

HUMAN
RIGHTS
WATCH

“We Lost Everything”

Debt Imprisonment in Jordan

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Summary

“Tamer” is a Jordanian doctor. As a doctor with his own private clinic, he made over US\$4,000 a month, well above the average income of a Jordanian. He was happily married with a daughter, had a car and a house. A typical middle-class life in Jordan. A few years ago, Tamer developed osteoporosis. The bone disease prevented him from working, and as a result, he was unable to make payments on his car loan and mortgage for his clinic. He used his savings of over two decades to try to cover some of the loan installments and left Jordan to get treated.

A year later, Tamer found out that his creditors had filed a complaint against him, and a court sentenced him to months in prison in absentia. To avoid prison, Tamer did not return to Jordan. He has not spoken to his daughter in a year and a half, and in 2018, his wife asked for a divorce, citing financial issues.

Tamer’s tale is the tale of tens of thousands of Jordanians who take out loans and then due to circumstances outside their control, fail to repay the debt. As the economy continues to deteriorate and unemployment soars, many Jordanians find themselves needing to borrow more and more money to afford food, shelter, and other basic needs. Many, for example, run up bills on bank credit cards with high-interest rates or take out loans to pay for school fees. Many people, especially those with poor credit or low incomes, also rely on unregulated informal lenders as a source of cash, or simply have piles of unpaid bills, such as utilities, or grocery store tabs, or medical bills, drowning them in debt. In the absence of an adequate social safety net, Jordanians have turned to borrowing to cover gaps. While people across the globe face such problems, Jordanians face a particularly harsh consequence: they can be imprisoned for failing to repay.

Jordan is one of the few countries in the world that still allows debt imprisonment. Failure to repay even small debts is a crime that carries a penalty of up to 90 days in prison per debt, and up to one year for a bounced check; courts routinely sentence people without even holding a hearing. The law does not make an exception for lack of income, or other factors that impede borrowers’ ability to repay, and the debt remains even after serving the sentence. Over a quarter-million Jordanians face complaints of debt delinquency and

around 2,630 people, about 16 percent of Jordan's prison population, were locked up for nonpayment of loans and bounced checks in 2019.

Recent developments have brought new urgency to reforming Jordan's draconian treatment of people unable to repay their debts. First, the country's deteriorating economic situation, coupled with its woefully inadequate social safety net, have forced thousands of families to borrow money to pay for food, rent, medical expenses, and other life necessities. By the end of 2019, the average ratio of debt for each household amounted to 43 percent of the household's income.

The economic crisis precipitated by the Coronavirus pandemic undoubtedly has made the situation even worse.

The second factor is unregulated loans that allow abuse. A simple promissory note – purchased for a few piasters (less than a US dollar) from a store or handwritten – creates a loan contract enforceable in Jordan's courts that a creditor can turn into an arrest warrant without the borrower even having a hearing before a judge. While the Central Bank of Jordan (CBJ) caps interest rates at 25 percent, informal lenders are not subject to that limit and charge as much as 50 percent.

The World Bank and other financial institutions have invested heavily in microfinance in Jordan, championing easy access to money as a tool of economic empowerment and poverty reduction. These institutions say that they are targeting women because they are an economically marginalized group. However, due to flawed design and implementation, some microcredits made women more vulnerable to debt imprisonment.

As microfinance institutions proliferated, more and more people, and women, in particular, had access to funds, but a lack of regulation and oversight capacity sometimes translated into abusive practices including at some microfinance institutions. Those who received loans often faced exorbitantly high rates leaving them in default. While some of the larger microfinance institutions have made commitments to protect beneficiaries, most do little to vet borrowers before granting loans.

Moreover, many microfinance institutions are not registered and evade regulation by the CBJ, allowing institutions to charge as much as 50 percent interest. This is double the

average rate globally, according to an analysis of nearly 2,000 microfinance institutions in 109 countries, which also found that high-interest rates are a central reason why microfinance institutions fail as poverty alleviation tools and that women are charged on average higher rates than men. And while the loans are meant to seed entrepreneurial projects, borrowers generally are personally liable, denying them the possibility of declaring bankruptcy given that Jordan does not have a personal bankruptcy law.

As a result, women are particularly vulnerable to debt imprisonment, exacerbating the gender inequalities that microfinance was meant to ameliorate. In Jordan, around 9,000 women are wanted for failure to repay debts that do not exceed \$1,400 each, according to a January 2020 study by Konrad Adenauer Foundation.

While some cases documented in this report address registered and regulated microfinance institutions, most of the cases concern transactions in the informal financial sector. This includes any financing transactions conducted by actors not licensed as financial institutions by the CBJ or any other regulatory body, and accordingly not subject to oversight, including families, friends, business associates, retailers who sell on credit, moneylenders, and loan sharks.

Given the informal nature of these transactions, the number of active loans or the total amount of debt in the informal financial sector is difficult to ascertain as is the number of individuals who have failed to repay. The Jordanian Judicial Council, the highest judicial body responsible for oversight of the judiciary, indicated that there were [143,000 court cases](#) related to financial issues in 2019 across the country. According to a 2020 study by Jordan's Economic and Social Council, the number of individuals wanted for failure to repay debt rose tenfold in only four years, from 4352 in 2015 to 43,624 in 2019. In August 2020, the official Jordanian News Agency counted more than [3,000 notices](#) for wanted borrowers who allegedly defaulted on their debts between June 30 and July 23 alone. The National Charitable Association for the Rehabilitation of Residents of Correctional Facilities (NCA), a humanitarian organization that provides financial support to enable borrowers who have defaulted to avoid imprisonment, estimates that tens of thousands of such informal loans exist, based on the number of applications they receive per year. Lawyers who provide legal aid to destitute borrowers at risk of imprisonment also estimate that the numbers are in the tens of thousands. Many of the people who defaulted on their debt whom Human Rights Watch spoke to said that dozens in their villages or communities

experienced the same problems. In several cases, multiple members of the same immediate family were indebted and at risk of being imprisoned.

Lax regulations, oversight, and enforcement around debt instruments account for the widespread nature of these loans, with the most common informal lending debt instruments – promissory notes – being the most problematic.

Under Jordanian law, any individual, licensed or unlicensed, can use a promissory note to lend money – a piece of paper that sets out the loan amount, the date of repayment and interest, and the signatures of the borrower and creditor. A template for these notes can be found at almost any stationery shop in the country. These notes are then normally assumed to be valid in courts and are difficult to challenge.

The ease of borrowing using a promissory note in Jordan is matched by the harshness with which the law treats individuals who fail to repay their debts. Under Article 22 of the Jordan Execution Law, creditors can request that a borrower be imprisoned if he or she fails to repay their debt. Promissory notes constitute an evidentiary instrument in Jordanian courts, meaning that judges can order imprisonment based on the existence of the note alone, without even seeing the borrower or providing them with an opportunity to dispute the debt or mount a defense despite the existence of such provisions in the law, undermining due process rights. In almost all cases investigated by Human Rights Watch that have led to imprisonment, at the creditors' request, judges chose to pursue imprisonment despite the availability of alternatives, such as non-essential asset freezes or wage garnishments.

Under the law, imprisonment does not resolve a debt, and a creditor can request renewed imprisonment of an individual for the same unpaid debt in the following year. If an individual has four unpaid promissory notes, he or she may be detained for a full year. If the borrower has still failed to pay back the promissory note(s), he or she can face further imprisonment for each note, resulting in a cycle of imprisonment that only ends when the debtor can prove that all debts have been paid.

Most countries in the world outside the Middle East have abolished imprisonment for debt, not only because it is extremely harsh and violates international human rights law but because it does not lead to repayment. Instead, debt imprisonment targets those

without the ability to pay and helps create cycles of endless debt. Imprisonment prevents the individual from being able to earn an income or find the means to repay the debt. All the borrowers interviewed for this report said they did not have the money to repay their debts when they were arrested or charged, and that their imprisonment only made their situations worse. Many said that to avoid imprisonment, they had to sell their household furniture or take on additional loans. Others said they asked their relatives or friends to borrow to pay their loans, entrapping them in debt as well.

Debt imprisonment or threats of imprisonment can also have a debilitating impact on a wide circle of individuals affected by them. For heads of households, imprisonment for failure to repay a loan will impact the entire household, leaving families without the means to secure basic necessities, and creating further societal strain both on them and on the state. Almost all those interviewed told Human Rights Watch that as a result of their imprisonment or being indebted, they lost their jobs and ability to provide for their families. In some cases, individuals left the country to avoid getting imprisoned, leaving their wives and families behind to make ends meet.

The International Covenant for Civil and Political Rights (ICCPR), which Jordan ratified, prohibits imprisoning an individual for failing to fulfill a contractual obligation. The practice of debt imprisonment also impinges on Jordan's obligations under international law to ensure that citizens and residents can achieve an adequate standard of living, which according to the International Covenant on Economic, Social and Cultural Rights (ICESCR), entails "adequate food, clothing and housing, and to the continuous improvement of living conditions." While debt creation and enforcement does not directly contravene this obligation, evidence shows that that debt imprisonment has detrimental consequences for the ability of many debtors to secure basic economic and social needs for themselves or their families such as food, shelter, and health care. Easy access to credit may be necessary in certain circumstances, however, loans should not act as a stand-in for the state's duties to guarantee an adequate standard of living for all, including by providing living wages, social security, basic income, and otherwise.

The abolition of debt imprisonment in Jordan is a contentious issue. Creditors and their lawyers claim that without the threat of debt imprisonment there would be no way to recoup loans. But Human Rights Watch's research in Jordan shows that debt imprisonment is one of the least effective ways to recoup debts, particularly from indigent individuals,

echoing a substantial body of global research by the World Bank and European financial institutions. It also fails to address the underlying socioeconomic issues that lead to these individuals becoming indebted in the first place. Jordan fails to guarantee its citizens and residents an adequate standard of living and does not have a functioning system of social security.

Debt imprisonment also increases the burden faced by Jordanian authorities. For every one of those detained for failure to repay debt or a bounced check, the Jordanian government pays 750 JDs (\$1057) per month, according to a 2020 study by Jordan's Economic and Social Council. In addition to the strain debt imprisonment causes for overcrowded and under-resourced prisons and courts, some families whose heads of households are imprisoned end up reliant on economic aid provided by the government, which is often insufficient and riddled with gaps.

Successive Jordanian governments' attempts to address this systematic problem have been scattershot and ineffective. Instead, members of the royal family, civil society, and individuals have undertaken numerous initiatives over the years to repay the debts of those imprisoned. In 2019, King Abdullah personally covered the debts of 1,500 women who were imprisoned and appealed to Jordanians to raise funds to cover the debts of others. The appeal raised nearly \$10 million. This was one of several different campaigns that activists and concerned relatives have coordinated on an almost yearly basis. Repaying the debts of men and women also constitutes *zakat*, a charitable tax that practicing Muslims are required to pay yearly. Despite this, a staff member at an organization that pays off the debts of indigent borrowers acknowledged that it does not solve the root of the problem: "We know this is not sustainable. We pay off the debt once, and the next day the same person has taken on another loan to pay their rent or buy something to sell."

Almost all other countries, outside the Middle East, have abolished debt imprisonment. Some have implemented individual bankruptcy procedures and debt restructuring programs that incentivize borrowers to be more productive and repay their loans, decreasing the burden on society as a whole. Such schemes are not get-out-of-jail-free cards; courts are empowered to differentiate between those unable to pay and those unwilling to pay and treat those committing fraud accordingly.

