



**International Co-operative  
Alliance – Africa**  
A Region of the International  
Co-operative Alliance

## **LEGAL FRAMEWORK ANALYSIS**

### **NATIONAL REPORT - Tanzania**

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## ABBREVIATIONS

AMCOS	Agricultural Marketing Cooperatives
BoT	Bank of Tanzania
BRELA	Business Registration and Licensing Agency
CCM	Chama cha Mapinduzi
CDD	Cooperative Development Department
CFT	Confederation of Cooperatives of Tanzania
CGA	Clove Growers Association
CJE	Cooperative Joint Enterprise
CUT	Cooperative Union of Tanganyika
CJV	Cooperative Joint Venture
CUZA	Cooperative Union of Zanzibar
CJV	Cooperative Joint Venture
TFC	Tanzania Federation of Cooperatives
ICA	International Cooperative Alliance
LFA	Legal Framework Analysis
KNCU	Kilimanjaro Native Cooperative Union
KNPA	Kilimanjaro Native Planters Association
MAFS	Ministry of Agriculture and Food Security
MOCU	Moshi Cooperative University
SACCOs	Savings and Credit Cooperatives Society
SCCULT	Savings and Credit Cooperative Union League of Tanzania
TCDC	Tanzania Cooperative Development Commission
VAT	Value Added Tax

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# **1 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 Centered Businesses in Action” between the International Cooperative Alliance (ICA) and the European Commission to which the Alliance Africa is a co-signatory.

The purpose of cooperative law is to ensure that cooperative members appreciate their social cohesion as a prime investment capital necessary for the sustainability of their organization and for assuring member oriented legal frameworks. This is a trait which differentiates cooperatives from other for-profit business associations that depend on finance capital of shareholders and other investors. Cooperative law also plays a function of ensuring that a level playing field with other types of business organizations is guaranteed and maintained. A country or state which overlooks this purpose stands not to sustain its cooperative systems. In the past political and ideological reasons forced countries such as Tanzania to be driven away from this purpose and they are now finding it difficult to recuperate.

The current study by ICA would thus lead to making recommendations on the creation or improvement of legal frameworks of member countries to redirect cooperatives towards the purpose of the cooperative law. 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 ICA member countries; (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 About the Author**

This report has been prepared by Dr. Audax Peter Rutabanzibwa who is currently a lecturer in cooperative law at the Moshi Co-operative University (MoCU) in Tanzania and is a former Chief Executive Officer of the Tanzania Cooperative Development Commission (TCDC) and Registrar of Cooperatives of Mainland Tanzania.

# **2 THE NATIONAL COOPERATIVE LAW**

## **2.1 The General Context**

The United Republic of Tanzania is a Union of two independent countries of Tanganyika and Zanzibar. The Union, which has been described as constitutionally unique for its complex nature, was forged on 26 April 1964 through the signing of the Articles of Union by the late Julius Kambarage Nyerere and the late Abeid Aman Karume the then presidents of Tanganyika and Zanzibar respectively. The Articles of Union, among other things, provide for Union Matters which are areas of cooperation and therefore under the jurisdiction of the Union Government. The Union comprises two parts; Mainland Tanzania and Tanzania Zanzibar. Zanzibar is a semi-autonomous part of the Union implying that all non-union matters are under the exclusive jurisdiction of the Revolutionary Government of Zanzibar which has its own Constitution, Executive, Judiciary and House of Representatives. Therefore, within the Union there are two

executives, two judiciaries and two parliaments.<sup>1</sup> Under this arrangement, Zanzibar has the authority to make its own laws and policies over non-union matters.

Cooperatives in the United Republic of Tanzania existed before they could be organized as a movement and before they could be legally recognized through a cooperative legislation. Traditional cooperatives existed in almost all tribal communities and were being regulated through their respective social norms. Some norms have survived the modern legal frameworks and continue to exist along with those of the registered cooperatives. The United Republic of Tanzania has two different cooperative legal frameworks and cooperative movements<sup>2</sup>. These movements were sometimes united in the 1980s when they were ‘taken over’ by the ruling party, namely *Chama cha Mapinduzi (CCM)* (Revolutionary Party) to be one of the party constituencies. The two cooperative movements were separated again in 1995, after Tanzania embraced multiparty democracy. This is because as indicated above, cooperatives do not fall under Union Matters. Currently, therefore the cooperative movements and hence their respective legal frameworks are different and will be so considered in this study.

The cooperative movement in Mainland Tanzania dates as far back as 1925 when the first Farmers’ Association known as Kilimanjaro Native Planters Association (KNPA) was founded by African coffee farmers in response to exploitative systems by Asian coffee traders. In 1932 the colonial government passed the first cooperative law<sup>3</sup> in order “to put KNPA in a position to organize itself in a manner known to the law and under a certain amount of control”<sup>4</sup>. The first cooperative society to be registered under the Ordinance in 1933 was KNPA under the name of Kilimanjaro Native Cooperative Union (KNCU) with 11 affiliated primary cooperative societies. After registration of KNCU several cooperative unions were established in areas where cash crops were grown<sup>5</sup>. In order to strengthen the cooperative movement, after independence the government established an apex cooperative known as The Cooperative Union of Tanganyika (CUT) in 1961<sup>6</sup>.

In 1967 Tanzania adopted a national-wide socialist manifesto<sup>7</sup> under which cooperatives were regarded as agents for preparing the country to attain socialist goals<sup>8</sup>. This policy determined the cooperative legal framework of Tanzania for the next thirty years and was supported by the *Jumuiya ya Muungano wa Vyama vya Ushirika Tanzania Act* of 1979 (Confederation of Cooperatives of Tanzania (CFT) Act of 1979) which affiliated the ‘cooperative movement’ into

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<sup>1</sup> For more on this constitutional set up see the Constitution of the United Republic of Tanzania (2005) Arts 1,2, & 4 and the Constitution of Zanzibar (2006) Arts 1 to 5.

