



## LEGAL COOPERATIVE FRAMEWORK ANALYSIS

### Within the ICA-EU Alliance

### NATIONAL REPORT of Haiti

#### I. Introduction

This report was produced within the investigation of the Legal Cooperative Framework Analysis initiated by the International Cooperative Alliance (ICA) and its regional offices. The investigation is carried out in the framework of an alliance signed between the European Union and the ICA for the 2016-2020 period, which aims to strengthen the cooperative movement and its capacity to promote international development.

The analysis of the legal framework seeks to improve the knowledge and evaluation of cooperative legislation, with the aim of ensuring that legal regulations recognize the specificities of the cooperative model and ensure equal conditions, compared to other forms of association. This analysis will also serve ICA members as input into their advocacy and recommendations regarding the creation or improvement of legal frameworks, to document the implementation of cooperative laws and policies, and to monitor their evolution.

In line with the objectives set out in the ICA-EU Project, this report aims to provide a general understanding of Haitian cooperative legislation and an assessment of the degree of its ability to promote the development of cooperatives. Recommendations are also made for the improvement of legislation in order to overcome some difficulties that cooperatives are currently facing.

The document has been prepared by Marie Florette Charles, Law Graduate, Master in International Law and Diplomacy. In order to create this document, the contributions made by national cooperative organizations affiliated to Cooperatives of the Americas have been taken into account.

Contributions from the expert and Haitian organizations members of Cooperatives of the Americas were collected through a questionnaire prepared by the International Cooperative Alliance and its regional offices. The questionnaire was sent in its entirety to all members in Haiti and completing it was voluntary.





## II. National Cooperative Legislation of Haiti

### General Context

The Law on cooperatives dates back to September 14, 1953 and related to the organization of cooperatives and established the National Council of Cooperative (CNC). This Law on cooperatives was amended by decree to three (3) repeated: by the decree of October 27, 1960, by the decree of June 18, 1974 and by the decree of April 2, 1981. But also, this Law underwent a last modification in June 1995 to article 45 on interest rates, repealing the ceilings on the rates to be imposed on loans.

The adoption in June 2002 of a new law baptizing the Law on Savings and Credit Cooperatives (LCEC), was published in the “MONITEUR” Official Journal on July 10, 2002. In accordance with the provisions of this Law according to art (1): This Law relates to the constitution, organization, control and supervision of Savings and Credit Cooperatives (CEC), commonly known as “Caisses Populaires and Federations of Savings and Credit. "This law is strictly enforced nationwide throughout the territory, including cities, provinces and boroughs. In addition, the law of June 2002 provides the Bank of the Republic of Haiti (BRH) to monitor the financial aspect cooperatives and the National Cooperative Council (CNC) which deals with the association aspect. These two entities, being, legally, an instrument making it possible to supervise, supervise and control the Coopératives d'Epargne et de Crédit. The Law on Savings and Credit Cooperatives (LCEC) is a uniform law that governs Savings and Credit Cooperatives and Caisses Populaires. However, in relation to the activity of certain funds, they are subject to other regulations, but without having a special law. This particularity is the case of Savings and Credit Cooperatives and the credit unions and of the credit union federations which are financial cooperatives, the objective of which is financial intermediation. This financial intermediation resides in receiving funds from its members and making them credit.

On the other hand, Cooperatives for agricultural production, consumption and housing are another type of cooperative. They are submitted by the National Council of Cooperatives (CNC) and are governed by the decree of April 2, 1981. Please note the Bank of the Republic of Haiti (BRH) has no notion of control over their constitution and functioning. However, the consumer and housing cooperatives are not numerous. There are only two (2) consumer cooperatives: one (1) in the Sud'Est Department (Jacmel) and the other in the Nippes and one (1) housing cooperative in the Sud'Est.

The Savings and Credit Cooperatives, and the Savings and Credit Cooperative Federations





in accordance with the provision of the LCEC (article 6), are based on the seven (7) cooperative principles, in accordance with the recognized cooperative identity by the International Cooperative Alliance (ICA). Indeed the 6th principle relating "Cooperation between Cooperatives" responds well to our motto "Unity is strength" while characterizing the development of the spirit of cooperation.