Jordan's Economic and Social Council, a government-affiliated policy center, recommended in 2020 study on debt imprisonment, the gradual ending of debt imprisonment, starting with extending the period of notice for repayment from 15 days to 3-5 years, and lowering the initial required payment to 15 percent as it was under the previous Jordanian execution law. A working group under the auspices of the Ministry of Justice is currently reviewing the recommendations and will make its own recommendations to the government and parliament.

Jordan should also repeal article 22 of the Jordanian Execution Law, which allows for the imprisonment of borrowers who default on their debt and pass legislation that allows for individuals to file a declaration of personal insolvency when they are unable to repay debts in line with international best practices. Jordan's Judicial Council should also instruct the judiciary involved in debt claims to assess the socioeconomic status of debtors and their ability to pay, and work with creditors and borrowers to set a repayment plan based on a borrower's financial capacity. While the law in theory allows for this, in practice, the judiciary does not see and often does not instruct the indebted individual with the availability of this measure or any other defenses. Donors and international financial institutions should provide technical assistance to Jordan to develop insolvency procedures that allow for effective debt relief and empower a borrower to be economically productive, including criteria that require relevant authorities to assess an individual's ability to repay. Those entities that fund microfinance institutions should ensure that such institutions will not seek imprisonment for persons who fail to meet their repayments, as well as the capacity to follow up with borrowers to ensure repayment plans that reflect an individual's ability to pay.

Methodology

The report is based on interviews with 21 Jordanians in Jordan and abroad, five of them women, who defaulted on their debts; and in addition, interviews with three Jordanian lawyers with expertise in Jordanian bankruptcy and insolvency law; three experts on indebtedness and the microfinance industry in Jordan; a member of a humanitarian organization that supports people in paying their debts; and two global financial experts in insolvency.

The report is also based on an analysis of Jordanian laws, practices, and policies. It draws on publicly available data and reporting on debt imprisonment, as well as available data on Jordan's economic outlook and grants provided by major international financial institutions, including the World Bank and the International Monetary Fund.

While statistics on indebtedness and active loans from the banking and non-banking financial sectors exist, there is a significant gap in the available information about informal lending practices and how prevalent these are. Human Rights Watch has requested updated statistics from several government agencies and has yet to receive a response with the exception of the Ministry of Justice, which told Human Rights Watch it is unable to provide these statistics due to difficulties tracking them electronically. Based on available statistics from the Judicial Council and anecdotal evidence from organizations and individuals who provide financial and legal support to indigent people unable to repay their debt, it appears that informal lending practices and subsequent indebtedness are prevalent – particularly in communities of lower socio-economic backgrounds.

All interviews were conducted in Arabic or English. Human Rights Watch explained the purpose of the interviews to interviewees and obtained their consent to use the information they provided in this report.

In some cases where interviewees asked to not be named or where we assessed that naming them would jeopardize their security or their ability to operate in Jordan, we have not named them or provided identifying information.

On February 4, Human Rights Watch wrote to the Minister of Justice at the time, Bassam al-Talhouni, with the report findings and requested information regarding the number of individuals wanted and detained for failure to repay debt; the available alternatives to debt imprisonment in law and practice; the guidance provided to judges to seek these alternatives and whether the Ministry of Justice provides legal support to those incapable of affording it in such cases. The letter and response are included in full in Appendix 1, and parts of the response are reflected in relevant sections of the report.

I. Background

Jordan is one of the few countries in the world that still allows debt imprisonment.¹ Over a quarter-million Jordanians are sought by the authorities for detention for failing to repay debts or issuing checks without credit.²

The number of people who have taken on debt that they are unable to repay is linked to Jordan's economic situation. Since its creation as an independent nation-state, Jordan has suffered from persistent socio-economic challenges. Economic growth has been slow, and the country relies on external funding to maintain its budget, with public debt currently at 96.6 percent of the GDP.³ Official estimates put unemployment at 23 percent in the first half of 2020, up from 19.1 percent in 2019, likely due to the coronavirus pandemic.⁴

The coronavirus pandemic has worsened the country's economic situation. For the first time in decades, the International Monetary Fund and the World Bank expect Jordan's economy to contract. A series of full lockdowns imposed by the government, coupled with a downturn in demand and revenue for most enterprises, has meant cutbacks and closures among businesses, and a resulting loss of employment and revenue. With more than 1 million people out of Jordan's population of 10.1 million living below the poverty line even before the pandemic, many more are now unable to secure food, shelter, education, or other rights.⁵

The Jordanian government was the recipient of around US \$3.6 billion in aid and loans from other countries and international financial institutions in 2019.⁶ On March 26, 2020,

¹ According to Jason Kilborn, an expert in natural insolvency and debt imprisonment globally, debt imprisonment is only taken seriously in the Arab world and India. Most countries have either abolished it or have a moratorium on it in practice.

² Rana Sweis, "Microloans' Failure of Jordanian Women," Konrad Adenauer Stiftung, January 2020, <https://www.kas.de/documents/279984/280033/Publication+Microloans%27+Failure+of+Jordanian+Women.pdf/61bdagd3-1a3e-52f9-13c8-f808b6b962e2?version=1.0&t=1581846668674>

³ Laith al-Ajlouni, "Could Covid-19 push Jordan to the edge?" *Middle East Institute*, March 30, 2020, <https://www.mei.edu/publications/could-covid-19-push-jordan-edge>

⁴ World Bank, "The World Bank in Jordan: Overview," October 1, 2020, <https://www.worldbank.org/en/country/jordan/overview>

⁵ As of 2019, the World Bank estimates the population in Jordan to be 10.1 million. See World Bank, "Data Portal: Jordan" <https://data.worldbank.org/indicator/SP.POP.TOTL?locations=JO>

⁶ Jordanian Ministry of Planning and International Cooperation, "Foreign Assistance Report 2019," https://mop.gov.jo/ebv4.0/root_storage/ar/eb_list_page/foreign_assistance_arabic_2019.pdf

the International Monetary Fund approved a four-year \$1.3 billion loan, to “support the country’s economic and financial reform program.”⁷ Many of the funds provided to Jordan have components that target the economic empowerment of women and youth, and to support small and medium enterprises which make up over 90 percent of Jordanian businesses,⁸ including by making it easier to access loans.

While Jordan touts a number of initiatives that aim to provide a social safety net for Jordanian citizens, such as the National Aid Fund and Day Laborers’ Program, these programs have major gaps and are beset with challenges, including the inequitable distribution of funds, difficulties among poorer families to access the assistance and the inadequacy of the existing programs in covering the deepening poverty.⁹ In response to mounting socio-economic stress, individuals have turned to borrowing money to cover major gaps.

Lending in Jordan occurs in the formal, semi-formal, and informal financial sectors. Banks are responsible for most of the lending that occurs in the formal lending sector and is closely regulated by the Central Bank of Jordan (CBJ). There are 25 licensed banks in Jordan. According to the CBJ, by the end of 2019, the total debt from regulated banking and non-banking organizations was 11,243.8 million Jordanian Dinars (JDs, approx. US\$15858.87 million).¹⁰ The semi-formal financial sector constitutes community-based organizations that provide credit and financing institutions that do not market themselves as microfinance institutions. These are not subject to CBJ supervision or licensing but are supervised by the Ministry of Industry and Trade and must declare financing as one of their business objectives.

⁷ “IMF Executive Board Approves US\$1.3 billion Extended Arrangement Under the Extended Fund Facility for Jordan,” *IMF Press release*, March 26, 2020, <https://www.imf.org/en/News/Articles/2020/03/25/pr20107-jordan-imf-executive-board-approves-us-1-3-bn-extended-arrangement-under-the-eff>

⁸ Laith al-Ajlouni, “Could Covid-19 push Jordan to the edge?” *Middle East Institute*, March 30, 2020, <https://www.mei.edu/publications/could-covid-19-push-jordan-edge>

⁹ UNICEF, “National Social Protection Strategy 2019-2025,” <https://www.unicef.org/jordan/social-protection>; Taylor Luck, “Jordan launches new financial safety net for tens of thousands of families,” *The National News*, May 29, 2019, <https://www.thenationalnews.com/world/mena/jordan-launches-new-financial-safety-net-for-tens-of-thousands-of-families-1.867843>. Human Rights Watch interviews with four individuals who said that despite applying, they received no response and further those who were able to acquire assistance found it inadequate to actually cover their needs.

¹⁰ Central Bank of Jordan, “Financial Stability Report 2019,” <https://www.cbj.gov.jo/EchoBusv3.0/SystemAssets/PDFs/2019/JFSR-A-2019%2012-10-2020%20V1.5%20final.pdf>

The informal financial sector includes any financing transactions that are conducted by institutions or actors that are not licensed as financing institutions by the CBJ or any other regulatory body, and accordingly are not subject to any pre- or post-oversight or monitoring practices by any regulatory bodies.¹¹ These include families, friends, business associates, retailers who sell on credit (with or without interest), moneylenders, and loan sharks (people who loan money at very high interest rates and use threats or violence to collect debts). Despite being unregistered and unregulated, repayment of loans by informal financing entities is enforced by courts, with potentially grave consequences for defaulting borrowers. Furthermore, given the unregulated nature of these entities, there is a lack of information regarding the scale of operations in this sector.

Until very recently, microfinance institutions were primarily part of the semi-formal and informal financial sectors. Microfinancing took off in Jordan beginning in the 1990s, but accelerated in the last decade, following a global trend that championed providing individuals who cannot access credit through banks with small loans to start their own businesses and projects as a model for “bottom-up development,” and a tool for women’s economic empowerment. More than two decades later, there are over 25 registered microfinance institutions in Jordan operating in all governorates of the country, primarily targeting women and individuals from low-socioeconomic backgrounds in rural areas who may not have access to other lending instruments. There are three types of registered microfinance institutions – not-for-profit institutions, for-profit institutions mostly founded by banks, and UN-specific microfinance institutions, such as UNRWA. There are also tens of unregistered microfinance institutions.

