

LEGAL FRAMEWORK ANALYSIS

within the ICA-EU Partnership

National Report of Palestine

ICA - Asia and Pacific (ICA-AP) is the voice of cooperative enterprises in the Asia and Pacific region. ICA-AP, as a regional office of the ICA, is also a co-signatory of a Framework Partnership Agreement signed between the International Cooperative Alliance and the European Commission in March 2016, which aims at strengthening the cooperative movement and its capacity to promote international development. This agreement underpins the 'Cooperatives in Development' program and includes knowledge building activities at the global (harmonized) and regional (decentralized) level.

The activities planned within the framework of the program include diverse research activities conducted at the global and regional level. The primary activities undertaken at the global level include a Legal Framework Analysis (A2.2), which is led in a coordinated way by all ICA offices. Within this framework, ICA-AP oversees implementing the research in the Asia and Pacific region.

The study on legal frameworks under the Legal Framework Analysis (A2.2) will evaluate jurisdictions and policy regulations according to their enablement of cooperative development. The document will present recommendations for the next steps in renewing the legal frameworks and helping to shape the policy agendas in a targeted way in the different regions and countries. It will evaluate the cooperative legal framework in place with common indicators, delivering on a scale of how 'cooperative-friendly' the legislation in a country is. In the same context, this report deals with the Legal Framework Analysis of Palestine.

Introduction

Cooperative development in Palestine is, just as any other area of development, affected and constrained by the prevailing socio-economic and political situation. The history of cooperatives in Palestine 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 neighboring 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 the resilience of the Palestinian people against the difficulties of Israeli occupation.



- Cooperative development under the British mandate in Palestine (1922 – 1948): the first cooperative law was issued by the British High Commission in 1933, thus 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. This period witnessed an increase in the number of cooperatives in both parts of Palestine: 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 goods (“ration commodities”).
- Cooperative development after the 1967 war and until the establishment of the Palestinian Authority (1994): The Israeli occupation of Gaza and the West Bank meant that the Palestinian cooperatives were unable to communicate with the Jordanian and Egyptian government institutions which 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.
- Cooperative development since 1994: After the 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.

The above shows that the Palestinian cooperative movement went, within the relatively short period of 72 years, through four distinct administrations: British mandate, Egyptian/Jordan rule, Israeli occupation, Palestinian administration. Each of those applied different principles, ideologies and orientations, thus confusing cooperative members and weakening cooperative

¹ The 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.

² The 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).

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



societies.

The purpose of this report is to examine the friendliness of cooperative laws in Palestine in the present context, particularly Decree-law N° 20 of 2017 which is the only law that governs cooperative activity in Palestine. Chapter II provides an overview of the cooperative legal framework in Palestine. Chapter III examines the important legal features of cooperative laws in Palestine under the headings indicated below:

- Purposes of the Cooperative Laws
- Principles, Definitions, and Objectives
- Establishment
- Membership
- Governance
- Business Activities
- Capital and Financing
- Appropriation of Surplus
- Disposal of Residual Property
- Cooperation among Cooperatives
- Tax Treatment
- Promotion of Cooperatives by the Government

Chapter IV discusses legal friendliness and obstacles of cooperative laws in Palestine and Chapter V makes a summary and a conclusion.

Overview of the Cooperative Legal Framework in Palestine

The Palestinian Basic Law -an interim constitution of sorts- does not explicitly mention cooperatives. However, there are several articles in the Basic Law that have relevance to and support the formation of cooperatives. For example, Article 20 of the Basic Law states that the economic system in Palestine shall be based on the principles of a free market economy and enshrines the freedom of economic activity and private property. Article 26 is also significant in this regard as it enshrines the rights of Palestinian citizens to form and establish unions, associations, societies, clubs and popular institutions in accordance with the law.

The Palestinian Decree-law N° 20 of 2017 is the only law that regulates cooperative associations in Palestine. It was enacted on November 2017, ten years after the first draft of a bill had been formulated with ILO assistance, replacing cooperative laws N°50 of 1933 (which used to apply in the Gaza Strip) and N° 17 of 1956 (which used to apply in the West Bank). This is a major achievement – for the first time in history, Palestine has a unified cooperative law, as an indispensable basis for a unified cooperative movement. Nonetheless, as discussed later in this report, the systemic application of the Decree-law remains constrained by the lack of several by-laws, regulations and instructions, most of which are urgently needed.



The total number of registered cooperatives in Palestine is 795, of which 785 are in the West Bank and 172 in the Gaza strip. The number of *active* cooperatives in the West Bank amounted to 545 (69% of the total), with 46,000 members; the corresponding figures for Gaza were 122 active cooperatives (71% of the total) with 8,000 members. All Palestinian cooperatives belong to one of five categories⁴, as shown in the table below.

Cooperatives in Palestine (2018)						
	Agriculture	Housing	Services	Artisans	Consumers	Total
Northern West Bank	120	39	30	5	7	201
Central West Bank	55	132	37	11	4	239
Southern West Bank	56	26	14	5	4	105
Gaza	17	99	3	1	2	122
Total	247	296	84	22	17	667
Percentage	37%	44%	13%	3%	3%	100%

Female membership represents about 23% of total membership in the West Bank. There is no data, however, on the number of women cooperative members in Gaza. The large proportion of housing cooperatives in Gaza (81% of the total) may be due to the historic Egyptian influence, since housing cooperatives are very popular and widespread in Egypt.