## ii. Specific Elements of the Cooperative Law

### a) Definition and Objectives of Cooperatives

The legal space is far from being empty as evidenced by the enumeration of Decrees and Laws. Particularly article 6.1 of the LCEC defines the Cooperative, as being "Any autonomous association of people voluntarily united to satisfy a common need by means of a collective enterprise and where power is exercised democratically." It is also a company with objectives, a structure and administrative bodies which differ from the Company.

The union of cooperatives groups together the activities of the cooperative pursuing a common goal in a geographic, regional or national district. It is constituted on the same bases and the same principles as the cooperatives which participate in it.

As a Cooperative, the CECs are founded on membership and open to all; democratic control, that is to say: one member, one vote, regardless of their LCEC share (art. 5); ethnic and religious political neutrality (article 6) decree of April 2, 1981.

Regarding the economic participation of the members, the LCEC provides according to (art. 33, paragraph 3) on cooperatives and Caisses Populaires in Haiti "the shares may not receive dividends but only an interest which may exceed the legal rate. This interest rate can be changed each year by the general meeting within the limit provided. Annually, a deduction of at least one tenth is made from the net surplus, which is allocated from a reserve fund. The reserve fund is non-transferable and unsuitable and in no case may be shared between members. A product of its annual surplus is made available for Education and Training, information for members and the general public, is one of the cooperative principles (art 5 paragraph 4) of the LCEC.

In addition, article 129 on the said Law states "Cooperatives can merge either to create a new CEC, or by option of so-called absorbing CEC. But this merger must be previously authorized by the BRH, while submitting a merger agreement in support of their request.

Cooperative companies differ from share capital companies by their internal functioning. The difference is noticed when the organization is set up and the eventual distribution of the profit. The management of the cooperatives is democratic one (1) man, one (1) voice.



Excess revenue belongs to client members.

The purpose of the cooperatives is: service and mutual aid. The members of the cooperatives voluntarily join and participate actively in the activities of the cooperative according to the common interests of what is necessary for its success. Other members of the cooperative, the LCEC offers services to non-members and other entities within the limits previously established by the National Council of Cooperatives (CNC), for example (agricultural credit, for agricultural cooperatives, for housing etc...). And according to company policy, the Credit Committee delegates part of its powers to the director for loans that do not exceed 50,000.00 gourdes.

On the other hand, the LCEC, art. 24, second paragraph prohibits a CEC from engaging directly in trade or the production of goods and services. However, it can take part in the capital of any company up to 25%. This participation will be taken in the chapter of overpayment and permanent shares.

## **b) Establishment, Cooperative Membership and Government**

Legally, before carrying out their activity, the Cooperatives must be authorized to operate by an operating notice issued by the National Council of Cooperatives (CNC) after advice from the Bank of the Republic of Haiti (BRH). All of them must be registered with the CNC as a cooperative. To do this, this request must include: the registration of the CNC as a cooperative: an expedition of the constituting document duly registered in legal law, a copy of the statutes signed by a minimum of 21 founding members, a copy of the internal regulations, an opening balance sheet of the CEC, the business plan for a CEC in formation, or a federation, proof of the constitution of a share capital.

To be a member or member of the credit union, LCEC imposes any natural or legal person submitting the requirements required by the cooperative principle, that is to say: has interests in the territory of the credit union, applies for admission, subscribes and pays a share, comply with the statutes and internal regulations of the CEC and registration by the board of directors.

The procedure followed in the assemblies must be in accordance with the law, the statutes, the regulations and the principles of democracy. At meetings, all members have only one vote regardless of the share of capital they hold. This principle is uniform in all types of cooperative.

This democratic governance structure is reinforced by the rules and regulations governing cooperatives and in accordance with which the cooperative is created is uniform, whether it be provinces, territories or boroughs. The peculiarity of cooperatives no matter the place, is





that it shares the same values and guiding principles, which are exercised in their governance and operations

The government base of cooperatives is based on the following bodies such as the general assembly, the administrators, the supervisory committee, all chosen from among the cooperative's members.

