



Guidelines for Debt Policies & Debt Relief for Natural Persons: *A human rights based approach*

Preamble

Credit is often necessary at various phases in the human lifecycle, and it may even be essential for the socio economic development of the majority of persons and households on the planet. Credit should be provided and used responsibly. However, when financial consumers fall into debt difficulty, they should be allowed a financial fresh start with no stigma or adverse consequences attached; similar to how corporations are treated by law.

With a view toward achieving debt policies which respect the human rights of natural persons, We propose the following guidelines be adopted globally:

01

Countries should abolish the practice of incarcerating borrowers who default on their debts due to inability to repay.

Poverty can be a cause of one's inability to repay debt obligations. Economic downturns, job losses and illnesses are often precursors to unforeseeable, and unavoidable financial difficulties. Criminalizing debt default and/or incarcerating the debtor is unlikely to increase repayments (nor in most cases does it absolve the underlying debt). Further, it is contrary to various human rights conventions, such as, but not limited to the UN's Covenant on Civil and Political Rights.

02

Countries should provide various rehabilitative procedures to over indebted individuals in need of debt relief, including extra judicial debt counseling or mediation services and insolvency/bankruptcy procedures, which allow for debt restructuring; such that the debtor is able to make repayments without unduly burdening, or diminishing the quality of life below acceptable human rights standards.

When the circumstances are such that the debtor is unable to repay his or her debts and maintain an adequate, dignified standard of living, then debt write offs should be available.

When wages are garnished, debtors should be allowed a sufficient allowance for a dignified existence. Further, there should be protection of debtors' residence, essential furniture, clothing and tools of one's trade.

03

Countries should establish a definition for individual/household over-indebtedness for example in ratios of unsecured debt to income, and regularly monitor, and publish data on over-indebtedness; intervening to make necessary market corrections through the appropriate regulation and policy making when necessary.

04

Financial institutions which disproportionately contribute to individual/household over indebtedness levels as per the country's definition of over indebtedness, should be obliged to contribute to debtor relief funds and/or financial education and literacy initiatives as outlined by Government.

05

Financial institutions should be required to consider the restructuring of a consumer/individual debt upon request from the borrower, or make such an offer when the financial institution becomes aware that the borrower is experiencing continued repayment difficulties. This is particularly relevant during the global pandemic.

06

Debt collection agents should be monitored by government, and a civil cause of action and monetary damages made available to individuals/households who experience abusive collections behavior by financial institutions or their agents. Redress and compensation for such damages should be available through a financial ombudsman, mediator, arbiter or other similar ADR mechanism for resolution of financial consumer disputes.

07

Countries should monitor the market conduct of all financial services providers, including the new digital, or online financial services providers to ensure that there is no predatory lending/collections behavior, data privacy is respected, lending is responsible and all financial consumers are adequately protected having access to redress mechanisms for financial consumer complaints resolution.

08

Countries which do not have consumer tribunals should consider the establishment of a financial ombudsman, mediator or alternative dispute resolution system where consumers/individuals can bring disputes with financial services providers for an efficient, fair and low or no cost resolution of their complaints. The consumer can elect to use this system or the court system, and consumer shall have the right to appeal the decision of the financial dispute resolution mechanism to the courts, whereas financial institutions should be bound by its decisions. The system should also have the power to convene creditors to mediate an equitable restructuring of debt if needed by the debtor.

09

Financial literacy programs should be funded and civil society should be empowered to reach out to, and educate, low-income communities who are most vulnerable to predatory or sharp financial practices.

10

Access to justice for impoverished debtors, such as legal aid should be provided by the State, in particular in States where consumers face the potential penalty of incarceration for debt default.