In addition, as the table below shows, there are six registered cooperative unions were in Palestine⁵. Two of those unions, namely “consumer” and “handicraft”, seem to exist on paper only. It appears that these two unions were established primarily to be able to register the General Cooperative Union (GCU) which, according to article 15.1.c of the Cooperative Law, must have at least 5 sectoral unions as members. The GCU in turn was established as a prerequisite to register the CWA, since the Agency’s board includes three GCU representatives. For the time being, these three unions (handicraft, consumers, general) are empty shells that do not provide tangible services to their affiliates⁶. The other three do render effective services, but still struggle with financial sustainability since their membership, and therefore their income, is relatively small. The agricultural cooperative union was formed in 2012 through the merger of three existing unions,

⁴ The categories are somehow artificial, thus hiding the much greater diversity of the Palestinian cooperative movement: “agriculture” includes animal husbandry, crop production, olive oil pressing, rural development and “general agricultural services”; “housing” can mean joint construction, joint purchase, joint management, joint services, or a combination of those; “services” includes savings & credit, utility services, women empowerment cooperatives, education services, as well as packaging and marketing; “consumer” includes groceries and food processing facilities.

⁵ A seventh union, namely the “cooperatives union to monitor accounts”, has not been active for more than ten years, and is considered as dormant by the CWA.

⁶ It is perfectly imaginable however that these unions could provide useful services; the consumer union could, for example, purchase consumer goods in bulk, and thereby realize economies of scale; the handicraft union could (fair trade) exports on behalf of its members and thus enlarge market access; the GCU could effectively represent the movement nationally and internationally.



namely livestock marketing, crop marketing, and olive oil marketing. The persons met during the consultant’s mission deplored the merger since the new union had lost its specialization, which made it less attractive to potential member cooperatives.

Name	Main function	Member coops	% of active coops
Agricultural cooperative union	Fair trade certification; olive oil exports; agricultural extension; business plans	92	37.2%
Housing cooperative union	Legal services, engineering consultancy, architecture services	60	20.2%
Savings and credit cooperative union	Management information systems; accounting support; financial management; credit assessment	12	14.3% (30% if only S&C coops are counted)
Consumer cooperative union	N/A	N/A	N/A
Handicraft cooperative union	N/A	N/A	N/A
General cooperative union	Representation, links with international bodies, awareness raising	5 sectoral unions	100% of unions

The new law does not oblige primary cooperatives to affiliate with a union, or sectoral unions with the GCU, which, from the consultant’s point of view, is a very positive element of the new legislation since it complies with the basic cooperative principle of voluntary membership. Article 15.2 of the law provides for the establishment of “central associations” by four or more primary cooperatives located in the same governorate. Such central associations, which do not exist yet, would represent the movement regionally, not by sector.

Legal Features of Cooperative Laws in Palestine

1. Purposes of Cooperative Laws

It is to be emphasized that cooperative law comprises all those legal rules - laws, administrative acts, court decisions, jurisprudence, cooperative bylaws/statutes or any other source of law, which regulate the structure and/or the operations of cooperatives as enterprises in the economic sense and as institutions in the legal sense. This notion of cooperative law comprises, hence, not only the cooperative law proper (law on cooperatives, or the Decree-law on Cooperatives in the case of Palestine), but also all other legal rules and procedures, which shape this institution and



regulate its operations. For the purposes of this report, however, the discussion of the cooperatives laws here focuses mainly on the Decree-law on Cooperatives.

According to Article 2, the main purpose of the Decree-law is to encourage, organize and develop the cooperative work in Palestine. It explicitly states that regulation of the cooperative sector vests with the Cooperative Works Commission (CWA) – an agency established by virtue of the Decree-law- whose administrative and financial structure are covered at length in law. The Decree-law thus mixes private and public law elements, rendering its implementation complex than the laws it replaced. This is particularly true considering that Article 3 of the Decree-law regulates the scope of its application without mentioning the Cooperative Works Agency (CWA) despite Chapter II of the Decree-Law dealing with the CWA.

2. Principles and Definitions

The decree makes explicit reference to the seven ICA principles, though it does not refer to them as such. Article 2 states that cooperative work must be based on and guided at all times by the principles of *voluntary membership, democratic management, economic participation, self-autonomy, cooperative knowledge and cooperation among cooperatives* for the benefit of the cooperative members and the local community.” It is worth noting here that the ICA principles are well-known by all stakeholders with whom the consultant has met during completion of this questionnaire. In most conversations with stakeholders, explicit reference was made to the seven principles; and, in nearly all organizations visited, there were large posters and signs displaying these principles. Moreover, the Cooperative Sector Strategy 2017-2022 (CSS) has formulated a vision statement as follows:

A leading productive and independent cooperative sector whose practices reflect its absolute commitment and belief in the seven cooperative principles, and that makes concrete contributions to the national economy and towards building the pillars of the future Palestinian State.

