GLOBAL WEEK OF ACTION
FOR JUSTICE AND
DEBT CANCELLATION
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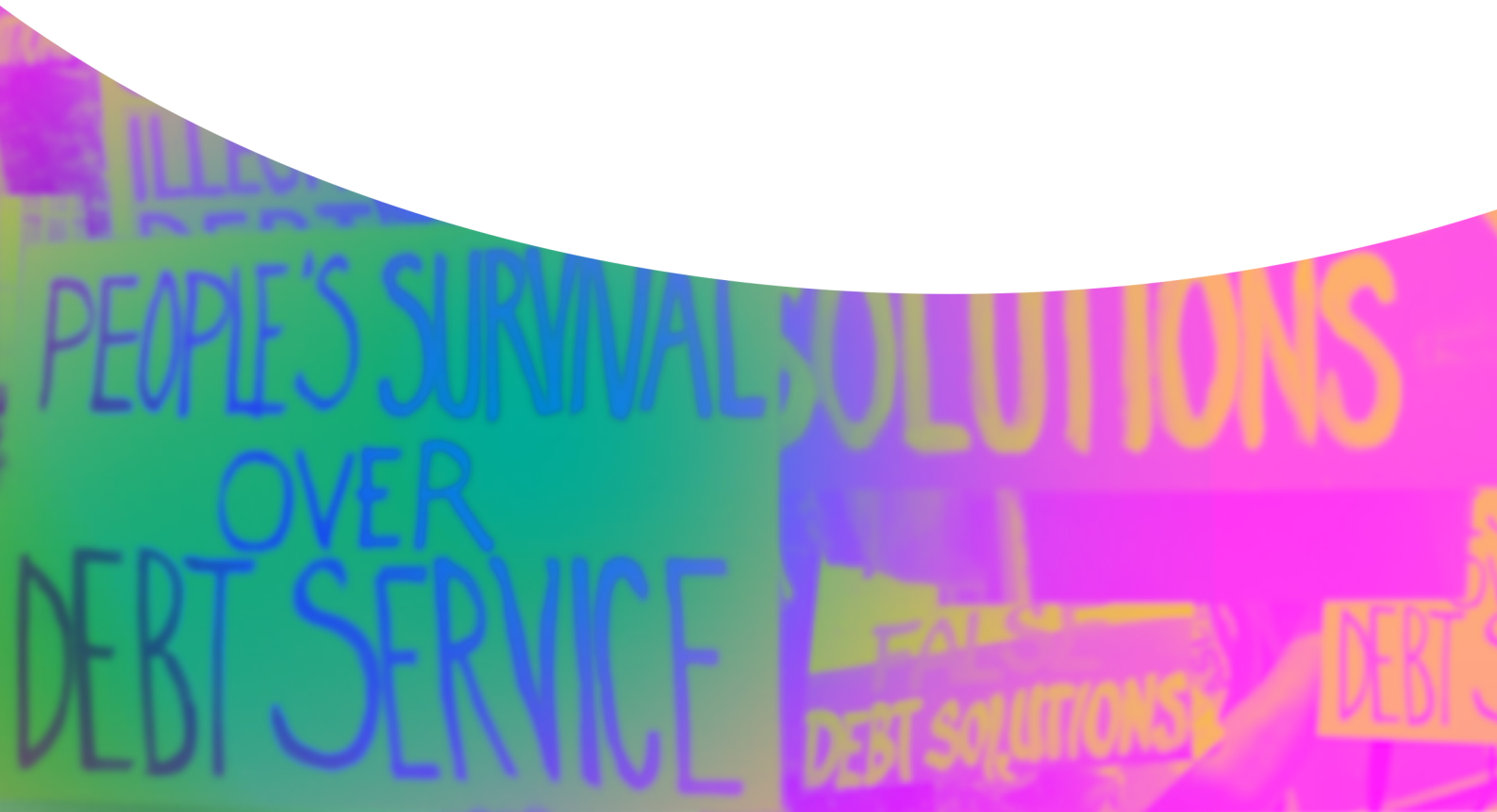
PRIVATE CREDITORS AND LEGISLATION



Private creditors and legislation

Private lenders are the largest group owed debts by countries in the global south. They are made up of a multitude of different types of company, including banks, hedge funds, asset managers and commodity traders. Of external debt payments by governments in the global south between 2022 and 2028, 65% are to private lenders, 20% to multilateral institutions and 15% to other governments.[1] This is because private companies have both lent the largest amount and charge the highest interest rates. The average interest rate on external loans to global south governments is 1.2% from multilateral lenders, 2.3% from other governments and 4.2% from private lenders.[2]

Private lenders claim they charge higher interest rates because of the risk of not being repaid. But there is a long history that when governments struggle to pay debts, private lenders get bailed out, while debtor governments are put further into debt.

