

LEGAL FRAMEWORK ANALYSIS

MIDDLE EAST

SUB-REGIONAL REPORT

ICA-EU PARTNERSHIP

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LEGAL FRAMEWORK ANALYSIS within the ICA-EU Partnership Sub-Regional Report: Middle-East

I. INTRODUCTION

This report covers the sub-region Middle East and includes the countries of Lebanon, Jordan and Palestine, drawing upon their national reports for data and conclusions. The report has been prepared by Mr. Amer Madi, sub-regional expert for West Asia.

This section should briefly explain the objectives of the legal framework analysis research in the same way across all countries and regions, as well as present an introduction to the specific regional, as well as national contexts. It should also include:

- Stock introduction (see below)
- Who is writing the report? (E.g. Regional experts)
- Any other input provided by staff, affiliated partners, etc.

Cooperatives benefit from regulations that acknowledge their specificities and ensure a level playing field with other types of business organisations. The research falls within the scope of the knowledge-building activities undertaken within the partnership for international development signed in 2016 between the European Commission and the International Cooperative Alliance (ICA), which aims to strengthen the cooperative movement and its capacity to promote international development worldwide. It demonstrates that the absence of a supportive legal framework for cooperatives, or the presence of a weak or inadequate legal framework, can negatively impact cooperatives and their evolution. In contrast, the existence of supportive regulations can foster cooperatives' creation and strengthening, acting as a driver of sustainable development. For this reason, further knowledge and evaluation of cooperative legislation will become a tool for ICA members, cooperators worldwide, and other key stakeholders such as policymakers and cooperative legal scholars. With greater knowledge and access to a global, country-based legal framework analysis, ICA members can advance their advocacy and recommendations on the creation or improvement of legal frameworks, document the implementation of cooperative legislation and policies, and monitor their evolution.

The main objectives of the legal framework analysis are to:

- Provide general knowledge of the national cooperative legislation and of its main characteristics and contents, with particular regard to those aspects of regulation regarding the identity of cooperatives and its distinction from other types of business organizations, notably the for-profit shareholder corporation (the sociedad anónima lucrativa in Spanish; the société anonyme à but lucratif in French).
- To evaluate whether the national legislation in place supports or hampers the development of cooperatives, and is therefore “cooperative friendly” or not, and the degree to which it may be considered so, also in comparison to the legislation in force in other countries of the ICA region (or at the supranational level).

- To provide recommendations for eventual renewal of the legal frameworks in place in order to understand what changes in the current legislation would be necessary to improve its degree of “cooperative friendliness”, which is to say, to make the legislation more favourable to cooperatives, also in consideration of their specific identity.

II. OVERVIEW OF COUNTRIES COVERED: MIDDLE EAST

This regional report is being prepared following the completion of national reports from the countries of Jordan, Lebanon and Palestine under the Legal Framework Analysis Study. The regional report is a synthesis of national reports which cover the history of those countries, each of which is informed—albeit in different ways—by colonial aims dividing up the Ottoman empire, i.e. the French Mandate (1922 – 1943) and the British Mandate (1922 – 1948). Legal and political structures and norms established at that time linger today, informing any discussion of contemporary cooperative development. Otherwise, however, there exists no regional framework law between these countries and Israel's ongoing occupation of the West Bank and Gaza creates a barrier to such cooperation, particularly as Lebanon remains at war with Israel, which controls Palestinians' borders, trade and other relationships with regional actors.