<sup>2</sup> The Mainland movement is organized under the umbrella cooperative known as Tanzania Cooperative Federation (TFC) and the Zanzibar movement is organized under the umbrella cooperative union, known Cooperative Union of Zanzibar (CUZA), more explanation about the two movements is provided below, pages 4-5.

<sup>3</sup> Cooperative Societies Ordinance (Cap. 211)

<sup>4</sup> Mally Wilson J. A, “*The Kilimanjaro Native Cooperative Union Ltd .,Its Past, Present and Future*”, in Essays on the Cooperative Movement in Tanzania (Mainland), University of Dar es Salaam, 1975, at pg. 6

<sup>5</sup> For instance, in Ruvuma the “Ngoni-Matengo Cooperative Union” was established in 1936, in Kagera the “Bugufi Coffee Cooperative Society” was registered in 1936 and “Bukoba Native Cooperative Union” in 1950 and in Mwanza the “Mwanza Traders Cooperative Union” was established in 1946

<sup>6</sup> Under the Cooperative Union of Tanganyika Act, of 1961

<sup>7</sup> Famously known as the Arusha Declaration

<sup>8</sup> Government Paper No. 4 of 1967, Wages, Incomes, Rural Development, Investment and Price Policy, National Printing, paragraphs 59 -61.

the ruling political party<sup>9</sup>. Among policy and legal measures that were taken during this period include the passing of the Villages and Ujamaa Villages (Designation and Registration) Act of 1975 which had an effect of recognizing all villages as ‘primary cooperative societies’, disbanding cooperative unions in 1976, and establishing crop authorities to perform the function of marketing of farmers’ produce, a function which was earlier on being performed by the unions. Due to the problems which were being encountered by most farmers in marketing their produce under the new arrangement, cooperative societies were restored in 1982 with the passing of the Cooperative Societies Act of 1982<sup>10</sup>, albeit with the structures that had to accommodate their affiliation within the ruling political party structure. Following pressures from the cooperative movement, cooperative stakeholders and the International Cooperative Alliance (ICA), the separation of cooperatives from political structures begun to take root in the 1990s. As a result, the 1991 and 2003 Cooperative Societies Acts<sup>11</sup> recognized the international cooperative principles and values but failed to fully divest cooperatives from political and government control.

Currently Tanzania Mainland has a total of 11,629 registered cooperatives.<sup>12</sup> The cooperatives provide direct employment to 90,090 people. In 2019 the recorded production value of produce which were marketed through Mainland cooperatives amounted to 2.9 trillion Tanzanian shillings<sup>13</sup>. The Mainland cooperative movement is organized under the national umbrella cooperative society, namely Tanzania Federation of Cooperatives (TFC) which was registered in 1994. Currently TFC has 44 members comprising of agricultural co-operatives unions, some AMCOS, some SACCOS and some housing co-operative societies, with 805,530 individual members and with 189 employees<sup>14</sup>. TFC is a member of the ICA. The current challenges faced by TFC include: weak membership base, inexorable bank liabilities, limited financial and manpower capacity, political interference and not being truly member-owned as it was established with government influence to take over CFT-Mainland assets and responsibilities, after the cooperative movement ceased to be one of constituencies of the ruling party.

In Zanzibar the first cooperative law was enacted in 1925 to recognize cooperatives which were established before<sup>15</sup>. The latter societies were organized under the cooperative umbrella organization known as Clove Growers Association (CGA)<sup>16</sup>. In 1967 cooperatives were abolished by a Presidential Decree. They were restored by another Presidential Decree of 1979, which was later replaced by the Cooperatives Societies Act of 1986<sup>17</sup>. From 1978 to 1991 the law and structure of cooperatives in Zanzibar was similar to that of Mainland because they also had to be affiliates of the ruling political party, namely CCM. In 2008 Tanzania Zanzibar had a

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<sup>9</sup> *Jumuiya ya Muungano wa Vyama vya Ushirika Act of 1979* meaning “The Union of Cooperative Societies Act”

<sup>10</sup> No 15. of 1982.

<sup>11</sup> No. 15 of 1991 and No. 20 of 2003.

<sup>12</sup> According to TCDC December 2019 Statistics

<sup>13</sup> According to TCDC 2020 statistics, scheduled to be officially released after being tabled in Parliament by the Minister responsible for cooperatives in the second week of May, 2020.

<sup>14</sup> From TFC 2020

<sup>15</sup> Their starting dates are not documented but it is reported that they were established along racial lines: there were African, Arab and Indian cooperatives, see Sam Maghimbi (2010), “*Cooperatives in Zanzibar, Decline and Renaissance*”, ILO Series on Status of Cooperatives in Africa at pg. 1-3 available at <https://www.ilo.org/wmsp5>

<sup>16</sup> Ibid at pg. 2- 3,

<sup>17</sup> Act No. 4 of 1986

total of 4,751 registered cooperatives<sup>18</sup>. The cooperative movement is organized under the umbrella cooperative society, namely Cooperative Union of Zanzibar (CUZA) which was registered in 1996. The current challenges faced by CUZA include: limited financial and manpower capacity and not truly being member-owned as it was established with government influence to take over CFT-Zanzibar assets and responsibilities, after the cooperative movement ceased to be one of constituencies of the ruling party.

## 2.2 Specific Elements of the Mainland and Zanzibar Cooperative Laws

### Part I: Outline of the national cooperative legislation

#### *Section 1. National co-operative laws; sources and general features*

1. Currently the constitution and regulation of cooperatives in Tanzania Mainland is governed by the Cooperative Societies Act No. 6 of 2013 (Chapter 112 of the Laws of Tanzania). This law establishes the Tanzania Cooperative Development Commission (TCDC) which is responsible for coordinating the promotion and supervision of cooperative development activities, with the Registrar of Cooperatives being its Chief Executive Officer. Along with the Cooperative Societies Act, the cooperative legal framework for the Mainland also involves the Cooperative Audit and Supervision Act No. 15 of 1982 which establishes the Cooperative Audit and Supervision Corporation (COASCO), mandated with auditing of all cooperatives<sup>19</sup>. There is also the Microfinance Act of 2018 which governs the licensing and management of Savings and Credit Cooperatives Societies (SACCOs). This law is administered by the Bank of Tanzania (BoT), but BoT has delegated powers to TCDC to administer a part on (SACCOS) on BoT's behalf<sup>20</sup>. On the part of Zanzibar, cooperatives are governed by the Zanzibar Cooperative Societies Act No. 15 of 2018 which repeals the 1986 Act. It also establishes within the Ministry responsible for cooperative matters, a Department of Cooperative Development (DCD) and the office of Director of Cooperative Development to head the said Department and to be the Registrar of Cooperatives. The Act spells out the functions of the Department to include regulation and promotion of cooperative societies.

