

Justice

Legal Analysis Briefs

Debt and Imprisonment in Jordan

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1. Background

Unpaid debt in Jordan is widespread, affecting almost 2% of its population. Most recent estimates regarding people with unpaid debt in Jordan include 157,367 individuals who are wanted in civil debt cases and 30,669 individuals who have issued checks bounced due to insufficient funds.¹ Among those facing civil debt cases, 8,7% possess a debt of over JOD 20,000, while the percentage reaches 42% among people who have issued bounced checks.

According to Jordanian legislation, failing to repay debt is a reason for imprisonment. Although the criminalization of debt is a growing phenomenon around the world,² Jordanian legislation takes it further: the law considers unpaid checks a criminal matter and provides for prison penalties. As per the Jordanian Execution Law no. 25 of 2007 (amended in 2019), individuals who fail to repay their debts for whatever reason, including lack of income, can be sentenced to up to 90 days in prison per debt per year if a formal or informal creditor provides proof of a loan contract and a notice to the debtor in question.

Debt in Jordan is a multidimensional phenomenon that must be understood in all its complexity to formulate adequate solutions. Among policy circles in Jordan and elsewhere, there is a widespread view of simplifying debt due to 'unhealthy consumption patterns' by individuals. This approach emphasizes the role of individual responsibility vis-a-vis his/her financial obligations, which translates into the promotion of awareness-raising interventions on 'financial culture and basics'.³ Instead, as analyzed by ARDD and others, factors such as chronic unemployment, low salaries, rising inflation, insufficient and inadequate financial instruments, along with the absence of stable and predictable inclusive social protection mechanisms and social safety nets that can help families cope with life shocks, help explain why many individuals resort to borrowing money to pay for food, shelter, health treatments, and other basic needs or articles. By the end of 2019, it was estimated that "the average debt ratio for each household amounted to 43% of the household's income".⁴

1 Ammon News, 100 ألفا بدلا من 20 ألفا بدلا من نيسان .. تعديل أمر الدفاع المتعلق بعدم حبس المدين وتمديدته لنهاية نيسان . January 31, 2023. <https://www.ammonnews.net/article/742549> .

2 Finance Watch, January 2022. From Debtor Prisons to Being Prisoners of Debt. Available at: <https://www.finance-watch.org/wp-content/uploads/2022/01/Personal-insolvency-paper-january-2022.pdf>; ACLU, 2018. A Pound of Flesh: The Criminalization of Private Debt. Available at: <https://www.aclu.org/report/pound-flesh-criminalization-private-debt>

3 Jordan Strategy Forum, 2023. Position Statement. Available at <https://jsf.org/sites/default/files/%D8%A7%D9%84%D8%B9%D9%85%D9%84%20%D8%A8%D8%A3%D9%85%D8%B1%20%D8%A7%D9%84%D8%AF%D9%81%D8%A7%D8%B9%20%D8%A7%D9%84%D9%85%D8%AA%D8%B9%D9%84%D9%82%20%D8%A8%D8%AD%D8%A8%D8%B3%20%D8%A7%D9%84%D9%85%D8%AF%D9%8A%D9%86.pdf>

4 Human Rights Watch, 2021. "We Lost Everything": Debt Imprisonment in Jordan. Available at <https://www.hrw.org/report/2021/03/16/we-lost-everything/debt-imprisonment-jordan>

The nature of debt is also a matter of concern, as, according to estimates by the Central Bank of Jordan, the number of informal lenders has more than doubled since 2017 (from 13.3% in 2017 to up to 39.3% in 2022), while sources for formal borrowing have only increased 4.5% (from 9.9% in 2017 to 14.4% in 2022). As ARDD has documented through its research on the economic impact on families and women,⁵ informal borrowing thrives among those vulnerable, enhancing the possibility of abuse. In addition to the need for adequate and reliable social safety nets, the inadequacy of financial instruments in Jordan is likely at the core of this problem. While in 2022, the financial strength of banks in Jordan increased,⁶ borrowers were faced overnight with interest rate hikes from 5% to 10%. This rate hike puts high pressure on average families and business owners in Jordan, who may risk defaulting on their monthly payments.⁷ This increase is compounded by a generalized need for more awareness by borrowers regarding the contractual terms of their loans.

2. Legal Analysis

The Jordanian Civil Code (Article 626) defines a loan as the ownership of money or something similar, stipulating that the same amount and/or quantity is returned to the lender at the end of the loan's term. A loan requires an agreement delineating the relationship and repayment mechanisms between the two contracting parties.⁸

The Jordan Execution Law (JEL) was adopted as a temporary law no. 36 in 2002, then enacted as the JEL no. 25 of 2007, amended in 2019, with its most recent iteration as JEL no. (9) of 2022. Prior to 2002, the Procedure Act of 1952 regulated repayments of debt. The 1952 Procedure Act prevented the imprisonment of a debtor who is unable to pay his/her debt by offering him/her a settlement commensurate with his financial situation (Omar Al Atout, 2021).

