





ARDD

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## Acknowledgement

The Arab Renaissance for Democracy Development (ARDD) is producing a series of briefs that provide timely legal analysis of complex issues as they are discussed by Jordanian legislative bodies and civil society. The legal analysis series aims to render more accessible complex legal issues for non-specialized audiences to encourage social dialogue and empower individuals to understand relevant legal procedures and rights. This brief on debt and imprisonment in Jordan is the first of ARDD's legal analysis series. ARDD acknowledges and thanks members of The Forum for Supporting the Development of Justice Sector in Jordan for their insights on Defense Order no. 28 in particular.

## The Legal Framework of Debt in Jordan

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 that delineates the relationship and repayment mechanisms between the two contracting parties (ARDD, 2019, p. 12).

Jordan is today among the few countries in the world that prosecutes and imprisons people who fail to repay their debts.<sup>1</sup> 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 for 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. Frequently, arrests of debtors are carried out without a court hearing (Human Rights Watch, 2021, p. 1).

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

## Repayment of Debt According to The Jordan Execution Law and Penal Code

The JEL no. 25 of 2007 and its 2019 amendments outlines the procedures and precedents under which the Execution Department prosecutes and imprisons people who fail to repay their debts. First, the creditor must present evidence of an existing debt to the Execution Department, which is housed in the Court of First Instance in the district of the parties involved. If the creditor possesses a contract that does not clarify the amount owed, the creditor must bring the case before a court (a magistrate's court or courts of

<sup>1</sup> According to an interview conducted by Human Rights Watch (2021), debt imprisonment is only a practice in the Arab world and India. Most countries have either abolished it or have a moratorium on it in practice.

first instance<sup>2</sup>). The court will determine the amount that is owed, and the court decision will effectively constitute proof of debt for the Execution Department (Human Rights Watch, 2021, p. 22). Promissory notes (kimbialet), which are commercial papers easily found in stationary stores that detail a transaction or a bill, also constitute direct evidence of debt.<sup>3</sup>

The Execution Department (ED) requires the provision of either a financial bond with clear amount of payment due or a court verdict (JEL Article 6). Then the ED will issue a notice to the borrower to pay or settle the debt within 15 days of notice. The borrower also has the right to reply during the notice period and object or deny the debt for any reason; for instance, if the debtor claims that his signature has been falsified, or the promissory note has been forged, then both parties will have to go to court to prove the debt. However, this is not an option if a court verdict was initially presented to the ED (JEL Article 7A, 2007). If the department regards the case as legitimate, the debtor can be sentenced to up to 90 days per debt if the debt or at least 25% of the total amount is not paid 15 days after the payment notice and the agreed settlement as approved by the creditor or if the debtor does not show up at court (JEL Article 22A, 2007). Debtors may evade imprisonment if they have paid all or part of the debt in agreement with the creditor prior to the appeal, or they have a health condition that precludes imprisonment (JEL Article 22, 2007).

Ninety days of imprisonment does not preclude the request for a renewal of imprisonment (JEL Article 22C, 2007). If the debt is not paid off after the ninety days, the creditor can request a 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 deposited funds to cover this check is subject to imprisonment between one to two years and an additional fine JD 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 (Human Rights Watch, 2021, p. 23).

These laws apply to all people residing in Jordan, regardless of their nationality and legal status.

## Debt and COVID-19

Due to unemployment, a deteriorating economic situation, and the absence of inclusive social protection mechanisms, many Jordanians need to borrow money to pay for food, shelter, and other basic needs. While some turn to formal credit institutions such as banks or microfinance organizations to take out loans, most rely on informal lenders whose loans are unregulated and as such can charge interest rates at as much as 50 percent (Ibid., p. 2). By the end of 2019, “the average ratio of debt for each household amounted to 43 percent of the household’s income” (Ibid.). According to a 2020 study by Konrad Adenauer Stiftung, over 250,000 Jordanians inside the country and abroad are wanted for unpaid debts and/or bounced checks (p. 2). The United Nations Office on Drugs and Crime in a 2019 report stated that nearly 12% of the total convict population in Jordan is imprisoned for the failure to repay debts (Ibid.).