The Decree-law defines a cooperative as “a social-economic entity established by at least 15 members who volunteer to meet their common needs and aspirations through their own contributions, joint ownership, management and democratic oversight.”⁷ The law states that cooperatives shall exercise their activities according to their legal personality, and shall have financial and administrative independence. In this capacity, the Decree-law grants cooperatives the right to own movable and immovable property, conclude contracts, including sales and mortgage contracts, accept donations and assistance, and undertake all legal actions to achieve their objectives.

While the Decree-law does not include any articles that explicitly differentiate between cooperatives and other types of business, its Articles 3 and 16 makes it clear that cooperatives are

⁷ Decree-law on Cooperatives, Article 15.1. Author’s translation.



governed by it. Moreover, the Decree-law includes several provisions that –when compared with the Companies Law applicable in the West Bank and Gaza- make these differences quite clear. For example:

- Article 18.1 states that cooperatives must take a name that includes the word “cooperative” or any of its derivatives, thereby making a clear distinction from other forms of enterprise.
- Article 20 (member rights) refers to shareholders as members and defines members as those individuals who have paid their membership fees and fulfilled their financial obligations towards ownership of the minimum equity shares species in the cooperative’s bylaws/articles of association.
- Article 32.1 explicitly states that each cooperative member shall have one vote, irrespective of the number of shares he/she holds in the cooperative. This is contrary to the decision-making structure in other forms of enterprises where individual voting power is proportionate to the number of share an individual owns.
- Article 41 restricts ownership of shares to a maximum of 20% of total equity for individual members, and to a maximum of 35% for “legal members”, whose collective ownership of shares is also capped at a maximum of 49%. These restrictions cannot be found in any of the other laws governing non-cooperative enterprises in Palestine.
- Article 45 deals with surplus (not profit) distribution and stipulates mandatory allocation of surplus in specific percentages for different purposes as we discuss later in this document.

3. Objectives of cooperatives

In Article 15.1, the Decree-law states that cooperatives are established on a voluntary basis by members “to meet their common needs and aspirations through their own contributions, joint ownership, management and democratic oversight.” It is thus implicitly understood from the Decree-law that cooperatives are established to promote their members through providing (paid) services to members, granting cooperatives the independence to identify their objectives and purpose and the way they will pursue these in their bylaws. However, the definition (Article (15.1)) does not mention that cooperatives are/have an enterprise. Cf. also Article (5.4).

It is worth noting here that the Decree-law leaves the issue of transacting with non-members to the discretion of the individual cooperatives but requires clarification in the bylaws of these cooperatives. However, the Decree-law is formulated in a way that incentivizes members to transact with their cooperatives by requiring the distribution of no less than 25% of surplus to members in proportion to the volume of their transaction with the cooperatives, but at the same time it does not make it mandatory in any way for members to transact with their cooperative. The Decree-law assumes that cooperatives will set their own requirements and develop the needed mechanisms to ensure the economic participation of members beyond payment of membership fees and ownership of shares and how the cooperative will promote its members,



including members obligations towards their cooperative and whether or not non-members can transact with the cooperative.

The Decree-law does not explicitly prevent cooperatives from engaging in community development or serving non-members, but the ways in which the law is understood and actually applied makes it difficult at times for cooperatives to attain registration on the basis of general community development objectives or on the basis of enterprise ideas built around providing service to non-members. Once registered, however, and in the absence of regulations that explain what standard of performance must be adhered by cooperatives vis-à-vis member promotion following their registration, cooperatives may receive grants and donations to implement general development activities within the communities they serve (and, in fact, outside). Perusal of general development objectives has become a common practice by many cooperatives, often to the detriment of the core cooperative endeavor for which these cooperatives were established, and without much consensus by members.

The Decree-law does not put any restrictions on the types of economic activities that cooperatives may engage in. This is intended to foster innovation and encourage cooperatives to transcend the conventional services that cooperatives usually get established to deliver. In fact, innovation in cooperative activities is one of three objectives of the cooperative sector strategy for the years 2017-2022 (CSS). The CSS, which follows a previous strategic document covering the period 2014 – 2016, has formulated a vision statement as follows:

A leading productive and independent cooperative sector whose practices reflect its absolute commitment and belief in the seven cooperative principles, and that makes concrete contributions to the national economy and towards building the pillars of the future Palestinian State.

To achieve this vision the CSS pursues three strategic goals, namely:

1. An institutional environment that enables the cooperative movement to grow and develop;
2. Improved financial and organizational performance [within the cooperative movement]; and
3. New work fields and sectors inclusive in cooperative work.

The three strategic goals are refined through 22 proposed policy interventions and 12 concrete results to be achieved by 2022. The CSS is explicitly linked to the National Policy Agenda (2017-2022) through a table that shows the contribution of cooperatives to the priorities and policies of the Agenda.

4. Establishment

By virtue of the Decree-law, a Cooperative Works Commission (CWA) was established to regulate and promote cooperatives in Palestine, including cooperative unions. Its regulatory functions



include cooperative registration, without which cooperatives cannot formally operate.

A cooperative will not be registered unless it has a minimum of 15 members, and is obliged by law to maintain this number after its registration. Should the cooperative membership become less than this statutory requirements, it risk being subject to dissolution by the CWA Article 54.1). In general, the high minimum number is thought to ensure the viability of the cooperative. There is evidence that this number does not correlate with the viability. The minimum number might have to vary according to the type of cooperative. For example, consumer cooperatives are difficult to organize with few members only, whereas worker cooperatives tend to fail if the number exceeds 10 members, etc.

