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Private debt and human rights

Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights

Summary

The purpose of the present report is to assist in understanding – and also to unravel, denounce and offer recommendations to tackle – human rights violations in the context of private debt, focusing specifically on individual and household debt offered by a range of lending actors, whether operating in formal or informal settings. There are two drivers of the rising private indebtedness: first, the flourishing supply side of finance, with deregulation and increasing financialization being its facilitating instruments; second, the reconfiguration of many human needs for social reproduction that become unmet financial needs paralleled by a colossal failure of the State to ensure economic, social and cultural rights for all. The Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights, Juan Pablo Bohoslavsky, studies the negative human rights implications of microcredit, health, education and housing-related debts, abusive collection practices, including the criminalization of debtors, consumers and migration-related debts, and debt bondage. Private debt can be both a cause and a consequence of human rights violations.

Contents

I. Introduction

1. As stated by the Human Rights Council in its resolution 40/08, the issue of foreign debt, both public and private, is closely linked with increasing inequality worldwide and with the obstacles to sustainable human development resulting from the debt burden, including in achieving the 2030 Agenda for Sustainable Development through adequate financing. In this sense, the General Assembly has already warned, in its resolution 71/215, of rising private and public indebtedness in many developing countries, and stressed the need for continuing efforts to address systemic fragilities and imbalances and to reform and strengthen the international financial system.

2. The mounting levels of private debt are largely made out of corporate debt, and to some extent of household debt, loans and debt securities,[1] with deep and direct implications for global economic and financial systems and for the ability of States to comply with their human rights obligations. According to the United Nations Conference for Trade and Development (UNCTAD), at the end of 2017, global debt stocks amounted to $213 trillion – or 262 per cent of global GDP; a considerable increase in comparison to 2008 (240 per cent) and 1980 (140 per cent). Accounting for more than two thirds of the global debt in 2017, the accumulation of private debt stock largely contributed to overall debt surge,[2] with private indebtedness in foreign-denominated being a common denominator.

3. As the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights discusses below, the above-mentioned trends show a fundamental shift of States' human rights obligations to guarantee access, availability, affordability and quality for the realization of these rights to the power of unregulated markets.[3]

4. The purpose of the present report, which was prepared also on the basis of submissions by States, civil society organizations, scholars and other stakeholders in response to the Independent Expert's call for contributions[4] is to assist in understanding - and also to unravel, denounce and offer recommendations to tackle – human rights violations in the context of private debt, focusing specifically on individual and household debt. Under the umbrella of "individual and household debt", many forms of private debts can be considered, as can various types of creditors and debtors. Some of these might even refer to small family businesses borrowing through formal and informal channels. The most direct and egregious violations of human rights suffered by private borrowers are committed in the context of individual and household debts, particularly in the case of persons and households living in poverty or marginalized, or those who are forced into a "debt trap". Corporate debt will only be considered at an aggregated level to offer perspective of its weight in the global economy. However, private corporate debt can also have – together with household debt – deep implications for the economy, and therefore for human rights, as explained below.

5. Household debt is not a problem per se. The ability to borrow within the limits of one's own financial capacity may improve people's living standards, allowing access to services that would otherwise be out of reach; and it may play a role in activating and supporting the economy. Household or individual debt may, at times, also facilitate social mobility or integration, and it can be a determinant factor in ensuring social inclusion. However, over-indebtedness (understood for the purposes of the present report as a debt the repayment – and cost associated – of which would entail the deprivation of resources needed

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[1] See United Nations Conference for Trade and Development (UNCTAD), Trade and Development Report 2019, pp.74 – 75.

[2] Ibid, p. 76.

[3] Maurizio Lazzarato, *Governing by debt*, Semiotext(e), 2015; Susanne Soederberg, *Debtfare State and the Poverty Industry: Money, Discipline and Surplus Population* (Routledge, 2014).

[4] See www.ohchr.org/EN/Issues/Development/IEDebt/Pages/ReportPrivateDebt.aspx. The report was also informed by extensive consultations and discussions held with experts in Princeton, Nairobi, Buenos Aires and Geneva from October to December 2019). The Independent Expert thanks all experts and stakeholders, in particular Friedrich Ebert Stiftung and Open Society Foundation, as well as OHCHR staff, who provided him with valuable inputs.

to sustainably enjoy the debtor's human rights), abusive contractual terms and collection practices become a burden and a threat for individuals or households, potentially quickly turning into a trap for many, putting the realization of human rights in jeopardy. In this regard, the role of the State (and of private actors) is vital to level off the inherent power imbalance between contractual parties for an effective human rights protection effort.

II. Private debt, and macro-economy and public debt

6. Heavily privatized credit creation and financial intermediation have been the main driving forces of the steep increase in private debt in developing economies since the 1980s.[5] After the 2008 financial crisis, shadow banking and a range of other credit activities have continued to expand, despite efforts made in regulations. According to UNCTAD, since then, non-bank financial intermediation has grown twice as rapidly as conventional and public banking, its share accounting for 48.2 per cent of all global financial assets, surpassing that (43.9 per cent) held by commercial banks and public financial institutions.

7. Even though public indebtedness in developing countries rose to 51 per cent in 2017, the unprecedented explosion of private debt should clearly raise the loudest alarm bells. While a large portion of this private debt can be attributed to the access of high-income developing countries to deeper domestic financial and banking systems and easier access to international financial markets, upward trends in overall indebtedness have also been observed in both middle- and low-income developing countries since 2012. For example, the ratio of public debt to GDP of high-income countries went from 34 per cent in 2008 to 50 per cent in 2017, their overall indebtedness reaching 215 per cent of GDP, largely due to the sharp increase in private debt in the aftermath of the global financial crisis.[6] Despite the growing trend in household debt witnessed in emerging economies, rising from 25.4 per cent in 2011 to 40 per cent in 2018, lending to non-financial corporations also played a major role in the overall increase in private non-financial debt.

8. A number of studies have pointed to a close relationship between the accumulation of private debt, macroeconomic instability and sovereign debt crises: private debt booms in some countries have been associated with economic downturns and often serve as an accurate indicator of financial instability.[7] In the same vein, increasing inequality may lead to private overborrowing and overlending, which can in turn have an impact on financial stability, potentially resulting in a debt crisis over time.[8]

9. Individual and household debt accounts for a significant portion of private debt in most countries, and may be the result of a series of economic measures, such as privatization or austerity measures, or labour market flexibilization, which drive down the wages of unskilled workers and fuel inequality.[9] For instance, even though unemployment is at its lowest in nearly four decades in the countries belonging to the Organization for Economic Cooperation and Development (OECD), real wages have not picked up or have grown at a pace slower than that of the decade prior to the 2008 financial crisis.[10] In the meantime, the costs of health care, housing, food and education have risen, while social benefits have been cut or reduced.

10. As the gap between nominal income and cash needs has widened, households have increasingly turned to debt to fulfil their consumption needs. Similar problems were faced by developing countries, where the expansion of consumer credit has significantly contributed to GDP growth while many consumers have fallen into a cycle of overindebtedness and

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5 UNCTAD, Trade and Development Report 2019, p. 76.

6 Ibid, p. 77.

7 Juan Pablo Bohoslavsky, "Economic inequality, debt crises and human rights", *Yale Journal of International Law*, vol. 41, No. 2 (2016).