#### *Laws Governing Cooperatives in the United Republic of Tanzania*

Law	Type of cooperative and nature of regulation	Particular elements to note	Location
The Cooperative Societies Act, 2013 (Cap 112).	All cooperatives.	Every type of cooperative must be registered under this law.	<a href="https://www.ushirika.go.tz">https://www.ushirika.go.tz</a>
The Cooperative Societies	All cooperatives, except the licensing of	Regulates all types of cooperatives on formation,	<a href="https://www.ushirika.go.tz">https://www.ushirika.go.tz</a>

<sup>18</sup> According to the data provided by Sam Maghimbi op cit fn 13. Current not could not be obtained because of communication problems as during the time of study movements in Zanzibar were limited.

<sup>19</sup> As per section 55(3) of the Cooperative Societies Act, 2013 external auditing of cooperatives may also be carried out by private companies, after being so approved by the Registrar.

<sup>20</sup> Clustered as Tier 3 Microfinance Institutions by the Act.

Regulations, 2015 (GN. No. 272 of 2015)	SACCOs has to follow Microfinance Regulations	registration and supervision	
The Cooperative Audit and Supervision Act No. 15 of 1982	All cooperatives must be audited by COASCO, except where the Registrar of Cooperatives approves a private auditor	Apart from COASCO, cooperatives which elect to be audited by a private auditor have to get approval from the Registrar	<a href="https://www.bunge.go.tz">https://www.bunge.go.tz</a>
Microfinance Act, No. 10 of 2018.	It regulates the licensing of all types of microfinance institutions, including SACCOs (Tier 3 microfinance institutions)	All SACCOs must be registered under the Cooperative Societies Act and licensed under this law either by BoT or by TCDC which is delegated that responsibility by BoT.	<a href="https://www.bot.go.tz">https://www.bot.go.tz</a>
Microfinance (SACCOS) Regulations, 2019 (GN No. 675 of 2019)	It regulates SACCOS licensing, inspection and supervision and consumer protection of SACCOS products	All SACCOS must seek and obtain a license from BoT of a delegated authority (TCDC)	<a href="https://www.bot.go.tz">https://www.bot.go.tz</a>
The Cooperative Societies Act, No 15 of 2018 (Zanzibar)	All cooperatives established in Zanzibar	Every cooperative established in Zanzibar must be registered and regulated under this law.	<a href="https://www.zanzibarassembly.go.tz">https://www.zanzibarassembly.go.tz</a>
Zanzibar Cooperative Societies Regulations, 2019 LN No. 171 of 2019	All cooperatives, except the licensing of SACCOS	Regulates all types of cooperatives on formation, registration and supervision	Not yet uploaded
Zanzibar SACCOS Regulation, 2019 LN No. 172 of 2019	Regulates the licensing of SACCOS	Regulates and supervision of SACCOS registered in Zanzibar.	Not yet uploaded

2. Although cooperatives are considered as private sector institutions in terms of policies and laws of Tanzania by the Union Constitution, their autonomy and independence are not like that of other private sector institutions because of being highly controlled by the governments of both sides of the Union.

The Mainland Act has (14) main parts namely; Objects of cooperative societies, establishment of TCDC, Cooperative Formation, Registration and deregistration, Rights and Liabilities, Duties and Privileges, Property and Funds of coops, Creation and registration of charges, Audit, Inspection and Enquiries, Amalgamation and Division, Dissolution, Offences and Miscellaneous provisions. While, the Zanzibar Act has nine (9) main parts which start with the establishment of the CDD, Structure, Formation and Functions of Cooperatives, Registration, Capital structure,

Shares and Properties of cooperative societies, Savings and Credit cooperatives, Dissolution and Dispute handling, Audit, Inquiry and Inspection and Miscellaneous provisions.

3. The Mainland Act does not explicitly introduce the ICA cooperative values and principles. Nevertheless, it has a provision that requires every registered society to have objects which conform to those principles<sup>21</sup>. However, because the Act also exerts external government control over the cooperatives, the rest of provisions do not fully interpret the ICA principles. The Zanzibar Act on the other hand, recognizes the ICA principles and values and requires the Registrar to, before registering a society, ensure that such a society considers, among other things, the ICA principles and values<sup>22</sup>. In addition, non-adherence to the values and principles may be one of the grounds for the cancellation of registration<sup>23</sup>.

#### *Section 2: Definition and objectives of cooperatives*

4. The Mainland Act does not precisely define the cooperative society; it only defines it as “a society registered under the Act”. Whereas the Zanzibar Act defines it as “an association of persons who have voluntarily joined together for purposes of achieving a common need through the formation of a democratically controlled organization and make equitable contribution to capital, required for the formation of such an organization and who accept the risk and benefits of the undertaking in which they actively participate, and registered under the provisions of the Act”. The essential elements of the notion of co-operative, namely member ownership, control and benefit from its economic, social and the cultural undertakings are thus reflected in the Zanzibar definition.