The General Assembly is the supreme authority of the cooperative. Its decisions are binding on all members, provided they comply with the LCEC and the statutes. It meets at least once a year when convened by this Board of Directors to assess, appoint, discuss, and take valid decisions for the purposes of the CEC. It can be convened as an extraordinary meeting, by two (2) members of the Board of Directors, by the Supervisory Committee or at the reasoned request of 25% of its members.

In turn, the Board of Directors oversees the good management of the cooperative. The directors are appointed by the General Meeting from among the members. Its powers fall within the limits of the statutes and internal regulations delegated to them by the general meeting of members. Its multiple tasks define the resource management policy of the CEC, as well as its credit policy and others. The chairman of the board of directors represents the company or the union in court, both at the request and the defense. The Board of Directors may appoint a management committee drawn from among its members and delegate part of its powers to an associate managing director or not.

The Cooperative Company also has a Supervisory Committee, whose members are elected three (3) whose mandate is to check the books, the cash, the portfolio and the values of the company, to control the regularity of the inventories and goods. They must prepare a report each year in order to report to the general meeting on the execution of the mandate entrusted. They are elected for (3) three years and are eligible for re-election, according to the procedure provided for in the statutes.

The members of the Board of Directors and the Supervisory Committee exercise their services free of charge. According to the conditions of the General Meeting of members, they alone receive the reasonable costs incurred in the exercise of their functions. Apart from such reimbursements, no direct or indirect advantage may grant them in any form.

Annually, any CEC or any federation of CEC must verify its books and accounts by an independent auditor. Otherwise, in accordance with this law, the BRH appoints an auditor whose remuneration is the responsibility of the federation. Private audit is performed by a member of a professional association of accountants recognized by law, who may not be an officer, a person to whom an officer is linked, an employee or a member of the federation of which he is a member responsible for checking.



**N.B:** The managers of the caisses are certainly of good will, but for the most part they are almost devoid of technical capacity and strategic vision to lead the sector to its destination. Those who have led for (10) years are mostly the same today. Credit unions use volunteer leaders for boards and committees. Those who are successful in bringing their good ideas cannot always leave their income-generating activities to go and work voluntarily.

### c) Cooperative Financial Structure and Taxes

The Law on Savings and Credit Cooperatives fixes the minimum share capital at fifty thousand gourdes (50,000.00 gourdes), at the time of the formation of the CEC. However, if the request is supported by a federation, the proof of the minimum share capital is twenty-five thousand gourdes (25,000.00 gourdes). Art 19. Paragraph 7. On the other hand, the amounts indicated above can be modified by the BRH in concert with the CNC according to the evolution of the sector and general economic activity. Qualifying shares are nominative and are fixed by law at the nominal value of each member. In the event of dissolution, they are refundable; to resigning or excluded members, or to assigns to deceased members.

A CEC can be dissolved for the reasons provided for by the statutes or by the free vote given by two thirds (2/3) of the members in general assembly, which once pronounced the liquidation, forms a commission of liquidators of three (3) members at least for this purpose.

The Reserve Funds only serve to pay debts at the time of the liquidation of the CEC, the payment of the savings of the small depositors. If there is, the balance is paid to the BRH on the account support for cooperatives.

Annually, 10% of the overpayments from any CEC are deducted, in order to constitute a reserve fund. If the own funds are greater than or equal to the regulatory own funds, a CEC can establish a fund to be used for social or community purposes by allocating to this fund 10% of the amount allocated in LCEC rebate (art. 64 paragraph 2).

The CECs are not empowered by the said Law to engage in commercial activities or to be transformed into other organizations. The annual overpayment, after the deductions, the balance is distributed to the members in proportion to the business handled by each of them with the CEC and not in proportion to the number of shares held by each member.

The law states that the CECs can receive donations and legacies and gifts of all kinds from legal or natural persons. These donations received are part of their social heritage,

There are also certain sources of funding that come from: member deposits and credits.



Funding for members (equity), the first source to explore is funding for members, that is, funds (share capital) invested in the cooperative enterprise. It can also be cash (cash), but also physical assets such as buildings or rolling stock etc.