8 A/HRC/31/60, para. 22.

9 Jean-Michel Servet and Hadrien Saiag, "Household over-indebtedness in Northern and Southern countries: A macro-perspective", *Microfinance, Debt and Over-Indebtedness,* Isabelle Guérin et al (eds) (Routledge, 2014), p. 26.

10 OECD, *Economic Outlook*, vol. 2019, No. 1, p. 8.

poverty due to those loans. Even the International Monetary Fund (IMF) has acknowledged that growing household debt may hold back economic recovery, which is already weak, prolonging the current phase of low growth.[11]

11. High household debt can also have a negative impact on the economy. At a certain point, indebtedness puts strain on productivity, consumption and growth, leading to unsustainable disequilibrium.[12] If private debt is too high, consumers and businesses have to divert a greater portion of their income to cover interests and principal on that debt, spending and investing less as a result. In a number of financial crises, the rising level of consumer debt has triggered investment asset bubbles, leading to a financial meltdown. In many cases, private debt is nationalized through bailout programmes, which deepen public sector imbalances and may lead to sovereign debt crises.[13] The unprecedented explosion of private debt indeed constitutes the single largest contingent liability on public debt in the event of a debt crisis.[14]

12. A correlation between private debt and inequality has been widely recognized. Studies show that household debt and top income share are positively correlated; income inequality therefore widens as private debt grows.[15] According to the credit-demand line of reasoning, private debt increases as households try to maintain certain absolute or relative levels of consumption while facing growing inequality; in other words, people borrow more extensively to maintain their standard of living. This can also be exacerbated by inequality; in a very unequal society, low-income households may do worse than households with an identical income in a more equal society.[16] Moreover, household lending has become a key mechanism in social reproduction. Indeed, credit has become increasingly important to have access to basic public services, such as education and health care. Unequal access to credit can therefore exacerbate existing social and economic inequalities.[17]

13. A common policy response in a financial crisis has been to protect financial institutions and large corporations, which, by default, shields the wealthier households owning their assets, rather than middle- and low-income households.[18] Moreover, the majority of countries resort to austerity to deal with a financial crisis, and drastic cuts in social protection and public sector jobs exacerbate the inequality gap. Austerity measures usually affect those in vulnerable situations, such as the poorest, not creditors. For women, access (or lack thereof) to social security and private debt are closely connected.[19] On the one hand, women's access to credit can be jeopardized by cuts to welfare benefits, which, on the other, are essential to prevent overindebtedness.[20]

14. Rising levels of inequality may, in turn, directly or indirectly contribute to an increase in public debt and financial crises. To the extent that income inequality is directly related to income tax base, high levels of income inequality indicate that the tax base is not progressive enough. There is also some support for the view that rising inequality is harmful to economic growth,[21] while empirical evidence suggests that it is associated with more frequent and

11 IMF, Global Financial Stability Report 2019, p. 53.

12 Ibid., p. 78. See also Servet and Saiag, "Household over-indebtedness in Northern and Southern countries", p. 28.

13 UNCTAD, Trade and Development Report 2017, Geneva, 2017, pp.100 and106.

14 UNCTAD, Trade and Development Report 2019, p. 76.

15 See also UNCTAD, Trade and Development Report 2017, pp. 103–104.

16 See A/HRC/31/60.

17 Lena Rethel, "Financialisation and the Malaysian Political Economy", *Globalizations*, vol. 7, No. 4 (2010).

18 UNCTAD, Trade and Development Report 2017, p. 108.

19 Luci Cavallero and Verónica Gago, *Una lectura feminista de la deuda*, Fundación Rosa de Luxemburgo, Buenos Aires, 2019.

20 Julia Callegari, Pernilla Liedgren and Christian Kullberg, "Gendered debt: a scoping study review of research on debt acquisition and management in single and couple households", *European Journal of Social Work*, 2019, p. 9.

21 Jonathan D. Ostry Andrew Berg and Charalambos G. Tsangarides, "Redistribution, Inequality, and Growth", IMF, 2014, p. 15. The World Bank subsequently questioned the veracity of the findings in *Poverty and Shared Prosperity 2016: Taking on Inequality* (World Bank, Washington, 2016), p. 71.

widespread financial crises.[22] Regressive taxation and sluggish economic growth may diminish public revenue and lead to more reliance on external borrowing, which may eventually degenerate into a sovereign debt crisis. Empirical studies demonstrate that there is indeed a positive correlation between income inequality, fiscal deficit and sovereign debt.[23]

15. In turn, a rise in the income of the richest will also increase their savings, leading to a huge accumulation of private wealth. This increasing supply of capital requires more investment opportunities and consequently boosts the credit supply, even for riskier borrowers.[24]

16. It should be recalled that accurate and comprehensive global, regional or sometimes domestic data about household private debt are not entirely available. The IMF Global Debt Database[25] is an important tool in this regard, offering a combination of available sources and information; it also shows, however, that data on private household debt are not yet available for many countries and/or for long and comparable periods. Many cases of informal (or even illegal) lending/borrowing at the individual and household levels are not registered, accounted for or adequately estimated. In certain countries the weight of the informal economy is huge, and a large part of private household debt is likely to be kept out of financial, banking and non-banking systems. Another part of household debt can be intertwined within larger estimates of illicit financial flows, such as all debt owed to migrant smugglers and transit debts owed to corrupt authorities at the border. Therefore, a purely quantitative approach to private debt and human rights would be highly unsatisfactory in contexts such as these. To be fair, such an approach remains largely out of reach without adequate data collection and analysis, and would offer only a partial insight into the complexities of individual and household debt from a human rights perspective.

III. Household debt and human rights standards

17. The explosion of private household debt in many countries is the direct result of two parallel phenomena: of the State failing to abide by its human rights obligations, in particular in the field of economic, social and cultural rights, and social services being increasingly "financialized" or reduced to commodities.

18. The human rights framework is fundamentally based on the notion that States (and to some extent private actors) have obligations to respect, protect and fulfil human rights, ensuring equality and combating discrimination. All human beings are equal in dignity and rights is the flagship provision of the Universal Declaration of Human Rights.

19. Financialization can in practice work as the antithesis of such a framework, as it rests on the idea of the individual's responsibility to take appropriate steps to ensure an adequate standard of living and access to essential goods and services for themselves. Greater access to credit for all, understood as "financial inclusion", is increasingly seen as a solutions to many human rights problems – whether to start a business to earn a living, to obtain appropriate health care or to have access to employment opportunities. In the 1990s, Muhammad Yunus, who pioneered the concept of microcredit, even argued that access to credit was a "basic human right for all",[26] although no serious effort to explain its legal sources was made. Financialization highlights the power of financial markets and the notion of self-management in improving one's own living conditions, obfuscating States' obligations to take appropriate steps to progressively realize economic, social and cultural rights.

