

## **“Change Needed” – How Israel Drives Debtors into Poverty**

**Report Summary, February 2016**

Against the backdrop of the cost of living, the availability of credit, the unraveling of the social security net provided by the state, and the policy of privatization of social services over recent decades, debt repayment has become one of the main problems facing residents of the State of Israel. The Committee for the Fight against Poverty (the “Alalouf Committee”) rightly noted that debts are a key difficulty for people living in poverty, since they constitute a barrier to overcoming poverty and a significant factor in its exacerbation. This conclusion was raised repeatedly in our discussions with people living in poverty and with grassroots professionals who work with families facing economic distress.

From the perspective of human rights laws, debt has a profound impact on people from the lower-middle class and on people living in poverty. The presence of debt, and more specifically the inability to repay debt, poses a real risk to the basic rights of debtors and their families to a dignified existence, including decent living conditions, shelter, nutritional security, health, and education. Despite these ramifications of debts of private households, as well as others – such as the impact on national economic stability – **Israel has not adopted a broad-based national policy designed to provide optimum responses and solutions for debtors and to help them move out of debt and poverty.** Accordingly, we believe that it is vital to place the debt crisis on the public agenda. Policy makers must acknowledge the problem and define a clear vision for resolving it.

We at the Association for Civil Rights in Israel (ACRI) have chosen as our first area of focus the debt collection system in Israel – a system that is diffuse, inconsistent, and can potentially cause serious damage to the human rights of debtors. However, it is important to note that an overall solution of the debt crisis must also address the stages that precede the creation of debt and collection, and the various responses required in these stages. Actions required in this context will include cutting the cost of vital services (municipal tax, water, and electricity); reinforcing the welfare services; increasing baseline benefits; strengthening the Employment Service; providing supervision and education on proper economic behavior; tightening regulation of the credit market; encouraging creditors – particularly from the public sector – to reach fair installment arrangements before initiating collection proceedings, and so forth.

**The collection system in a democratic society must be based on human rights principles**

We believe that any debt collection system must be based on a number of key principles in order to ensure the protection of debtors’ human rights. The collection system should maintain **human dignity**; the debt should be collected while **preserving debtors’ capacity**

**to support themselves;** the collection system should be a system for **enforcing charges and not for penalization;** and collection proceedings must be **proportionate**. We examined the debt collection system in Israel on the basis of these principles.

## **Key Problems in the Debt Collection System in Israel**

**The debt collection system in Israel is diffuse, inconsistent, and can potentially cause serious damage to the human rights of debtors.** Different bodies, including public bodies, are subject to different acts of legislation concerning the debt collection proceedings they are permitted to initiate. Debtors' rights vary in each specific proceeding. In order to simplify this complex reality, we have divided the field of collection into two main tracks. We will detail the main problems encountered in each track and propose appropriate solutions.

### **Administrative Collection Proceeding under the Tax Ordinance (Collection)**

An administrative collection proceeding is a key collection track used by many public bodies in Israel, such as local authorities, Magen David Adom, the National Insurance Institute, and others. The source of authority is found in the Tax Ordinance (Collection), an ordinance enacted in 1929 under the British Mandate. In an administrative collection proceeding, the authority determines the presence and level of the debt, and it is empowered to use a wide range of coercive means for the purpose of collection. Among others, these include entering debtors' homes and confiscating belongings; the use of force in order to enter homes; confiscating and selling real estate; confiscating a vehicle; confiscating bank or provident fund accounts; confiscating assets held by a third party, and so forth – all this without the need to prove the debt in court; without any appeals mechanism or effective supervision; and with the potential to cause grave damage to basic rights. Moreover, this mechanism does not include any judicial proceeding determining the means of repayment of the debt with reference to the debtor's personal circumstances. There is no possibility to unify separate cases (as is possible at the Executor's Office), a situation that is liable to lead to the collapse of debtors without means. The arrears interest and collection expenses imposed on debtors are particularly high. As if all this were not enough, most of the authorities have privatized their collection systems, which are now outsourced private companies with a financial interest in collection.

### **Collection Proceedings at the Executor's Office**

**Enormous gulfs in power and knowledge favor creditors and disfavor debtors:** 93 percent of debtors in cases at the Executor's Office are not represented by attorneys, whereas 95 percent of creditors are represented; 91 percent of all debtors are private

individuals, as compared to just 22 percent of winning parties; 78 percent of winning parties are professional creditors such as banks, authorities, etc. that are in possession of extensive knowledge about the creditor; in most cases, the creditors are repeat players in the system, whereas most debtors are encountering the system for the first time in their life; 84 percent of cases are opened directly at the Executor's Office, without any preliminary legal proceeding and without the debt being proved before a judicial body.

**Violation of the right to a dignified existence:** There are no standard guidelines assisting registrars in calculating the payment order in accordance with any index for a dignified existence, in order to ensure that debtors retain a sum sufficient to provide a decent standard of living for themselves and their families. The payment order is currently determined in an arbitrary manner.

**Privatization of executive powers:** The law allows the contractors of the Executor's Office to receive assistance from additional persons without any legal obligation of supervision.

**Ineffective means of collection that serve only to punish debtors and inflate the debts:** In many cases confiscation is imposed on belongings that have little value or demand, and accordingly the items cannot always be sold. Even when items are sold, the remuneration does not always cover the cost of confiscation. The concern is that in such cases, confiscation effectively serves as a tool for punishment or for coercing impoverished debtors into obtaining sums beyond their capacity.