The JEL no. 25 of 2007 and its 2019 amendments outline the procedures and precedents under which the Execution Department prosecutes and imprisons people who fail to repay their debts. Ninety days of imprisonment does not preclude the request to renew imprisonment (JEL Article 22C, 2007). If the debt is not paid off after ninety days, the creditor can request second imprisonment of the same unpaid debt after a year has passed.

The Jordanian Penal Code is invoked if an individual issues a check with insufficient funds. Under Article 421 of the Penal Code, any person who issues a check without having sufficient funds to cover this check is subject to imprisonment for one year and an additional fine of JOD 100-200 (Jordanian Penal Code Article 421, 1960). The outstanding balance is treated as a debt, and the individual who wrote the bad check is considered a debtor under the jurisdiction of the JEL and can face an additional 90 days in imprisonment as per the JEL.⁹

These laws have applied to all people residing in Jordan, regardless of nationality and legal status. However, under Defense Order No. (28) 2021 (March 28, 2021), imprisonment was postponed for debtors whose debts do not exceed JD 100,000 and people who have written checks without sufficient funds whose values do not exceed JD 100,000. These debtors were still prevented from leaving the country.

5 ARDD, 2021. Through Women's Eyes: The Socioeconomic Impact of COVID-19 on Women in Jordan One Year into the Crisis. Available at <https://www.ardd-jo.org/Publications/through-womens-eyes-the-socioeconomic-impact-of-covid-19-on>

6 Al Ghad, 26/06/22 As for the indicators of the financial strength of banks, they maintained high levels of capital adequacy, reaching 18% at the end of June, 18%, and the percentage of non-performing debts decreased significantly from about 7.7% in 2012 to 5.5% in the current June. While banks maintained a high coverage ratio for non-performing debts, which improved from 69.4% in 2012 to 80% in June. Available at <https://alghad.com/%D8%A7%D9%84%D8%AC%D9%87%D8%A7%D8%B2-%D8%A7%D9%84%D9%85%D8%B5%D8%B1%D9%81%D9%8A-%D8%A7%D9%84%D8%A3%D8%B1%D8%AF%D9%86%D9%8A-%D8%AA%D9%88%D8%B3%D8%B9-%D8%B9%D8%B1%D8%A8%D9%8A-%D9%88%D8%A7%D8%B3%D8%AA/>

7 Al Jazeera-Net, May 28, 2022. Available at <https://www.aljazeera.net/ebusiness/2022/5/28/%D8%B2%D8%A7%D8%AF%D8%AA-%D8%A3%D8%B9%D8%A8%D8%A7%D8%A1-%D8%A7%D9%84%D9%85%D9%82%D8%AA%D8%B1%D8%B6%D9%8A%D9%86-%D8%A7%D9%84%D9%85%D8%A7%D9%84%D9%8A%D8%A9-%D8%A8%D9%86%D9%88%D9%83>

8 ARDD, 2019. Debt and Imprisonment in Jordan. Available at <https://www.ardd-jo.org/Publications/debt-and-imprisonment-in-jordan-legal-analysis-briefs-series-volume>

9 Human Rights Watch, 2021. op.cit.

The Defense Order's decisions were enacted on March 29 and have remained effective through periodic extensions until January 31, 2023. On January 31, 2023, Prime Minister Dr. Bishr Al-Khasawneh issued an official communication regarding the amendment of Defense Order No. (28) of 2021 and a further extension until April 30, 2023.

According to the amended Defense order, the value of debt that allows for postponing the implementation of the debtor's imprisonment decisions issued under JEL and the penal code, has been reduced from JD 100,000 to JD 20,000. This means that just over 50 percent of current debtors can now face prison.

The extension of Defense Order No. (28) of 2021 has faced many critiques from the legal field. The Bar Association has argued that its extension disrupts court decisions and the implementation of the new amendments to JEL and the Penal Code, aimed at providing more excellent protection and care to debtors.¹⁰ According to these amendments, the cases of non-imprisonment have been expanded, especially for debts that are less than JD 5,000, provided they are not related to rent allowance or labor rights, along with a revised minimum settlement that prevents the debtor from being imprisoned to be the ratio of 15% of the value of the claimed debt, instead of 25%. Moreover, the amendments stipulate that the debtor's imprisonment period is reduced to 60 days instead of 90 days in one year for one debt, and it cannot exceed 120 days in case of multiple debts.

