

LEGAL FRAMEWORK ANALYSIS

within the ICA-EU Partnership

National Report of Kiribati

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

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

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

Introduction

This report was initially prepared by connecting with Mr. Waimauri Nawaia, the national expert appointed by the International Cooperative Alliance Asia and Pacific

1



(ICA-AP). The process began with the completion of questionnaires for the legal framework analysis with input from the staff at the Co-operative Registry within the Department of Commerce. The report has been reviewed and some additional commentary added by Ann Apps, the sub-regional expert for Oceania to conduct a comparison with other legal frameworks to prepare a sub-regional report for Oceania.

The legal framework analysis of cooperative legislation in Kiribati aims to:

- Provide a general overview of the Cooperative Societies Ordinance Cap 14 (CSO) together with the Cooperative Societies Regulations 1977 (CSR), its main features including how the legal framework secures the cooperative identity and distinguishes it from other types of business organisations. This analysis will also include some consideration of the Credit Unions Act 1990 (as amended in 1993) (CUA) albeit to a lesser extent.
- Evaluate if cooperative law in Kiribati supports or hampers the development of cooperatives and, to the extent that it is not “cooperative friendly”, make recommendations for reform.

Cooperative law – Kiribati

General Context

The Republic of Kiribati is a Pacific island nation in the Pacific region, comprised of 33 islands, and situated close to the Equator. The nation comprises only 811 square kilometers of land and depends on the ocean for its survival, with only a few crops grown locally due to the very hot and dry climate.

Kiribati (previously known as the Gilbert Islands) became a protectorate of the British Empire in 1892, a British colony in 1912 and then gained self-independence in 1977. Kiribati gained its full independence on 12 July 1979. During the colonial period, Britain introduced and applied most of its laws to Kiribati, which included the law for cooperative societies. When Kiribati gained self-independence in 1977, the new government adopted these laws and consolidated them as ordinances. The Cooperative Societies Ordinance Cap 14 1977 was among the ordinances adopted at this time and remains current law to this day.

Even before Kiribati gained independence, the population was already increasing at a rapid pace and the lifestyle of its people was also rapidly changing due to the influence of globalisation. Given this influence, the people of Kiribati became dependent on imported goods to supplement their diet - particularly in terms of their consumption of dairy products. At the time of independence, there were very few small privately-owned businesses given the capital costs of start-up and most of the market was controlled by a small handful of government-owned businesses.

In this economic context, many new cooperatives were established – through which business-minded individuals worked together to establish member-owned businesses to cater to their economic needs and aspirations. In 1975, 44 cooperatives operating across the islands. Initially, the main cooperative focus was on the wholesale and retail of groceries and general merchandise (that is, consumer cooperatives) and copra trading (producer cooperatives).

Today, there are over 300 cooperatives in operation across 22 islands – with a collective membership of close to 10,000 (approximately 10 percent of the total permanent population). Although copra trade remains a primary business activity, these cooperatives cover a range of other sectors including:

- Farming (11)
- Animal Husbandry (2)
- Baking (2)
- Copra (194)
- Fishing (76)
- Gravel and Sand (1)
- Handicrafts (5)
- Rental (3)
- Retail (12)
- Shipping (3)
- Stevedoring (3)

This report will consider the legal framework governing these cooperatives, along with the regulation of collectively owned credit unions.

Specific elements of the cooperative law

Definition and objectives of cooperatives

Cooperative Principles

Table 1

| Application of Cooperative Principles (General) | Law or Regulation | Relevant section (link) |
|--|-------------------|-------------------------|
| The requirement for registration that business is designed to promote the economic interests of its members, in accordance with cooperative principles | CSO | S 4 |
| The scope of this law is to enable the creation of credit unions that will: (a) promote thrift among its members; (b) create a source of credit at a fair and reasonable rate of interest primarily for provident and productive purposes; (c) receive the savings of its members either as payment on shares or as deposits; and (d) provide an opportunity for its members to use and control their own money to improve their social and economic well-being. | CUA | S 15 |