The key legal requirements for registering a cooperative are the following:

1. A completed and duly signed standard application form.
2. Proposed Articles of Association and Bylaws.
3. Minutes of the meeting of founders, including their names and the names of authorized signatories for administrative, financial and registration purposes.
4. A clear definition of the cooperative enterprise, including an economic feasibility study of this enterprise.
5. A form that includes the names and basic socio-economic data of all the founding members.
6. A bank receipt showing deposit by the cooperative of the total value of equity shares in the cooperative and the membership fees by all founding members.

5. Membership

The Decree-law stipulates the conditions of membership in a cooperative. According to Article 22, cooperative members must be Palestinian citizens over 18 years of age, with no previous criminal record and have the merit and interest to join the cooperative of their choosing. The principle of open-door membership is not explicitly mentioned in the Decree-law, however; and there are no provisions in the law that obligate cooperatives to accept third parties as members. The Decree-law is also silent on the rights and obligations of members, including those related to voluntary withdrawal. It states that cooperatives should deal with these issues in their bylaws, thereby allowing individual cooperatives to put limitations on voluntary withdrawal of members. Discussion with the CWA and cooperative stakeholders suggest that the CWA scrutinizes cooperative bylaws during the registration process to ensure that they adhere to the “open door membership” principle, including unobstructed separation from the cooperative by members.

The Decree-law regulates the voting power in the General Assembly meetings by explicitly stating that each member has only one vote, irrespective of the number of shares he/she owns.

6. Governance



The governance structure of cooperatives as stipulated in the Decree-law (Article 29) is as follows:

- 1- General Assembly: this is the highest decision making body in cooperatives, and is responsible for electing an Executive Board, and deciding general policies that govern the cooperative operations, including reviewing and amending bylaws, approving operational plans and budgets, appointing an external auditor, deciding on how surplus will be distributed, and authorizing acceptance of donations, cooperative loans, dissolution, mergers, and membership in cooperative unions. The General Assembly is composed of members of the cooperative.
- 2- Management Committee/Board: This is elected by the General Assembly from the ranks of its members in accordance with the provisions set in the individual cooperatives' bylaws. The Management Committee/Board is responsible for implementing policies set by the General Assembly in accordance with the cooperative bylaws and is accountable to the General Assembly.
- 3- Surveillance Committee: The establishment of a surveillance committee (such an "oversight committee" is mentioned in Article (1)) is considered as a permanent body overseeing the work of the management in the absence of such oversight by the members who, generally, do neither have the time, nor the knowledge and know-how to effectively exercise their (permanent) control rights.
- 4- Other committees: The Decree-law states that cooperatives can establish other committees as needed and gives the General Assembly the authority of establishing them.

The Decree-law leaves it to discretion of individual cooperatives to decide on the structure of the executive management (administrators) in their bylaws, including whether executive staff should be cooperative members or not. It does however include a long list of illegal actions that should not be committed by Board members or employees and imposes a fine of up to 5,000 Jordanian Dinars and/or imprisonment of up-to two years for those committing them. These actions include, inter alia: misuse and misallocation of cooperative assets, including for personal gain; obstructing audit or investigation activities; falsifying or misrepresenting information on cooperative performance; misuse of authority or position within the cooperative for self-advancement and personal gain; and taking decisions or actions in circumvention of the Decree-law and the cooperative bylaws.

7. Financial Structure & Distribution of Surplus

The Decree-law does not prescribe a minimum issued capital for cooperative establishment, stating that cooperatives should underwrite shares that are commensurate with the financing needs of its cooperative project. While the law states that cooperative bylaws should establish the minimum share capital that individual members should own to enjoy their full membership rights (including voting and running for cooperative Board elections), it permits individual members to own a maximum of 20% of the cooperative's total issued shares. Legal members could own up to 35% of shares, but collectively they cannot own more the 49% of the total shares. The Decree-law requires members to pay the value of shares fully in cash; thus, shares are not linked in any way with the volume of transactions a member makes.



Should a member decide to withdraw from the cooperative, he/she is entitled by law to receive the full value of his/her stock in the cooperative, minus any amounts of money he/she owes to the cooperative (Articles 43 and 44). It is worth noting here that the Decree-law explicitly states that members' shares can only be seized based on court decision.

The Decree-law recognizes cooperative profits as surplus and requires that it gets distributed as follows:

- 5% of surplus is to be allocated for community development,
- 5% for transfer to the Cooperative Development Fund (an independent institution whose establishment is stipulated in the Decree-law),
- a maximum of 20% to individual members in proportion to the shares they own,
- a minimum of 20% to a reserve account held by the cooperative;
- a maximum of 10% to the cooperative management committee (based on decision by the general assembly), and
- the remainder as a return to members in proportion to their transactions (patronage).

The Decree-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, cooperative can establish special funds to finance on-lending activities, as well as social, health and cultural activities.

While the Decree-law states that cooperatives should be liquidated upon dissolution, it also states that the procedures of liquidation and the distribution of assets and net surplus shall be set-out in secondary regulations issued by the Cabinet. These regulations -as well as others or pertinence here- have not yet been issued.