Regarding income tax, CECs are autonomous institutions and like all other institutions, pay income tax, a ceiling of 10% is levied on overpayments or surpluses at each. The annual surplus earnings are allocated, after the legal deductions, in priority, according to the provisions of article 67 of this law. The balance is distributed to the members in proportion to the business by each of them with the CEC and not in proportion to the number of shares held by each member

Financial cooperatives enjoy certain tax exemption on the Land Contribution of Built Properties for premises housing a CEC or a FECEC and the exemption from business tax, customs exemption. Other shares, financial cooperatives are subject to commercial profit tax at the rate provided for commercial companies.

Financial cooperatives enjoy certain tax exemption on the Land Contribution of Built Properties for premises housing a CEC or a FECEC and the exemption from business tax. On the other hand, financial cooperatives are subject to commercial profit tax at the rate provided for commercial companies.

For the calculation of taxable net profit: the provisions on the portfolios imposed by BRH regulations are deductible expenses; member dividends and end-of-year discounts, granted in proportion to their activity with the CEC, are deductible expenses; for networks, members of the same CEC Federation, the profit is calculated and paid on a consolidated basis including the FCEC and all CEC members; Any remuneration for shares is not deductible expenses.

#### **d) Other Specific Characteristics**

Through the National Council of Cooperatives (CNC) the state controls all the CECs. Thus (art. 8) LCEC mentions: "The CNC is the supervisory authority for Cooperatives. It is responsible for formulating and promoting the Government's policy in Cooperative matters. The CNC and the Bank of the Republic of Haiti (BRH) are official bodies making it possible to give CECs the legal status of cooperatives as legal entities.

The BRH through the Directorate of General Inspection of the Caisses Populaires (DIGCP) monitors compliance by the CECs and the FCECs. The multiple roles of the CNC are defined in the decree of 1981. It has a monopoly on training, a right of scrutiny over the way in which the cooperative has its goods, the possibility of taking a percentage (number not specified) on excess -perceptions of cooperatives. He periodically evaluates cooperative



"This document has been produced with the financial assistance of the European Union. The content of this document is the sole responsibility of the International Cooperative Alliance, and in no way can it be considered to reflect the views of the European Union."



development and presents the Development of the Plan in addition to the quarterly reports, an annual report intended for the President of the Republic.

The audit report is drawn up by a qualified accounting firm, which is inserted quarterly in a special book. A report on this report is sent annually to the CEC general assembly. Data from the CNC / BIT study published in September 1990 revealed the existence of 298 cooperatives, 219 of which in the agricultural sector alone and 79 in that of savings and credit, for a total of approximately 112,000 members. The participation of women amounted to 40% of the membership of multi-purpose cooperatives, 48% in the credit unions.

In reality, we do not know the number of cooperatives because of the vagueness in the criteria used to identify them. Most of the 85% cooperatives are in rural areas. If we counted only those who have a license, who have regular activities and who respect their statutes, we would probably have less than 50 cooperatives in Haiti. The departments of Artibonite, North, West, South and South East are the ones with the most cooperatives. In terms of penetration, the ratio of the number of members to the population is the highest in the South and the South East.

### III. Degree of Ease of National Legislation for Cooperatives

This legislation, which targets cooperatives in general, has no concern for ensuring compliance with financial standards, which must normally be observed by savings and credit institutions, to guarantee the confidence of supervisory bodies and better protection of members' savings.

A CEC obtains legal status in the form of an accreditation. Among the benefits of legal recognition, a cooperative may enjoy the preference of leasing vacant land in the private domain of the state, exemption from various taxes and customs duty. The CNC has introduced the operating permit to circumvent the operation of the board of directors; however, the legal value of this permit appears questionable.

The Law on Savings and Credit Cooperatives has known nearly 18 years of existence, but from a legal point of view, the majority of cooperatives and among them, the most important find them in a precarious situation which is detrimental to their development. While respecting the heavy prescriptions of the law, they can only hope to obtain from the State a temporary status - an operating permit whose legality is questionable. This handicap, to which are added restrictions in terms of training, access to external resources (loan, donation) and the free disposal of its assets, makes the Haitian cooperative enterprise a company under permanent supervision.







