e) of the FSRA). Nevertheless, it remains to be seen whether the financial inclusion provisions of the FSRA will be effectively enforced to curb financial exclusion of the poor and low-income earners in South Africa (Abrahams, 2017, pp. 632-661; Arun & Kamath, 2015, pp. 267-287; Atkinson & Messy, 2013, pp. 1-55).

9. Concluding Remarks

The article discussed the regulation of financial inclusion for the poor and low-income earners prior to, and after democracy in South Africa. It was noted that financial inclusion was poorly regulated between 1600 and 1994 under the Usury Act and the 1992 Exemption in South Africa. Likewise, the 1999 Exemption and all the Acts that were enacted between 1994 and 2016 did not expressly provide for financial inclusion in South Africa. For this reason, the adequacy of the statutory regulatory frameworks under the Usury Act, the Credit Act, the FSB Act, the SARB Act, the Banks Act, the CPA, the NCA and the FSRA was examined in this article in relation to the promotion of financial inclusion in South Africa. Therefore, the relevant practices and regulatory measures that were adopted in a bid to curb financial exclusion of the poor and low-income earners in South Africa between 1600 and 2016 were generally flawed and inconsistently enforced. In light of this, it is submitted that policy makers should consider enacting a specific and separate statute that deals with financial inclusion to effectively curb financial exclusion of the poor and low-income earners in South Africa. This approach could further enable the unbanked and all financially excluded persons, especially the poor and low-income earners to access basic financial products and financial services in South Africa.

Moreover, it is submitted that although the various statutory and related measures that were introduced by policy makers and other relevant role-players between 1600 and 2016 are commendable, more still needs to be done to effectively promote financial inclusion of the poor and low-income earners in South Africa (Abrahams, 2017, pp. 632-640; Coovadia, 2018, pp. 8-9). For instance, most of the unbanked, the poor and low-income are still struggling to access basic financial services and financial products that are offered by financial institutions in the formal financial sector in South Africa (Abrahams, 2017, pp. 632-640; Coovadia, 2018, pp. 8-9). Therefore, the policy makers and other relevant authorities should consider empowering a specific financial inclusion regulatory body to embark more on awareness campaigns and financial education programmes to encourage the poor and low-income earners to access and utilise the formal financial sector in South Africa (Morgan, Zhang & Kydyrbayev, 2018, pp. 1-32; Coovadia, 2017, pp. 1-15; Godwin, 2017, pp. 151-153). The other option is to provide adequate resources and ensure that the FSCA and the PA are manned by sufficient persons with the relevant expertise to robustly enforce the relevant provisions of the FSRA that deals with financial inclusion in South Africa (Godwin, 2017, pp. 151-153; Kessler, et al, 2017, pp. 1-15). The FSCA and the PA should be empowered to impose harsher penalties upon financial institutions and other persons that do not comply with the financial inclusion provisions in terms of the FSRA. This could encourage the formal financial institutions to streamline their requirements to enable the poor and low-income earners to utilise the financial services and financial products that are offered in the formal South African financial sector without incurring excessive interest rates which give rise to over-indebtedness (Sibanda and Sibanda, 2016, pp. 1-36; Sithole, 2018, pp. 1-75; Ssebagala, 2017, pp. 235-244).

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