20. Debt is not per se a human rights problem, even less a violation. What raises concerns is when indebtedness is either caused by or causes human rights violations, affecting in

22 UNCTAD, Trade and Development Report 2017, p. 110.
23 See A/HRC/31/60.
24 Photis Lysandrou, "Global Inequality, Wealth Concentration and the Subprime Crisis: a Marxian Commodity Theory Analysis", *Development and Change*, vol. 42, No. 1 (2011), p. 183.
25 www.imf.org/external/datamapper/datasets/GDD.
26 See John Gershman and Jonathan Morduch, "Credit is not a right", *Microfinance, Rights and Global Justice* (Cambridge University Press, Cambridge, 2015), p. 14.

particular those in a situation of marginalization or vulnerability. The Universal Declaration of Human Rights enshrines rights of particular relevance for an analysis of overindebtedness and abusive lending and collection practices, in particular the rights to life, liberty and security, to freedom of movement, to social security, to just remuneration, to an adequate standard of living, including food, housing, education, clothing and medical care and necessary social services, and the right to security. The rights to have access to information and to political and public participation are also of specific significance in this context.

21. All the above-mentioned rights have been provided for in several biding instruments at the international level, notably the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. With regard to specific population groups, several instruments have also been negotiated and ratified, ensuring that there is a clear understanding of one of the pillars of human rights: non-discrimination.

22. The principles of equality and non-discrimination lie at the heart of international human rights law. Understanding the implications of household indebtedness on the enjoyment of rights, such as to health, education, housing or access to water and electricity, inevitably leads to a detailed assessment of what the enjoyment of various human rights require from a financial perspective. Individuals or households trapped in the spiral of debt and economic vulnerability have to confront formidable economic forces or actors, high degrees of inequality, low levels of accountability, increasing services financialization and limited access to mechanisms of justice or redress.

23. Frequently, individuals or groups of individuals face discrimination owing to their economic and social situation, which can be direct or indirect, or compounded by other forms of discrimination. This arbitrary treatment is given on account of their belonging to a certain economic or social group or strata within society in relation to their debt situation[27] and may be stigmatized, marginalized or criminalized because of their debt or debt in their household.[28]

24. To some extent, the very low levels of social protection and public expenditure in this area,[29] and the progressive weakening of remuneration systems for workers in formal employment are to a great extent the reason why millions of people seek recourse to credit in order to secure essential services, and are caught in a never-ending circle. In its general comment No. 19, the Committee on Economic, Social and Cultural Rights referred to the “redistributive character” of social security, which plays an important role in poverty reduction and promoting social inclusion. Closely linked, the right to work encompasses the right to a remuneration that provides all workers with a decent living for themselves and their families. As explained by the Committee in its general comment No. 23, remuneration must be sufficient to enable the worker and his or her family to enjoy other rights in the Covenant.

25. Affordability, accessibility and quality are essential elements for the definition of the rights to housing, health and education.[30] Conversely, lack of access to health services, facilities and goods is most often defined by economic limitations on the one hand (low wages, poverty, high living costs, inflation) and high costs of medicines, hospitals or medical attention on the other.

[27] Unlike collateral, the amount paid for the risk-premium (mostly determined by the availability and quality of collateral) is not returned once the debt has been paid. This practice constitutes a different price for the same product and therefore discrimination based on property; see Oliver Pahnecke, “Interest Rates, Risk Premiums and Human Rights”, 2019 (available from the OHCHR secretariat).

[28] Committee on Economic, Social and Cultural Rights, general comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), para. 35.

[29] According to the International Labour Organization (ILO), only 29 per cent of the global population is covered by comprehensive social security (full range of benefits, from child and family benefits to old-age pensions), while the remaining 71 per cent are either partially protected or not at all; see ILO, *World Social Protection Report 2017-2019*.

[30] Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health, para. 12 (b) (iii).

26. The situation is no different in the case of adequate access to public education.[31] In this regard, the Human Rights Council, in its resolution 41/16, noted the Abidjan principles on the human rights obligations of States to provide public education and to regulate private involvement in education, according to which States must take steps to ensure that no individual is excluded from any public educational institution on the basis of the inability to pay, and must take all effective measures to prevent the risk of overindebtedness for learners and their families.

27. The International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone to an adequate standard of living for himself and his family, including food and housing, and to the continuous improvement of living conditions (art. 11.1). This article should be read in conjunction with article 2.2 of the Covenant, providing for the exercise of any right under the Covenant without discrimination of any kind. Moreover, in its general comment No. 4, the Committee on Economic, Social and Cultural Rights defined seven fundamental characteristics of the right to adequate housing that Governments must ensure.

28. In addition to other serious human rights concerns with a potential impact on a range of rights, including the right to life, liberty and security, several of the issues relating to debt collection pose crucial questions with regard to access to justice, and to procedures and mechanisms by which both public and private actors might claim debts. Article 26 of the International Covenant on Civil and Political Rights is clear in providing for equality before the law, without any discrimination, and to the equal protection of the law.

29. The Guiding Principles on Business and Human Rights[32] are relevant to the impact of business activities on human rights, including banking and financial private lenders and other private lending actors. According to the Guiding Principles, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises. In turn, corporations must not violate human rights, while States have a duty to take steps to prevent and to investigate, punish and redress abuses through legislation, regulations, policies and adjudication. Furthermore, States have an obligation to ensure access to effective remedial mechanisms for persons whose rights have been violated by business activities within their territory.

IV. Typologies of private household indebtedness: cause and consequence of human rights violations

30. Household debt can both be caused by and result in human rights violations. Too often, private lenders benefit from (and promote) this scheme, even at the expense of borrowers' human rights.

31. Certain groups in vulnerable situations are more affected by abusive private lending. In turn, people confronting cumulative and/or intersecting inequalities are usually exposed to multiple forms of discrimination, which, in the field of private debt and human rights, translate into mutually exacerbated negative human rights implications of different kinds of debts.

A. Microcredit and debt

32. Widespread in many countries, microcredit was originally premised on the objective of lifting people out of poverty by enabling financial inclusion and "economic empowerment", particularly in emerging and developing economies. A central target were populations in rural areas, with women borrowers often being prioritized.[33] Microcredit has,

[31] International Covenant on Economic, Social and Cultural Rights, art.13.2 see also Committee on Economic, Social and Cultural Rights, general comment No. 13 (1999) on the right to education.

[32] See A/HRC/17/31, annex.

[33] Submission by the Committee for the Abolition of Third World Debt.

however, proved to have, in many cases, effects opposite to those intended,[34] including increasing overindebtedness and generating a "poverty trap".[35] A number of studies have shown that, far from serving to enhance local entrepreneurship or productive undertakings, loans were often used for other expenses, such as for rent payments or guarantees, schooling fees or health-related expenditures. While some short-run benefits of microfinance could be found, it has also been associated with spiralling debt that results in deeper impoverishment, family breakdown and even suicide. Furthermore, evidence was found of "anti-developmental" flaws,[36] blocking other development policies that might have more potential for sustainable impact, and major opportunity costs.

33. It is true that, when microfinance is well targeted, there have been cases in which it has benefited recipients.[37] Nevertheless, there have been many cases of overlending and overborrowing that led to microfinance crises in countries such as Bangladesh, the Plurinational State of Bolivia, Bosnia and Herzegovina and Cambodia. In general, the lack of safety nets for people living in poverty, once their private debt escalates, and the failure of certain States to regulate microfinance and lenders are essential concerns.