Both Acts indicate that cooperatives are to be differentiated from other forms of for-profit business organizations such as:

- Re-capitalization within co-operatives is done by members only, but with other for-profit business organizations, non-members may invest in them.
- Minimum number of members required for formation of cooperatives is twenty (20) or more persons for Mainland<sup>24</sup> and seven (7) or more for Zanzibar<sup>25</sup>, but in other forms of business organizations such as companies the required minimum member is one (1) or more persons.
- Registration of co-operatives is solely done by Registrar of co-operatives while in other forms of business organizations such as companies registration is done by Registrar of Companies based in the Tanzania Business Registration and Licensing Agency (BRELA) for Mainland and Ministry of Industry and Trade for Zanzibar.
- Furthermore, SACCOS must obtain a license from BoT or TCDC in the Mainland and from DCD in Zanzibar and should mainly offer financial services to their members, but companies offer services mainly to non-members and obtain their business licenses from local authorities where their businesses are based.
- The distribution of surplus of the cooperatives is restricted and a part may be distributed to the members, depending on their participation in the cooperative transactions as patronage refund

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<sup>21</sup> According to section 3 of the Act

<sup>22</sup> Sections 3 and 17 of the Act.

<sup>23</sup> According to Section 22 of the Act

<sup>24</sup> Except that for specialized skills cooperatives the minimum number may be ten( 10) or more

<sup>25</sup> Except for SACCOS the minimum number of persons shall be one hundred and fifty (150) or more

whereas in companies shareholders do not participate in the activities which generate profit but may be paid a part of it in the form of dividends.

5. The purpose of the Mainland Act is twofold: to regulate cooperatives (register, deregister, supervise and audit) and coordinate cooperative promotional activities. Cooperative promotion functions are supposed to be provided or coordinated by cooperative officers<sup>26</sup>. The purpose of the Zanzibar Act is also to regulate (register, deregister, supervise and audit) and promote cooperatives through facilitating training to cooperatives. Further, the Zanzibar Act requires secondary societies to provide management, supervisory and promotional services to member primary cooperatives and the umbrella cooperative to provide promotion services to secondary member cooperatives<sup>27</sup>.

Issues on handling cooperative transactions/activities are stated in various by-laws of cooperatives but also in the regulations that are made under the Acts. Most by-laws provide that it is members' responsibility to transact business with their co-operatives and that it is the responsibility of the cooperatives to transact business with their members. Both Acts indicate that the main function of cooperatives should be to provide business services to their members. The Mainland Act compels cooperatives to include in their respective by-laws provisions that compel every member to transact his/her business activities through their cooperatives<sup>28</sup>. Although both Acts do not have provisions which compel cooperatives to transact with non-members, policies of both governments require non-members to sell some specified produce through cooperatives.

6. Some cooperatives provide different services aiming at socio-economic benefits to their members and non-members, apart from those provided in their respective objects. There are no specific provisions in the Acts which compel cooperatives to pursue the social or community services. However, the Mainland Act allows cooperatives, if so decide at their general meetings to expend their net balance on any charitable, educational or medical or any other such purposes<sup>29</sup>.

7. Co-operatives are recognized as private sector organizations and have the right to carry out any economic activities that are permissible under the law, just as other players do. After adoption of free market economic policies in early 1990s, a monopoly of exclusive provision of specified business services which was being enjoyed by cooperatives came to an end. Cooperatives are now among different business organizations whose economic survival depends on maintaining a competitive edge over other players, under an evenly leveled playing legal

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<sup>26</sup> Provided under sections 50 and 69 of the Act. The Act defines "promotion" as "*provision of services to the general public and cooperative members that contribute to the formation, growth and prosperity of cooperative societies*". Section 25 also provides that one of the functions of the Cooperative Federation is to provide education, training and advisory services to its members.

<sup>27</sup> Sections 14 and 15 of the Zanzibar Act. The Act does not define what promotion services mean, however, from the functions of those cooperatives promotion it could include collection of data and information on the activities of the members and also provision of consultancy services on the purchase storage of member produce and on price bargaining.

<sup>28</sup> Section 60 of the Act

<sup>29</sup> According to section 80 of the Act.

ground. However, because of lack of awareness, some cooperatives do not benefit from legal incentives provided in the investment laws to new entrants in the market<sup>30</sup>.

*Section 3: Establishment, cooperative membership and governance*

8. Both Acts require co-operatives to have specific registers for co-operatives which are maintained by respective Registrars of co-operatives. Co-operatives are registered by law and certificates of incorporation are issued.

1) Before a co-operative is registered or established in law, it shall:

- (a) Have the minimum number of twenty persons in the Mainland<sup>31</sup> and seven in Zanzibar.<sup>32</sup>
- (b) Have a name which is unique to it and does not resemble the name of another co-operative which in the opinion of the Registrar might deceive or mislead the public,
- (c) Include the word “co-operative” as part of the name of the co-operative,
- (d) Include the word “limited” as the last word of the name of the co-operative,
- (e) Have an office with a registered address,
- (f) Have a Board of Directors in Mainland or Management Committee in Zanzibar which is democratically elected by members,
- (g) Have an appointed Manager,
- (h) Each member must have completed the payment of at least fifty percent of minimum share capital in the Mainland and in Zanzibar a minimum core capital of Tanzanian shillings 350,000/= for other types of cooperatives and Tanzanian shillings 5,000,000/= for SACCOS is required<sup>33</sup>.
- (i) Have certified copies of resolutions passed at the initial and formation meetings in the Mainland and in Zanzibar submission of a duly filled registration application form is required<sup>34</sup>.
- (j) Have a report of the formation committee including a feasibility study or project write up and,
- (l) Have four copies of By-laws for Mainland and for Zanzibar have one approved copy of the by-laws<sup>35</sup>.

2) Any minimum of twenty primary cooperative for Tanzania Mainland or five for Zanzibar with the object of facilitating the operations of their registered co-operatives may, by a resolution passed by their respective general meetings, form a Union.

3) Any minimum of five registered co-operatives unions with the object of facilitating the operation of the registered unions may, by a resolution passed by their respective general or special meetings, form a tertiary society for Zanzibar or a Federation for Mainland. However, for Mainland the Minister responsible for cooperative matters may exempt any society from the requirements of the Act as to registration<sup>36</sup>.