Until the mid-2000s, microfinance institutions were subject to a fragmented regulatory regime that provided virtually no protection to borrowers. As incorporated entities, for-profit microfinance institutions fell under the oversight of the Ministry of Trade and Industry, but there were no specific rules governing microlending practices. Microfinance institutions that were registered as subsidiaries of banks were regulated by the CBJ, and non-profit MFIs fell under the purview of the Ministry of Social Development. In 2014, the government issued Regulation No. 5 of 2015, which unified the regulatory framework by

¹¹ Tanmeyah Jo, “Informal Lending Practices and their Effect on the Microfinance Industry,” August 2019, <http://tanmeyahjo.com/Portals/0/Informal%20Lending%20Practices%20and%20their%20effect%20on%20the%20Microfinance%20Sector.pdf?ver=2019-11-24-151021-083>

giving the CBJ oversight over all registered microfinance institutions.¹² According to 7iber, an independent investigative media outlet, regulations only began to be implemented in 2018.¹³ That same year, the CBJ also issued instructions for the protection of consumers in the context of microfinance. While the instructions dictate the need for clarity, diligent credit checks, and ensuring that clients are not overburdened with debt, very little concrete guidance is provided.¹⁴

Finally, Jordan's first and only credit bureau. CRIF Jordan was established in 2015 and formally started its operations in 2016.¹⁵ While banks are obligated to join the credit bureau, non-banking lending services are not, and until early 2019 the bureau could not produce regular score reports, making it difficult to assess individuals' credit scores and to enforce a blacklist.¹⁶

¹² "Microfinance Companies Bylaw" No. 5 of 2015, promulgated pursuant to Paragraph (G) of Article (12) and Article (65) of the Central Bank of Jordan Law No. (23) of the year 1971,
<http://tanmeyahjo.com/Portals/o/Microfinance%20companies%20bylaw.PDF?ver=2019-02-05-015056-070>

¹³ Shaker Jarrar and Omar Faris, 7iber, "التمكين المتوازن: كيف أنهكت القروض الصغيرة حياة النساء وعائلاتهن," July 3, 2019,
[https://www.7iber.com/society/%D8%A7%D9%84%D8%BA%D8%A7%D8%B1%D9%85%D8%A7%D8%AA-%D8%A7%D9%84%D9%82%D8%B1%D9%88%D8%AF%D9%86/?fbclid=IwAR2X3R8hFQ196-ZKXEWyL6-vrA1C1cJTKyjlAh8RORsZzt_td-b-_l6rd70](https://www.7iber.com/society/%D8%A7%D9%84%D8%BA%D8%A7%D8%B1%D9%85%D8%A7%D8%AA-%D8%A7%D9%84%D9%82%D8%B1%D9%88%D8%B6-%D8%A7%D9%84%D8%B5%D8%BA%D9%8A%D8%B1%D8%A9-%D9%81%D9%84%D9%82%D8%B1%D9%88%D8%AF%D9%86/?fbclid=IwAR2X3R8hFQ196-ZKXEWyL6-vrA1C1cJTKyjlAh8RORsZzt_td-b-_l6rd70)

¹⁴ Microfinance Consumer Protection Instructions No. 15/2018,
<http://tanmeyahjo.com/Portals/o/Consumer%20Protection.pdf?ver=2019-02-05-014050-167>

¹⁵ CRIF: Jordan Credit Bureau, "About Us," [Arabic],
https://www.crif.jo/AR/Pages/%D9%85%D9%86_%D9%86%D8%AD%D9%86

¹⁶ "Jordan's First Credit Bureau," *The Business Year*, 2019, <https://www.thebusinessyear.com/jordan-2019/ahmad-amoudi-general-manager-crif-jordan/vip-interview>

II. Causes of Indebtedness and Default

As the economic situation in Jordan continues to deteriorate with a lack of functional social safety nets and the rising cost of living, more people have turned to loans to pay for rent, food, healthcare or even to get married.

Six interviewees told researchers that they initially took out loans to be able to pay for rent, school, healthcare, or other necessities. One man took out a loan to pay for his education.¹⁷ One woman, a 60-year-old living outside Amman, described how she got into a cycle of debt resulting in 17 pending complaints against her after her family was subjected to a *jalwa*, a tribal practice that was removed from Jordanian law in 1976 but which authorities still use to force relatives of someone accused of murder to move elsewhere to prevent revenge attacks:¹⁸

We lost everything – our house, our sheep, everything. We were desperate, and we couldn't pay rent or buy food or anything. Then one of my friends introduced me to her sister and her husband. They are lenders. The woman would lend me money, and then when the time came to pay, her husband would say, I will pay my wife back on your behalf, but sign this additional paper [a blank promissory note] for me. They did this back and forth multiple times until I was in so much debt trying to pay them back.¹⁹

A woman who has a child with a hearing disability said she took out loans to be able to pay for basic necessities after her Egyptian husband left for Egypt to get treatment for his heart attack because fees for medical care of non-Jordanians are significantly higher.²⁰ She said she applied for several national support programs, including the National Aid Fund and day laborers' support, but was rejected for everything. She also took out a loan to pay for her daughter's hearing aid, as the government did not provide assistance to do so.

¹⁷ Human Rights Watch interview with Y by phone, September 8, 2020.

¹⁸ "Jordan: Hundreds Displaced Based on Family Ties," *Human Rights Watch Press Release*, September 17, 2019, <https://www.hrw.org/news/2019/09/17/jordan-hundreds-displaced-based-family-ties>

¹⁹ Human Rights Watch interview with L by phone by phone, May 17, 2020.

²⁰ Human Rights Watch interview with N by phone, August 9, 2020.

Eleven of the 21 defaulting borrowers who Human Rights Watch interviewed became indebted after economic hardships resulted in the loss of their businesses or regular income, causing them to default on loans that they had taken out for cars or houses. In four of the 21 cases, people wrote checks to their business partners on their personal accounts as collateral for future financial obligations, even though they had insufficient funds to cover the amount of the check at the time, or took out loans to start on business projects that failed, resulting in default.²¹ Two told Human Rights Watch that they had repaid their debts although they did so out of court.²² They said they did not think to ask for a record of payment, enabling their creditor to file a claim in court as though the debt was still outstanding. According to one lawyer who specializes in debt cases, informal lenders routinely do not provide a receipt or other written evidence of repayment, and many borrowers fail to ask for a verified record of payment, making this a frequent problem.

Every borrower Human Rights Watch interviewed said that they were unable to pay off their debts due to economic hardship. One woman, who had taken out five loans from microfinance institutions that serve women, told Human Rights Watch that authorities were seeking her to detain her after she defaulted on an installment because her small bookshop had not brought in any money at all since the coronavirus pandemic started.²³

Another man who had a poultry farm said it would have cost him a quarter of a million Jordanian dinars (\$352,613) to replace his chickens after they got sick. He had to close his farm and left for Turkey after he defaulted on his loans.²⁴

²¹ Human Rights Watch interview with F, by phone, September 8, 2020; Human Rights Watch interview with MD, by phone, September 8, 2020; Human Rights Watch interview with NZ, by phone, September 10, 2020; Human Rights Watch interview with G, by phone, September 10, 2020.

²² Human Rights Watch interview with A K, by phone, September 8, 2020; Human Rights Watch interview with W, by phone, November 2019.

²³ Human Rights Watch interview with S, by phone, May 17, 2020.

²⁴ Human Rights Watch interview with A J, by phone, November 2019.

III. Oversight of Lending Practices

Debt has proliferated in Jordan in recent years. According to the Central Bank of Jordan, by the end of 2019, the total debt from regulated banking and non-banking organizations was 11,243.8 million JDs (\$15,858.87 million).²⁵ These figures only account for the formal and semi-formal financial sectors, where the Central Bank or other regulatory bodies such as the Ministry of Trade and Industry, have oversight over financial transactions and can track them.²⁶

While four of the cases documented by Human Rights Watch involve registered microfinance institutions that are regulated, the most concerning transactions are in the informal financial sector. Given the informal nature of these transactions, no regulatory body records the number of active loans or the amount of debt accrued in the informal financial sector. According to Tanmeyah, a non-profit Jordanian organization that monitors microfinance institutions, 71 percent of the borrowers they surveyed have engaged in informal borrowing in the past.²⁷ The most common debt instrument used within the informal lending practices are promissory notes followed by checks.

Informal Lending through Promissory Notes

Much informal lending in Jordan takes place through the instrument of promissory notes (known in Arabic as a *compialeṭ*). The use of promissory notes in Jordan is widespread, due to the ease with which they are issued. A template can be found at any stationery store and purchased for 15 piasters (\$0.21), or an individual can write one out, so long as it is signed, dated, and labeled as such.

²⁵ Tanmeyah Jo, Informal Lending Practices and their effect on the Microfinance industry, August 2019, <http://tanmeyahjo.com/Portals/0/Informal%20Lending%20Practices%20and%20their%20effect%20on%20the%20Microfinance%20Sector.pdf?ver=2019-11-24-151021-083>

²⁶ Tanmeyah Jo, Informal Lending Practices and their effect on the Microfinance industry, August 2019, <http://tanmeyahjo.com/Portals/0/Informal%20Lending%20Practices%20and%20their%20effect%20on%20the%20Microfinance%20Sector.pdf?ver=2019-11-24-151021-083>

²⁷ Tanmeyah Jo, Informal Lending Practices and their effect on the Microfinance industry, August 2019, <http://tanmeyahjo.com/Portals/0/Informal%20Lending%20Practices%20and%20their%20effect%20on%20the%20Microfinance%20Sector.pdf?ver=2019-11-24-151021-083>

Under Jordanian law, promissory notes constitute direct evidence of debt, and as such are enough to result in complaints that frequently lead to prison terms for the borrowers.²⁸

The majority – 16 of the 21 cases investigated by Human Rights Watch – involved promissory notes as the primary debt instruments. They were issued by private individuals – including immediate relatives and neighbors - furniture and mobile phone stores, and microfinance institutions.

The apparently simple acceptance in the court of promissory notes as *prima facie* evidence of debt has allowed at times for the abuse of these instruments, particularly as there are no guarantees in law or in practice against their abuse.

In one case, a judge accepted a promissory note only based on the presence of a signature, even where the name, address and other information is incorrect.²⁹ Another lawyer said he had several clients who experienced the same difficulties.³⁰

In two other cases, individuals were jailed after having signed a blank promissory note. The creditor then filled in an amount and date, often doubling or even tripling the amount of loan and setting a settlement date much earlier than what was agreed to, according to lawyers for the two individuals.³¹ In another two cases, individuals who could not repay their own debts were asked to act as guarantors or sign promissory notes for people they did not know at the behest of the creditor in lieu of repayment.³²

At least two individuals had complaints based on as many as 17 promissory notes.³³

²⁸ Law No. 12 of 1966 (The Trade Law of 1966, art.123, which defines a promissory note and art. 222, which sets out the conditions); Human Rights Watch interview with Lawyer SN, by phone, March 18, 2020; Human Rights Watch interview with Lawyer FL, by phone, March 25, 2020; Human Rights Watch interview with Lawyer AS, by phone, April 7, 2020.

²⁹ Human Rights Watch interview with NM, February 21, 2020

³⁰ Human Rights Watch interview with AS, February 23, 2020

³¹ Human Rights Watch interview with Lawyer AS, by phone, April 7, 2020; Human Rights Watch interview with Lawyer SN, by phone, March 18, 2020.

³² Human Rights Watch interview with S, by phone, May 17, 2020; Human Rights Watch interview with L by phone, May 17, 2020.

³³ Human Rights Watch interview with NZ, by phone, September 10, 2020; Human Rights Watch interview with L by phone, May 17, 2020.

Human Rights Watch interviewed a man who borrowed 13,000 JDs (\$18,335) from his employer to finance a small internet café, which would allow him to support his ill father and continue his education. He signed a promissory note for that amount, but his employer later said it was invalid and had him sign another one for a slightly higher amount (15,000 JDs). Four years later, the employer submitted to a court both promissory notes and required the man to pay the combined amount (28,000 JDs). The man could not repay the full amount and was sentenced to 90 days in prison. To avoid imprisonment, he fled to Turkey.³⁴

Microfinance Loans

While the informal lending sector appears to be at the heart of the default and imprisonment phenomenon, regulations in the formal and semi-formal sectors also make it easy to acquire loans and default on them. Even where registered and regulated, some microfinance institutions providing loans with little oversight have facilitated imprisonment by contributing to the creation of unsustainable debt.

While easy access to credit may be necessary in certain circumstances, loans and their repayment should not act as a stand-in for the state's duties to guarantee an adequate standard of living for all, including by providing living wages, social security, basic income, and otherwise. Further, debt and loans should not be unsustainable or push anyone below an adequate standard of living. This means that the state is also required to ensure that the regulations around debt ensure that payments are affordable and that interest rates are not so high as to impact the ability of an individual to attain an adequate standard of living.

While the CBJ has attempted to regulate microfinance institutions, four experts familiar with the problem in Jordan told Human Rights Watch that some regulated and unregulated microfinance institutions that claim to promote women's economic empowerment provided loans at interest rates at 25 percent, sometimes up to 50 percent, and failed to assess the viability of the loans.³⁵

³⁴ Human Rights Watch interview with Y, by phone, September 8, 2020.