As such, the history of cooperatives in the region can be grouped into five phases:

- **Traditional forms of cooperation:** Cooperative work is an extension of the prevailing traditions and norms in the Arab and Islamic societies throughout history; cooperative work used to come in the form of initiatives and unwritten agreements in the same society or between the neighbouring societies; it focuses on exchange of assistance and mutual benefit. These traditional forms of cooperatives exist until today, for example in the form of rotating savings and credit associations and play an important role in strengthening resilience.
- **Cooperative development during the mandatory period:** In Palestine, for example, the first cooperative law was issued by the British High Commission in 1933, paving the way for the registration between 1933 and 1948 of 244 cooperatives.
- **Cooperative development between the 1948 war¹ and the 1967 war²:** During this time, Jordan ruled the West Bank and Egypt administered the Gaza Strip. The Jordan Central Cooperative Union (JCCU) was established by 247 primary cooperative societies in 1959. This was complimented by the establishment of the Cooperative Institute in 1963 and the Cooperative Auditing Union in 1964. From the lens of Palestine, this period witnessed an increase in the number of cooperatives: the number of cooperatives in the West Bank amounted to 418 in 1967, while the number of cooperatives registered in the Gaza Strip was sixty. This expansion was driven by the “the guided economic system³” which prevailed in the West Bank and Gaza Strip. In the Gaza Strip, consumer cooperatives were formed as branches of the Egyptian central consumers institution in order to enable consumers to purchase subsidized consumer

¹The 1948 Arab–Israeli War marked the end of the British Mandate and the birth of Israel, in which Transjordan, Egypt, Syria and Iraq intervened in sending expeditionary forces that entered Palestine and engaged the Israelis.

²The so-called “Six-day war” was fought between June 5 and 10, 1967 by Israel and the neighboring states of Egypt, Jordan, and Syria. It led to the occupation by Israel of the Sinai Peninsula and Gaza (Egypt), the Golan heights (Syria), and the West Bank (Jordan).

³Under this system the cooperatives benefitted from government assistance and facilities, including soft loans and grants and preferential quotas for tax-free imports of goods.

goods (“ration commodities”). In Jordan, the number of cooperative societies reached 709 in 1967. In Lebanon, too, cooperatives were being encouraged by policies supporting the middle class intended to confront the negative aspects of the free economic system. The executive decree for cooperatives in 1972 and the establishment of the Ministry of Housing and Cooperatives in 1973 also helped to increase cooperative participation in Lebanon.

- **Cooperative development after the 1967 war:** The Israeli occupation of Gaza and the West Bank meant that the Palestinian cooperatives there were unable to communicate with the Jordanian and Egyptian government institutions that had supported their establishment. The occupation imposed numerous obstacles. Despite these obstacles, a large number of the cooperatives were able during the period of the Israeli occupation the West Bank and Gaza Strip to continue with their activities and offer services to their members such as loans, provision of production requirements and land reclamation, food manufacturing, exports, consumer goods, housing, transport, medical insurance, and water and electricity services. In Jordan, the Government of Jordan took over the responsibility of cooperative development by establishing an autonomous but quasi-governmental agency, the Jordan Cooperative Organization (JCO), which absorbed the JCCU, the Cooperative Institute and the Audit Union. The Cooperative Law of 1971 changed the nature of Jordan's cooperative sector by placing all functions and responsibilities of the hitherto autonomous apex bodies under the JCO as “super apex”. Since the Government held most seats on the Board of Directors of the JCO, this resulted in effective government control over the cooperative movement. Established in 1978, the Jordan Cooperative Bank (JCB) disbursed between 16 to 20 per cent of the total institutional credit between 1980 and 1985. The Central Bank stopped the JCB from operating because it was on the brink of bankruptcy. In Lebanon, the cooperative sector witnessed an important breakthrough especially after the promulgation of the executive decree for cooperatives in 1972 and the establishing of the Ministry of Housing and Cooperatives in 1973. Lebanese economic and social sectors were then affected by the civil war, which broke out in 1975 and lasted until 1990.
- **Cooperative development since 1994:** After the 1994 establishment of the Palestinian National Authority, cooperatives were placed under the authority of the General Directorate of Cooperatives within the Palestinian Ministry of Labor. The Directorate ensured compliance with the two cooperative laws inherited from the past, namely Law no. 17 of 1956 (West Bank) and the Egyptian law of 1933 applied in Gaza Strip. The Directorate re-registered during the period 1995-1997 all cooperatives and kept them in a consolidated national register. In Jordan, major change was also under way. By 1995, the financial situation of JCO had become so alarming that the government decided to dissolve the organization all together, replacing it by the Jordan Cooperative Corporation (JCC), a government agency fully financed by the State and established in accordance with a new Cooperative Law that was promulgated in 1997, replacing the 1971 Law. Currently, the Co-operative Law (No. 18 of 1997) and the Cooperative Societies Charter (No. 36 of 2016) are the two principle legislations that regulate the work of cooperatives in Jordan.