Certainly, cooperatives need a "Legal Recognition" or Operating License allowing them to operate. This operating license which should be published in the Monitor, but for some cooperatives, this publication has not been made.

Some cooperatives setting up in rural areas are not supervised by their supervisory body. Managers who can bring a case to good port are not interested in living in rural areas, because of the lack of infrastructure, we even see the ineffectiveness of these cooperatives as being instruments of development.

The current laws suffer from a number of anachronisms and deserve to be modernized. This approach requires prior consideration by the State on its role vis-à-vis cooperatives. In fact, the 1987 Constitution, which mentions "that Haiti is a cooperative public republic", must benefit from State support in several forms.

An appropriate legal framework where financial services cooperatives (Caisses) and economic services cooperatives (agricultural, multi-purpose, production) can have their own legislation; government leadership provided by the CNC to reform the Law, review its powers and be allocated resources in relation to those responsible; promote concerted action between supervisory agencies and donors to ensure consistency in supporting cooperatives.

#### **IV. Recommendations to Improve the National Legal Framework**

- Proposal for a new Law on the Savings and Credit Cooperative which will be much more complete, which should correct certain shortcomings of the current law of June 2002.
- Census of cooperatives on the (10) departments of the Republic of Haiti.
- Amend the existing credit laws in Haiti. The funds are for the most part, in rural areas, certain codes constitute constraints for the cooperatives to be able to enter certain guarantees for non-reimbursed loans.
- The establishment of a State Secretariat for Cooperatives to strengthen the Cooperative sector.
- The provision of the Cooperative sector in general and the credit unions in particular of the means necessary for the creation of a forum aimed not only at restoring the image of the sector, but at making known its benefits to all.
- Integrating cooperative intelligence into the curriculum of our schools and universities so that young people can better emerge from the solidarity economy.





- Tidying up the sector in the face of unfair competition in Haitian microfinance.
- There has to be a fair approach to the caisses. The BRH gives much more importance and advantage to the banks at the expense of the caisses in terms of product and service. The requests of the caisses are rarely answered with eagerness, since 85% of the caisses are remote in rural areas to serve the underprivileged who do not have access to banking service.
- Ensure that education and information training for members and the general public are respected as provided for in (art. 5) on Cooperative Savings and Credit Laws.
- The application of provisions providing for situations of conflict of interest, particularly with regard to the granting of loans to directors and to persons related to them.
- Restrictions should be provided, in order to avoid the payment of rebates when there are insufficient reserves.

## V. Conclusions

Despite, the Cooperative Enterprises of Haiti promote the seven (7) basic principles of the International Cooperative Alliance (ICA) which constitute the guideline of any cooperative, however, they are almost far from their real objective, “improving the economic needs of members”. The majority of cooperatives find themselves in a precarious situation which is detrimental to their development. The structural mechanisms put in place are not adequate. Legislation that includes cooperatives in general does not ensure compliance with financial standards, which must be observed by Savings and Credit Institutions, for better protection of members' savings. Certain laws relating to taxation and others of cooperatives which have been highlighted in articles, 42, 49, 58, deserve to be called into question. The majority presence of the funds in rural areas requires the speed of the state for their expansion. In addition, the current laws suffer from a certain number of anachronism or a certain obsolescence, taking into account their inadequacy to the socio-economic reality of the members; that said, the expectations have not been met, so their modernization is necessary.

Port Au Prince, Haiti. March, 2020.

**M.Sc. Marie Florette Charles.**

The legal frameworks analysis is a tool developed under the ICA-EU Partnership #coops4dev. It is an overview of the national legal frameworks at the time of writing. The views expressed within are not necessarily those of the ICA, nor does a reference to any specific content constitute an explicit endorsement or recommendation by the ICA.



"This document has been produced with the financial assistance of the European Union. The content of this document is the sole responsibility of the International Cooperative Alliance, and in no way can it be considered to reflect the views of the European Union."