34. The use of loans to cover for basic needs and a range of economic, social and cultural rights is commonplace. In Cambodia, as apparently in many other countries,[38] studies suggest that the majority of microcredit loans were used for non-productive purposes, including consumption, servicing existing debt, and covering unexpected expenses, such as illness and accidents.[39]

35. The interest rates levied on loans often render borrowers helpless in the face of mounting debt. In Morocco, where the microcredit model has been encouraged with public funding, this type of credit may range from $52 to $5,200, with an average interest rate as high as 35 per cent.[40] Abusive contractual terms and predatory practices by lenders are frequent, such as charging interest rates of 220 per cent and abusive practices from debt collectors, including harassment, pushing them to desperation, even suicide.[41] Women are often among the beneficiaries of microfinance, therefore they are specifically affected by such practices. The collapse of the microfinance industry in Andhra Pradesh (India) in 2010 was a tragic example of how corporate-driven microfinance institutions targeted the poor with usurious interest rates on loans, fuelling overindebtedness and pushing borrowers over the edge, leading to the loss of more than $1 billion in loans.[42]

36. During his country visit to Sri Lanka, the Independent Expert learned about the number, frequency and seriousness of lender abuse, affecting women in particular. He recommended that the Government, inter alia, extend the current legislation covering microfinance licenses to ensure that all lending institutions were regulated and that usurious microcredits were voided (or voidable), ensure that those in need benefited from debt relief programmes, and provide victims with the right to request the return of money as compensation.[43]

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34 See Isabelle Guerin, Marc Labie and Jean-Michel Servet, *The crisis of microcredit* (Zed Books, London, 2015).

35 Milford Bateman and Ha-Joon Chang, "Microfinance and the Illusion of Development: From Hubris To Nemesis in Thirty Years", *World Economic Review*, No. 1(2012), p. 14.

36 Milford Bateman, Stephanie Blankenburg and Richard Kozul-Wright, *The Rise and Fall of Global Microcredit: Development, Debt and Disillusion* (Routledge, New York, 2019).

37 Gershman and Morduch, "Credit is not a right", p. 22.

38 Hugh Sinclair, *Confessions of a Microfinance Heretic: How Microlending Lost Its Way and Betrayed the Poor* (Berrett-Koehler Publishers, San Francisco, 2012).

39 Maryann Bylander, "Credit as coping: rethinking microcredit in the Cambodian context", *Oxford Development Studies*, vol 43, No. 4, p. 546.

40 *Le microcrédit au Maroc : quand les pauvres financent les riches*, ATTAC/CADTM, 2017.

41 A/HRC/40/57/Add.2, paras. 78–80.

42 Philip Mader, "The Instability of Commercial Microfinance: Understanding the Indian Crisis with Minsky", in Bateman et al., *The Rise and Fall of Global Microcredit*, chap.10.

43 A/HRC/40/57/Add.2, para. 97.

B. Health-related debt

37. Health-related debt – a growing cause of financial insecurity and impoverishment in many households around the world, be it due to maternity services, unexpected hospitalization, a chronic disease or the need for costly or rare medication or frequent services and facilities – often arises from high out-of-pocket medical expenses that people cannot afford. Such expenses increasingly expose people to risks of financial hardships; global estimates suggest that some 33 million people experience financial hardship due to essential surgery that requires out-of-pocket payments, and are pushed into poverty as a result.[44]

38. The primary factor underlying high out-of-pocket expenses is lack of access to adequate essential health care, services or facilities: more than 50 per cent of the global population has no access to adequate essential health care and, in most countries, the accessibility and affordability of essential health care are limited or not guaranteed. In many countries, health packages may cover too few interventions, may not cover medicines, or provide insufficient financial protection;[45] health insurance does not necessarily protect the insured from medical debt.

39. In the United States of America, for instance, an estimated one in three individuals reported having difficulty paying their medical bills, despite the fact that many people with medical debt are insured.[46] The insured are often required to incur very high costs for deductibles, co-payments and other fees, which they may not be able to afford.[47]

40. Catastrophic health expenditure is also attributed to the prevalence of unregulated and unorganized private medical practices in some countries.[48] Putting in place an adequate, universal health-care system and allocating sufficient public funding and resources can be one crucial way to reduce high out-of-pocket medical costs, and therefore health-related poverty and indebtedness.

41. Health-related debt can have long-lasting, devastating consequences for individual debtors, whether the debt arose from a one-off intervention or has become a recurrent life-saving expense. Persons with medical debt are in a particularly vulnerable situation, as often they have lost their sources of income owing to illness or injuries. Indebted households may sell their assets or turn to more borrowing to pay off the debt, thereby falling into debt trap and, consequently, the poverty trap.

42. Lack of food, inadequate access to nutritious food, malnutrition and hunger seriously affect the physical health of people, especially children, pregnant women, the chronically ill and older persons. For people who are late in their payments or in default, bills and hunger are too often connected, sometimes forcing them to resort to "pay day loans" and food aid. The Special Rapporteur on extreme poverty and human rights found that food bank use increased almost fourfold between 2012–2013 and 2017–2018, and that there were now more than 2,000 food banks in the United Kingdom, up from just 29 at the height of the financial crisis.[49]

43. In some parts of the world, persons who are unable to pay their medical debt can lead to their detention in medical facilities (either public or private). While the extent of this practice remains unknown, the limited academic research conducted suggests that hundreds

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[44] ILO, *Universal social protection for human dignity, social justice and sustainable development*, International Labour Conference, 108th session, Geneva, 2019, p. 103.

[45] Ibid.

[46] Karen Pollitz et al., "Medical Debt among People with Health Insurance", Henry J. Kaiser Family Foundation, 2014.

[47] David Bank and Jenny Griffin, "Financing Out-of-Pocket Medical Debt and Keeping Bill Collectors at Bay", Aspen Institute, 2015.

[48] Wim Van Damme et al., "Out-of-pocket health expenditure and debt in poor households: evidence from Cambodia", *Tropical Medicine and International Health*, vol. 9, No. 2, p. 278; World Health Organization (WHO), "India tries to break cycle of health-care debt", WHO Bulletin, vol. 88, No. 7, 2010.

[49] A/HRC/41/39/Add.1, para. 22.

of thousands of people are likely to be affected every year. In particular, "medical detention" for unpaid medical bills have been observed in various countries.[50]

44. Private household debt resulting from health-related expenses often leads to greater revenue for private actors, who convert access to health care and medicines into a highly profitable commodity and business model. The cost of essential medicines, when unregulated by the State or protected by patents and secret negotiations, and therefore left to "market forces", is a major cause of the increase in health-related debt and a matter of serious concern from a human rights perspective.[51]

C. Education-related debt

45. Millions of households around the world make hard choices for the education of children and adolescents, often based on economic considerations and their total dependence on access to credit. In certain cases, households have to which member of the family is more "deserving" of education, which can at times mean only the eldest child or the boy rather than the girl. Despite the obligation of States to provide for free public education, 262 million young people aged between 6 and 17 were still out of school in 2017, and more than half of children and adolescents do not meet minimum proficiency standards in reading and mathematics (see A/HRC/41/37).

46. The call to prevent the risk of overindebtedness reflects a mounting situation around the world, and may often refer to debt for secondary education too. Student loans have also been on the rise, as the public education systems in many countries have faced austerity, private schools have expanded and the cost of education has grown rapidly.[52] As the Special Rapporteur on the right to education highlighted, for-profit schools may seek to maximize profits through high fees or to cut costs by reducing the most expensive parts of the curriculum, expelling learners that need the most support, or not properly maintaining school premises (ibid.)