**Many decisions are made in the presence of only one party:** These decisions have fateful ramifications for debtors, such as stay of exit from Israel, imposition of confiscation, etc. Due to the discrepancy in power between the sides and the high costs, debtors do not always appeal even when an appeal would be justified.

**Inflation of the debt by means of arrears interest:** The purpose of arrears interest is to incentivize prompt payment by debtors and to punish late repayment. In the case of debtors who are unable to pay the debt, rather than those evading repayment, the purpose of incentivizing payment does not apply. In this situation, interest effectively constitutes punishment imposed due to the debtor's inability to repay the debt.

## **Key Solutions**

The unification of the collection systems in Israel into a single system, or at least the unification of administrative collection proceedings under a single enforcement and collection authority, would create a uniform, orderly, and supervised system.

**Regarding the Administrative Collection Proceeding, ACRI proposes:**

1. Nullification of the Tax Ordinance (Collection).
2. At the very least, the reduction of the application of the Ordinance to a minimum and its abolition with regard to local authorities, the National Insurance Institute, Magen David Adom, and the water corporations.
3. Alternatively – the transfer of the authority to collect debts by administrative proceedings to the Center for the Collection of Fines in the Enforcement and Collection Authority with regards to local authorities, the National Insurance Institute, Magen David Adom, and the water corporations.
4. Pending the nullification of the Ordinance, modern legislation for administrative collection should be advanced that strikes a proportionate balance between the need for effective administrative collection and protection of the dignity and rights of debtors. This process should include the nullification of the privatization of collection to private companies, or the restriction of their powers; the formalization of the sequence of actions and deadlines for the execution of collection actions (proportionality); the formation of a professional committee within the collecting bodies to examine the personal circumstances of vulnerable debtors and propose a fair course for repayment consistent with the right to a dignified existence; the formulation of standard procedures and criteria for granting relaxations, payment in installments, the freezing of arrears interest, and debt cancellation; enhancing the accessibility of the proceeding and providing information ensuring the exhaustion of rights; the establishment of a neutral appeals mechanism against the debt or its level within each collecting body; enhancing the uniformity and coordination between the different collection systems to prevent a situation where multiple debts crush the debtor and prevent repayment; and so forth.

#### **Regulation of the Executor's Office System**

1. **Creating a category of vulnerable debtors and enhancing the accessibility of the system to these debtors:** It is proposed that the assumption that a debtor is able to repay the debt until proven otherwise be revoked in the case of debtors from vulnerable populations, when the system has indications regarding their vulnerable socioeconomic condition.
2. Formalizing in law the registrar's duty **to notify the debtor of the possibility of receiving legal aid** from the state.
3. Formulating **criteria for dignified existence** to be applied in determining the payment order.

4. **Reducing the power gaps between professional creditors and private debtors:** For example, a professional creditor would only be able to use direct collection means intended to seize the debtor's money and belongings in order to repay the debt. The creditor would not be able, without reasonable grounds, to use collection means intended to coerce debtors into paying sums beyond their capacity, such as restrictions on freedom of movement, revocation of driver's licenses, etc.
5. **Reducing the phenomenon of decisions granted in the presence of one party only:** For example – by requiring the registrar to acquiesce to a decision on special grounds; imposing expenses on creditors if the application was unjustified; providing legal aid without unduly harsh criteria.
6. **Establishing a professional forum** to examine the reasons for the low proportion of debtors who have legal representation and to propose means for increasing the number of those receiving aid. The committee will be established by the Legal Aid Division in the Ministry of Justice, together with the Enforcement and Collection Authority and relevant civil society organizations.
7. **Enhancing linguistic and informational accessibility** promoting the exhaustion of rights at the Executor's Office.
8. **Improving demographic research** about debtors in order to improve the system and reinforce debtors' rights. Such information can help highlight problems in the Executor's Office system, indicate their causes, and contribute to the formulation of additional solutions for these problems.
9. **Holding seminars** on debtors' rights for the professional and administrative echelons under the auspices of the Enforcement Authority.
10. **Minimizing the damage of privatization:** The powers currently granted to contractors will be exercised solely by public bodies, subject to the criminal and disciplinary law applicable to civil servants, and not by bodies motivated by financial interests. Alternatively, the mechanism for submitting complaints against the contractors should be reinforced and action taken to improve the transparency and publication of complaints and findings.
11. **Freezing arrears interest for impoverished debtors** and/or when a debt arrangement is reached, and providing **interest-free state loans** according to the debtor's socioeconomic situation.
12. **Sale of confiscated possessions in the debtor's home:** This will lead to savings in the expenses imposed on the debtor, which inflate the debt at the time of confiscation;

this proposal will also help ensure that the purpose of confiscation is to repay the debt and not to punish the debtor.

*The report "Change Needed" is dedicated to the late Moshe Silman, who set himself on fire in July 2012 during a demonstration in Tel Aviv in protest of his difficult economic situation. Silman, who died of his injuries, was distressed by his constantly growing debt. In a letter he released, a copy of which appears on the cover of the report, he complained about the authorities' inadequate response to his distress. "I will not be homeless," Silman wrote, "and so I protest at all the injustices the state has committed against me and those like me." We hope that the changes recommended in this report will be adopted so that tragedies of this kind will no longer occur in the State of Israel.*