³⁵ Human Rights Watch interview with Rana Sweis, an independent researcher and journalist and author of the Konrad Adenauer report on gender and debt in Jordan, by phone, March 29, 2020; Human Rights Watch interview with A Si, a lawyer providing legal aid to women who have defaulted on debt, by phone, April 7, 2020; Human Rights Watch interview with member of the Jordanian Charitable Society for the Care of Inmates of Correction and Rehabilitation Centers, Amman, August 24, 2020; Human Rights Watch interview with a researcher on microfinance, by phone, November 10, 2020.

Regulatory Order No. 5 of 2015 is the main regulation governing lending and applies to all registered lenders. It empowers – though does not require – the CBJ to set minimum and maximum interest rates, addresses issues of conflict of interest, and penalizes institutions that fail to adhere to standards. It also requires microfinance institutions to “treat clients fairly.”³⁶ More problematically, according to lawyers, borrowers who defaulted, and experts, a large number of microfinance institutions are not registered and thus, fall outside of the regulatory purview. While the law prohibits individuals from providing microfinance loans without being registered, there does not appear to be an enforcement mechanism or penalty associated with unregulated loans. Moreover, unregistered lenders may still use the courts to enforce their loan agreements, including imprisoning people who fail to pay.

The problem may be compounded by unsustainable high interest rates. For institutions that are regulated by the CBJ, the interest rate is currently capped at 25 percent. For unregulated institutions, it can go as high as 50 percent. In one case, a woman borrowed from one microfinance company at an interest rate of 47%. This coupled with the penalties for delay and frequency of installments exceeded her and her husband’s income, leading them to default.

Microfinance institutions targeting women have increased in Jordan. As of mid-2020, around 25 microfinance institutions had 466,394 active borrowers, 68 percent of whom were women.³⁷

Human Rights Watch interviewed four women and one man who had taken loans from major regulated microfinance institutions which either focus on women or have women as their primary clients.^{38 39} With the exception of one, all said they took out the loans to pay for rent, buy furniture or get food on the table. In three cases, the women said that their

³⁶ Regulatory Order No. 5 of 2015, <https://www.ammanchamber.org.jo/Uplaoded/PRNews/397.pdf>

³⁷ Tanmeyah Jo, “Industry Performance Report Q2 2020,” August 25, 2020, <http://tanmeyahjo.com/Portals/o/Tanmeyah%20Q2%202020%20-%20MF%20Industry%20Performance%20Report.pdf?ver=2020-10-01-123905-897>

³⁸ Human Rights Watch interview with N, by phone, August 9, 2020; Human Rights Watch interview with S, by phone, May 17, 2020; Human Rights Watch interview with S2 by phone, August 9, 2020; Human Rights Watch interview with W, by phone, November 2019; Human Rights Watch interview with AJ, by phone, June 21, 2020.

³⁹ Human Rights Watch interview with N, by phone, August 9, 2020; Human Rights Watch interview with S, by phone, May 17, 2020; Human Rights Watch interview with S2 by phone, August 9, 2020; Human Rights Watch interview with W, by phone, November 2019; Human Rights Watch interview with AJ, by phone, June 21, 2020.

husbands had made them take out the loans. Two women said they misrepresented their projects on their applications and used the funds to pay rent and buy a refrigerator. One woman explained:

I took out the loan by saying I had handicrafts that I wanted to put on the market. I lied because I needed the money – our situation is so bad. We have no water, no electricity, I can barely keep the roof over our heads. People think I am exaggerating but I am not – come visit me and you will see. And my husband left for Egypt to get treated [for heart attack], so I took the loan out. I have a daughter with a hearing disability, she needs a hearing aid, but they are so expensive.⁴⁰

They both told Human Rights Watch that they had attempted to apply to government-sponsored national programs but were rejected despite having met the criteria. A woman whose husband is a day laborer without work during Covid-19 explained:

The government has not helped us at all. I applied to everything – Day Laborers, Bread support, the sustenance fund. You name it, I applied for all of it. I was rejected.⁴¹

Several microfinance institutions are funded in part by the World Bank and the European Bank for Reconstruction and Development (EBRD) as part of the aid those institutions provided to Jordan for economic growth and development. For example, in 2018, Tamweelcom received a \$10 million dollar grant from the International Finance Corporation (IFC), a subsidiary of the World Bank group.⁴² In 2018, the European Bank for Development provided a fourth loan to the Microfund for Women (MFW), in the amount of \$4 million dollars.⁴³ The International Monetary Fund (IMF) has also supported increasing access to microfinance an element of its loan programs, including a \$1.3 billion Extended Fund

⁴⁰ Human Rights Watch interview with N, by phone, August 9, 2020.

⁴¹ Human Rights Watch interview with N by phone, August 9, 2020.

⁴² “World Bank Agrees to \$10M for Jordan’s Small Businesses,” *AlBawaba*, November 6, 2018, <https://www.albawaba.com/editorchoice/world-bank-agrees-10m-jordans-small-businesses-1209698>

⁴³ Nibal Zgheib, “EBRD supports Jordan’s women-led businesses,” EBRD press release, December 13, 2018 <https://www.ebrd.com/news/2018/ebrd-supports-jordans-womenled-businesses.html>

Facility approved in March 2020.⁴⁴ While the IMF also called for “efficient supervision and monitoring of the microfinance sector,” its focus on improving Jordan’s insolvency laws has been limited to commercial bankruptcy.

While the ostensible purpose of microloans is to seed entrepreneurship, borrowers are denied one of the key advantages the law provides to business owners: the ability to absolve debt while protecting personal assets by declaring bankruptcy. Since borrowers generally take loans out in their own name, even when they are using the money to invest in businesses, they cannot avail themselves of Jordan’s corporate insolvency law, and there is no law providing for personal insolvency.

⁴⁴ “Jordan : 2020 Article IV Consultation and Request for an Extended Arrangement under the Extended Fund Facility,” International Monetary Fund, Country Report No. 20/101, April 16, 2020, <https://www.imf.org/en/Publications/CR/Issues/2020/04/10/Jordan-2020-Article-IV-Consultation-and-Request-for-an-Extended-Arrangement-under-the-49324>

IV. Debt Imprisonment

Eleven of the 21 defaulting borrowers interviewed by Human Rights Watch were imprisoned for between three days and 42 months for failure to repay their debt. The others all have complaints pending against them and face arrest at any time, and most have gone into hiding as a result.

Individuals may be imprisoned for failure to repay debt under two different laws. Article 22 of the Jordanian Execution Law, which regulates how courts should enforce sentences related to debts, allows creditors to request that the court authorize the detention of an individual who defaulted on their debt, so long as they provide a notice.⁴⁵ If the debt is based on a contractual obligation without clarity as to the amount, the creditor must go to a civil court (a magistrate's court or a court of first instance) and provide proof of the unpaid debt and the amount.⁴⁶ Once the court determines the amount, the creditor can seek enforcement of the judgment with the Execution Department, a department housed in the court of first instance for each jurisdiction and mandated to enforce decisions within that jurisdiction.⁴⁷

If the borrower signed a promissory note, a creditor could go directly to the Judicial Execution Department, as the promissory note counts as evidence of an existing debt.⁴⁸

Under the Execution law, a borrower who defaults can be imprisoned for up to 90 days per year per debt if they fail to pay the amount within 15 days of being given notice, which can be provided through classified notices, by directly reaching out to the debtor, or by posting a notice in the debtor's neighborhood. Upon the expiry of the notice, the debtor must pay 25 percent of the total amount and the rest in installments. If the debtor fails to show up at court or fails to pay the initial 25 percent or any of the additional installments within the notice period, then the court can issue a warrant for their arrest.⁴⁹

⁴⁵ Jordanian Execution Law, Article 22.

⁴⁶ Human Rights Watch interview with Lawyer SN, by phone, March 18, 2020; Human Rights Watch interview with Lawyer FI, by phone, March 25, 2020; Human Rights Watch interview with Lawyer AS, by phone, April 7, 2020.

⁴⁷ The Execution Law No. 25 of 2002, art. 4.

⁴⁸ Ibid.

⁴⁹ The Execution Law No. 25 of 2002, art. 22 (a).

Inability to repay is not a protection against imprisonment under the Jordanian Execution Law, which provides three available defenses:⁵⁰

1. A borrower must allege that the amount has been partially or fully paid, or that the debt note has been forged, for the case to be dropped.
2. The judge decides that the notice is insufficient and requires that the notice period of 15 days be reinstated.
3. The borrower may claim that they were not present for the entire proceeding and require the process to be restarted.

Imprisonment does not resolve a debt, and a creditor can request renewed imprisonment of an individual for the same unpaid debt even after they served 90 days the following year. If an individual has four unpaid promissory notes, he may be detained for a full year. If the borrower has still failed to pay back the promissory note(s), he or she can face further imprisonment for each note, resulting in a cycle of imprisonment that only ends when the debtor can prove that all debts have been paid. In five cases documented by Human Rights Watch, individuals were either imprisoned more than once or creditors filed multiple complaints against them for the same debt.

The law allows for judges to consider delaying imprisonment if an individual has an illness. Three lawyers told Human Rights Watch that judges can also delay imprisonment for a reasonable repayment scheme, so long as the debtor repays the first 25 percent of the debt, but judges rarely use this capacity and many borrowers do not even have the requisite 25 percent.⁵¹

The second law under which people can be imprisoned for debt is Article 421 of the Jordanian Penal Code, which establishes criminal liability for checks drawn on insufficient funds. Under this law, an individual can be imprisoned for up to one year; upon release, failure to repay the amount of the bad check can lead to a second prison term of 90 days, per the Jordanian Execution Law. The law treats writing a check not backed by sufficient funds more harshly than other types of defaulted debt because it considers it a violation of

⁵⁰ The Execution Law No. 25 of 2002, art. 22.

⁵¹ Human Rights Watch interview with lawyer SN, by phone, March 18, 2020; Human Rights Watch interview with lawyer FI, by phone, March 25, 2020; Human Rights Watch interview with lawyer AS, by phone, April 7, 2020; also see: Jordan Center for Legal Aid, “Legal Memorandum on Debt Imprisonment,” March 23, 2020, <https://www.jcla-org.com/ar/publication/legal-memorandum-debtors>

both the “public right” to have confidence in checks and the personal right of the person to whom the money is owed.

Under the Penal Code, an individual can be imprisoned for a year per bad check. A debtor may be able to petition a judge to combine sentences for multiple offenses. One person who had issued six checks as collateral in bidding for a project which then fell through said this depends entirely on the judge’s discretion. He said he was given a 42-month sentence for the six checks, which he completed, while another individual who had issued 46 checks without credit received a combined sentence of one year.⁵²

Both laws fail to require a judge to differentiate between individuals who willfully refuse to repay their debts and those whose socioeconomic circumstances prevent them from doing so. The Ministry of Justice and lawyers told Human Rights Watch that a judge may postpone the sentence issue a travel ban or order a seizure of assets if they find it appropriate. While the MOJ claimed that the courts do investigate with debtors their ability to repay prior to sentencing them to prison, in ten of the eleven cases that Human Rights Watch investigated which led to imprisonment, judges resorted to imprisonment as a first option and without consideration of other remedies, based on the creditors’ request. As one creditors’ lawyer said, reflecting the inaccurate perspective of creditors:

There are other options available to recoup funds, but honestly imposing a travel ban or trying to identify their available assets is much, much harder than getting them imprisoned. So the easiest way to get the money is to imprison them.⁵³

The law itself does not require judges to demand that a creditor or her lawyer exhaust other alternatives to imprisonment, such as asset seizures, before imposing imprisonment.