47. Student loans for tertiary education are usually perceived as a positive investment and "good debt", as they could go a long way towards better educational qualifications and employment opportunities, and may provide financial stability for the individual and the entire household. Evidence suggests, however, that student loans no longer guarantee social mobility and financial stability. The increasingly concentrated labour market and stagnant wage growth mean that graduates often have difficulties finding employment that enables them to pay off debt.[53]

48. In Fiji, students receiving loans through the Tertiary Education Loans Scheme are expected to allocate 20 per cent of their gross salary upon employment to their repayment.[54] In Thailand, with a view to enhancing access to secondary and higher education for children of low-income families, the Government used a dedicated fund to provide loans to 2.9 million recipients from 1996 to 2007;[55] challenges in debt repayment and debt default were, however, reported, including due to financial problems resulting from unemployment.[56] In Chile, at the university level, the interest on student loans has risen to 6 per cent, and thus may result in

[50] The practice has been observed in Cameroon, the Democratic Republic of the Congo, Ghana, Kenya, India, Indonesia, Liberia, Nigeria, Uganda, and Zimbabwe, and; see Robert Yates, Tom Brookes and Eloise Whitaker, "Hospital Detentions for Non-payment of Fees: A Denial of Rights and Dignity", Research Paper, Centre on Global Health Security, 2017.

[51] See https://msfaccess.org/secret-medicine-prices-cost-lives.

[52] Michael Lim, Mah Hui and Jomo Kwame Sundaram, "Transforming Society, Financialization Destroys Social Solidarity", Inter Press Service, 4 June 2019.

[53] Michael Corkery and Stacy Cowley, "Household Debt Makes a Comeback in the U.S.", *New York Times,* 17 May 2017.

[54] A/HRC/32/37/Add.1, para. 39.

[55] Piruna Polsir and al., "Thailand's Student Loans Fund: An analysis of interest rate subsidies and repayment hardships", in Shiro Armstrong and Bruce Chapman, *Financing Higher Education and Economic Development in East Asia* (Australian National University press, Canberra, 2011, p. 221.

[56] Amara Tirasriwat, "Analysis of Problems on Student Loan Defaults in Thailand and Guideline Solutions", XIV International Business and Economy Conference, Bangkok, 5–8 January 2015.

decades of debt repayment for debtors.[57] It has been reported that the most vulnerable groups struggle to pay their debts, and those attending technical and private university were specifically affected.[58]

D. Housing and utilities debt

49. Housing financialization, predatory lending and unpayable household mortgage debt, at the root of the 2008 financial crisis, illustrate the links between household debt and the deregulation of financial markets, to the detriment of people, with devastating consequences in terms of thousands of foreclosures, widespread cases of eviction, displacement and homelessness, across countries in the North and increasingly also in the global South. In 2012, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context raised the alarm about predatory lending practices targeting the poor and more marginalized, forcing them into a debt trap as the sole alternative to have access to housing, with States in some cases facilitating the process or in others ignoring the risks to people and the economy at large (see A/67/286).

50. In 2017, the Special Rapporteur on housing also noted that the financialization of housing was linked to expanded credit and debt taken on by individual households made vulnerable to predatory lending practices and the volatility of markets, the result of which was unprecedented housing "precarity". She summarized: "Not only had people lost their homes but they faced personal financial ruin".[59]

51. Since housing is the entry point to the exercise of numerous human rights, such as education, work or health, people often place expenditure on rentals, mortgages or utilities at the top of their family priorities, often to their peril. This directly contradicts the authoritative interpretation of affordability for the right to housing made by the Committee on Economic, Social and Cultural Rights in its general comment No. 4 (1992), in which it clarified that personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. The Committee added that States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance, which adequately reflect housing needs. It is essential to note that discrimination on various bases, such as sexual orientation, by public and private landlords as well as credit providers has an important impact, with, for example, leases and mortgages applications being denied to members of the LGBTI community as a result.[60]

52. Mortgages taken on in a foreign currency, sometimes to the detriment of the debtors or of refinancing "opportunities", for those already struggling to secure payments – both of which are often aggressively promoted by lenders – are also of specific concern.[61] Changes in the housing market can have dire consequences for debtors. In Norway, the expansion of the housing market played a role in household indebtedness between 1997 and 2017.[62] Furthermore, the role of vulture funds acquiring lenders' debts and sometimes debtors' homes in addition to enjoying advantageous tax conditions should not be left out of the right to adequate housing equation.[63]

53. In 20 years, 20 million people have moved to the peri-urban areas in Mexico, to areas without a sufficient water supply or infrastructure provided to the poor, while the construction

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57 Submission by the Committee for the Abolition of Third World Debt.

58 See Macarena Segovia, "Las cifras negras del CAE: 40% de los estudiantes desertores o egresados se encuentran morosos", *El Mostrador*, 28 May 2018.

59 A/HRC/34/51, paras. 5 and 21.

60 Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para.11. See also A/74/18, para. 14 and A/HRC/29/23, para. 69.

61 See submissions by the Open Society Justice Initiative et al. Romania and Ireland.

62 Economist Intelligence Unit, "Household debt poses risk to private consumption", 30 July 2019.

63 Submission by the Open Society Justice Initiative et al.

of 5 million social housing units far from urban centres and their provision to the poor through long-term financing has trapped households into paying for new housing that lacks basic water and public services. Since housing developers were guaranteed profits based on no-risk financing provided through the government management of a 5 per cent tax on all workers,[64] this market quickly became the most securitized financial market in Latin America.[65] Housing developers, without adequate regulation, chose the cheapest land, with profit margins as high as 40 per cent.[66]

54. Natural disasters can also have an impact on household indebtedness. In Puerto Rico, a survey conducted a year after hurricane Maria suggested that those affected by the disaster commonly faced “financial challenges”: 17 per cent of interviewees reported having been late on rent or mortgages payments; 24 per cent also mentioned having had to borrow money from friends and relatives “to make ends meet” in the year.[67] It was also reported that farmers saw their debt double or even triple after the 2010 floods in Pakistan, and had to resort to borrowing for agricultural inputs and food.[68] As land is sometimes collateral against loans contracted by small farmers, the risk of livelihood loss in the event of debt default is clear when they face a natural disaster, a bad harvest or dropping commodity prices,[69] even though they should be protected in such situations by the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas.

E. Debt enforcement, abusive collection practices and the criminalization of debtors

55. Lenders may resort to various means or channels to enforce repayment of debts contracted. Besides judicial enforcement – should the debt be legally contracted – recourse to debt collection services, going from “official agencies” to non-financial institutions, are frequent. In this context, abusive practices have been observed across the world. Cases of debtors being subjected to daily telephone calls or various forms of harassment and shameful practices by collectors have been reported. In other instances, the confiscation of credit cards by debt collectors to have debtors withdraw the amount owed (plus interest) at an automatic teller machine have been reported.[70] In Sri Lanka, practices such as collectors going to women’s houses where they stayed for hours to be paid have been reported, in addition to women being exposed to psychological and physical violence by collectors (see A/HRC/40/57/Add.2).