<sup>2</sup> Magistrate’s Courts have jurisdiction in cases related to debt and immovable property in which the amount involved is JD10000 or less. Magistrate’s Courts also have jurisdiction over criminal cases of violations and misdemeanors, for which the law has not designated other courts jurisdiction. Courts of First Instance have jurisdiction in criminal cases that are outside the jurisdiction of the Magistrate’s Courts, and civil cases in which the amount involved exceeds JD 10000.

<sup>3</sup> See Art. 4 from Execution Law and Article 123 of Jordanian Commercial Law

Women in Jordan disproportionately take on the burden of debt. This relates to both the increasing opportunities for women to formally take out loans from microfinance organizations targeted to women and the fear that men have that their reputation will be tarnished if they took on a loan (ARDD, 2019, p. 5). In many cases, women are pushed by their male relatives to borrow money. Women in debt are referred to as *gharimat* in Jordan, meaning “indebted women.” In 2019, the Minister of Social Development Basma Ishawat shared that around 9,000 *gharimat* are wanted for loans, each under JD 1,000 (The Jordan Times, 2019a).

Since 2017, the Zakat Fund reactivated the *Sahm Al Gharimat*, a program that allocates funds for indebted women. In 2019, King Abdullah announced a specific campaign to repay the debts of 5,672 imprisoned *gharimat* whose individual debts did not exceed JD 1,000 (The Jordan Times, 2019b). He personally covered the debts of 1,500 women, and the appeal itself raised nearly JD 6.3 million and covered 6,481 *gharimat* (The Jordan Times, 2019c).

Due to the loss of income from the COVID-19 pandemic restrictions and the additional costs of hygiene items and higher costs for online education, more individuals took out loans during 2020 and many had difficulty paying back these loans. While no figures on the number of defaulters have been published at the time of this report, official statistics issued by the Central Bank of Jordan show that as of March 2021, defaulters owe about JD 1.77 billion (Al Ghad, 2021). Moreover, the ratio of the value of bounced checks to all checks increased from 3.3% in the first two months of 2020 to 4% in the first two months of 2021 (Ibid.).

A study conducted in 2020 by ARDD found that during the COVID-19 pandemic, the pressure on indebted women has increased. Of the women surveyed who owe debt, 40% said that their creditors had asked for debt payments during the crisis. Some representatives from the Jordan National NGO Forum (JONAF) reported that they heard of the “existence of ‘dangerous persons who deceive women and trap them in illegal situations by lending them loans and committing them to conditions of which women are not fully aware.’” Other organizations mentioned that some women have received threats from their creditors, with some suggesting that women should sell their furniture and other belongings to pay their debts. Data shows that one illiterate woman with debt reported that her creditor had threatened her with jail” (ARDD, 2021 forthcoming).

## Debt and its Impact on Refugees in the Context of COVID 19

Refugees in Jordan, particularly Syrian and Iraqi refugees, are especially vulnerable to abuse from formal and informal creditors. A 2018 study by CARE International reported that nine in ten Syrian refugees had debt, due to a decrease in humanitarian aid, the lack of work opportunities and low income, and the high cost of living in Jordan (CARE, 2018). While there are no official statistics on the debt of refugees during the COVID-19 pandemic, civil society organizations that work directly with beneficiaries have reported that many refugees have struggled to pay their debts due to movement restrictions and the loss of work opportunities (ARDD, 2021).

An ARDD 2020 survey conducted during the COVID-19 pandemic in 2020 that included 349 refugee participants (53% men, 47% women) found that 71% of refugees had debts from non-institutional informal creditors and 7% had loans from institutional creditors, such as microfinance institutions. Contrastingly, 16% of the Jordanian sample of 663 participants reported having informal debts and 29% had

formal loans from institutional creditors. In terms of gender, 77% of refugee men reported having debts and 65% of refugee women reported having debts.

During COVID, many Jordanians who have loans benefitted from reducing installment amounts, reducing interest rates, and rescheduling loans; however, no refugee participants reported that they had benefited from the reduction of installment amounts or reduced interest rates. Only three refugee participants (less than 1% of refugees with debts) reported that they benefited from rescheduling loans. This lack of adjustments from COVID is likely due to the fact that most debts of refugees are informal and such mechanisms do not exist.