For non-debt related criminal and civil offenses, judges are empowered to impose alternatives to imprisonment. Ironically, under the same penal code that mandates imprisonment for a bounced check, a judge can sentence an individual for a minor offense

⁵² Human Rights Watch interview with G, by phone, September 8, 2020.

⁵³ Human Rights Watch interview with Lawyer SN, by phone, March 18, 2020.

other than bounced checks, to community service instead of imprisonment, so long as the prison term specified by law does not exceed one year. According to the Jordanian News Agency, as of August 31, 2020, some 330 individuals had benefitted from this option.⁵⁴ In September 2020, then-Minister of Justice Bassam al-Talhouni indicated that such approaches have benefits for both the detained and the state, as it “reduces costs of imprisonment for the government and overcrowding, and mitigates the negative impact of deprivation of liberty through imprisonment by allowing the individual to remain as part of the fabric of society and not restrict their ability to provide for themselves, which acts as a burden to the government and the individual’s family and dependents.”⁵⁵

In 2018, Jordan passed a commercial insolvency law that, according to the World Bank, made resolving insolvency easier by introducing a reorganization procedure, allowing debtors to initiate the reorganization procedure, and improving the survival of businesses during insolvency proceedings. The commercial insolvency law also allows creditors to use procedures under the Execution Law – which include debt imprisonment – as evidence of a borrower’s inability to pay. Following a successful declaration of commercial insolvency, no creditor can bring any further claims against a borrower.

Under Article 375 of the Jordanian Civil Code, a debtor may be considered personally insolvent where the value of his or her liabilities is greater than the value of his or her assets.⁵⁶ However, lawyers disagree on whether that provision remains applicable or had been repealed by the commercial insolvency law passed in 2018. In any case, according to two lawyers, it appears that declaring insolvency in practice remains very difficult.⁵⁷

Due Process Concerns

Because a promissory note suffices as evidence of a debt, judges primarily decide whether to impose a prison sentence based solely on the creditor’s request, without even seeing the borrower or allowing her to mount a defense despite the law allowing this in theory. Of the 11 individuals Human Right Watch interviewed whose cases ended in court or with

⁵⁴ محكمة خلال عامين يستبدلون الزنزانة بعقوبات مجتمعية بديلة غير سالبة لحياتهم، 333،” *Jordan News Agency*, September 20, 2020, <https://petra.gov.jo/Include/InnerPage.jsp?ID=152760&lang=ar&name=news#.X2cy5F65grY.twitter>

⁵⁵ Ibid.

⁵⁶ The Jordan Civil Code of 1976, art. 375

⁵⁷ Human Rights Watch interview with AS, by phone, February 23, 2020; Human Rights Watch interview with MH, by phone, February 23, 2020

imprisonment, 8 indicated they were not able to meet or speak with a judge despite making numerous requests to do so. According to one person,

I was stopped by a police patrol in the street, they checked my identification and ran my name, then immediately took me to the Execution department. I didn't even meet the judge, and then straight to the prison.⁵⁸ They [police officers] took me to Juweida [prison], then Suwaqa [prison], and I had not seen a judge.

One man told Human Rights Watch that he had been arrested four times but saw a judge only once. On that occasion, he persuaded the judge to postpone imprisonment for a year as he was able to provide a report from the Ministry of Health that stated he had 'permanent mental and physical disabilities'.⁵⁹ Two other people who had been arrested two and three times respectively said that they were never taken before a judge.

While the law allows for challenges in writing to the promissory note, according to lawyers and individuals who failed to repay, those wanted for failure to repay are rarely informed of the availability of these defenses by the judge or others in the process.

The borrowers' frequent inability to see a judge, coupled with the seeming acceptance of promissory notes as evidence without challenge, means that they may be subject to abuse by creditors.

In two of the cases that Human Rights Watch investigated, the individuals claimed that they had repaid the debt in full but failed to record the settlement. The lack of a paper trail and their inability to explain to a judge allowed the creditor to take them to court despite their having paid their debts, they said.⁶⁰ One man explained:

[The creditor] complained first about the first promissory note. I appealed and told him I paid most of the amount. But our law did not believe in it,

⁵⁸ Human Rights Watch interview with AO, by phone, September 7, 2020.

⁵⁹ Human Rights Watch interview with AJ, by phone, June 21, 2020.

⁶⁰ Human Rights Watch interview with Y, by phone, September 8, 2020; Human Rights Watch interview with MD, by phone, September 8, 2020.

only based on paper documentation. I brought witnesses and the court rejected the witnesses.

Under the Jordanian Execution law, police officers may not enter a person's house to arrest someone or trick them into arrest. Three of the borrowers Human Rights Watch interviewed alleged that the police acted unlawfully in arresting them. One lawyer explained that creditors and their lawyers often bribe law enforcement officers to find and arrest a person who has been charged or sentenced. In one case, police raided the borrower's house at 1:30 a.m. on August 10, 2019:

They took me to the police center in al-Hashimi al-Shamali, then to North Amman, then to the, court and then to the prison. It was Saturday – the day before Eid. We never left the vehicle at the court. We were 42 people in a tiny van. I stayed in the car for around four hours.⁶¹

In another case, a woman who owned a stationery shop with her husband called the police to report a break-in at her shop. She had several debt complaints against her at the time. She said the police came to her house and told her she had to go down to the precinct to submit a statement about the security problem:

They promised they wouldn't do anything. I told them I was wanted for a failure to repay, and they promised nothing would happen. I called my husband and told him to come with me. They took us to South Central in Irbid. There they changed their minds and told us we had to sign a statement to the effect that they had found me in the street and suspected me, and when they ran my name it turned out I was wanted and took me in. I refused. I told them I wouldn't sign it because that wasn't what happened. They said you are going to get yourself in trouble or we will put you in prison. They took me to the cell.⁶²

In a third case, police officers pretending to represent a charity set up a meeting with the individual who defaulted on his debt and arrested him. In a second incident involving the

⁶¹ Human Rights Watch interview with NZ, by phone, September 10, 2020.

⁶² Human Rights Watch interview with S, by phone, May 17, 2020.

same person, they cut off a man’s electricity to force him out and arrested him.⁶³ Two lawyers also said that creditors often provide wrong addresses for the borrowers when filing the complaint, resulting in the 15 day notice being sent to the wrong address.⁶⁴

Lawyers said that the disproportionate impact on people from low socioeconomic backgrounds is compounded by their lack of financial and legal literacy, and their inability to access legal advice due to financial constraints. According to one lawyer, hiring a lawyer requires at least 250 JDs for the agency fees alone.⁶⁵ Borrowers prefer to use these amounts to pay against the debt directly, especially where the amount of the debt is below 1000 JDs. For cases of amounts over 1000 JDs, lawyer representation becomes obligatory per the law, but the borrower is required to carry the cost herself.

Lacking understanding of procedures, the lawyers said, individuals often fail to know that they can mount challenges to the promissory notes or mistaken provision of notice or that they can show that they have other assets to repay the debt. Within the allotted 15 days. In some cases, they settle outside court without reflecting the settlement in the court record, allowing the creditor to file suit again.

On February 4, Human Rights Watch wrote to then Minister of Justice, Bassam al-Talhouni with the report findings and requested information regarding the number of individuals wanted and detained for failure to repay debt; the available alternatives to debt imprisonment in law and practice; the guidance provided to judges to seek these alternatives and whether the Ministry of Justice provides legal assistance to those incapable of affording it in such cases.

The Ministry of Justice responded indicating that debt imprisonment under law is not punishment for a crime, but rather a method for pressuring debtors to pay. It also claimed that the courts do investigate with debtors prior to sentencing them to prison their ability to repay. It said that it was not able to provide statistics, given the difficulties with tracking such cases electronically. Finally, it indicated that by law, there are alternatives to imprisonment, including travel bans, asset freezes, and settlement based on the debtors’

⁶³ Human Rights Watch interview with B, by phone, November 2019.

⁶⁴ Human Rights Watch interview with AS, by phone, February 23, 2020; Human Rights Watch interview with NM, February 21, 2020

⁶⁵ Human Rights Watch interview with AS, by phone, February 23, 2020

capabilities. Finally, the Ministry of Justice claimed that despite Jordan having ratified the ICCPR in 2006, and published it in the Official Gazette, it has not been considered by Parliament and thus is constitutionally inapplicable.

V. Consequences of Debt Imprisonment

Deteriorating Standard of Living

Imprisonment or threat of imprisonment for debt is debilitating for individuals, including others who may rely on the imprisoned person for support, particularly those from low socioeconomic backgrounds.

For heads of household, failure to repay debts, if compounded by imprisonment, will often leave the entire household without the means to secure basic necessities, and create further societal strain both on them and on the state.

Nineteen of those interviewed told Human Rights Watch that as a result of their imprisonment or being indebted, they lost their jobs and ability to provide for their families. In seven cases, men left the country to avoid imprisonment, leaving their wives and families behind to make ends meet.

A 28-year-old man who left for Turkey after a court sentenced him for failing to repay a promissory note described the consequences for his family:

My father is sick, our house is rented, and I was the only person who could support my family. I begged [the creditor] to settle. I told him, I would take out a loan in 1,000 JDs, and give it to him and settle. He refused; he said he wanted 5,000 JDs cash and that his lawyer wants another 3,000 JDs. I couldn't get those amounts so I ran away to Turkey. Now, my family relies on the National Aid Fund to help with rent, and my uncles try to give them 50 JDs a month.”⁶⁶

A salesman told Human Rights Watch that as Jordan's economic situation deteriorated, he was unable to repay his suppliers. He said that creditors had lodged at least three complaints against him and has been imprisoned twice for failure to repay his debts. He lost his job and has not left the house since the new complaints were filed to avoid being

⁶⁶ Human Rights Watch interview with Y, by phone, September 8, 2020; The National Aid Fund is a government-supported fund that provides monthly and emergency financial aid to ‘poor and needy’ households.

arrested again. Unable to provide for his wife and children, he relies on his wife's family to meet their basic needs.⁶⁷

An electrical engineer went to prison for three months and 20 days for two complaints against him after the owner of a house he was working on refused to repay the remaining costs on the project, which the engineer had already taken out loans to pay for in advance. He told Human Rights Watch that he was released when he settled the bills, but that he could not find employment in his field of work. He told Human Rights Watch that he resorted to buying small things and selling them in front of a mosque to pay off installments on the remaining loans and make ends meet, but that he is barely able to do so.⁶⁸

A Cycle of Debt

To avoid imprisonment, several individuals said, they sold off essential household items to pay off the 25 percent installment required by law to avoid imprisonment or took on additional debt to repay the initial loan. One man who was arrested twice before escaping to Turkey told Human Rights Watch:

The last time I was arrested, I was in the hospital [visiting my father] because my dad's health condition was really bad. They came to the hospital and arrested me there. Now my father has passed away. I was imprisoned for seven days. My family had to sell my car, which was worth 11,000 JD for 5,000 JD just to get me out of prison. After that, I left and came to Turkey.”⁶⁹

Others borrowed from relatives or had their wives and sisters take out loans for them to repay the debt or to bail them out of prison, because, they said, women had an easier time obtaining loans. This led to additional complaints against their relatives. In one case, a staff member of an organization that supports individuals who have defaulted on their debt told Human Rights Watch that the organization helped repay the debts of nine people

⁶⁷ Human Rights Watch interview with A O, by phone, September 7, 2020.