56. In Czechia, around 10 per cent of the population are thought to be affected by “debt enforcement”, the impact of which on poverty and deprivation is a particular manifestation of income inequality.[71] The exponential effect of debt accumulation, sometimes in combination with high interest rates, can push people into informal employment and the fear of otherwise having a considerable part of their salary seized,[72] with little left for the fulfilment of basic needs. Of note is also the potential contribution of the phenomenon to the “shadow economy” and illicit financial flows.

64 Submission by Greene, Peixoto-Charles and Morvant-Roux.

65 Susanne Soederberg, “Subprime housing goes south: Constructing securitized mortgages for the poor in Mexico”, *Antipode*, vol. 47, No. 2.

66 Submission by Greene, Peixoto-Charles and Morvant-Roux.

67 Bianca DiJulio, Cailey Muñana and Mollyann Brodie, “Views and experiences of Puerto Ricans One Year after Hurricane Maria”, *Washington Post*/Kaiser Family Foundation, September 2018, p. 12.

68 See Food and Agriculture Organization of the United Nations, “The impact of natural hazards and disasters on agriculture, and food security and nutrition”, Rome, 2015.

69 A/HRC/13/33/Add.2, para. 26.

70 Deborah James, “‘Deeper into a hole?’: borrowing and lending in South Africa”, *Current anthropology*, vol. 55 (2014), p. 6.

71 See SDG Watch, *Falling Through the Cracks: Exposing Inequalities in the EU and Beyond*, Brussels, 2019.

72 Robert Muller, “Debt-trapped Czechs excluded as economy grows”, Reuters, 13 December 2018.

57. In South Africa, debt collection is a significant “industry”; for example, the courts passed 18,973 judgments for debt with a total value of R342,1 million in May 2019 alone.[73] A staggering 47,360 summonses were issued for debt in this short period.

58. Overindebtedness can not only deprive indebted persons of their economic, social and cultural rights, but also their civil and political rights by penalizing and punishing them in the criminal justice system. Such an occurrence has been observed in various regions across the world. For instance, in 2014, in Yemen, dozens of individuals were reportedly imprisoned as a result of their inability to pay their private debt.[74] In Sierra Leone, informal borrowing and lending for the purpose of petty trading may often end up in the criminal justice system, resulting in the arrest and detention of the debtors.[75]

59. Individuals from low-income backgrounds may accumulate debt through fines and fees levied by local authorities, such as traffic and parking fines. These may quickly snowball into larger sums when they enter the court system and face additional costs.[76]

60. For people in a situation of vulnerability, the accumulation of fines and fees, which can also be the result of various forms of discrimination, can exacerbate consequences and sometimes culminate in amounts that they ultimately may not be in a position to pay. In 2009, a Canadian study conducted in Montreal concluded that, in comparison to the population in general, a disproportionate number of tickets for minor offences were delivered to the homeless; non-payment of tickets could lead to detention.[77]

61. For the poorest and most vulnerable, access to justice can be particularly challenging. According to the Special Rapporteur on extreme poverty and human rights, in addition to the costs of legal assistance, there are numerous other costs associated with accessing justice which constitute a major barrier for the poor, who simply cannot afford those expenditures.[78] Indirect costs can be incurred for the production of documents, transport or expertise, or because of loss of income when attending court, which can also ultimately contribute to household debt.

F. Consumer debt

62. Consumer credit includes debts repaid by instalments and regular (revolving) credit. These debts can be contracted in various ways: from spending on food staples, education-related expenses, health services and medicines, to spending connected to the celebration of a national or religious holiday or the purchase of non-essential items, gambling or Internet-based games.

63. Access to credit through formal channels remains an important challenge for many, in particular for specific groups in vulnerable or marginalized situations. In some countries, the constant exposure of consumers to new lending “opportunities”, pressures and practices, such as unsolicited-credit cards or financial advertisements through mobile applications, may also contribute to household debt and overindebtedness.

64. For example, in Argentina, more than 7.7 million pensioners and other persons entitled to a universal child grant owe approximately $3,000 million to the national social security administration. The economic downturn, characterized by massive public debt and decreasing wage levels, has also led to a large number of cases of bankruptcy of social security beneficiaries in the past four years, millions of whom were forced to request credit from the social security administration to pay for basic goods and services. The number of those with social security debt is as high as 30 per cent of all pensioners (over 2.1 million

[73] Submission by Stellenboch University-Legal Clinic.

[74] Human Rights Watch, “Yemen: Dozens Jailed for Debts”, 21 April 2014.

[75] Alison Thompson and Sabrina Mahtani, “Women, Debt & Detention: An Exploratory Report on Fraudulent Conversion and the Criminalisation of Debt in Sierra Leone,” AdvocAid, July 2012.

[76] The Aspen Institute, “Consumer debt: A Primer”, March 2018, p. 21.

[77] Christine Campbell and Paul Eid, “La judiciarisation des personnes itinerantes à Montréal: un profilage social”, Commission des droits de la personne et des droits de la jeunesse, 2009.

[78] A/67/278, para. 51.

people) of 95 per cent of grant beneficiaries. It is estimated that about 80 per cent of grant beneficiaries would not be able to afford the basic *canasta* – basic living/food expenses once the 30 per cent deduction from income is taken into account.[79]

65. As highlighted by the South African Human Rights Commission, the persons most vulnerable to human rights violations resulting from abusive practices are lower income groups and those in poverty. Of note is the fact that, in South Africa, total credit records of consumers rose from around 17 million in 2007 to 24 million in 2016. Furthermore, it was estimated that at least 40 per cent of workers' monthly income was allocated to debt repayment,[80] and that around 80 per cent of the salary of those working in the formal sector were subject to deductions for debt owed in 2012.[81] In parts of the Russian Federation, it was reported that people were sometimes struggling to make ends meet, with as much as 83 per cent of their monthly salary allocated to loan repayments.[82]

66. The impact of consumer overindebtedness can translate into a range of human rights consequences. For instance, in a series of interviews conducted in France, Germany, Hungary, Slovenia, Spain and the United Kingdom on the effect of overindebtedness, a lower standard of living and a deterioration in well-being and/or mental health were indicated as the most common consequences.[83]

67. Being considered a bad payer as a result of arrears or debt default can have severe consequences: there are usually moral and economic implications of a poor credit record. While some debtors have underlined the psychological burden of being considered a bad payer and the shame associated to it, others have highlighted the potential consequences for their livelihood and employment.

68. In parallel to more traditional forms of credit, the digital lending industry is fast evolving, providing services to a growing number of borrowers. In Kenya, 70 per cent of adults currently use mobile money, while only 40 per cent have a bank account.[84] Personal information gathered by the "fintech" industry, including via payments and loans applications, is also a matter of concern. As lenders believe that all data are "credit data", they set in motion complex big data algorithms that process the social media activity of millions of people trying to assess creditworthiness.[85] The use of such practices can also affect individuals in particular ways, beyond economic considerations.

69. Furthermore, financial industry technology increasingly (and aggressively) facilitates credit through digital means, including mobile application, leading to overborrowing.[86] This is a highly unregulated sector. In several African countries, payday loans have been granted with interest rates at several 100 per cent.[87] In this context, policies and entities aiming at protecting consumers rights and provide "financial literacy" is seen as playing a key role in mitigating the potential impact on human rights of overindebtedness and abusive lending practices.

70. As many borrowers take a number of short-term loans at the same time, they often need more credit to repay the previous one, which in real terms ends up turning short-term loans into long-term ones, but with very high interest rates.