When asked about lawsuits due to debt, ten refugee men and two refugee women reported that they had received lawsuits, whereas five Jordanian men and seven Jordanian women reported the same.

Refugees were more likely to report new expenses than Jordanians, with 42% of the refugee sample versus 10% of the Jordanian sample expressing that they had new expenses. Refugees also faced further risk of being imprisoned due to the likely possibility that they will default on their debts. The same ARDD survey revealed that 40% of men who had asked for loans registered a “self-warranty” as a guarantee for repaying their loans, while 28% of them registered a family member for the same purpose. On the other hand, 41% of women chose a guarantor from the family, compared to 26% of women who chose “self-warranty.”

Six out of eleven Syrian refugee men (55%) who borrowed money from a formal institution assigned themselves or a family member as a guarantor, compared to eight out of thirteen Syrian refugee women (62%). No other guarantees were mentioned, such as promissory notes (kombialat) checks, and. These “self-warranties” might increase the risk of being imprisoned.

### Defense Order No. 28 of 2021

On March 28, 2021, the Prime Minister issued Defense Order No. 28 of 2021, aimed at addressing the imprisonment of individuals who fail to pay their debts. The Defense Order postpones the imprisonment of 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 are still prevented from leaving the country. The Defense Order’s decisions were put into effect on March 29 and are effective until December 31, 2021.

This Defense Order is a formal continuation of a judicial order that was announced in March 2020 stating that the imprisonment of all convicts in a civilian debt case that does not exceed JD 100,000 would be postponed (Ammannet, 2020). The difference in these two orders stems from its jurisdiction: while the Judicial order granted powers to the Judicial Council, the current order grants powers to the Prime Minister under the Defense Act.

### Legal Analysis and Debate on Defense Order No. 28

The issuance of Defense Order no. 28 has sparked a major debate among lawyers and economists about the effect of the defense order in legal, economic, and social terms. Previously there had been controversy over the Execution Law, as Jordanians have pressured the government to end unfair imprisonment

of debtors in light of the harshness of the penalty when compared to the amount that has been owned. In 2019, 100 members of the Lower House signed a petition to amend the Penal Code and the Execution Law, and activists and families of indebted people staged a protest near the royal court demanding the abrogation of Article 22 of the Execution Law (Al Sharif, 2019). The Jordanian Committee of National Affairs also staged a sit-in in early 2020, calling for the softening of debt laws (Weldadi, 2020).

The Defense Order no. 28 has been issued at a time during which the government is reviewing the Execution Law and the articles related to the imprisonment of debtors specifically. A committee chaired by the Minister of Justice has been reviewing the legality and efficacy of debtor's imprisonment. It is important to note that the Defense Order and the committee are not related. The committee was formed with the intention to develop proposals that include the amendment of the Execution Law, especially Articles 22 and 23, whereas the Defense Order is a temporary provision that will expire on December 31, and thus the Execution Law will be reactivated.

As for the suspension of the implementation of imprisonment for crimes of issuing checks with insufficient funds, it should be noted that it is incorrect to assume that the defense order lifts the penal protection for checks. Upon analysis of the defense order, it is clear that the defense order still considers issuing bad checks a crime punishable by law. The defense order merely delays the execution of criminal judgment and punishment.

More specifically, if a complaint is made against someone who has issued a bad check or against someone who has not paid their debts and this appeal is considered valid, the court in question will adjudicate the defendant and sentence him to prison according to the Penal Code and the Execution Law. However, the execution of this judgement will be postponed until January 1, 2022, as delineated by Defense Order no. 28 of 2021.

Moreover, the continuity of judicial procedures, whether regarding financial claims or cases of bad checks from a criminal point of view, as well as obtaining judicial rulings, is a fundamental matter to be considered. While COVID-19 has had severe consequences on the operation of many sectors, it is important to maintain judicial proceedings to preserve the rights of citizens.