⁶⁸ Human Rights Watch interview with MD, by phone, September 8, 2020.

⁶⁹ Human Rights Watch interview with Baha', by phone, November 2019.

from one family after the family members had acted as guarantors for one another, taking out loans to repay an original loan to avoid imprisonment.⁷⁰

In two other cases, a man forced his wife to take out microloans and sell her gold jewelry to repay his existing loans to avoid default, as did a hairdresser, who asked his wife to apply for a loan to pay back installments on a promissory note he took out to rent his salon. In both cases, the women defaulted on their own loans, accumulating additional debts and courts issued complaints against them.

A young man promised his creditor, an employer, to take out another loan to repay his existing debt, but his creditor filed a complaint before he was able to.

The Jordanian government does not grant legal aid except in criminal cases where the crime is punishable by execution or life imprisonment.⁷¹

Stigma

Eleven of the individuals interviewed who remain in Jordan told Human Rights Watch that because there was an order for their imprisonment, they were unable to move freely in the country. Nine described the stigma associated with imprisonment. One woman who was convicted and awaiting sentencing described her plight:

Because of the threat of being detained for my debt, I can't move. I have not been able to move, I am so scared, we can't even think of children, even though we've been married for seven years.

I am an engineer. Imagine what would happen to my parents, how are people going to look at me? I am not a thief. I didn't eat people's rights. I just had too many financial commitments and the economic situation in the country is horrific.⁷²

⁷⁰ Human Rights Watch interview with member of the Jordanian Charitable Society for the Care of Inmates of Correction and Rehabilitation Centers, Amman, August 24, 2020.

⁷¹ Justice Center for Legal Aid, “Legal Aid in Jordan,” <https://www.jcla.org/en/legal-aid-jordan>

⁷² Human Rights Watch interview with S, by phone, May 17, 2020

A man who spent 13 years with the Jordanian Army told Human Rights Watch he resigned after he had defaulted on a loan from a fellow officer, to avoid shaming himself:

I resigned of my own volition because I did not want my 13 years in the armed forces to be tarnished with this. I had a good reputation, and after this, I would only be known as a crook.”

He is now attempting to get reinstated in the army with the hope that the salary he would earn can help him repay his outstanding debt.⁷³

A third man refused to share his full name with a researcher at Human Rights Watch for fear that he would be recognizable in Jordan: “I am from a prominent Jordanian family, but I do not want to bring shame to my country or my people.”⁷⁴

A Jordanian man who is now in Egypt, told Human Rights Watch that his children were bullied extensively at school because he was imprisoned for failing to repay an existing debt. Another man, who graduated with a degree in finance but fell into debt and defaulted, said he would never be able to work at a financial institution:

I graduated from [a good school] with a degree in finance, but what bank would take me? What fault is it of mine? No way would I be employed over something like this. I was supposed to have a job and get married and start a life, and I cannot do anything.⁷⁵

Fleeing Jordan

To avoid imprisonment and the stigma surrounding it, thousands of indebted Jordanians fled the country to Turkey, Cyprus, Egypt, and other countries.⁷⁶ Human Rights Watch

⁷³ Human Rights Watch interview with AS, by phone, September 10, 2020

⁷⁴ Human Rights Watch interview with A, by phone, September 10, 2020.

⁷⁵ Human Rights Watch interview with Y, by phone, September 8, 2020;

⁷⁶ See e.g. Ayman Fdeilat, “تلقفهم سجون الغربية.. أردنيون هاربون من ديارهم بسبب الديون”

Aljazeera, January 20, 2020,

<https://www.aljazeera.net/ebusiness/2020/1/20/%D8%A3%D8%B1%D8%AF%D9%86%D9%8A%D9%88%D9%86-%D9%87%D8%A7%D8%B1%D8%A8%D9%88%D9%86-%D9%85%D9%86-%D8%AF%D9%8A%D8%A7%D8%B1%D9%87%D9%85-%D8%A8%D8%B3%D8%A8%D8%A8-%D8%A7%D9%84%D8%AF%D9%8A%D9%88%D9%86>

spoke to seven individuals who are currently abroad for this reason. Three told Human Rights Watch that because of financial claims against them in Jordan, they are unable to renew their passports, resulting in family separation, and loss of employment and legal residency. On January 19, 2021, the Jordanian government issued a decision amending the legal provision and dropping the requirement for General Intelligence approval before renewing passports. It is unclear, however, how this decision has been implemented and the Passports Control Department has indicated that “it will still require the approval of the Minister of Interior before renewal.”⁷⁷

One man, currently in Turkey, told Human Rights Watch that because of the Jordanian embassy’s refusal to renew his and his family’s passports, he was not able to renew his residency and register his children in school:

My two daughters, one is 13 and one is 16, are here with me in Turkey, but they’ve been out of school for two years because we don’t have valid residency permits and we cannot renew them. My wife and two other children [5 and 7 years old] are in Gaza. I haven’t seen them since 2016, and this is what’s breaking me apart. I can’t even talk to them because I don’t send them money or anything.⁷⁸

In another case, a doctor in Jordan developed a severe case of osteoporosis that resulted in partial paralysis. As a result, he was unable to work and pay the loan installments on his car or his clinic and defaulted on his debts. He left Jordan for treatment in 2016 and has not returned to Jordan:

I had a very normal life. I was married and worked very regularly. I had a couple of cars, and I could make the down payments and installments. I had a clinic – I was making 3,000-4,000 JDs [\$4,235-5,647] per month. I got osteoporosis in the hip area, and this impacted my ability to walk. I started

⁷⁷ Mahmoud al-Tarawneh, “تعهدات تجديد جوازات المطلوبين بالخارج .. هل ترى النور؟” *al-Ghad*, January 16, 2021. <https://alghad.com/%D8%AA%D8%B9%D9%87%D8%AF%D8%A7%D8%AA-%D8%AA%D8%AC%D8%AF%D9%8A%D8%AF-%D8%AC%D9%88%D8%A7%D8%B2%D8%A7%D8%AA-%D8%A7%D9%84%D9%85%D8%B7%D9%84%D9%88%D8%A8%D9%8A%D9%86-%D8%A8%D8%A7%D9%84%D8%AE%D8%A7%D8%B1/>

⁷⁸ Human Rights Watch interview with WAL, by phone, November 2019.

using a wheelchair. I could not work, and I could not repay my loans. I used my savings to try to cover the costs.

Then I left for treatment. A year later, I found out there were [debt] complaints against me, and that I was sentenced in absentia. I had never been to a police station even, and I was still very sick, so I didn't return to Jordan. I didn't want to go to prison.

My family returned [to Jordan], but I did not. My condition improved and I started working in the country I am in to repay the money. Because I was getting treatment, I had additional debts. I was paying it all off, but my passport was about to expire, and I could not renew it because there was a financial complaint pending against me in Jordan. My employer in Egypt refused to renew my contract, and I lost my job. Now I am back in default.

He told Human Rights Watch that he was now in Turkey, but at risk of being deported because his passport expired in January 2020. He had not spoken to his daughter in a year and a half, and his wife asked for a divorce in 2018, citing financial issues.⁷⁹

Gendered Impact of Debt Imprisonment

Programs targeting women for microfinance lending are often predicated on the assumption that microloans are among the most effective ways to ‘empower women economically.’ While this might be the case, Human Rights Watch’s research in Jordan indicates that in some cases loan collection has resulted in the imprisonment or threat of imprisonment of women for debt.

The gendered impact of debt imprisonment cannot be underestimated. A 2019 study by the Arab Renaissance for Democracy and Development (ARDD), a Jordan-based legal aid organization, found debt to be one of the most pressing factors hindering women’s economic empowerment.⁸⁰ Around 9,000 women are wanted for failure to repay debts that

⁷⁹ Human Rights Watch Interview with A, by phone, September 10, 2020.

⁸⁰ Arab Renaissance for Democracy and Development, Between Poverty and Prison: The Challenges of Debt Among Vulnerable Women in Jordan, June 23, 2019 available at <https://www.ardd-jo.org/Publications/between-poverty-and-prison-the-challenges-of-debt-among-vulnerable>

do not exceed \$1,400 in each case, according to the Konrad Adenauer Foundation study.⁸¹ Human Rights Watch interviewed five women who had received loans from microfinance institutions targeting women.

In some cases, male relatives have coerced women into taking loans. A lawyer told Human Rights Watch that one of his clients was threatened by her son that he would kill her if she did not apply for one of these microloans. The woman applied for three microloans shortly afterward and was unable to pay them back in time, resulting in multiple complaints against her.⁸²

In other cases, women became guarantors for their husbands or sons. In informal debt processes, becoming a guarantor often means that a woman signs a promissory note for an amount that can be more than double the amount of the original loan, in exchange for a promise from the creditor to waive the case against the son or husband, or to provide an additional loan. Two women interviewed by Human Rights Watch indicated that their husbands forced them to apply for loans to pay for necessities. Human Rights Watch interviewed one man who said that he forced his wife, his mother, and his sister each to take out loans on his behalf for medical expenses. He said that all three were now wanted because of their inability to repay.⁸³ In four cases, the women who took out loans from microfinance companies told Human Rights Watch that they had defaulted due to lack of regular income, and high interest rates. They said that the microfinance companies called and informed them that they submitted complaints against them and that they will be going to jail.

⁸¹ Rana Sweis, “Microloans’ Failure of Jordanian Women,” *Konrad Adenauer Stiftung*, January 2020, <https://www.kas.de/documents/279984/280033/Publication+Microloans%27+Failure+of+Jordanian+Women.pdf/61bd9d3-1a3e-52f9-13c8-f808b6b962e2?version=1.0&t=1581846668674>

⁸² Human Rights Watch interview with Lawyer AS, by phone, April 7, 2020.

⁸³ Human Rights Watch interview with AJ, by phone, June 21, 2020.

VI. Ineffectiveness of Debt Imprisonment

Proponents of debt imprisonment in Jordan claim that it is the only effective way to force people to repay their debts and address the rights of creditors.

A comparative analysis of other countries tells a different story. Jordan remains one of few countries that imprison individuals for failing to repay their debts. Most countries outside the Middle East abolished the practice in the 19th century in widespread recognition of its inefficacy as a debt collection mechanism.⁸⁴ According to a 2017 World Bank study, “Even debtor’s prison is not a sure method of coercing debtors to pay, and the tragic irony of imprisoning debtors in order to goad them into working to pay creditors ought to be obvious. Imprisonment for debt was abandoned in most areas … it was spectacularly ineffective in producing payment for creditors.”⁸⁵

None of the borrowers interviewed by Human Rights Watch were able to pay off the entire amount after being imprisoned or upon threat of imprisonment. Several who could settle did so by selling furniture, cars, houses, or borrowing from relatives to be able to repay debts. Others fled the country. As one person imprisoned for unpaid debt put it,

“Do you think if I had the money, I would spend a day in prison? No. What is left to force me to pay? Hang me by my feet and beat me? If you imprisoned me once or twice or three times, the message should be clear. I cannot pay.”⁸⁶

The ineffectiveness of debt imprisonment is compounded by the fact that in Jordan, the debt remains after the sentence is carried out, aggravating a cycle where indigents remain unable to repay and risk repeated imprisonment. This is unlike other countries where a borrower who is imprisoned may work off their debt in prison, or whose imprisonment is considered in lieu of repaying the debt.