3. Way Forward

Addressing the complex phenomenon of unpaid debt in Jordan requires a combination of approaches to address the current problem's size and nature. On the one hand, and as explained in ARDD's May 2021 legal analysis,¹¹ the Jordanian government should focus on finding solutions that guarantee the protection of debtors and creditors, strengthening the rule of law, the right to litigation, and ensuring the implementation of legal provisions while avoiding harm to the debtor or creditor.

This balance can be achieved through the following actions:

- Amending the Penal Code and JEL to replace prison sentences with alternative penalties consistent with Human Rights approaches. A recent Jordan Strategic Forum policy brief suggests alternative measures such as “stopping the granting of licenses, or some civil transaction” as first thoughts.¹²
- Review of legislation and policies related to lending and financing, both at the personal level and the level of licensed lending institutions. The review would include the following:
 - Central Bank Law no. 202 of 2002 regarding the value of interest to limiting interest rate hikes, or at least encourage banks to help customers meet their financial obligations through personalized and feasible refinancing tools.
 - Credit Information Law no. 15 of 2010 should be expanded and utilized more. Debt is traditionally financed by banks based on real estate as collateral in Jordan; lenders must move toward giving credit by considering a customer's creditworthiness, guarantees, feasibility study, ability to pay off the loan, and the project's competitiveness.
 - Jordanian Insolvency Law no. 21 of 2018, in a way that it would enable borrowers to reorganize, preserve the rights of lenders, and encourage the continuity of projects and enterprises and movement of capital into other ventures, instead of waiting for several years to close a business. Such tardiness in the movement of capital stagnates the circulation of financial resources.

10 Al Duster, September 27, 2022. Article by Laith Al Assaf. Available at https://www-addustour-com.translate.google.com/articles/1304651-%D8%A7%D9%84%D8%AD%D9%83%D9%88%D9%85%D8%A9-%D8%AA%D8%AD%D8%B3%D9%85-%D8%A7%D9%84%D8%AC%D8%AF%D9%84-%D9%88%D8%AA%D9%85%D8%AF%D8%AF-%D8%A3%D9%85%D8%B1-%D8%A7%D9%84%D8%AF%D9%81%D8%A7%D8%B9-28?_x_tr_sl=auto&_x_tr_tl=en&_x_tr_hl=en

11 ARDD, 2021. Debt and Imprisonment in Jordan.

12 JSF. 2023. Position Statement.

- Amending JEL as follows:
 - Return the authority to the Execution Department to consider cases of financially distressed debtors. The JEL must explicitly stipulate the role of the judiciary and its authority to consider the debtor's financial abilities. If the debtor is unable to pay back debts, judges should rethink imprisonment.
 - Expand Article 23 of the Execution Law, which stipulates the exceptions to imprisonment, to cover more factors that would preclude imprisonment. Such factors include the amount
 - Of money the debtor owes, the debtor's age, the number of family members, whether the debtor's household has a breadwinner, and if there are no sources of income. It is possible to verify the sources of income of the debtor's family members to ensure that the debtor is not deceiving the creditor by moving money around
 - If imprisonment is maintained, its period should at least be reduced
 - The percentage of payment that the debtor must pay to avoid imprisonment should be reduced
 - From 25% to 15%, as it was first introduced by Temporary Law no. 36 of 2002.
- Enhance mechanisms and tools for arrangements in debt repayment that ensure a balance between the rights and duties of these two parties should be established. These mechanisms should be able to distinguish between a borrower who is defrauding a creditor and a borrower who is incapable of paying their debts. There should be specific definitions, so a clear text defines these types of debtors.
- Creation of a stable fund to pay off the defaulting debtor's debts managed by the Ministry of Justice or the Ministry of Social Development. To ensure that the fund works properly, the controlling parties should be stipulated insofar that a judicial decision determines which debt and how much of any debt is disbursed to the relevant creditor
- Creditors should be encouraged to accept judicial settlements on the total or partial amount of the debt by granting them tax exemptions on the amount of money owed. A legal text should clarify the rates of tax exemptions according to these judicial decisions.
- The proposal of his excellency Senator Ahmed Tabishat should be adopted. The proposal includes the prevention of the imprisonment of a debtor working in the private sector if the debtor is enrolled in social security. This is similar to what is currently applied regarding the imprisonment of debtors who are public employees, which is not allowed because their dues to social security guarantee the payment of debts.

On the other hand, preventive measures should also be considered in addition to those aiming to promote the fulfillment of contractual obligations. Among some of them are:

- Establish predictable life-cycle social protection mechanisms to support individuals and their families to avoid falling into debt due to risks and vulnerabilities associated with different stages in life.
- Collection of information (qualitative) and statistics (quantitative) on debt that help understand the situation and reasons leading up to indebtedness among individuals and families
- Provide awareness-raising programs regarding financial literacy and available options for repayment of debt.
- Access to financial and legal advice and counseling before and during contracting financial obligations.