8. Taxation

The Decree-law does not specify what tax regime governs cooperatives, but it states that primary cooperative organizations, sectoral unions and the General Union are exempted from taxes, customs duties and registration fees on movable and immovable property necessary for the implementation of the objectives specified in their bylaws provided that they are not disposed of within a period of not less than (5) years, unless the accrued taxes and customs duties are paid.

Cooperative specific (income) taxation is not dealt with in the law and should be a matter of promotional policies. Distinction between “profit and “surplus” is also lacking in the Decree-law and -according to stakeholders met- should be clarified.



Income taxation: Taxation is an area where the difference between “specific treatment”, one which takes the specific features of cooperatives into consideration, and “preferential treatment”, one which gives favours to cooperatives, plays out in its most significant way. The Government might want to consider distinguishing between surplus and profit. Surplus is the positive result generated on transactions with members according to the cooperative principles. If generated in this way, it belongs to the members and must not be taxed. Profit is the positive result generated on transactions with non-members on commercial terms and may be treated like income of commercial companies. A related issue is the treatment of the transfer of the profits and parts of the surplus to an (indivisible reserve fund).

9. Government Oversight

The Cooperative Works Agency (CWA) -and independent body funded by government and governed by a Board of Directors from government and the cooperative movement- is responsible for registering cooperatives, regulating the cooperative sector, and promoting cooperatives. Despite the government having a double function according to Article (5), namely, to regulate and promote, the Decree-law leans towards “regulation”. The promotional aspect seems to be relegated to a matter of lesser importance. A shift towards a more balanced approach, possibly one which sees regulation in view of promotion might be considered.

The CWA has the following responsibilities:

- Registration and liquidation of cooperatives and their unions (articles 7.13, plus 24 and 54); this includes arbitration as per article 7.14
- Reviewing and approving audited accounts presented by cooperatives (7.15 and 46)
- Supervision of the application of the law (5.3, 7.13)
- Coordination with other ministries (5.5), namely those that have a cooperative unit (housing and agriculture), or that are of importance to cooperatives (for example Finance, Trade, Economy etc.). This also include relevant parastatal organizations such as the Palestinian Standards Institute.
- Donor coordination and project endorsement (5.8. and 7.10).
- Technical advisory, promotional, awareness-raising and support activities (7.9) – the main functions of CWA field workers.
- Development and design of plans and strategies for the cooperative sector (5.1); this would include the promotion of new fields and categories for cooperative action, as foreseen in the Cooperative Sector Strategy.
- Management of CWA internal affairs.

However, the Decree-law delegates most of the above functions to CWA Board and not to the Agency itself, which may not be realistic. Several stakeholders met during the preparation of this report suggested to activate article 11.1.G of the Decree-law, through which the Board of the Agency may assign “any other functions or powers” to the Chairman and, thereby, to the Agency. This could be done through the CWA Regulations, which are yet to be developed.



It is worth noting here that (according to Article 6) the CWA has a board of 11 members, of whom only three are from the cooperative movement. Government officials have the absolute majority in the board. Moreover, the number of Board members (11) exceeds the number of CWA staff at headquarters (8), which shows that the Board has much more and diverse executive powers and duties than the agency itself. For example, it would be the Board and not the Agency that registers cooperatives (para 13, see also article 24.1).

The relationship between the CWA and the secondary and tertiary cooperative organisations is not clear in the Decree-law. Article (5.4) is only the basis for such a regulation. As higher-level cooperative organizations are being established with the support of government and in view of making them self-reliant entities capable of giving support to their members, the government may decide to delegate control to these organizations. This, however, needs regulating.

10. Cooperation among Cooperatives

In addition to espousing respect to the ICA principle of cooperation among cooperatives (Article 2) and allowing cooperatives to co-invest in enterprises that promote cooperative value chains, the Decree-law encourages cooperation among cooperatives through the formation of central cooperative organizations, sectoral cooperative unions, and tertiary cooperative organizations. Yet, The Decree-law does not oblige primary cooperatives to affiliate with a union, or sectoral unions with the General Unions, which, from the consultant's point of view, is a very positive element of the cooperative legislation since it complies with the basic cooperative principle of voluntary membership. There are restrictions, however, on the establishment of secondary and tertiary cooperative organizations (Article 15), which may affect their viability and effectiveness, in some cases, and put undue limitations on voluntary association in other cases. For example:

- Article 15.2 of the law provides for the establishment of “central associations” by four or more primary cooperatives located in the same governorate, provided that the number of central associations of the same type in the same sector does not exceed one central association in the same governorate. Such central associations, which do not exist yet, would represent the movement regionally, not by sector. It is not entirely clear however what is meant by “central association”; what is their role compared to the sectoral unions?
- Sectoral Union: A federation that consists of at least 7 cooperative societies from the same sector.
- General Union: A union that consists of at least 5 sectoral unions, and it is not permissible to establish more than one general union.

Concerning higher-level cooperative organisations, it should be noted here that their tasks are not mentioned, not even by way of examples, such as preparing pre-registration feasibility studies, organizing education and training, audit, providing legal and business advice. Moreover, their legal form needs specifying. It is defined by their functions (economic and/or socio-political/representative).

