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27 November 2019

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Parliament of the Republic of South Africa
Chairperson: Standing Committee on Finance

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Dear Mkhacani Joseph Maswanganyi,

1. Open Secrets is a non-profit organisation dedicated to investigating and pursuing accountability for economic crimes and related human rights violations. An important aspect of our work, much like the Standing Committee on Finance, includes holding the financial sector accountable. Part of the work of Open Secrets includes conducting investigations and releasing the findings to the public.
2. On 23 October 2019, Open Secrets released such an investigative report, *The Bottom Line: who profits from unpaid pensions?*. The investigation probed the conduct of private fund administrators in the pensions industry and that of the Financial Sector Conduct Authority (“**the FSCA**”, the then Financial Services Board), particularly regarding what is referred to as the “Cancellations Project”.¹ The investigative report made the following key findings which Open Secrets wishes to bring to the attention of the Standing Committee on Finance:
 - 2.1. Over R40 billion in pension benefits is owed to over 4 million people and while this remains unpaid the private corporations in this industry continue to profit from administering and investing this money.
 - 2.2. 6 757 pension funds were recklessly and unlawfully cancelled in the course of the “Cancellations Project”, leading to at least hundreds of funds being cancelled before paying out their members. Vulnerable pensioners were prejudiced by these cancellations. Both private fund administrators and the FSCA are responsible for this.
 - 2.3. Liberty was responsible for 80% of the 6 757 cancelled funds, and cancelled at least 130 funds in error affecting thousands of fund members.
 - 2.4. There has been no accountability for either the fund administrators or regulator implicated in unlawful conduct during the “Cancellations Project”.
 - 2.5. There remain unaddressed systemic failures of governance in the pension funds industry, and vulnerable pensioners and fund members continue to suffer as a result.

¹ For more information on the Cancellations Project and *The Bottom Line: who profits from unpaid pensions?* See https://www.opensecrets.org.za/cancelled_pensions/ and <https://www.opensecrets.org.za/publications/>.

3. It is clear from the findings of *The Bottom Line* that the issue of unpaid pensions is one of great public importance, heavily impacting on the constitutional right to social security of a large section of the population. When beneficiaries are not paid their pensions, it is the beneficiaries that pay the price, contributing to increased levels of poverty and increased difficulty in accessing basic services such as education and healthcare. This is particularly so for vulnerable groups of beneficiaries such as orphans and the elderly.
4. When privately administered pension fund benefits are not distributed to beneficiaries, the State has to step in and ensure that people's constitutional right to social security is still protected and respected. This is primarily done through the provision of social grants and puts additional strain onto already stretched state resources, effectively subsidising or 'bailing out' the private sector using public funds. This lack of accountability and shirking of responsibility of the private sector needs to be urgently addressed.
5. Given that the state already subsidises private pension funds through generous tax breaks for contributions to these funds, the fact that private administrators are failing to ensure members receive their benefits when they are owed is even more egregious.
6. Section 59 and 55(2) of the Constitution sets out National Assembly committees as a mechanism for public participation, including that the public have access to the committees. The Constitution likewise mandates these committees with the core function of ensuring oversight over and accountability of the Executive.
7. Consequently, the Standing Committee on Finance ("**the Standing Committee**"), as a National Assembly committee, *must* ensure oversight of the Executive, in particular, the Minister of Finance.² In performing this function, the Standing Committee can monitor, investigate, enquire into and make recommendations concerning the conduct of the Minister of Finance and/or the FSCA.³ Pursuant to this, the Standing Committee has the power to report and make recommendations to the National Assembly.⁴
8. The Standing Committee may accept representations or submissions from interested parties and conduct public hearings.⁵ Meetings of the Standing Committee must be open to the public

² Section 227, Rules of the National Assembly.

³ Section 227, Rules of the National Assembly.

⁴ Rules of the National Assembly, 9th ed, 26 May 2016 ("**Rules of the National Assembly**").

⁵ Section 167, Rules of the National Assembly.

and afford the public the opportunity to contribute to its deliberations.⁶ The Standing Committee must ensure public involvement in the business of the Standing Committee.⁷

9. Consequently, Open Secrets would like the opportunity to present our findings to the Standing Committee, in order to deliver the information uncovered in our investigations and answer any questions that the Standing Committee might have in respect of these findings.⁸ This is in line with the Standing Committee's Constitutional mandate of public participation, oversight and accountability, and to ensure the constitutional right to social security is promoted, protected, respected and fulfilled.
10. Please do let us know of the availability of the Standing Committee in 2020, for Open Secrets to present our findings on the issues of unpaid benefits and the unlawful cancellation of pension funds during the "Cancellations Project" undertaken by the FSCA.
11. Kindly provide a response to this request by **12 December 2019**.
12. The investigative report, *The Bottom Line: who profits from unpaid pensions?*, is attached hereto and marked "**Annexure A**" for your attention. We have also attached an addendum to the investigative report, *Look Beyond The Bottom Line*, marked "**Annexure B**".
13. Kindly confirm receipt.

Yours sincerely,



Michael Marchant

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⁶ Section 184, Rules of the National Assembly; section 57(1)(b) of the Constitution of the Republic of South Africa.

⁷ Section 170 and section 235, Rules of the National Assembly.

⁸ For more information on the Cancellations Project and *The Bottom Line: who profits from unpaid pensions?* See https://www.opensecrets.org.za/cancelled_pensions/ and <https://www.opensecrets.org.za/publications/>.