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**SPEECH BY HON NICO SMIT MP ON THE MICROLENDING
BILL**

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Hon. Speaker, Hon. Members

After perusing the Microlending Bill that was tabled by the Hon Minister of Finance, it became clear that there are a number of issues that raise concerns for the microlending industry. After consulting representatives of this industry that makes an important contribution to Namibia's economy, I feel that this Bill should be referred to the appropriate parliamentary committee for reconsideration.

This draft Bill seems to be a law written by the regulator, Namfisa, for its own benefit. The Micro Lenders I consulted informed me that all their attempts to engage, through their Association, with the Minister of Finance met with no response at all.

It is common knowledge that there was no prior policy, no white paper, no debate on the principle and policy of the Bill which informed the draft or

before the draft was adopted by Cabinet and tabled in this House. This means that there was no debate regarding the issues at the heart of the Micro Lending Industry. The industry was asked to comment on what had already in effect been decided, but Namfisa never sat down with the industry to debate these comments. This seems highly irregular if one considers that Namfisa is the main beneficiary of this proposed Bill – all levies and fines go directly to this body and not to Treasury.

How, I must ask, can that be right, Hon Speaker? Regulators must implement the law, ensure compliance with the law and act in accordance with the law. They must not make laws to benefit themselves with no checks and balances in place to keep the process fair!

Hon Speaker, Hon Members

As to the draft Bill before us today: how, we must ask, will this affect the industry to be regulated, and more importantly, what effect will this law have on ordinary men and women, often those who find it difficult to meet their needs on the salary they earn and who depend on lenders who, at their own risk, lend out their own money to people who turn to them to borrow when they need it?

Those who have read the Bill will agree that this is a good example of what regulatory overkill is about: the amount of red-tape, the discretionary powers of the regulator, the cost of all of this and the uncertainty in the wake of open and vague requirements for compliance. A frightening range of punitive measures, administrative penalties, the threat of cancellation of licences, punitive interest and fines and jail time in the wake of numerous criminal offences, repeated again and again in this bill does not auger well for business. What makes this even worse is that as mentioned

before, penalties and interest will constitute income not to the fiscus, but to the regulator.

This must surely be an incentive to find fault and punish that will be a source of uncontrolled corruption.

If one looks at the latest statistics from our Central Bank, it is mortgage loans and consumer credit that are pushing so many people into financial distress. That is where the big exposure is and that is where the consumer must be protected. Yes, I agree, just as irresponsible purchasing of goods and services on credit should be discouraged, so must irresponsible borrowing, regardless of whether it is from banks or micro lenders. But just how serious a threat is this in the world of micro lending? A typical payday lender, for example, who lends out his or her own money, will be very careful not to lend money to a person whose credit record makes it plain that that money will not be repaid. It is inherent in the nature of micro-lending on a payday basis that lenders, in their own interest, will ensure that money is not committed to borrowers, however desperate they may be to get money for a dentist or to pay school fees, if they are already overstretched and clearly unable to pay back.

This is different perhaps with so-called term lenders of which there are only very few, and particularly if they lend money as they do to civil servants and are then permitted by this Government to take the money directly from the payroll of their customers even before they get their money paid into their bank accounts. How the Government justifies this practice is beyond me. Civil servants, as borrowers in these circumstances, are driven into poverty on account of the government facilitating this without any real protection and, on my understanding of

the law, in conflict with the provisions protecting the workers under the Labour Act.

Hon Speaker, Hon Members

Micro-lending is an industry in the non-banking financial sector of our economy. It is made up of businesses funded with capital from their owners who then lend their own money to people who turn to them when they need funds which they cannot get or cannot afford to get from banks or anyone else. It is the lender who takes all the risk. Not the borrower. If the borrower does not repay, the lender loses.

Under the authority in the Usury Act to exempt businesses from the provisions of that Act, the Minister many years ago legislated a complete regulatory framework for micro lenders. This surely captures the role of the legislature and must be unconstitutional. This is why the regulation of micro lenders under a proper Act passed by Parliament is so important.

As matters stand, it is not compulsory for moneylenders - as defined in the Usury Act – to register as micro lenders under the controversial exemption regime. There are some 350 moneylenders who have registered and who, at this time, pay levies to finance Namfisa's budget. How many moneylenders there are who have not registered is unknown. Although they should be regulated under the Usury Act and pay levies in terms of the Namfisa Act, Namfisa has focused its regulatory clout on only those who have gone to the trouble to register themselves and who comply with the terms and conditions of the exemption regime. It seems that we need micro-lending, but we do not want micro lenders. That is the message this Bill sends out.

Hon Speaker, Hon Members

What one would expect is that a policy to address the regulation of an important industry in the financial sector is first brought to this House in the form of a White Paper, which is then debated here or by a select committee. His Excellency, the President encouraged us in his speech earlier this year in this August House to utilise the committee system much more effectively. I think this draft Bill presents us with a fine opportunity to follow this advice!

As far as regulation of Micro Lenders is concerned, it is absolutely critical in my view that every business providing loans must be known and to that end required to register. They must apply and meet requirements which are known upfront, and if they are met, should leave the regulator with no discretion but to register them. If a registered lender then fails to comply with the requirements at any time, there should be a proper procedure to address that, just as is currently the case with banks under the Financial Institutions Act. In the case of a proven, serious instance of non-compliance with the law, there must be penalties and no doubt ultimately also the power to cancel a licence - but then only after a due process has been followed and to which everyone at the receiving end of administrative action is entitled: fairness and reasonableness.

Let us be clear: we on this side of the House, fully support the need, as we understand the Industry also does, for micro lenders - as indeed any other important player in our economy - to be subject to regulation. All we say is that such regulation must be proportionate to the risk and the costs of such regulation for the economy and the taxpayer or consumer in Namibia. It must be fair. It must ensure both a transparent, accountable

industry and an accountable and predictable regulator – and serve to ensure a level playing field.

Hon Speaker, Hon Members

Laws and regulations, by their very nature place limitations on the fundamental right to trade and to do business. And that is perfectly in order as long as such limitations are imposed under laws passed by this Parliament in compliance with Articles 21(2) and 22 of the Namibian Constitution and, for present purposes of more immediate import, the provisions of the former:

'The fundamental freedoms referred to in Sub-Article (1) hereof shall be exercised subject to the law of Namibia, in so far as such law imposes reasonable restrictions on the exercise of the rights and freedoms conferred by the said Sub-Article, which are necessary in a democratic society and are required in the interests of the sovereignty and integrity of Namibia, national security, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.'

Hon Speaker, Hon Members

I submit that this Bill does not measure up to this so critical threshold of our Constitutional democracy.

It is with all this in mind and in the very best interest of the people we collectively represent that I propose that this Bill be referred to the relevant Standing Committee

I so move, Hon Speaker.