IV. Legal Friendliness and Obstacles



Overall, the Decree-law is cooperative friendly, though it is certainly not perfect (no piece of legislation ever is). It contains several elements that reflect good practice and measures that could be useful in other contexts. The most important of these are the following:

- The inclusion of a clear definition of a cooperative in the law, and the alignment of this definition with both ICA definition and ILO Recommendation 193 in this regard.
- Registration by government and prohibition of the use of the word “cooperative” in the name of any other form of enterprise. The recognition, and thus the protection, of cooperatives by the state manifests itself in the registration of their name and all other information justifying their status as a legal person in a public or at least publicly recognized register.
- While the Decree-law requires approval of the CWA for registering cooperatives, the requirements for registration are clear, the discretionary power of the CWA is limited by law, and there are legal mechanisms for co-operators to challenge any decisions that reject registration applications.
- Cooperative registration is conceived as a local service and the potential co-operators have only to deal with a single authority to obtain registration.
- While the Decree-law does not allow registration of more than one cooperative in the same sector in any given “area”, the registration procedures themselves do not hinder cooperative formation: They are relatively simple, straightforward, and registration process is not very long (30 days within completion of application).
- The Decree-law gives registered cooperatives a legal person status and leaves it to the discretion of individual cooperatives to determine the scale of their legal capacity, which can be infinite or limited by the objective/purpose of the cooperative concerned. The legal person status includes the right to own subsidiaries in another legal form than a cooperative.
- The Decree-law allows for both physical/natural and legal persons to be members of primary cooperatives, while enshrining the one-member-one-vote principle and including provisions that make certain that the decision-making procedure within the cooperative is not affected by admitting such groups as members. In doing so, the law enables cooperatives to raise capital from unconventional members, while protecting democratic rights of individual members and ensuring that they are not infringed upon.

This notwithstanding, there are several important weaknesses in the legal framework that stand in the way of cooperative development, of which the most prominent are:

- The Decree-Law mixes private with public law elements. This makes its implementation more complex. The Decree-Law mixes private (i.e. cooperative) with public (regulation of the CWA) law elements. This makes its implementation more complex. Ideally, a separation of these two areas of law (public and private law) in two distinct texts is needed. Although the prominent position of CWA regulation in Chapter II in the Decree-Law has no effect on the legal value of other chapters, it sends a wrong message in the sense of giving the CWA more importance than the cooperative themselves.
- The legal nature of the CWA might have to be clarified. Likewise, the status of the staff. The members of the staff are civil servants. As such they must act in the interest the public.



Depending on the legal nature of the CWA cooperatives are either over- or underrepresented in its bodies. If the CWA is to be regarded as a public entity, then cooperatives might be sufficiently represented. In case it must be regarded as semi-public or semi-private, they might be underrepresented. A better representation of the cooperative sector could be reached by co-opting additional members, if that is (legally) possible.

- The double function of the CWA, namely regulatory and promotional (cf. the introductory words of Article (5)) might need careful implementation to avoid contradictions. Such an accumulation of powers is not atypical, as do many cooperative audit systems by combining control and advice-giving.
- The powers of the CWA Board, of the Commission and of the staff (cf. Articles (5) and (7)) need clarifying, also as far as hierarchy is concerned. There might be overlaps (for example Articles (5.8) and (7.10)). The Board has - in part at least - executive powers (example Article (7.5)). Board seems to have powers without having any staff (for example Articles (7.15)).
- As noted in the answer to Q18, the relationship between the CWA and the secondary and tertiary cooperative organisations is not clear. Article (5.4) is only the basis for such a regulation. As higher-level cooperative organisations are being established with the support of government (cf. below Point 7.) and in view of making them self-reliant entities capable of giving support to their members, the government might have to phase out. This “in and out-phasing” needs regulating.
- The definition (Article (15.1)) does not mention that cooperatives are/have an enterprise. Cf. also Article (5.4). Given the fact that the Decree-Law has recently been issued and there are several competing legislations awaiting review and endorsement, the Decree-law is not expected to be revised soon. So, this could only be clarified in a policy document with strong and convincing arguments, as the policy document cannot override the Law.
- The Decree-law restricts cooperative formation by stipulating required minimums. The minimum number of members (Article (15.1)) 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. There is evidence that this number does not correlate with the viability. The minimum number might have to vary according to the type of cooperative. For example, consumer cooperatives are difficult to organize with few members only, whereas worker cooperatives tend to fail if the number exceeds ca. 10 etc. The same is true for the minimum number of members required for higher-level cooperative organisations. Moreover, the fact that the Decree-law does not permit the registration of cooperatives in the same “area” (c. Article 19) is problematic as it contradicts the principle of voluntary membership. There is little evidence to support the rationale that such restriction will increase the viability of cooperatives and reduce the administrative regulatory burden on the CWA. In general, cooperatives should be free to decide. The rule could create artificial protectionist advantages for existing structures to the detriment of their own members and could discourage membership.
- Concerning higher-level cooperative organisations: i) their tasks are not mentioned, not even by way of examples, such as preparing pre-registration feasibility studies, organising



education and training, audit, providing legal and business advice; and ii) their legal form needs specifying. It is defined by their functions (economic and/or socio-political/representative).