III. REGIONAL COOPERATIVE LAW: MIDDLE EAST

I. Regional Context

The Middle East is a sub-Region of the Asia and Pacific Region under the Legal Framework Analysis. Geographically, it is a transcontinental region in Afro-Eurasia which generally includes Western Asia (except for Transcaucasia), all of Egypt (which is mostly in North Africa), and Turkey (partly in Southeast Europe). Thirteen out of eighteen of the countries typically included in the Middle East are Arab countries, and while there are numerous ethnic groups represented in the region, most of the people of the region are Arab. The region has a very diverse religious representation with most of them originating there; Islam is the most dominant but Christianity, Judaism, Baha'ism, Zoroastrianism, Yazidism, Druze and numerous other minority groups are found throughout. The climate is hot and arid for the most part, although the Nile in Egypt and the Euphrates and Tigris in Iraq provide irrigation for agriculture for nearby communities. Despite the presence of wealthy oil-rich states in the Middle East region, the average income is low and unemployment is widespread. Youth unemployment in the Middle East and North Africa has remained the highest in the world for over 25 years, reaching 30 percent in 2017⁴. Only in Qatar are youth unemployment rates lower than the world average of 13 percent. For our purposes, the LFA covers Palestine, Jordan, Lebanon, UAE, Saudi Arabia, Kuwait and Iran, however human resources constraints have limited this sub-regional report to Palestine, Jordan and Lebanon, which have existing country analyses.

As described above, the history of colonialism in the region leading into the continued occupation of the lands of Palestine and an extenuated war situation between Israel and other neighbouring states (Lebanon, Iran, Syria, etc.) and more recent internal and intra-state conflict have created a context in which regional cooperation is extremely difficult and fractured. The League of Arab States is the main regional political body that includes the countries in this report. While it is riven with disagreements, there are several areas of possible cooperation. Other regional but targeted organizations include the Euro-Med Youth Programme and the Islamic, Educational, Scientific and Cultural Organization. The MENA-OECD Initiative on Governance and Competitiveness for Development is working to develop economic reforms across the region.

⁴<https://www.brookings.edu/research/youth-employment-in-the-middle-east-and-north-africa-revisiting-and-reframing-the-challenge/>

II. Overview of National Contexts

Existing legal frameworks

Constitution	General co-operative law/provisions	Special co-operative law/provisions	Absence of co-operative law	Explicit reference to ICA principles
JORDAN				
No specific reference to cooperatives; Article 16.2 grants right to establish societies provided that the objects of such societies are lawful, their methods peaceful, and their by-laws not contrary to the provisions of the Constitution	- <i>Cooperative Law</i> enacted on 22 April 1997; establishes and provides for the administration of the Jordan Cooperative Corporation	<i>Cooperatives Societies Charter</i> governs the registration and administration of cooperatives within the Jordanian Cooperative Union (JCU), adopted 21 February 2016	- a precise definition of a cooperative	- Article 19 of <i>Cooperative Societies Charter</i> states that "Primary cooperatives, their unions, and the Jordanian General Cooperative Union are non-governmental organizations governed and controlled by their respective members in accordance with the democratic and cooperative principles." - Some implicit non-specific references to the cooperative principles can be found in the <i>Cooperative Societies Charter</i> (ie. Voluntary and open membership, democratic membership, member economic participation, etc.)