The defense order is practical from a health and economic standpoint, as overcrowding in prisons would facilitate the spread of COVID-19 and the Jordanian government pays around JD 750 per month to detain someone in correction and rehabilitation centers (Human Rights Watch, 2021, p. 5). The impact the defense order has on debtors is also positive, as it gives debtors opportunities to arrange their financial affairs during the period of the defense order to pay creditors back. However, there are also negative consequences to be considered, namely:

- Loss of confidence in commercial transactions based on credit that could affect the stability of such transactions, which would have negative repercussions on the economy
- Less faith in the strength of legal orders, the right to resort to litigation, and the implementation of judicial rulings
- Overall decrease in lending practices
- Creditors become debtors because of their inability to collect their rights
- Debtors evading payments with the intention of harming creditors



## Comparative Legal Analysis of Unpaid Debt in MENA

In Jordan, imprisonment due to unpaid debts often leads to a cycle of debt, as the debt remains after the sentence is carried out. Other countries have asserted that the debtor's money is the guarantor of debt repayment instead of his physical body, and borrowers who are imprisoned may work their debt off in prison. According to Human Rights Watch:

Countries that have abolished debt imprisonments, such as Bahrain, Turkey, and Germany, have replaced it with more effective debt collection mechanisms, including bankruptcy laws, mandatory credit worthiness assessments, and repayment plans designed to ensure that the money is repaid eventually. As part of these changes, governments have also created employment schemes for indigents to pay off their debts (Human Rights Watch, 2021, p. 38).

Bahraini law encourages courts to release borrowers if they can explain their financial distress, relinquish available assets to meet obligations, and prove that they have not defrauded the creditor (Ibid.). However, some laws are not allowed to be written off, including debt linked to family support, fraud, and criminal liability.

The United Arab Emirates (UAE) in article 342/2 Federal Law no. 11 of 1992 regarding civil proceedings explicitly specifies which debtors are able and permitted to be imprisoned. In November 2019, the UAE passed the first consumer insolvency law in the region, offering indebted Emiratis the opportunity to work to resolve their debts (Ibid., p. 39). However, creditors must consent to this insolvency scheme and borrowers have little leverage to negotiate.

Similar to Bahrain, Kuwait has passed laws on the exclusions of imprisonment, such as a debtor's inability to pay off debts, the age of the debtor (must not be over the age of 65), and the ability of debtor's children, if applicable, to be taken care of in the absence of the debtor. Additionally, imprisonment should not be ordered if the debtor has provided a creditor with a bank guarantee sufficient to meet the debt or provided a personal guarantor.

## Way Forward

Although Defense Order no. 28 of 2021's issuance was practical considering the repercussions of the COVID-19 pandemic, ARDD believes that the Jordanian government should focus on finding solutions that guarantees the protection of both debtors and creditors with a view to strengthening the rule of law and right to litigation and ensuring the implementation of legal provisions while avoiding harm to the debtor or creditor. This balance can be achieved through an amendment of the JEL no. 25 and its 2019 amendments.

To this end, ARDD proposes the following recommendations to create a legislative text that balances the protection of the creditor in obtaining rights and the protection of the debtor from imprisonment:

- Legislation and policies related to lending and financing must be reviewed, both at the personal level and the level of licensed lending institutions. As such, the Central Bank Law no. 202 of 2002 regarding the value of interest must be reviewed and reconsidered to prevent an increase in the amount of interest.

- The JEL must be amended so that the authority is returned to the Execution Department to consider cases of debtors who are financially distressed. 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.
- Article 23 of the Execution Law, which stipulates the exceptions to imprisonment, should be expanded to cover more factors that would preclude imprisonment. Such factors include the amount of money the debtor owes, the age of the debtor, the number of family members, whether the debtor's household has a breadwinner, if there are no sources of income, etc. It is possible to verify the sources of income of the debtor's family member 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 the Temporary Law no. 36 of 2002.
- Legislative mechanisms and tools 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 there is a clear text defining these types of debtors.
- The creation of a stable fund to pay off the debts of the defaulting debtor that is 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 amount of the debt by granting them tax exemptions on the amount of money owed. It should be noted that 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 on the grounds that their dues of social security guarantee the payment of debts.
- Awareness should be raised on the importance of the role of institutions supporting vulnerable individuals who cannot pay their debts.
- The 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 taking into consideration the creditworthiness of a customer, credit guarantees, the project's feasibility study, the ability to pay off the loan, and the project's competitiveness.
- The Jordanian Insolvency Law no. 21 of 2018 should be amended to 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.

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