



**International Co-operative
Alliance – Africa**

A Region of the International
Co-operative Alliance

Legal Framework Analysis

Mozambique National Report

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Acknowledgement

About the Author

This report was prepared by Mr. Antonio Florindo Passarinho, a Mozambican legal expert and Member of the ICA Africa Legal Committee.



“This report has been produced with the assistance of the European Union. The contents of this report are the sole responsibility of The Alliance Africa and can in no way be taken to reflect the views of the European Union.”

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I. INTRODUCTION

1.1 Objectives of the Legal Framework Analysis

The Legal Framework Analysis (LFA) is undertaken under the auspices of the Framework Partnership Agreement “Cooperatives in Development – People Centred Businesses in Action” between the International Cooperative Alliance (ICA) and the European Commission to which the Alliance Africa is a co-signatory. Cooperatives benefit from regulations acknowledging their specificities and ensuring a level playing field with other types of business organizations. The absence of a specific legal framework for cooperatives or a weak legal framework may damage cooperatives, while in contrast a supportive regulation may allow their development. This is the reason why knowledge and evaluation of cooperative legislation is a necessary tool for ICA offices and members to support their advocacy and recommendations on the creation or improvement of legal frameworks, to document the implementation of cooperative legislation and policies, and to monitor their evolution. Against this background, the objectives of the LFA are: (i) to acquire general knowledge of the national legislation on cooperatives, including but not limited to the legislation in force in the 107 countries (as of April 2018) represented by ICA members, as well as of supranational cooperative legislation if existent; (ii) to evaluate the national jurisdictions covered by the LFA according to their enabling environment for cooperatives, in order to compare national cooperative laws with pre-determined indicators, based on a scale of “cooperative friendliness” of the national legislation; and (iii) to provide recommendations for eventual renewal of the legal frameworks in place.

1.2 Aim of the Report

This report aims to provide a comprehensive and up-to-date analysis of the status of cooperative legislation in Mozambique. It is therefore meant to increase people’s understanding of the existing framework in terms of its strengths and weaknesses. To achieve this, the report presents an analysis of the specific elements of the existing cooperative legislation including the definition and objectives of cooperatives, establishment of cooperatives, membership and governance, cooperative financial structure and taxation and other specific aspects of the law. On the basis of the analysis, the degree of ‘cooperative friendliness’ of the cooperative legislation is determined after which recommendations for improvement of the law are made.

1.3 Author of the Report and Methodology

The report was preceded by a comprehensive research and was compiled and written by Mr. Antonio Florindo Passarinho, a Mozambican legal expert and Member of the ICA Africa Legal Committee. Some members of the Mozambican Association for the Promotion of Modern Cooperatives (AMPCM) participated in the survey and their contributions are

incorporated in this report.

II. NATIONAL COOPERATIVE LAW OF MOZAMBIQUE

i. General Context

In Mozambique a series of actions and new policies have been adopted by the government and national organizations, seeking greater regulation of cooperatives. These actions aim to, among other things, increase local competitiveness and access to new markets and sources of resources.

According to the New General Law of Cooperatives number 23/2009 (Law no. 23) which is the national cooperative legislation in force, cooperatives are Small and Medium Enterprises (SMEs) created to achieve their members' economic and social aspirations. The major distinction between cooperatives and other types of businesses lies in the fact that cooperatives are more operationally friendly and socially oriented than others. The seven cooperative principles play a vital role in marking the said distinction.

In Mozambique cooperative societies are systematically organized. Law no. 23 provides for cooperatives to be linked to organized systems in unions, federations and confederations, in order to reinforce the importance and contribution of a strict system of supervision and regulation for the good governance and security of the whole segment. The systematic organization follows the logic that the risk incurred by one cooperative has repercussions in the others of the system and on the other hand the said organisation provides benefits in relation to operational costs and collective representation.

The cooperative movement in Mozambique is longing for the approval of legal instruments and regulations by the government to operationalize Law no. 23. Once approved the said regulations, which will also cover tax matters, will be an important booster which can contribute to the country's inclusive and sustainable economic and social development

The seven cooperative principles promulgated by the International Cooperative Alliance (ICA) in its Statement on the Cooperative Identity are duly recognized and incorporated in Law no. 23.

ii. Specific elements of the national cooperative law

a) Definition and objectives of cooperatives

The legal definition of cooperatives has its expression in article 2 of Law no. 23. According to this law, "cooperatives are autonomous legal entities, of free constitution, variable capital and composition and democratic control, in which their members commit to contribute goods and services for the exercise of an economic activity, for mutual benefit and risk-sharing, in order to meet their economic needs and aspirations, and a profit on equity predominantly carried out in

proportion to their operations.”

Cooperatives in Mozambique aim to meet the essential needs of the population, address any social or economic need, and fulfil the aspirations of their members and the society at large. According to article 6 of Law no. 23, the ‘cooperative acts’ are transactions between members to achieve their social aspirations or needs related to their objectives. Specifically, the law defines ‘cooperative acts’ as those performed among cooperatives and their members, or among members themselves and their cooperatives when associated in order to achieve their objectives. Moreover, Law no. 23 provides for the possibility to establish multi-purpose or multi-sector cooperatives.

b) Establishment, cooperative membership and governance

According to Law no. 23, cooperatives are registered with the Legal Entities Registration Office (Conservatória de Registo das Entidades Legais) after which the registration is published in the Gazette of the Republic by virtue of article 14 of Law no. 23. The minimum number of members required to form a cooperative is five (5) for a first-class cooperative and two for a second-degree cooperative. The law clearly defines what are first-class cooperatives and second-degree cooperatives. First class Cooperatives are those that are constituted by natural and or legal persons whose object is based on the direct provision of services to its members. Second class cooperatives are formed by unions, federations and confederations of cooperatives, whose purpose is the coordination, orientation and organization, on a larger scale, of services of interest to their affiliates.