PALESTINE				
<p>No explicit mention in the Basic Law</p> <ul style="list-style-type: none"> - Article 20 states that the economic system shall be based on the principles of a free market economy and enshrines the freedom of economic activity and private property. - Article 26 enshrines the rights of Palestinian citizens to form and establish unions, associations, societies, clubs and popular institutions in accordance with the law. 	<p>Palestinian Decree-law N° 20 of 2017 regulates cooperative associations in Palestine; unifies the previously fractured legal regime existing between Gaza and the West Bank; regulates the sector through the Cooperative Works Commission (CWA), established and detailed in law.</p>	<p>LEBANON</p> <ul style="list-style-type: none"> - Decree 17199, 18/8/1964 - Executive decree 2989, 17/3/1972 - Decree 9569, 19/12/2012 – procedures for financial aid - Decree 8355, 10/07/1974 – organization of training - Budget Law – promotion of fairs for marketing 		<p>Palestinian Decree-law N° 20 explicitly references the seven ICA principles in Article 2: voluntary membership, democratic management, economic participation, self- autonomy, cooperative knowledge and cooperation among cooperatives</p>
LEBANON				
<ul style="list-style-type: none"> - No explicit mention in the Constitution - indicates “social justice as a right and social and economic development as a pillar of unity and stability of the state” 	<ul style="list-style-type: none"> - Law of the cooperative associations decree number 17199/1964, last amended in 1983 - Executive decree for cooperative associations number 2989 enacted on 17/3/1972, last amended on 21/6/1977 			<ul style="list-style-type: none"> - Seven ICA principles are only implicitly mentioned in related laws (see below): - Open membership (article 12 decree number 2989/72) - Democratic member control (articles 21 decree number 17199/64)

LEBANON				
				and articles 53-55 Decree number 2989/72) - Member financial participation (article 2/d and 9/1, decree number 2989/72) - Autonomy and independence of the cooperative (article 7 decree number 17199/64) - Education, training and information (Decree 8355- 10/07/1974) - Cooperation among cooperatives (articles 62- 63 decree number 17199/64) - Concern for community (article 33/2-b decree number 17199/64)

III. Specific Elements of The Co-operative Law

I. Definition and objectives of cooperatives

Most laws in the region generally define cooperatives as groups with members having a shared interest in cooperation and social improvement. In Lebanon, a cooperative must have ten members and is “any non-profit association composed of persons, having a variable capital, established according to the provisions of the present law whose objectives is the improvement of the socio-economic conditions of its members by joining their efforts according to the general principles of cooperation.”⁵ The Decree-law in Palestine, which was developed in cooperation with the ILO, defines a cooperative as “a social-economic entity established by at least 15 members who volunteer to

⁵Decree number 17199/64 article 1

meet their common needs and aspirations through their own contributions, joint ownership, management and democratic oversight.”⁴⁷ Articles 3 and 16 lay out terms that differentiate cooperatives from other entities, including requiring the word cooperative to be used in their name, defining member rights, stating that cooperative members should have one vote, restricting ownership of shares of 20-35%, and defining surplus distribution. Innovation is encouraged by the lack of restrictions on the types of economic activities that cooperatives may participate in.

In Jordan, however, aside from being referred to as a non-governmental organization (NGO) governed by its members (15 required), a precise definition of a cooperative cannot be found in either the Cooperatives Law or the Charter. While cooperative leaders fully understand that cooperatives are a form of socially oriented economic enterprises that are based on the principles and values of self-help and solidarity, the way cooperatives operate in practice does not fully reflect this understanding. This is a result of the adverse effects of international aid. In Jordan, for example, donors set up cooperatives with funding and without a great deal of member support, ignoring the fact that cooperatives are legal entities able to do business, and skirting the JCU by establishing contact with cooperatives directly.