Table 2

| Application of Cooperative Principles (Specific) | Law or Regulation | Relevant section (link) |
|---|-------------------|-------------------------|
| Voluntary and open membership Restriction on age (over 16), residency and on membership of more than one savings and loan society. | CSO | SS 23, 25 S 24 |

| | | |
|--|----------------------------------|-------------------------------------|
| <p>Membership conditional upon subscription or purchasing member shares.</p> <p>A member is free to withdraw from society and receive reimbursement of the amount paid for member shares.</p> <p>No registered society shall fix any limit to the number of its members.</p> | <p>CSR</p> | <p>RR 13, 16</p> <p>R 12(1)</p> |
| <p>Democratic member governance</p> <p>No member shall have more than one vote in the affairs of the society (chairman has casting vote where votes are equal).</p> <p>Also, by limiting the shareholding of any one member to no more than 20% (1/5th) of a cooperative's total share capital the influence of anyone member is limited.</p> | <p>CSO</p> <p>CSO</p> | <p>S 26</p> <p>S 29</p> |
| <p>Member economic participation.</p> <p>Where the registered society is a producer cooperative (i.e. the cooperative disposes of agricultural commodities or handicrafts produced by members), the cooperative may require that its members dispose of all or a specified proportion of their produce through the cooperative.</p> <p>Otherwise, members can only exercise rights of membership if they have paid the membership fee or acquired member shares as required by rules or by-laws.</p> <p>Transactions with non-members may be prohibited or restricted.</p> | <p>CSO</p> <p>CSO</p> <p>CSO</p> | <p>S 13</p> <p>S 24</p> <p>S 34</p> |

| | | |
|---|-----------------------|------------------------|
| <p>Autonomy and independence</p> <p>A registered cooperative is independent and autonomous, to the extent that it has the power to hold property, enter into contracts, institute and defend suits, and do all necessary for its constitution.</p> <p>Conversely, the Minister may appoint special members to the committee of any secondary society if the society receives financial assistance from the Government or if the Minister considers such appointments to be necessary for the interests of the national economy.</p> | <p>CSO</p> <p>CSO</p> | <p>S 8</p> <p>S 62</p> |
| <p>Cooperation among cooperatives</p> <p>A registered society may include a society established to facilitate the operations of other registered societies.</p> | <p>CSO</p> | <p>S 4</p> |
| <p>Concern for community.</p> <p>Any registered society may, with the sanction of the Registrar, after one-fourth of the net profits in any year has been carried to the general reserve fund, contribute an amount not exceeding 10 percent of the remaining net profits to any charitable purpose or a common-good fund.</p> | <p>CSO</p> | <p>S 36(2)</p> |

Cooperatives are not defined in the CSO other than the requirement that they are a society that “has as its object the promotion of the economic objects of its members

in accordance with cooperative principles, or a society established with the object of facilitating the operations of such as society” (CSO s 4). Tables 1 and 2 above show how some of the cooperative principles are given effect within this legislation specifically. However, the CSO and CUA do not explicitly set out the ICA Cooperative Principles or reference the ICA Statement of Cooperative Identity or another instrument which refers to those principles, e.g. ILO R 193.

The promotion of members as an objective of the CSO and CUA

The CSO does not specifically address the objectives of cooperative, i.e. it does not have a preamble, setting out ‘the role and the function of cooperatives in society in general and in the economy of the country in particular’.¹

The promotion of members is prioritised by the power for the Registrar to restrict the cooperatives’ transactions with non-members, CSO s 34. Members are unable to exercise their rights unless they have made payment to the society or acquired an interest as required by the rules or by-laws, CSO s 24. If the cooperative is a producer cooperative it may require its members to only disposing of its produce or a proportion of their produce through the cooperative, CSO s13. Regarding the division of remaining surplus (following distribution of dividends and other payments required by law), and where society has among its principal functions, trading or dealing in goods of any kind, it may distribute surplus between the members thereof as a bonus or rebate in proportion to the value of business each member has transacted with the society during the period in question. Otherwise, such surplus may be distributed as a bonus on the wages or the value of the products of each member – or may otherwise be devoted to reducing the cost of services to members, CSR r 19(4).