Admission of new members is done on the basis of the first cooperative principle of voluntary and open membership. Members who meet the qualifications for membership as stipulated in article 29 of Law 23 can be admitted without any form of discrimination. Third parties are allowed to become members in cooperatives as long as they are in the same business area or act in the same value chain.

With regards to voting, the statutes of each type of cooperative establish the criteria and eligibility conditions of the members of the governing board. The law strictly prohibits voting based on economic and financial participation in a cooperative’s capital. In this way, each member has only one vote. Exceptionally, the statutes of first-class cooperatives which provide for periodic adjustments in the distribution of the share capital may adopt proportional voting for operations carried out with the cooperative; provided that this proportion does not contravene the requirements prescribed by Law no. 23.

The governance structure in cooperatives is based on the organograms of the societies

which are composed of: The General Meeting; Supervisory Board and Governing Board. The governing board is democratically elected in the General Meeting and it is responsible for governing and overseeing the day to day activities of a cooperative. Moreover, the application and implementation of directives, plans and activities of the cooperative within a reasonable time-frame are the responsibility of the bodies approved by the General Meeting. These bodies are usually made up of the Board of Directors led by president, a vice president and a secretary or treasurer. Apart from the General Meeting, a Tax or Audit Council is in place and responsible for ensuring compliance with the law, controlling members' actions in general and Cooperative Bodies in particular as well as overseeing compliance with the resolutions issued by the General Meeting.

c) Cooperative financial structure and taxation

The law provides that share capital is variable and that the statutes of respective cooperatives must state; specifically, the minimum initial capital. However, there is a room for share capital increase by a member which is also determined by the cooperatives in their statutes. In case a member exits or cooperative is dissolved, the right to full reimbursement of the subscribed capital is assured in articles 15 and 33 of Law no. 23. Profits and income resulting from transactions with members are returned to them in the same proportion of their transactions with the cooperative after a deduction of 1.5% and 5% of the indivisible obligatory reserves and those stated by the General Meeting of the cooperative pursuant of their statutes.

In the case of dissolution of a cooperative or conversion into another type of business organization, the capital and residual assets are distributed to members who have not approved the conversion of the cooperative into another business organization. Thus, the registration of the new business organization would only become definitive if it proven that the credits of the opponents were duly paid. This is pursuant to article 81 of Law no. 23.

Cooperatives in general are subject to the tax legislation in force in the Mozambique, except operations undertaken under the 'cooperative act' as defined by Law no. 23. Nonetheless, actors of the cooperative sector in Mozambique are demanding the approval of a specific tax law applicable to cooperatives by the Mozambican legislator, the National Assembly. This is the most significant weakness found in the national cooperative legislation. This shortcoming largely hampers the development of the cooperative sector.

d) Other specific features

Without prejudice to the regulatory role of the State, cooperatives are entitled to administrative, financial and patrimonial autonomy. Control or self-control is carried out by

representative organizations of the cooperative movement in Mozambique. The principle of cooperation among cooperatives is expressed in article 6 of Law no. 23. The ‘cooperative act’ is a clear demonstration of this principle, and occurs in both primary and secondary cooperatives. Given this structure, cooperatives are not regulated by any other public authority.

III. DEGREE OF “COOPERATIVE FRIENDLINESS” OF THE NATIONAL LEGISLATION

Law no. 23 is to a high degree ‘cooperative friendly’. Article 6 of Law 23 supports this proposition as it embodies such friendliness. However, the lack of a specific tax regime applicable to cooperatives is a great constraint and hampers the development and growth of cooperatives in Mozambique. Therefore, it is necessary to redouble efforts to develop national advocacy campaigns, and if necessary, at the level of regional and international organizations in order to employ persuasive mechanisms for the adoption of regulatory norms to facilitate the growth and formalization of the economy, and of this sector in particular. In general, the Mozambican cooperative legislation is to a large extent cooperative friendly; however, the exact degree of friendliness can hardly be stated.

As far as other jurisdictions are concerned, there is no doubt that the Portuguese Cooperative legislation would be the recommended normative instrument. We would also recommend the employment of part of the Italian cooperative legislation for its systematic nature.

IV. RECOMMENDATIONS FOR THE IMPROVEMENT OF THE NATIONAL LEGAL FRAMEWORK

The cooperative movement is still awaiting the approval of legal instruments and regulations for the full operation of cooperatives. Although the regulations for the national legislation (Law no. 23) have been submitted for appraisal and approval by the Council of Ministers, the Government of Mozambique is still unresponsive to this scenario. Initially the National Assembly set a 180-day deadline, counting from August 27, 2009, for the Government of Mozambique to approve the needed regulations. However, to date the regulations have not yet been approved.

Moreover, cooperatives lack a tax regime for the cooperative sector as a way of encouraging the establishment of more cooperatives and contributing to the economic and social development of the cooperatives in the country.

V. CONCLUSIONS

Mozambique has made progress in recent years in the cooperative sector, despite the need and urgency to implement some reforms so as to adapt to the new world order of the cooperative movement. For cooperatives to perform more effectively and productively, there is an urgent for the government to approve regulations to implement Law no. 23 should be addressed by the government.