The objectives and purpose of cooperatives are not defined in Jordan's Cooperatives Law or the Cooperative Society's Charter, leaving it to members to decide in this regard. These laws do not have any explicit legal provision that a cooperative is obligated to transact with its members. Restrictions on what activities cooperative can engage are enforced through restrictions explicitly mentioned in the model bylaws that the Registrar makes available to different types of registering cooperatives. For example, these bylaws prohibit non-housing cooperatives from engaging in real-estate development and housing projects altogether. Further definition of cooperatives' appearance and objectives are useful in this case.

II. Establishment, cooperative membership and governance

Membership governance of cooperatives in the region is weak. In Lebanon and Jordan, state involvement in the registration and management of cooperatives could be perceived as antithetical to the principal of democratic governance by the membership. In Lebanon, the General Directorate of Cooperatives exerts external control over cooperatives in order to protect the member's rights and public funds. Government financial support for the cooperatives is used to justify this engagement, whereas the state is viewed as needing to safeguard the use of public funds. In Jordan, all cooperatives must be officially registered by the Jordanian Cooperative Corporation (JCC) to be able to operate. The JCC is an autonomous semi-governmental organization, with financial and administrative independence. It is governed by a Board of 12 members – predominantly – high levels of government and leaders of the Jordanian cooperative movement. The JCC Board is chaired by the Prime Minister, while the seat of the vice chair is reserved to the JCC Director General, appointed by the King based on nomination by the Council of Ministers.

All of the legal regimes in the region indicate that a cooperative must be established with a certain number of members. In Jordan, the establishment of a primary cooperative is contingent of the willingness of at least 15 founding members to apply for registration. This number of members is mandatory but lax enforcement means few cooperatives are disbanded upon this ground. In Palestine, too, 15 members are required to establish a cooperative. This minimum number of members might be too high or too low depending on context. In general, the high minimum number is thought

to ensure the viability of the cooperative, but there is evidence that this number does not correlate with viability. For example, consumer cooperatives are difficult to organize with only a few members, whereas worker cooperatives tend to fail if the number exceeds 10 members.

Generally, throughout the region, cooperative governance is carried out by a general assembly which elects an executive board; additional surveillance or monitoring bodies are also present in Jordan, Lebanon and Palestine. Because the law is so vague in Jordan, it would be highly desirable to develop a code of conduct to which all agencies involved in the promotion of cooperatives in Jordan should subscribe; this would include the use of standardized management and accounting systems, as well as common training and education material.

III. Cooperative financial structure and taxation

In Palestine, Jordan and Lebanon, each member is to contribute to the capital of a cooperative, but the amount of capital required is not prescribed in law. Lebanon adopts a complicated formula for distributing surplus, with 5% at most being reserved for social and cultural activities. While cooperatives are tax-exempt, their members are required to pay income tax on their earnings.

Palestinian law provides cooperatives with a relatively wide range of options to finance their operations (Article 40). These include equity capital, membership fees specified in the bylaws, loans, donations, accumulated reserves, member deposits and profit generated from them, surplus generated and profit from cooperative owned businesses and investments. Accordingly, it is permissible for cooperatives to take loans from members, issue preferred stocks, and invest in non-cooperative businesses if thus is authorized by their General Assemblies. Moreover, cooperatives can establish special funds to finance on-lending activities, as well as social, health and cultural activities. Palestinian law also divides up surplus with 5% going to community development, 5% paid to the CDF, and the rest divided among members, a cooperative reserve, and the cooperative's management, as determined by the cooperative general assembly. This configuration is unique in that it supports the various structures required to maintain the cooperatives and their governance.

The capital of a cooperative in Jordan is the total amount of contributions paid by the members. The Cooperative Societies Charter has no legal provision allowing any cooperative to issue any financial instrument other than member shares or to admit investor members. It stipulates that a member should contribute at least one share unit but does not go beyond this limitation.