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79 David Cufré, "Reperfilar al jubilado", *Página/12*, 28 September 2019.

80 South African Human Rights Commission, "Human Rights Impact of Unsecured Lending and Debt Collection Practices in South Africa", 2017, pp. 7 and 14.

81 See Chantelle Benjamin, "Garnishee abuse is order of the day", *Mail&Guardian*, 25 October 10/2013.

82 Max Seddon, "Russians struggle under burden of soaring consumer loans", *Financial Times*, 29 August 2019.

83 European Consumer Debt Network, "The over-indebtedness of European households", 6 November 2014.

84 Eric Toussaint, "Alert on the sophistication of illegitimate debt techniques via mobile telephony", CADTM, 8 November 2019.

85 Kevin Donovan and Emma Park, "Perpetual Debt in the Silicon Savannah", Boston Review, 20 September 2019.

86 See Milford Bateman et al., "Is fin-tech the new panacea for poverty alleviation and local development? Contesting Suri and Jack's M-Pesa findings published in *Science*", *Review of African Political Economy,* vol. 46, No. 161 (2019).

87 South African Human Rights Commission, "Human Rights Impact of Unsecured Lending", p. 17.

G. Migration-related debt

71. Migration-related debt may be taken on to pay for the costs of migrating to another country, with or without documents. It can include payment of documentation, travel by various means, assistance in crossing borders, or even bribing authorities during transit or paying for smugglers when migrating without documentation. Such debt is frequently an issue for the entire (extended) family, and creates generational links and obligations across elders and younger members.

72. Although migration from Central and South America to the United States is a well-documented reality, increasing border controls and cruel practices, including detention of non-accompanied children, witnessed in recent years have focused the spotlight on its complexities and the financial network underpinning it. It is obvious that more stringent migration policies will lead to higher prices (and debt) for migrants to pay those who provide support to travel.

73. The more debt a family member incurs for economic migration, the more likely a never-ending debt-driven cycle, fed by the hope of avoiding the loss of collateral. Psychological and physical pressure, sexual harassment, death threats and other means of intimidating relatives who stay behind are frequently a feature of the abuse exercised by collectors and smugglers. The pressure applied may even lead to suicide. Since parcels of land that are essential for livelihood of the family or a house are often put up as collateral, victims are not only left over-indebted but also without any of the meagre resources they once had.

74. At each attempt, the dangers and threats increase, and the smuggling networks (including “coyotes” and traffickers), sometimes in collusion with security forces at borders, take financial advantage. Individuals and families therefore go beyond their network to borrow, turning to high-interest loans from unregulated or loosely regulated institutional actors, such as *prestamistas* (moneylenders), notaries, cooperatives or banks, using land, homes, vehicles, or goods as collateral.[88] In such a context, some might consider remigration the only option for debt repayment.

75. The sad irony is that many of those who migrate for economic need are frequently abandoned by their State. At the same time, they send remittances back to their countries of origin and contribute greatly to sustaining the economy. In Guatemala, remittances accounted for more than 11 per cent of GDP and more than foreign investment in the country in 2017.[89]

76. Even in the case of formal migration, some countries do not allow recent migrants to work for a certain period, which aggravates their economic family situation while having to repay migration-related debts. Furthermore, refugees and asylum seekers can incur new debts when arriving to a country as they face a range of financial challenges to meet their basic needs. For example, in 2018, 88 per cent of Syrian refugee households in Lebanon had debts.[90]

77. The situation is not much different in South-East Asia, where concern has been growing concern in recent years over migrant overindebtedness. The International Organization for Migration (IOM) has identified specific dynamics, including an increasing reliance on debt to finance migration costs; high rates of household debt among migrant sending families; new forms of distress migration induced by overindebtedness; the degree to which remittances and migrant earnings are channelled towards the payment of loans; and the emotional and psychological impact of indebtedness on migrants.[91]

[88] Laura Heidbrink, “The coercive power of debt: migration and deportation of Guatemala indigenous youth”, *The Journal of Latin America and Caribbean Anthropology*, vol. 24, No. 1 (2019).

[89] IMF Country Report No. 18/155, June 2018, p. 5.

[90] Office of the United Nations High Commissioner for Refugees, “Yearly UN Study: Syrian Refugees in Lebanon Accumulated More Debt in 2018 than Ever before”, 26 December 2018.

[91] IOM, *Debt and the Migration Experience: Insights from South-East Asia*, 2019, p. 15.

H. Debt bondage

78. Millions of people in all regions of the world continue to be subject to bonded labour or debt bondage, a form of human exploitation that is close and often tantamount to slavery. In 2016, debt bondage affected half of the total victims of forced labour imposed by private actors around the world;[92] it was furthermore estimated that 4.8 million of the 24.9 million victims of forced labour were sexually exploited.[93]

79. According to the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, debt bondage can be found in various sectors of the economy, and is disproportionally endured by people in a vulnerable situation, such as those belonging to minority groups, indigenous people, women, children, people determined as being of low caste, and migrant workers. She found that many victims of debt bondage faced multiple and intersecting sources of discrimination, which made them vulnerable to exploitation and abuse. The Special Rapporteur pointed out that migrant workers represented a significant portion of the labour force in the Gulf Cooperation Council countries of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates, particularly in the private sector, where the *kafalah* system, which allowed employers to sponsor workers, provided fertile ground for dependency towards employers, potential abuses and debt bondage, because it linked workers’ employment and residency status to their employers.[94]

80. Recruitment agencies often charge illegal costs and fees when recruiting foreign workers. Cases of identity documents being confiscated by recruiters until full repayment of debts have been reported.[95] Such practices are considered to contribute to debt bondage,[96] together with the non-payment, underpayment or delayed payment of wages, and contract substitution. Because of the pressure applied by recruitment agencies to secure new working contracts, domestic workers sometimes see their contract abruptly end after they have finally paid off their debt and begun to receive a salary.[97]

V. Conclusions

81. **There are two drivers of the increase in private indebtedness: first, the flourishing supply side of finance, with deregulation and increasing financialization being its facilitating instruments, which also includes the commodification and financialization of essential components to the realization of economic, social and cultural rights; second, the reconfiguration of many human needs for social reproduction that become unmet financial needs. While the past century has witnessed the establishment and expansion of social safety nets, the gaps that remain provide fertile ground for private debt to flourish. Paradoxically, the social protection measures taken by States, via cash transfers, have been identified as a form of potential lending collateral, guaranteeing creditor’s loans or allowing for lower interests instead of serving their original purpose.**[98]

82. **Accounting for a significant portion of private debt in most countries, high individual and household debt has been associated with inequality, macroeconomic instability, unsustainable sovereign debt and financial crises. Low wages, poverty and inequality, exacerbated by such policies as privatization, austerity measures and labour market flexibilization, have pushed millions of people into debt, which in turn has pushed millions of people into poverty and informality, making them vulnerable to all kinds of abuse. At the core of this phenomenon lies so-called “financial inclusion”, the colossal failure of States to ensure the realization of economic, social and cultural rights**

92 ILO, *Global Estimates of Modern Slavery*, Geneva, 2017, p. 5.
93 Ibid., p. 10.
94 A/HRC/33/46, paras. 9 and 29.
95 Submission by the Asia Pacific Forum on Women, Law and Development.
96 A/HRC/33/46.
97 Submission by the Asia Pacific Forum on Women, Law and Development.
98 See Lena Lavinas de Morais, *The Takeover of Social Policy by Financialization: The Brazilian Paradox* (Palgrave MacMillan, New York, 2017).

for all. The explosive increase in private debt is what has sustained aggregate demand and economic growth over the past decades, often at the expense of indebted households. Millions of people around the world transfer a significant part of their wealth and well-being to the financial sector, whose links to the real economy continue to erode, compromising shared prosperity and financial stability and security, and reinforcing inequality.