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<sup>30</sup> For example, the Tanzania Investments Act No7 of 1997 gives tax holiday of 5 years new investors on application of Tanzania Investment Centre, new cooperative ventures have never applied for the incentives.

<sup>31</sup> Specialized skills cooperatives may be established by ten persons.

<sup>32</sup> In Zanzibar the minimum number of persons who may establish a SACCOS is 150 persons. This number is not common; however, due to communication problems we could not find an explanation for such a big number.

<sup>33</sup> According to Regulation 49

<sup>34</sup> According to Regulation 6

<sup>35</sup> According to Regulation 6 of Zanzibar Cooperative Societies Regulations, 2019

<sup>36</sup> According to Section 136

In the two Acts, when the membership falls below the required minimum number for registration of a relevant co-operative, the Registrar shall withdraw their certificate and that cooperative will cease to operate or to be legally recognized.

9. Admission of new members is regulated by cooperatives by-laws. Both legislation require that a person must have a common bond or need (interest) with that of other members to qualify as a member.

Co-operatives are not obliged to accept third parties as members. However, according to the Mainland Act registered cooperatives may establish cooperative joint ventures with other private or public companies upon being so approved by the Registrar<sup>37</sup>.

Both Acts allow members to exit their co-operatives upon paying their liabilities or being paid their contributions. Their by-laws outline the process and procedures that members need to follow before their liabilities or benefits are paid.

10. Both Acts require that each member of a registered society shall have one vote only as a member in the affairs of the society, regardless of the capital he/she invested in the co-operative. In any case where the votes are equally divided the chairperson may exercise a casting vote. The voting powers of members are normally prescribed in the societies' by-laws.

11. The general internal structures of co-operatives are: (i) The Members General Meeting, (ii) Board of Directors for Mainland and Management Committee for Zanzibar and (iii) The Management/Administrators. Member control is stated in various by-laws of co-operatives. Members express the control through various powers provided in the Regulations and in the by-laws. These include: making decisions to elect the members of the Board of Directors or Management Committees; approving annual financial statements and auditors' reports, budgets and approving cooperative policies.

The Boards of Directors/Management Committees of co-operatives are elected from the members. However, in Tanzania Mainland when it is necessary in the public interests, the Registrar may appoint 'special members' to the Boards not exceeding one third of the members<sup>38</sup>.

Responsibilities and Duties of Directors/Management Committees include the following:

- ✓ Generally supervise management of all the affairs of a cooperative society;
- ✓ Lay down proper business operational and financial procedures and regulations of the society;
- ✓ Supervise the preparation and auditing of the society's accounts and laying them before cooperative annual general meetings;
- ✓ Set/prepare cooperative policies and supervise their implementation;
- ✓ Hire the Cooperative Society Manager.

Responsibilities and Duties of Administrator/Manager include the following:

- ✓ Has operational control over the cooperative and its resources;

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<sup>37</sup> According to section 26(3) of the Mainland Act

<sup>38</sup> This is according to section 137 of the Mainland Act.

- ✓ Implements operational and organizational policies;
- ✓ Advises the Board;
- ✓ Makes day-to-day decisions;
- ✓ Acts in line with directors' direction;
- ✓ Hires/fires other staff;
- ✓ Records proceedings of all meetings;
- ✓ Keeps all financial records of the co-operative;
- ✓ Reports activities regularly to the Board of Directors.

A director or a management committee member may be removed if members are convinced that he/she is not performing as expected. This can take place during a special meeting or Annual General meeting of members. Otherwise if directors commit any crime such as misappropriation of cooperative funds or assets, etc., they lose their position immediately and are subjected to criminal offences as provided in both Acts and other penal codes of the country.

#### *Section 4: Co-operative financial structure*

12. Both Acts require that capital contribution of the cooperatives should be governed by the societies' respective by-laws. The Acts also do not prescribe any minimum share capital; the minimum share capital is as well stated in various by-laws. The Mainland Act further requires a member to have contributed at least 50% of share capital he/she is required to contribute before he/she starts enjoying membership rights and the other half should be paid within two years<sup>39</sup>.

Contribution towards share capital varies from one cooperative to another. It is based on the economic activities that are pursued by the co-operative but it is in the form of entrance fees, membership subscription, share contribution, deposits from members and non-members, and other contributions as may be provided in the by-laws. Some co-operatives contribute equally towards the capital base, while other co-operatives' contributions vary between members. But a member cannot contribute more than 20% or 1/5<sup>th</sup> of the total co-operative share capital. Normally contribution is made proportional to the volume of transactions within the co-operative. The prescribed capital and profit thereof is returned to a member who exits the co-operative.

13. According to section 79 of the Mainland Act of 2013 and regulation 67 of the Cooperative Societies Regulations of 2015, the annual net balance together with any sum available for distribution from previous years after the financial statements have been audited and the required provisions have been made, shall be distributed as follows: (i) not less than 20% of it shall be set aside and be carried into the Reserve Fund (ii) not less than 15% shall be credited to the bad and doubtful debts provision account, (iii) not more than 15% shall be set aside to maintain the Share Transfer Fund (iv) the remainder may be disposed of by the general meeting in various ways, including payment of dividends or share income for members, honoraria to Board members and bonus to members and salaried officers and reminder may be distributed in any other way as approved by the general meeting. The Zanzibar Act requires every cooperative to establish a reserve fund into which at least thirty five percent of the cooperative surplus made during the financial year will be deposited.<sup>40</sup> Regulation 47 of Zanzibar Cooperative Regulations

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<sup>39</sup> This is according to section 41

<sup>40</sup> According to section 25 of the Zanzibar Act.

requires that out of 35 deposited in the fund 20 percent shall be deposited into the statutory reserve, 10 percent into education fund and 5 percent into share transfer fund.

The remainder of the net surplus (profit) after deduction of the mandatory distributions is normally distributed only if it is provided for in the cooperative by-laws and finance policy. The respective by-laws and policies provide the percentage which is to be distributed according to the members' capital contribution and the percentage which is to be distributed according to the volume of business a member transacted with the cooperative. Distinction between profits accumulated from transactions with members and transactions with non-members are relevant because transactions with the members are recorded against each member's registration number and guide the cooperative when determining distribution of surplus to the members. However, non-members do not have any share on the surplus made.