Jordanian cooperative laws make no distinction between surplus from cooperative transactions with members and profits deriving from other sources (including from transactions with non-members). There are also no legal provisions that regulate the distribution of surplus in proportion to members' subscribed capital. Cooperatives in Jordan are treated on equal terms as those accorded to other forms of enterprise and social organization, and they do not enjoy any privileges such as tax benefits, loans, grants, access to public works programs, and special procurement provisions. This disincentivizes the establishment of cooperatives over private companies by entrepreneurs. Cooperative societies are subject to regulatory and financial control by the JCC, while companies maintain financial independence.

IV. DEGREE OF “COOPERATIVE FRIENDLINESS” OF THE LEGISLATION IN THE REGION

The overall picture of legislation in the region is “cooperative friendly.” There are models of legislation that are clear in their definitions and objectives, and detailed in laying out legal status. In Palestine, the legal definition prohibits the use of the term “cooperative” in referring to any other entity. While not often explicit in this, the legislation reflects good practice and is aligned with the ICA definition and the seven ICA principles. The process to register a cooperative is fairly simple and does not take very long (30 days in Jordan and Palestine, after completion of application). In most cases, legislation enshrines the “one member, one vote principle.”

Some areas remain for clarity in the law. In Jordan, a lack of clarity in objectives of cooperatives, definitions and preambles in legislations leaves the laws open to interpretation and confusion. Moreover, there is a lack of attention to the member of a cooperative's status as a user, which is different from that of a shareholder in a company. In Palestine, the legal nature of the governing body, the CWA, is not clear, with implications for the proper representation of cooperatives within it. There is also greater clarity needed in laying out the powers of the CWA's various organs and their hierarchy, as well as its relationship with tertiary cooperative organizations. In Lebanon, the sector is limited and falls under the purview of the Ministry of Agricultural rather than falling under a separate agency that has a broader set of responsibilities and outreach.

As mentioned above, there is little evidence that requiring a certain number of cooperative members in formation ensures survival; different types of cooperatives can thrive with different minimums begging the question as to whether there should not be more flexibility in this regard. Restricting registration of cooperatives in the same “area” as in Palestine also is objectionable, perhaps creating artificial protectionist advantages for existing structures. Non-democratic state governance in the management of cooperatives (for example, in Jordan's JCC which does not include elected cooperative members) is also problematic and unfriendly. Palestine's CWA has a board of eleven members, of whom only three are from the cooperative movement. Finally, incorporating gender analyses and equity within the cooperative legislation and policymaking would increase their democratic character.

V. RECOMMENDATIONS FOR THE IMPROVEMENT OF THE LEGAL FRAMEWORK IN THE REGION

For cooperatives in the Middle East region to grow and develop, they need an enabling environment that promotes and strengthens their autonomy and facilitates their access to forms of technical and financial support that enable them to deliver services that meet the needs of their members. Key to achieving this are the following:

- **Developing a policy document for cooperative development, in a participatory manner with all cooperative stakeholders.** A supportive policy is necessary in creating an enabling environment for cooperative development. Such a policy should be developed in a participatory manner and harmonized with other relevant policies that affect cooperative operations and development, e.g. taxation policy, commercial/economic policy, employment policy, industrial and agricultural policy, etc.

- **Resolving existing issues of a unified and consistent strategy, democratic governance, and respect for the ICA principles within the law and regulations.** Based on the national cooperative policy/strategy, redrafting cooperative legislation (or establishing regulations) to: (i) make it consistent with the national cooperative policy, (ii) ensure that cooperatives are not subject to any form of external control that compromises their democracy and autonomy, and (iii) recognize and underscore the cooperative principles and values. As in the case of a cooperative development policy, the cooperative law should be popularized by presenting it in a simplified, layperson's version that is widely disseminated among cooperative stakeholders. The process involved in formulating cooperative legislation must ensure active participation by the key stakeholders through regular consultations, considering their views, needs and concern.
- **Developing a national cooperative development strategy** (based on the national cooperative policy): A cooperative development strategy forms the basis for the plans, programs and actions that will help achieve the objectives of the cooperative development policy.

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