83. **Private debt should not be contracted by individuals and households as a way to compensate for the State's obligations to protect, promote and fulfil human rights. Personal or household financial and other costs associated with the repayment of debt should be at such a level that the attainment and satisfaction of human rights are not threatened or compromised. Contracting and repaying debt or defaulting on repayment should not entail human rights violations.**

84. **In the present report, the Independent Expert has explained that increasing financial inclusion does not necessarily automatically result in real life improvements, more enjoyment of human rights, more sustainable development or less inequality. It is obvious that a number of States (and international financial institutions) support debt-financed spending at the expense of the provision of public goods and services.**

85. **It is not surprising that microfinance, being the global flagship of financial inclusion to alleviate poverty, has been widely promoted by powerful global financial stakeholders which, in turn, are not very enthusiastic about engaging in more structural discussions on progressive taxation, tax fraud, care economy or other forms of enhancing State revenues and regulation to improve social welfare programmes and ensure access to a number of essential services.**

86. **The Independent Expert has considered the negative implications for human rights of microcredit, health-, education- and housing-related debt, abusive collection practices, including the criminalization of debtors, consumer debt, migration-related debt and debt bondage. Bearing in mind the reasons encouraging people to borrow under these typologies, it can be concluded that private debt can be both a cause and a consequence of human rights violations. This also explains why and how social unrest, inequality and unbearable levels of individual debt are intrinsically intertwined.**

87. **It is true that private debt is selectively coded by national regulations;**[99] **however, debt contracts exist in a broader legal and economic universe, in which human rights law interacts with (and limits) the rights of creditors. Although generally perceived as not dealing with human rights matters per se, financial consumer protection laws and bankruptcy regulations have important roles to play in this regard. Such laws should allow for the protection of individual facing overindebtedness or abusive lending and collecting practices, with have a potential impact on human rights. Consumer and bankruptcy frameworks should thus be envisaged as a mean to prevent possible abuses, to safeguard the human rights of borrowers and to compensate for the inherent power imbalance between the parties to a lending contract. Such an endeavour should include – and even encourage – the possibility for financial consumers to organize and negotiate collectively to compensate the power imbalance between lenders and borrowers.**

VI. Recommendations

88. **The Independent Expert recommends that States:**

(a) **Reduce wealth and income inequalities and eradicate poverty through progressive taxation and transfers, and provide and progressively extend social protection floors;**

(b) **Regulate and monitor all lending activities, formal and informal, ensuring that contractual terms, in particular interest rates and other non-interest charges,**

[99] See Katharina Pistor, *The Code of Capital: How the Law Creates Wealth and Inequality* (Princeton University Press, Princeton, 2019).

supporting or enabling technology for banking and financial services and the means to collect debts do not violate borrowers' human rights;

(c) **Ensure that bankruptcy laws are in place to protect debtors and are in line with human rights standards;**

(d) **Establish a minimum and non-seizable basic wealth and income (including wages and all kinds of social benefits) cap by law;**

(e) **Facilitate and/or grant debt relief to individual debtors when an adequate tool to protect their human rights is not available;**

(f) **Regulate the practices of lenders to ensure that the human rights of debtors are fully respected by putting in place an interest rate cap on individual/household debt and adopting legislation preventing and sanctioning predatory and abusive lending practices, and consider establishing an agency in charge of monitoring their operations;**

(g) **Regulate advertising of private credit, ensuring that both conditions and risks are clearly detailed and explained to potential applicants;**

(h) **Ensure that bankruptcy legislation subordinates to all other credits, if not declared void, reckless and abusive credits the lenders of which did not take into due consideration the repayment capacity of debtors and their human rights;**

(i) **Ensure that legislation prohibits the enforcement of debts where there is evidence of misrepresentation, fraud, mis-selling, coercion, unfair terms, harassment or other abusive practices by lenders or debt collection agencies;**

(j) **Ensure that individual debtors can receive financial legal counselling from the State, and that free legal service in court is provided;**

(k) **Prohibit the criminalization of debtors, ensuring, for example, that their political rights cannot in any way be limited because of their debt status;**

(l) **Ensure that financial regulators, borrowers and their organizations have access to relevant and timely information on the profit rates of lenders, an important element to assess the legitimacy of interest rates and non-interest items charged to borrowers;**

(m) **Investigate reports and cases of illegal overcharging, unpaid wages, wage deduction and document confiscation, hold actors responsible in the event of illegal fees being charged to foreign workers when recruited; make the results of investigations public; and ensure that affected migrant workers and their families have access to justice and remedies;**

(n) **Ratify the ILO Private Employment Agencies Convention, 1997 (No. 181);**

(o) **Improve databases and conduct qualitative and quantitative studies to assess the status of individual private debt, current lending and collection practices, and create specific indicators to follow up on the burden of debt on rights;**

(p) **Consider adopting a comprehensive data protection framework to ensure borrowers the full enjoyment of their right to privacy, both online and offline;**

(q) **Consider adopting a national action plan on business and human rights, and pay particular attention to the financial sector and lending businesses of all kinds and scale.**

89. **The Independent Expert recommends that:**

(a) **Recruiting agencies fully inform prospective migrants of the breakdown of all fees payable, such as the cost of training, agency fees, travel, working documents and accommodation;**

(b) **Digital lending businesses clearly inform debtors about data collected and what they will be used for.**

90. **The Independent Expert recommends that private lenders:**

(a) **Ensure that the private information of debtors is kept confidential and not shared for any other purpose than the lending transaction, including within the company and with sister companies;**

(b) **Assess the extraterritorial impact of digital lending operations, in accordance with their due diligence obligation, before developing lending platforms;**

(c) **Closely monitor lending and collection operations to prevent, identify and address abusive practices, in accordance with the responsibility of businesses to respect human rights;**

(d) **Ensure that debt collectors never resort to abusive collection practices, such as harassment of debtors, under any circumstances;**

(e) **Ensure that they are selling appropriate loan products to borrowers, in compliance with their due diligence human rights obligations.**

91. **The Independent Expert recommends that national human rights institutions, in the context of their mandates, pay particular attention to the impact of private debt, including overindebtedness and abusive practices, on the enjoyment of human rights, including by conducting studies on the impact of private debt on human rights.**

92. **The Independent Expert recommends that international financial institutions:**

(a) **Systematically conduct human rights impact assessments of prescribed economic reforms policies, in accordance with the guiding principles on human rights impact assessments of economic reforms (see A/HRC/40/57), paying specific attention to the impact of fiscal consolidation and privatization on social services and potential cost retransfer to the population, in particular in terms of household indebtedness;**

(b) **Pay particular attention to the impact on human rights of microcredit and other lending initiatives supported by international financial institutions.**