The Mainland Act does not provide directly for patronage refunds as profit that arise from members' transactions with the cooperatives<sup>41</sup>. But the by-laws and policies of some co-operatives recognize patronage refunds as a profit stemming from transactions with members, and provide for returns to the same members in proportion to their transactions. Some by-laws, especially those of SACCOS make a clear distinction between patronage refunds from dividends. However, Regulation 47(3) of Zanzibar Cooperative Regulations requires the distribution of the remaining surplus (that is, 65%) to be based on patronage rebate of each member.

14. Section 81 of the Mainland Act allows cooperatives to charge the whole or part of its property, if however, its by-laws expressly empower it to do so, after it has been approved by the General Meeting and after the said charge has been registered by the Registrar. Further, the Mainland Act provides that co-operatives may admit a private or public company investor member through establishment of a cooperative joint venture with that investor, after being so approved by the Registrar<sup>42</sup>. Both Acts do not allow cooperatives to give loans to any person other than to their members. But for cooperatives whose main objects are to supply commodities their members are not allowed to make any loan nor allow any credit without the sanction of the Registrar.

15. In a case of dissolution both Acts require, the Registrar to appoint a liquidator who will value the assets and accumulate all proceeds within the co-operative. After the creditors have been paid and the debtors have paid their debt, the laws require the liquidator to divide the balances to the members, based on their contributions. Residual assets are distributed to members if only the co-operative is not in bankruptcy. If the cooperative is in bankruptcy the Mainland Act provides that the provisions of the Bankruptcy Act will apply.<sup>43</sup>

#### *Section 5: Co-operative external control*

16. As opposed to self control co-operatives in Tanzania are subjected to external control by the governments of both sides of the union. In the case of Zanzibar, the Department of Co-operative

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<sup>41</sup> Both Acts refer to patronage refund as "bonus" under the respective definitions under sections 2 of the Acts. Further, the Zanzibar Act under section 24 mentions deferred patronage refund as one of the cooperative sources finance.

<sup>42</sup> According to section 26 of the Mainland Act

<sup>43</sup> Section 112 of the Act.

Development, within the Ministry responsible for cooperatives is mandated to regulate and promote the activities of co-operatives under the direction of the Director of Cooperative Development who is also the Registrar. In addition, the Minister responsible for cooperatives has been given appellate authority on decisions of the Director/Registrar of cooperatives pertaining to registration, cancellation and dissolution of cooperative societies<sup>44</sup>. In the Mainland, TCDC although established by law as a semi-autonomous public body, is fully controlled by the government as follows: First: Determination of TCDC member composition: (i) The President appoints the Chairman of the Commission<sup>45</sup> (ii) Other members of the commission are appointed by the Minister responsible for cooperatives - (iii) Four out of ten members of the Commission are to be appointed from government or public institutions and only five out of ten may be appointed from cooperative movement. Second: Minister's control: The Minister responsible for cooperatives is given too much control on cooperatives as follows: (i) He may issue to the Commission general or specific directives relating to cooperative development<sup>46</sup> (ii) He is an appellate authority against the decisions of the Registrar which relate to: registration of a cooperative society, dispute settlements, cancellation and dissolution<sup>47</sup>. Third: Control of other ministries: The law has given to other sector ministries and local government authorities the responsibility of promoting cooperative development in their respective areas<sup>48</sup>.

Generally both Acts do not give co-operatives absolute control over themselves. However, the Zanzibar Act gives the movement some responsibilities that allow secondary and tertiary level cooperatives to exercise supervisory as well as promotional responsibilities to lower level cooperatives<sup>49</sup>.

#### *Section 6: Cooperation among cooperatives*

17. The principle of co-operation among co-operatives is addressed in both Acts. Both have provisions allowing cooperatives to affiliate in establishment of secondary co-operative (unions) and tertiary co-operative (Apex and Federation). According to the Zanzibar Act at least five (5) primary cooperatives may form a secondary society and at least five secondary societies may form an Apex cooperative society<sup>50</sup>. According to the Mainland Act at least twenty primary cooperatives may form a secondary society and at least ten secondary societies may form a Federation<sup>51</sup>. The Mainland Act also allows financial cooperatives such as cooperative banks to be formed by cooperation between SACCOS and other types of cooperative societies<sup>52</sup>.

The Mainland Act further allows two or more cooperatives to establish a cooperative joint enterprise (CJE) for purposes of establishing a joint business or economic enterprise. Such CJE

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<sup>44</sup> According to sections 21, 23 and 47 of the Zanzibar Act. However, section

<sup>45</sup> The current chairman is a former government minister

<sup>46</sup> Section 17 of the Act

<sup>47</sup> The law provides that in all these situations the decision of the Minister "shall be final".

<sup>48</sup> According to sections 15 and 15 of the Mainland Act.

<sup>49</sup> For example under section 14 secondary societies are supposed to assist the registrar in the process of registration of member primary cooperatives and also perform mediation and dispute resolution of member primary cooperatives. Equally under section 16 the Apex cooperative society is required to do the same to the secondary cooperative societies.

<sup>50</sup> Sections 13 and 15 respectively.

<sup>51</sup> Section 21 of the Act

<sup>52</sup> Section 21(3)

may form a joint board, provided such an enterprise shall not have a right to have a separate representation at the level of secondary or federation societies<sup>53</sup>. However, the law is silent as to whether such a CJE may be formed between cooperatives from two different countries or for that matter, from two sides of the union.