⁸⁴ See eg. Gustav Peebles, “Washing Away the Sins of Debt: The Nineteenth-Century Eradication of the Debtors’ Prison,” *Comparative Studies in Society and History* 55, no. 3 (2013): 701-24, <http://www.jstor.org/stable/23526021>

⁸⁵ Insolvency and Creditor/Debtor Regimes Task Force, “Report on the Treatment of the Insolvency of Natural Persons,” *World Bank*, 2014, <https://openknowledge.worldbank.org/handle/10986/17606>

⁸⁶ Human Rights Watch interview with G, by phone, September 7, 2020.

Given Jordan's focus on promoting small and medium businesses and entrepreneurship as a key pillar in its strategy for improving the economic outlook, it is ironic that the country continues to imprison people for failing to repay debts. International standards state that the law should provide a path to financial rehabilitation and a fresh start for failed individual businesspeople.⁸⁷. However, the practice of imprisoning budding entrepreneurs for failing to repay debt not only renders those individuals immediately unproductive but also creates a chilling effect.⁸⁸

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.

Denmark, for example, empowered courts to eliminate or write down uncollectible debts and develop a reasonable payment proposal.⁸⁹ The decision did not constitute a complete and immediate write-off of uncollectible debt but was conditioned on borrowers showing that they are “ready and willing to work to achieve” the opportunity for relief. It instituted strict entry requirements to identify “hopelessly indebted” individuals and differentiate them from those unwilling to pay. The court then appoints a neutral mediator who can assess the borrower’s situation and assist her in the development of a payment plan for the realistic portion of the debt, and the period of years over which it is to be paid based on projected disposable income, commonly five years. The mediator then creates a specific bank account for the borrower, into which the individual deposits the disposable income, and the creditors are allowed to access it based on a priority list to withdraw the funds. The mechanism is intended to avoid expending additional resources on enforcement. To avoid overreliance on the court’s discretion in budgeting, the law also set out a unified list of generally fixed essential expenses.] Importantly, while the law was primarily framed in humanitarian terms to support those “hopelessly indebted”

⁸⁷ Jason Kilborn, “Twenty-Five Years of Consumer Bankruptcy in Continental Europe: Internalizing Negative Externalities and Humanizing Justice in Denmark,” *International Insolvency Review*, Vol. 18, p. 155, 2009, <https://ssrn.com/abstract=1419488>

⁸⁸ Jason Kilborn, “Twenty-Five Years of Consumer Bankruptcy in Continental Europe: Internalizing Negative Externalities and Humanizing Justice in Denmark,” *International Insolvency Review*, Vol. 18, p. 155, 2009, <https://ssrn.com/abstract=1419488>

⁸⁹ Jason Kilborn, “Twenty-Five Years of Consumer Bankruptcy in Continental Europe: Internalizing Negative Externalities and Humanizing Justice in Denmark,” *International Insolvency Review*, Vol. 18, p. 155, 2009, <https://ssrn.com/abstract=1419488>

individuals, according to Jason Kilborn, an expert on personal insolvency laws globally, “the law was designed primarily as a pragmatic response to economically wasteful collections activities that imposed negative externalities on debtors, creditors, and especially Danish society and state coffers.”⁹⁰

In November 2019, the United Arab Emirates passed the first consumer insolvency law in the region, designed to protect indebted Emiratis and residents from prosecution and decriminalize their financial obligations, offering them an opportunity to work to resolve their financial dilemma while still supporting their families. It instructs the court to appoint advisers to liaise with creditors in order to develop acceptable repayment schemes.⁹¹ However, the UAE scheme still predicated relief on the consent of the creditor, which is rarely forthcoming and remains behind international best practices and most consumer insolvency schemes in the world.⁹² This is an essential consideration given that borrowers have very little leverage to force creditors to provide consent for engaging in negotiation, thus the need for state interference.

In Bahrain, the government developed a debt discharge scheme that is designed to follow both international best practices and Islamic tenets. The Bahraini law empowers the court to release the borrower from liability for debts not covered by the liquidation proceeds so long as the borrower can explain her financial distress, relinquish available assets to meet obligations, and has not defrauded the creditor. Some types of debt cannot be written off, for example, debt linked to family support, fraud, and criminal liability. The Bahraini law also encourages the government to provide financing to support indebted small businesspersons. The law was based on the recommendations of the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), the authority on standards for the global Islamic finance industry. In its Shariah Standard No. 43, the authority stated that:

⁹⁰ Jason Kilborn, “Twenty-Five Years of Consumer Bankruptcy in Continental Europe: Internalizing Negative Externalities and Humanizing Justice in Denmark,” *International Insolvency Review*, Vol. 18, p. 155, 2009, <https://ssrn.com/abstract=1419488>

⁹¹ Alice Haine, “How the UAE’s new insolvency law will help residents in chronic debt,” *The National News*, November 21, 2019, <https://www.thenational.ae/business/money/how-the-uae-s-new-insolvency-law-will-help-residents-in-chronic-debt-1.939054>

⁹² Jason Kilborn, “Small Business Bankruptcy Reform in the Arab World,” *Arab Law Quarterly* 36, 2020, 1-36,

After distribution [of the debtor's assets in the bankruptcy], creditors have no legal right to demand any unpaid debt from the debtor. However, the debtor has a moral obligation under Shari'a law to pay all debts in full.

The World Bank study on individual insolvency argues that the best way to ensure repayment is to make borrowers more productive. Successful personal bankruptcy laws can do that by conditioning relief on the repayment of existing debt. Such schemes also have the added benefit of combining multiple debts into one and reducing the debilitating impact of creditor insistence on the borrower's ability to repay.⁹³

Countries that have abolished debt imprisonment acknowledge that this means lending needs to be more carefully managed. Without a state guarantee of an adequate standard of living for all, including the right to social security, and a personal bankruptcy law, debt can function as a stand-in for inadequate social safety nets, and where unsustainable it can lead to non-repayment and imprisonment.

Creditors express concern that abolishing debt imprisonment allows borrowers who are willfully fraudulent to avoid negative consequences. What is needed are criteria that can separate those unable to pay from those who refuse to pay. When the United Kingdom abolished debt imprisonment in the 19th century, it replaced it with insolvency arrangements for individuals and criminal fraud charges for individuals who refuse to repay their debts.⁹⁴ The World Bank study proposes how laws can incorporate these criteria and notes that instances of borrowers' fraud in such countries are "vanishingly low."⁹⁵

Strain on Courts and Prisons

In addition to being ineffective, imprisonment of individuals who are unable to repay their debts strains the court and prison systems in Jordan. Around 2,630 people, about 16 percent of Jordan's prison population, were locked up for nonpayment of loans and bounced checks in 2019, according to a national report endorsed by the United Nations

⁹³ Insolvency and Creditor/Debtor Regimes Task Force, "Report on the Treatment of the Insolvency of Natural Persons," *World Bank*, 2014, <https://openknowledge.worldbank.org/handle/10986/17606>

⁹⁴ Andy Wood, "In Debt and Incarcerated: The Tyranny of Debtors' Prisons," *The Gazette*, <https://www.thegazette.co.uk/all-notices/content/100938>

⁹⁵ Insolvency and Creditor/Debtor Regimes Task Force, "Report on the Treatment of the Insolvency of Natural Persons," *World Bank*, 2014, pg 42, <https://openknowledge.worldbank.org/handle/10986/17606>

Office on Drugs and Crime.⁹⁶ The Judicial Council indicates that in 2019, there were 143,000 cases before the courts relating to financial issues.⁹⁷ It is difficult to determine the number of those wanted for defaulting on debts, given the lack of a comprehensive overview or records of informal lending transactions.

According to a 2018 study by Jordan's Department of Correction and Rehabilitation Centers, the cost to the state of accommodating one detainee is around 750 JDs (\$1,057) per month.⁹⁸ As of December 2019, the prison population was at least 150 percent overcapacity. Minister of Justice Bassam al-Talhouni has acknowledged that prison overcrowding is a major problem that the government is trying to resolve, given the financial and administrative burden it poses.⁹⁹ The state-of-emergency release of prisoners in 2020 due to the coronavirus pandemic may have temporarily lowered these figures, but the individuals remain charged and face re-arrest later.¹⁰⁰

⁹⁶ The National Plan for Supporting the Capabilities of the Correction and Rehabilitation Centers, date unknown, available at: https://www.unodc.org/middleeastandnorthafrica/en/web-stories/jordan_-the-launch-of-the-national-plan-for-supporting-the-capabilities-of-the-correction-and-rehabilitation-centers.html

⁹⁷ Jordanian Judicial Council, "Annual Report on the Condition of Regular Courts, Administrative Judiciary, and Public Prosecution," 2019, <http://www.jc.jo/storage/app/uploads/public/5f9/7c2/984/5f97c298498ef632967042.pdf>

⁹⁸ The Economic and Social Council, 'The Social and Economic Consequences of Cancelling Debt Imprisonment [Initial Observations], undated, copy on file with Human Rights Watch.

⁹⁹ World Prison Brief, "Jordan," <https://www.prisonstudies.org/country/jordan>

¹⁰⁰ "Jordan: State of Emergency Declared," *Human Rights Watch* news release, March 20, 2020, [https://www.hrw.org/news/2020/03/20/jordan-state-emergency-declared#:~:text=\(Amman\)%20%E2%80%93%20The%20Jordanian%2ogovernment,Human%20Rights%20Watch%2osaid%20today.&text=The%2ogovernment%2odid%2onot%2oimpose, and%2oto%2omeet%2obasic%2oneeds](https://www.hrw.org/news/2020/03/20/jordan-state-emergency-declared#:~:text=(Amman)%20%E2%80%93%20The%20Jordanian%2ogovernment,Human%20Rights%20Watch%2osaid%20today.&text=The%2ogovernment%2odid%2onot%2oimpose, and%2oto%2omeet%2obasic%2oneeds)

VII. International Legal Obligations

International human rights law unequivocally prohibits the deprivation of liberty for failure to fulfill a contractual obligation. According to article 11 of the International Covenant on Civil and Political Rights (ICCPR), which Jordan ratified and published in the Official Gazette, “No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation,” which includes prohibiting the deprivation of personal liberty either by a creditor or by the state for failure to pay a debt.¹⁰¹ While the Ministry of Justice has claimed that because the treat has not been through the Parliament it is constitutionally inapplicable. However, courts in Jordan have ruled in favor of the supremacy of the ICCPR. In any event Jordan is bound to comply with the Covenant having ratified it regardless of its status in domestic law. Thus, Article 22 of the Jordanian Execution Law clearly and blatantly violates Jordan’s obligations under international human rights law.

Jordan also has an obligation to ensure that residents can attain an adequate standard of living. Under article 11 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), “an adequate standard of living” for an individual and his or her family entails “adequate food, clothing and housing, and to the continuous improvement of living conditions.” While debt creation and enforcement does not directly contravene this obligation, evidence shows that debt imprisonment and certain types of debt enforcement have detrimental consequences for the ability of many borrowers to secure basic economic and social needs for themselves and their families, including food, shelter, and health care. In fulfilling its obligation to protect and promote human rights, Jordan should prevent and at a minimum mitigate practices that have such consequences, and be vigilant to ensure that the state is not complicit in such practices through institutions such as the police and courts. The state’s failure to ensure that everyone is able to enjoy an adequate standard of living has also contributed to individuals’ unsustainable borrowing practices.