- Additional financing instruments might be considered. Before considering external resources (donations, subsidies etc.), consider improving the internal financing possibilities, such as additional preferred shares (exempt from liability and reimbursable upon call by the members); limited non-member business; the establishment of subsidiaries to more easily access the financial market, as long as the members stay in control; improve the creditability/creditworthiness of cooperatives by, for example, (tax) promoting the establishment of indivisible reserve funds, by having stricter or even unlimited member liability or the possibility to further calls in case of financial difficulties and by setting-up, possibly with the cooperatives, guarantee funds that serve as security for credits.
- External financial resources, including donations, need regulating in such a way that cooperative do not become dependent upon them and that their autonomy (4th Cooperative principle) is not infringed upon. The ICA has published ideas on cooperative specific financing possibilities.⁸
- The Decree-Law is silent as far as ‘education and training’ is concerned. Their organisation can be stimulated by at least suggesting to, if not obliging cooperatives to set up education and training fund/s, the financing of which can be supported through exempting that part of the income, which is transferred to the fund from taxation.
- Audit needs a more detailed regulation as concerns the function of the audit, which is to protect third parties (individuals or legal entities who wish to become cooperative members), to protect the members and to empower them to exercise their control rights and which is to inform government about which entities are genuine cooperatives and are therefore eligible for promotional measures. The scope of the audit needs to be spelled out also (which is largely delimited by the objective/purpose of cooperatives). Moreover, the qualification of the auditor needs to be clarified.
- The following articles on the functions and responsibilities of the CWA might not comply with the 4th Cooperative principle of autonomy, particularly given the fact that government does not invest in cooperatives: 5.2 versus 5. at the beginning; 5.8 (which give CWA the authority to approve cooperative development projects); 7.13 (which gives CWA the mandate to register, monitor, investigate, and liquidate cooperatives); 31 (which stipulates that general assembly meetings of cooperatives have to be coordinated with and attended by the CWA); 37 (which gives CWA the authority and power to intervene directly in rectifying financial and administrative problems in cooperatives, including through appointing staff and committees on a temporary basis for this purpose); 48 (which requires CWA’s approval of general assembly decisions related to distribution of surplus); and 61 (which requires cooperatives and their unions to obtain CWA’s approval

⁸ The capital conundrum for co-operatives, at: <http://ica.coop/sites/default/files/mediaitems/ICA%20The%20Capital%20Conundrum%20for%20Co-operatives%20EN.pdf>



before becoming members in Arab and international cooperative associations and organizations).

- The Decree-law provides general text on scissions, mergers and other types of transformations, noting that regulations will be developed. There is a legal void now that these regulations -as well as many others- have not yet been developed.
- The regulation concerning members' participation (as for its importance as supra) is not very elaborate.
- Article 19.3 talks about members losing their rights and obligations, but those rights and obligations are defined nowhere in the law.
- The Decree-law doesn't provide supra when it comes to member admission. This leaves the door open to various interpretations, including justification for closing the door to new members.
- The Decree-law permits the exclusion from membership of persons who do not have a clean criminal record. Unless the punished behaviour is likely to harm the cooperative, the members should assume their general social obligations by helping to reintegrate such persons into society.

Summary and Conclusion

The Decree-law on Cooperatives in Palestine is quite progressive and could be a source of inspiration for others, particularly in relation to the one-member, one vote principle, surplus allocation, and the degree to which it aligns with the cooperative principle. At the same time, some modifications in the national legislation could be introduced to strengthen its alignment with the ICA principles, with inspiration from the following the following legislations:

- Open-door membership principle: Interesting wordings in this respect may be found in the UK regulation of “bona fide cooperatives”, where it is stated on the one hand that membership “should not be restricted artificially to increase the value of the rights and interests of current members”, and on the other hand that “for example, the membership of a club might be limited by the size of its premises, or the membership of a self-built housing society by the number of houses that could be built on a particular site”. The Norwegian Cooperatives Societies Act of 29 June 2007 could serve as another inspiration in this regard, where it is stated that refusal of admission requires “reasonable grounds” (art. 14).
- The economic participation and economic enterprise principle (as a way of strengthening cooperative identity and providing incentives for increasing member transactions): The national legislations could be inspired by the Dutch and Norwegian legislations when it comes to restrictions on non-member business. For example, Dutch law authorizes cooperative statutes to provide for the conclusion with non-members of agreements similar to those concluded with members (art. 53, par. 3, Dutch Civil Code), but this power may not be exercised to such an extent that the agreements with members are only of a subordinate importance (art. 53, par. 4, Dutch Civil Code). Along similar lines, Norwegian law defines a cooperative as “a group whose main objective is to promote the economic



interest of its members by the members taking part in the societies as purchasers, suppliers or in some similar way”, thus permitting transactions with non-members if they do not prevail over those with members. The Palestinian legislations could more explicitly restrict transaction with non-members in a similar fashion.