A debt crisis began for many countries in the global south at the start of the 1980s. At the start of the crisis much of the debt was owed to private lenders. For example, of the 40 countries which were later made eligible for an IMF and World Bank debt relief scheme in the 2000s, at the start of the 1980s half of their external debt payments were to private lenders, 30% to multilateral institutions and 20% to other governments. But rather than debts being canceled, multilateral institutions, especially the IMF and World Bank, lent more money, enabling the debts to private lenders to keep being paid. By the year 2000, just 10% of these countries' debt payments were to private lenders, 60% to multilateral institutions.[3] When they finally got some debt canceled in the 2000s, the private lenders had largely been repaid, and it was multilateral and government lenders who wrote some debt off.

Bailing out private lenders while forcing austerity on people in debtor countries has continued to be the standard response to debt crisis, such as in Greece in 2010 and Argentina in 2018. In 2019 a report found that $93 billion of IMF loans were effectively bailing out private lenders.[4]

This has continued to be the case since the Covid pandemic began. In April 2020 the G20 group of self-appointed most powerful countries agreed a scheme to suspend debt payments during the pandemic. 73 countries were classed as eligible for the scheme. When it was first announced the G20 said debt payments to governments would be suspended, and private lenders and multilateral institutions were also asked to suspend their debt payments. But they refused, and the G20 did nothing to make them. This effectively meant that the suspension of debt payments to governments enabled private lenders to keep being paid. In total, for the 46 countries which applied for the scheme, they only had 23% of their debt payments suspended, because private and multilateral lenders were not included.[5]

The debt crisis in the global south is now intensifying as interest rates increase and the dollar rises in value, making the relative size of debts owed in dollars higher. With the IMF increasing its lending, private lenders may once again be bailed out, rather than made to cancel debts.

Private lenders' primary motivation is to make money. Therefore, the main way debtor governments can get them to agree to cancel debts is to default or threaten to default. The international community could give debtors greater power in these negotiations by politically and financially supporting debtors to default. For example, The G20 has agreed a new Common Framework for Debt Treatments, for which 73

[1] Calculated from World Bank International Debt Statistics database.

[2] Calculated from World Bank International Debt Statistics database.

[3] https://committees.parliament.uk/writtenevidence/108922/default/

[4] https://www.theguardian.com/business/2019/oct/07/imf-accused-of-reckless-lending-to-debt-troubled-states

[5] https://www.ft.com/content/00b21f50-b8e2-4460-835d-98e26354f404

countries are eligible. Under the scheme, G20 governments say they will cancel enough debt to make it sustainable, so long as private lenders do the same. But they have given debtors no new tools with which to negotiate debt reductions with private lenders. Instead, they could say that debtors should default on any creditor who refuses to accept the debt reduction, and that G20 governments will politically and financially support the debtor to do so. Even saying this would increase the pressure on private lenders to accept the debt reduction.

A further step G20 governments could take is to change the law, particularly in England and New York. Of international government debts, 99% are governed by English or New York law.[6] This means that if there are any disputes over the debt, such as a lender suing a debtor for non-payment, the case is heard using English or New York law. These jurisdictions could change the law to make lenders take part in debt cancellation.

For example, in 2010 the UK passed a law which prevented private creditors suing for more than they would have got if they'd taken part in the debt relief scheme of the 2000s.[7] This effectively enforced that debt relief on any private creditor with debt governed by English law. France and Belgium have also passed laws to reduce the ability of private lenders to use their courts to enforce payment of debts.[8]

The UK and New York could do the same again but widen the scope of legislation to enforce any international agreed debt relief scheme on private lenders. The insistence of private lenders that loans should be governed by English or New York law is problematic for debtors, but it does give rich country governments power over private lenders, if they can be made to use it. ■

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[6] https://www.imf.org/~/media/Files/Publications/PP/2017/pp113017third-progress-report-on-cacs.ashx

[7] https://www.legislation.gov.uk/ukpga/2010/22/contents

[8] https://debtjustice.org.uk/blog/france-passes-law-clip-vulture-funds-wings