### *Section 7: Cooperative taxation*

18. According to the Union Constitution taxation is a union matter and co-operatives in both sides of the union are subjected to a specific tax regime. Income tax laws require that only cooperatives with annual turnover of more than 50 million Tanzanian shillings are supposed to pay corporate tax, which is 30% of the net-surplus (profit). Small cooperatives with less than 50 million shillings turnover are not supposed to pay corporate tax. Value added tax laws (VAT) exempt from tax all agricultural produce intended for export by cooperative unions<sup>54</sup>. Further, food, crops, livestock, agricultural machinery and inputs most of which are traded by cooperatives are exempted from VAT<sup>55</sup>. In addition, section 67 of the Mainland Act gives power to the minister responsible for finance to reduce or remit the duty, tax or value added tax which under any laws for the time being in force may be payable in respect of funds of a cooperative society or of the dividends or other payments received by the members of the society. However, because of the weakness in the cooperative movement, this provision is not fully utilized by the cooperatives. Both Acts recognize patronage refunds as a different component from the dividends. However, patronage payments are referred to as ‘bonuses by both Acts<sup>56</sup>.

### **Part II: Degree of “cooperative friendliness” of the national legislation**

19. Both the Mainland and Zanzibar Acts create a legal environment that may not be conducive enough to encourage sustainable cooperative development. Instead of encouraging cooperatives to take lead in the establishment, regulation and promotion of cooperatives, the laws give respective governments powers to over-regulate cooperatives, but at varying degrees. The Mainland legal framework contains the following ‘unfriendly’ provisions:

A. It gives to the minister responsible for cooperatives power to give directives of general and specific nature to the commission on matters pertaining to the development of cooperatives, thereby giving him direct control over cooperative affairs and rendering the commission function unnecessary. In addition, the minister is an appellate authority in all matters decided by the Registrar of Cooperatives. Further, since the minister responsible for agriculture is also the minister responsible for cooperatives, sometimes he uses legal powers under different laws to direct different public authorities to take over the functions of the cooperative movement such as collective procurement of inputs which is normally carried out by cooperatives and thereby denying the cooperators the benefits of collective bargaining.

B. The law also gives so much power to the Registrar of co-operatives who is the appointee of the President, which empowers him to get directly involved in almost all, cooperative decision making matters. These include the following:

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<sup>53</sup> Section 26 of the Act

<sup>54</sup> They are categorized as 1<sup>st</sup> Schedule or Zero rated supplies. This exemption is special for cooperative unions

<sup>55</sup> They are classified under 2<sup>nd</sup> Schedule as Exempted supplies. This exemption is not special for cooperatives.

<sup>56</sup> Refer to sections 77 of the Mainland Act and 27 of the Zanzibar Act and to the definition of “bonus” under section 2 of both Acts

- The Registrar approves and in that process may impose such limitations as he thinks fit, the establishment of cooperative joint business undertakings or cooperative business joint ventures;
  - He has legal mandate to direct a cooperative society which is seeking to be registered to amend its by-laws to conform to his directions as he may give;
  - He approves private auditors to audit cooperatives;
  - He controls the granting of loans by cooperatives;
  - He controls investments of cooperatives out of reserve funds;
  - He has power to conduct a continuous inspection on the by-laws, activities and financial affairs of a cooperative society;
  - He gives approval to the society's final accounts before distribution of surplus;
  - He may issue directions of a general or specific nature prescribing how the accounts and books of cooperatives should be kept.
  - He is the authority for entertaining dispute settlement in cooperatives;
  - He has power to hold an inquiry into constitution, working and financial condition of a registered society;
  - He has power to appoint special members to the Board of directors of the cooperative society;
  - He has power to dissolve a Board of Directors of a co-operative society and appoint a care taker or temporary board which shall serve for one year;
- C. The Law does not have provisions that would have an effect of strengthening the financial and managerial competence of the co-operative movement through allowing self-regulation in many matters that are handled by the Registrar which may be devolved to the movement such as supervision, inspection and dispute settlement.

On the side of Zanzibar, the law also gives to the Director of Cooperatives cum Registrar who is the appointee of the President powers to register and cancel registration of cooperative, to license and cancel license of SCCOS, to appoint and control the liquidators of coops, audit/supervise cooperatives and all his decisions are appealable to the minister responsible for cooperatives. Nevertheless, the Zanzibar legislation provides for functions of secondary and tertiary level cooperatives to carry out some regulatory functions such as audit services and dispute settlement as well as promotional services to cooperative members<sup>57</sup>.

20. However, despite the legal barriers which hinder cooperative development, the law has some provisions which may favour cooperative development, if understood and utilized by the cooperative movements of both sides of the union. For example, the law recognizes an implied contract between a member and his cooperative that a member must transact his business through a cooperative society and that the said implied contract cannot be construed as a restraint of trade in any legal proceedings<sup>58</sup>. The law also creates a first charge on the produce of a member for any rent or outstanding claim payable to a cooperative society by a member or past member<sup>59</sup>. The shares or interests of cooperative members in the capital of cooperatives are protected by law from attachment or sale under any court decree or order<sup>60</sup>. The law also exempts cooperatives from any compulsory registration of charges relating to shares or debentures, except if registered with the

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<sup>57</sup> Sections 14 and 15 of the Act

<sup>58</sup> Section 60. However, this is not reflected in the Fair Competition Act

<sup>59</sup> Section 61

<sup>60</sup> Section 63

Registrar of cooperatives<sup>61</sup>. Cooperatives also may have their tax liabilities reduced or remitted by the minister responsible for finance<sup>62</sup>.

21. Generally the law especially that of the Mainland creates an environment for co-operatives to operate as pseudo-public or quasi-governmental organizations, not as private sector organizations and this may be hindering them from utilizing the provided privileges. When a balance is made between the “friendliness” and “unfriendliness” of the Mainland Act as compared to that of Zanzibar, it may be observed that the Mainland Act is more co-operative unfriendly than friendly while the Zanzibar Act is only limited friendly.