Short of the possibility to alter the existing Decree-Law and in the absence of an explicit delegation of powers from the legislator to the government, ways must be found, first, to fill the gaps in the Decree-Law concerning the regulation of cooperatives. The most critical points in this regard concerns the imbalance of powers between the leadership and staff of the Cooperatives Works Agency (Article 11) and those of its Board (article 7), and the CWA’s regulatory mandate and decision-making power over what may be considered internal matters of cooperatives. About the former, it might be possible to redress this imbalance through appropriate clauses in the CWA bylaws. Despite certain shortcomings in the Decree-law, the need for its immediate revision is not urgent. Instead, a pragmatic approach to the way it is adopted is needed to make it work. This requires first and foremost the urgent formulation of a series of by-laws and regulations, namely:

- The organizational structure for the CWA (Article 7.23), its regulations (Article 7.17) and its financial resources (Article 13);
- Regulations defining in greater detail certain functions of the CWA, including those mentioned in Articles 27, 30, 45, 53, 56, and 67 of the Decree-law;
- Guidelines for the formation of cooperatives (Article 7.12) with its content being guided by the general clause in Article (2);
- Regulations concerning the future Cooperative Institute and the future Cooperative Development Fund (Article 7.16); and
- Regulations and procedures for the scission, merger and dissolution of cooperatives.

Of those regulations, the ones listed under the first bullet points are the most urgent since they require endorsement by the Council of Ministers. In addition, it will be necessary to draft, based on the new law, comprehensive, yet flexible model by-laws for primary cooperatives (see also article 7.12). The CWA might consider developing a lay-person’s guide on the new law with the aim of translating its main provisions into simple, easily understandable language.

Moreover, given the objective of the CWA, its Board must be more inclusive of the cooperative movement. The CWA has a board of eleven members, of whom only three are from the cooperative movement. Government officials have the absolute majority in the board. It would thus be needed to strengthen the voice of cooperatives in the CWA, and this could only be done through amendment to the law.

Amendments to the Decree-law are also needed to give greater autonomy to cooperatives in deciding how to regulate their own affairs through their bylaws. The most important amendments relate to removing restrictions on the minimum number of members required for cooperative registration (a particularly relevant limitation to workers cooperatives), removing restrictions on the number of cooperatives in the same sector that could be registered in the same



geographic area, and removing clauses that require the approval of the CWA on general assembly decisions, including those related to how surplus is distributed, from the Decree-law.

It is also to be considered whether it is appropriate to elaborate (model?) bylaws for the individual cooperative organization according to Article (7.11), giving particular focus to member admission and providing examples of how members rights and obligations could be articulated in these bylaws to ensure adherence to the ICA principles and ILO Recommendation 193. The elaboration of bylaws by the (potential) cooperative members themselves – if necessary, with the support by the CWA or a higher-level cooperative organization – is a unique and often also the only occasion when members familiarize themselves with the Decree-law and with organizational matters of their (future) cooperative. Once understood by elaborating, members will have lesser problems following their own rules. The elaboration of bylaws is a unique learning opportunity.

Moreover, despite the government having a double function according to Article (5), namely, to regulate and promote, the Decree-Law leans towards “regulation”. A shift towards a more balanced approach, possibly one which sees regulation in view of promotion might be considered. This is the approach underlying the ILO Recommendation 193. This would imply, possibly, a shift - wherever possible - from having bylaws to having a policy document on the promotion of cooperatives.

The basis for such a policy document could be Article (5.4 and 5.6), and the relationship between the Decree-Law and the policy would be guided by the principles ruling the law/ policy nexus. Promotional measures should be based on the factual situation of cooperatives in Palestine (including an analysis of the blocking factors against setting-up of cooperatives) and on a policy document. The Cooperative Sector Strategy 2017-2022 provides a strong basis for analysis and should be leveraged in this regard. In general, a policy document guides public authorities and stakeholders; it clarifies their relationship; it serves as a basis for the evaluation of government policies towards cooperatives and of the performance of cooperatives.

Based on the above, and in line with the Cooperative Sector Strategy, the following policy measures might be considered. The Government might consider other or additional measures, leveraging the ILO Recommendation 193 which includes numerous other examples. The measure proposed here relate to:

- Research, education and training: The Government might want to consider: -
 - including the subject of cooperatives into the general education curricula at all levels of the education system;
 - supporting cooperatives through joint funds and/or special tax treatment of funds the cooperatives set aside for the purpose; and
 - assisting in organizing education and training.
- (Income) taxation: The Government might want to consider distinguishing between surplus and profit. Surplus is the positive result generated on transactions with members according to the cooperative principles. If generated in this way, it belongs to the



members and must not be taxed. Profit is the positive result generated on transactions with non-members on commercial terms and may be treated like income of commercial companies. A related issue is the treatment of the transfer of the profits and parts of the surplus to an (indivisible reserve fund).

- Access to credit by improving the creditability/creditworthiness of cooperatives: The government might want to provide (tax and other) incentives to the financial sector operating in Palestine to extend credit to cooperatives.
- Strengthening secondary and tertiary cooperative organizations: The Government might want to consider assisting primary cooperatives in setting-up secondary (unions) and tertiary (federation/s) organizations. This is a typical way for cooperatives to avoid the negative effects of concentrating their businesses, as it allows them to maintain their autonomy, while retaining the benefits of cooperation.

A participatory approach to elaborating the policy document will facilitate its implementation. Based on such a policy document the Government might then elaborate a more concrete action plan, which needs to specify measures along the questions “Who does what, how, when and with which funds?”

It would be impractical at this juncture to recommend the development and adoption of cooperative laws for different sectors.

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