The processes by which people are arrested for failure to repay debts and subsequently imprisoned in Jordan also raise due process concerns. Governments must guarantee

¹⁰¹ International Covenant on Civil and Political Rights, art. 11,
<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

individuals a fair trial. This right is enshrined in the Universal Declaration of Human Rights and article 14 of the ICCPR. According to the European Court of Human Rights, such an obligation extends to civil and administrative proceedings as well as criminal trials, including the proceedings related to promissory notes and bad checks.¹⁰² It applies to any situation involving a sentence of imprisonment. The right to a fair trial includes allowing individuals the right to be heard in a timely manner and by a competent, impartial, and independent tribunal. When alleged debtors are arrested, they should be provided with an opportunity to meet with an independent and impartial judge and make their case.

¹⁰² Guide on Article 6 of the European Convention on Human Rights, European Court of Human Rights, August 31, 2020, https://www.echr.coe.int/documents/guide_art_6_eng.pdf

Recommendations

To the Jordanian Parliament/Government

- Repeal article 22 of the Jordanian Execution Law, which allows for the imprisonment of individuals who default on their debts.
- Pass legislation that provides alternative means for creditors to recoup debts and requires that the judge ensure these alternatives take precedence over imprisonment. Such alternatives may include co-pay and wage garnishment schemes that do not threaten the livelihood of the defaulting individual. The legislation should require the judiciary to assess whether there is willful refusal or a genuine inability to pay.
- Pass legislation that allows for individuals to file a declaration of personal insolvency when they are unable to repay debts in lieu of imprisonment. Such a scheme should follow international best practices, such as the Bahraini or Danish models.
- Pass legislation to regulate the use of promissory notes as instruments of debt and ensure that the burden of proof is on the party producing them to demonstrate their genuineness and that the judge is required to inform the debtor of the potential ways to challenge them.
- Announce a guarantee of the right to an adequate standard of living for every citizen and resident in Jordan, including access to adequate and affordable housing, food, water, and sanitation. This could be achieved through ensuring a living wage for all in employment, guaranteeing the right to adequate social security, and moving towards a guaranteed basic income.
- Dedicate resources to expanding and making more accessible the social safety net, including existing support programs, for indigent citizens and residents so that individuals do not have to borrow to cover basic necessities.

To the Judicial Council and the Ministry of Justice:

- Instruct the judiciary involved in debt claims to assess the socioeconomic status of borrowers and their ability to pay, and work with creditor and borrower to set a repayment plan based on the borrower's financial capacity. Any repayment plan,

- asset seizure, or wage garnishments should protect the borrower's basic economic rights and protect her ability to procure basic necessities;
- Where the judiciary finds that an individual is willfully refusing to repay debts, it can initiate criminal fraud proceedings that may include imprisonment
 - Instruct judges to assess the way debt is structured and the lending rate, as well as surrounding circumstances, to identify abusive debt structures or exorbitant interest rates.
 - Instruct the judiciary to require a meeting with the borrower and providing her/him with an opportunity to dispute the claims presented by the creditor or mount a defense.
 - Instruct Jordan's Bar Association and non-governmental organizations that specialize in this field to provide pro bono support to poor borrowers whose debt exceeds the amount that triggers a requirement for legal representation.

To the Central Bank of Jordan

- Regulate all microfinance and lending institutions and require them to register with the Central Bank and announce they will not request imprisonment of individuals who fail to repay their loans.
- Institute penalties and expand inspection, oversight, and enforcement capacities to identify oppressive microfinance and lending institutions.
- Cap the interest rates by microfinance and lending institutions at a manageable level to ensure individuals can afford repayment without being forced into destitution.
- Monitor these entities to ensure that they are able to conduct more robust vetting and follow up to ensure more successful projects.
- Allow more low-income individuals to access the regulated credit system so that they are less likely to resort to informal lending systems.

To Microfinance Institutions

- Publicly announce they will desist from requesting imprisonment for individuals who fail to repay their loans and abide by that commitment;

- Develop robust criteria for the rate of repayment of loans to ensure it is affordable and reasonable and does not negatively affect the household's adequate standard of living;
- Offer financial education and management and repayment training to all clients.

To International Donors and Financial Institutions

- Urge Jordan to repeal article 22 of the Jordan Execution Law;
- Provide technical assistance to Jordan to develop personal insolvency procedures that allow for effective debt relief and empower an individual who is unable to repay their debt to be economically productive, including criteria that require relevant authorities to assess an individual's ability to repay.
- Request any microfinance and other institution they choose to support to publicly commit to not seeking imprisonment for individuals who fail to repay their loans and assess their practices to ensure compliance with that commitment.

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Annex I: Letter to the Ministry of Justice of Jordan

February 4, 2021,

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His Excellency Bassam al-Talhouni
Minister of Justice
Amman, Jordan

Your Excellency,

I am writing on behalf of Human Rights Watch to seek your response to several questions regarding the issue of imprisonment for debt in Jordan.

Human Rights is an independent, nongovernmental organization that monitors and reports on violations of international human rights and humanitarian law by state and non-state actors in more than 90 countries around the world.

We are currently conducting research on the issue of debt imprisonment in Jordan, investigating the relationship between debt imprisonment and socioeconomic inequality, overcrowding in prisons, and resulting due process concerns. Our findings suggest that debt imprisonment disproportionately affects poor people rather than wealthier people with high debts, is an ineffectual way of collecting debt, and places undue strain on the court system and the government. Debt imprisonment is also a violation of Jordan's obligations under international human rights law not to imprison individuals solely for failure to fulfil a contractual obligation.

We found that, under Jordanian laws, failure to repay even small debts is a crime that carries a penalty of up to 90 days in prison per debt, and up to one year for a bounced check; and that courts routinely sentence people without holding a hearing. The law does not make exception for

unemployment, or other factors that impede borrowers' ability to repay, and the debt remains even after serving the sentence.

In the interests of thorough and impartial reporting, we would appreciate it if you could provide us with a reply by February 18, 2021 so that we can reflect your views and comments in our forthcoming report.

1. How many cases currently open before the courts are related wholly or substantially to failure to repay debt or issuance of bounced checks?
2. What percentage of all cases open before the court relate to default on debt and failure to repay?
3. What is the current backlog of cases before judicial authorities that enforce the Judicial Execution Law? What are the reasons for this backlog?
4. What alternatives to debt imprisonment are available under law and in practice? What guidance has the government issued to judges on alternative remedies to imprisonment for default on debt? Who has issued this guidance?
5. In how many cases have judges sought alternative remedies to imprisonment for default on debt?
6. In how many debt imprisonment cases has the Ministry of Justice provided pro bono legal support to indigents? If none, what are the reasons?

In addition to responses to the above questions, we would welcome any additional information you consider relevant regarding the Ministry of Justice's role and actions in relation to reducing imprisonment for debt in Jordan.

We would welcome an opportunity to discuss these issues with you or other relevant MOJ representatives. As noted, we would appreciate receiving a response from your office by February 18, 2021. Please contact my colleague Sara Kayyali at [REDACTED] to arrange a meeting and to respond to the above questions.

Thank you for your kind assistance in this matter.

Yours truly,

Adam Coogle
Deputy Director
Middle East and North Africa Division

Annex II: Response to HRW from the Ministry of Justice of Jordan

**In reference to questions included in Human Rights Watch's
research on debt imprisonment in Jordan,
I would like to indicate the below:**

First: On the question resulting from researchers' findings about how debt imprisonment disproportionately affects the poor rather than wealthier individuals who have high debts:

Jordan implements the rule of law and ensures a fair trial and equality for all before the law. All citizens are equal in rights and duties and there is no discrimination. The Hashemite Kingdom of Jordan's legislative system asserts the aforementioned based on Article (6) of its constitution, which states that "Jordanians shall be equal before the law. There shall be no discrimination between them in regards to their rights and duties on grounds of race, language or religion." Consequently, the law is applied indiscriminately on borrowers, whether rich or poor.

Second: Regarding the remark stating that failure to repay even small debts is a crime that carries a penalty of up to 90 days in prison per debt:

Failure to repay debt is not considered a crime, but is subject to the provisions of Jordan's Execution Law no. 25 of 2007, which includes special provisions on the imprisonment of debtors who fail to repay debt, do not propose a suitable settlement to repay the debt, or do not disclose property and funds that are sufficient to repay the debt. The imprisonment period does not exceed 90 days per year per debt. Through these provisions, legislators meant to ensure the rights of both creditor and debtor. It is noteworthy that imprisonment, in case of failure to repay the debt, is not a punishment for a crime, but rather a

means of pressure on borrowers who refuse to repay their debt despite their financial ability, to guarantee that creditors recover their debts and achieve their rights.

These matters are just financial claims. A case of failure to repay can only be recognized based on court rulings after evidence has been established. Also, the case for debt default and inability to pay is only upheld when the verdict is submitted to the Execution Department in light of borrowers' possession of sufficient funds to repay the debt or offer a financial settlement of the debt in accordance with the Execution Law provisions.

Article (22/a) of the Execution Law states that creditors can request that a borrower be imprisoned if he or she fails to repay their debt or offer a settlement commensurate with their financial capacities during the notice period, provided that the first installment as per the settlement is no less than 25% of the due debt.

Legislators have allowed for imprisonment of borrowers as per the provisions of the Execution Law:

- If the debt has not been repaid or if a settlement commensurate with the financial capacities of the borrower has not been offered within 15 days of being given notice;
- If, after questioning the borrower, it is proven to the execution chief that the borrower is capable of repaying the debt. Unlike what the report mentions, courts do not sentence [debtors] routinely. They follow the provisions of the law and function according to the principles and guarantees of fair trial and right to defense. The aggrieved party has the right to object to any decision issued by the execution chief within seven days of being given notice, according to the Execution Law's provisions.
- The decision issued by the execution chief can be appealed before the Court of First Instance in its appellate capacity within seven days of being given notice, and legislators have allowed for the right to appeal the prison sentence.
- The crime of issuing bouncing checks is a different case. Here, the act is considered a punishable crime according to the provisions of the

Jordanian criminal law, on par with different legislations around the world.

Third: On the statement that imprisonment due to failure to repay debt is a violation of Jordan's obligations under international human rights law, which forbids imprisonment of individuals for failing to fulfill their contractual obligations:

The Jordanian government ratified in 2006 the International Covenant on Civil and Political Rights, which was published in the Official Gazette, issue no. 4764. However, the constitutional ratification procedures have not been completed because they have not been presented before the Jordanian parliament for ratification as per Article (33/2) of the Jordanian constitution, because they infringe upon Jordanians' public and private rights.

Article (11) of the International Covenant on Civil and Political Rights states that the borrower shall not be imprisoned on the ground of inability to fulfil a contractual obligation. Consequently, it does not forbid imprisonment of an individual who is capable of fulfilling their obligation.

Fourth: Regarding the questions raised in the report about the following:

- The number of debt default cases examined by courts:

It is not possible to prepare statistics of civil cases of failure to repay debt that are examined by courts because these cases are merely financial claims. A case for failure to repay can only be upheld based on court rulings after evidence has been established, and the case of debt default and inability to pay is only upheld when the verdict is submitted to the Execution Department in light of the borrower's possession of sufficient funds to repay the debt or offer a financial settlement in

accordance with the Execution Law. All of the above cannot be tracked electronically.

- Regarding the cause of the civil execution cases backlog:

This is due to failure of the concerned parties to follow up on the execution claims in execution cases, in addition to the increasing number of claims submitted as civil debt cases.

- Regarding available alternatives to debt imprisonment in law and practice:

The options available to the officiating judge within the provisions of the Execution Law include seizure of funds of the convicted person or imposing a travel ban, in addition to allowing financial settlement according to the financial capacities of the convicted person.

A committee is reviewing the Execution Law in such a way to ensure justice and account for the interests of both parties (borrower and creditor).