22. Out of the legislation that has been reviewed, the South Korea and South Africa cooperative legal frameworks could be considered as relevant lessons for this study. South Korea has been preferred because it has enacted several cooperative societies’ Acts covering various areas but one general cooperative framework Act with checks and balance that allow government involvement in cooperative affairs, but at the same time controlling it so as to assure maintenance of cooperative independence and autonomy and adherence to other cooperative principles. The purpose of South Korean cooperative legal framework is to facilitate independent, self-supportive and autonomous activities of cooperatives<sup>63</sup>. The Act has provisions that are based on basic cooperative principles<sup>64</sup>. For instance, it provides for a legal duty to secondary and federation cooperatives to promote cooperative members through facilitating education and training to the members<sup>65</sup>. It encourages cooperation among cooperatives between cooperatives within and outside the country<sup>66</sup>. It prohibits cooperatives to be involved in political activities<sup>67</sup> and also prohibits central government or public organizations against violation of the autonomy of the cooperative<sup>68</sup>. The South Korean law provides further that a cooperative is to be established by members themselves, after agreeing on its articles of association<sup>69</sup>. Cooperative registration is simple and does not need registrar of cooperatives. It is done at the business registry of the Mayor’s office at the place of business of the relevant cooperative<sup>70</sup>. The law also has provisions which guarantee voluntary membership, contributions and members’ rights<sup>71</sup>. The law also provides for the management of the business of the cooperative which includes establishment of legal reserves and voluntary reserves out of the surplus created by a cooperative. It also allows distribution of dividends and patronage refund<sup>72</sup>. The law also provides for the dissolution of a cooperative where the liquidator is the president (chairman) of the cooperative and that the residual property shall be disposed of as provided in the articles of association<sup>73</sup>.

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<sup>61</sup> Section 66

<sup>62</sup> Section 67

<sup>63</sup> Act No. 11211, of Jan. 26, 2012

<sup>64</sup> Article 6

<sup>65</sup> Article 7

<sup>66</sup> Article 8

<sup>67</sup> Article 9

<sup>68</sup> Article 10

<sup>69</sup> Article 15

<sup>70</sup> Article 61

<sup>71</sup> Articles 20 - 26

<sup>72</sup> Article 50

<sup>73</sup> Article 59.

The South African cooperative legal framework has been preferred because of its compliance to a proper definition of the cooperative identity as recognized by the ICA Statement and because of its demerits from which one can draw a lesson. On the positive side, its legal framework interprets properly the principle of member economic participation in terms of having provisions on member contributions and distribution of surplus according to patronage participation. On the negative side the South African legal framework does not give proper consideration to the principle of cooperation among cooperatives in terms of having provisions which aim at strengthening the cooperative movement, particularly by allowing secondary and tertiary cooperatives to engage in lower level members regulation and promotion. The legal framework also has provisions which allow government to exert external influence to the cooperatives, particularly by the registrar who is the appointee of the minister.<sup>74</sup> Further, the minister himself has powers to order deregistration of a cooperative<sup>75</sup> and to consider appeals against the decision of the registrar<sup>76</sup>. The Act also establishes an Advisory Board<sup>77</sup> to advise the minister on cooperative development, the function which would have been played by the umbrella cooperative organization as strategy of strengthening the cooperative movement.

### **Part III: Recommendations for the improvement of the national legal framework**

23. At the time when the current study was being undertaken, proposals to amend the current Mainland legal framework were under consideration. However, when one considers the process and limited time taken to collect and discuss the proposed amendments<sup>78</sup>, would question whether the said amendments will be sufficient enough to bring about the national legislation which provides for a proper definition of cooperative identity, recognizes basic cooperative values and principles and strives to decipher them into the rest of the provisions of the legislation. We assert that the amended legislation should aim at phasing out the external control, particularly by the government while phasing in the cooperative movement. In order to attain this, the following has to be done to the national legal framework:

- Recognize the ICA values and principles and put up a legal framework that would allow/compel the interpretation of the values and principles into the rest of the cooperative legislation (in the Act, regulations and respective by-laws). In order to effect this the following need to be done:
  - The functions of the Registrar of co-operatives should be specifically defined by the law and should aim at implementing cooperative values and principles. Thus, a mechanism should be inbuilt in the legal framework that would enable devolution of the responsibilities from the registrar to the cooperative movement. The movement should get involved in the provision of inspection services, dispute settlement and liquidation of cooperatives. The function of cooperative promotion should be left to the cooperative movement, the role of the government should be to strengthen the capacity of the movement to provide such services;
  - Promotion of cooperative establishment and operation should be initiated and be carried out by members themselves. The involvement of cooperative officers should be limited

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<sup>74</sup> Section 76

<sup>75</sup> Section 73

<sup>76</sup> Section 93

<sup>77</sup> Sections 85 - 91

<sup>78</sup> Bearing in mind that almost all members of the government institutional structures which approve Bills/amendments for being tabled in Parliament are not versed with basic knowledge on cooperatives

- to guiding the cooperators towards understanding and adhering to cooperative values and principles and the said officers should be employees of the cooperative movement;
- Registration should aim at assuring whether the by-laws adhere to the values and principles and that they demonstrate an assurance that the cooperative members will interpret them into action once the cooperative is registered;
  - The supervision of co-operatives should be a joint responsibility of the department of co-operatives (Government Agency) and the Co-operatives Apex Bodies of the movement, but the primary responsibility should lay on the latter.
  - The legal framework also should encourage cooperation among cooperatives at national, regional and international levels. This should start with allowing cooperatives from the Mainland to cooperate with those from Zanzibar.
  - The cooperative development portfolio of the government should be handled by the ministry/minister/body of persons who understand and appreciate basic cooperative principles and norms because they are *a sine qua non* for cooperatives' success.

#### **Part IV: Conclusion**

The cooperative legal frameworks of the United Republic of Tanzania have produced cooperatives which may be referred as pseudo-public or quasi-governmental organizations, not as private sector organizations which should be operated according to the internationally recognized values and principles. This may have been influenced by the ideology and political environment that governed their past development. The implementation of the said legal frameworks has resulted in an 'institutional psychology' which hinders cooperatives from operating as vibrant and coherent movements. Under these circumstances, a proper reform in the cooperative legal frameworks would involve not only amending the cooperative laws to recognize and translate the said values and principles into action, but also inciting the understanding of the relevant enablers within and outside government circles to change their stance towards cooperative development.