The objects of credit unions (set out under CUA s 15 and in Table 1, above) require a focus on transactions with members as consumers, providers or employees. Section 61 allows credit unions to accept deposits from non-members, but only with the approval of the Registrar and the members. Part V provides generally for the rights and liabilities of members, and s 30 requires that no person may be the member of more than one credit union, without the approval of the Registrar.

¹ Hagen Henry, Guidelines for Cooperative Legislation (International Labour Office, 2012) 64.

Establishment, cooperative membership and governance

(with a specific focus on the operation of the CSO)

Legal requirements for the establishment and continuation of a cooperative.

Registration is necessary for the establishment of a cooperative under the CSO (see generally part II). Each registered society must comprise at least 10 persons who are otherwise qualified for membership under s 23, CSO s 5. An application for registration must include copies of by-laws of the society as prescribed by the CSO and CSR, CSO s 6. Any amendment to the by-laws must be approved by the Registrar, CSO s 10. The Registrar has the power to determine the liability of members (limited or otherwise) upon registration of the cooperative, CSO s 4.

The CSR provides for the keeping of a “Register of Societies” by the Registrar. The Registrar has the power to cancel the registration of a society that no longer has the required number of members, CSO s 42, or may otherwise dissolve the committee of the society upon inquiry/inspection or the request of at least three-quarters of the members, and appoint an administrator, CSO s41.

Admission of new members

There is no mandated requirement that cooperative members actively participate in the business of the cooperative once they have qualified for membership. However, a producer cooperative may set out minimum requirements for member participation in its rules requiring disposal of all or a percentage of the member’s produce through the society, CSO s 13.

A cooperative’s by-laws must include provisions regarding the qualifications for membership, the terms of admission of members and the mode of election, CSR r 57(1)(e)). A cooperative must not fix any limits to the number of members, CSR r 12. All members must be at least 16 years of age and “resident within or in occupation of land within the society’s area of operations as described by the by-laws”, CSO s 23.

Members’ voting rights

The CSO provides that no member shall have more than one vote in the conduct of the affairs of the society, however, the chairperson may have a casting vote and a cooperative society that is a member of the cooperative may have more than one vote if this is provided for in the by-laws, CSO s 26. These voting rights are exercised

in annual, special or regular general meetings, CSR rr 21-15. The law does not make any provision for joint membership.

Governance structure

A cooperative must be governed by a committee, which must comprise a chairperson (and vice-chairperson), secretary and regular member/s – and may also include a treasurer. The CSR prescribes the duties and responsibilities of each of these committee roles in detail.

A cooperative's by-laws must make provision for the total number of members of the committee and the quorum of the committee, CSR r 57(1)(h)(i).

The CSR also provides for the election, suspension, and removal of the members of the committee, and for the powers to be exercised and the duties to be performed by the committee and other officers, and for meetings of the committee (see generally, CSR rr 31-35. The primary duties of the committee are to:

- act as the executive authority and, subject to any directions from a general meeting, manage the affairs of the cooperative (including entry into contracts/ loan arrangements for no more than an amount agreed to at a general meeting, and the institution, defense or settlement of legal proceedings, CSR rr 20, 32.
- Keeping a copy of the latest annual balance sheet of the society and an annual report – for inspection by the members, CSR rr 23, 32.
- Additionally, the regulations require the committee to ensure general compliance with the law, and to keep true, full and accurate records and accounts to ensure accountability to members, CSR r 32. The CSR also sets minimum attendance requirements, so that a failure to attend 3 consecutive meetings without leave will mean that a committee member is deemed to have vacated the office, CSR r 35.

The cooperative is also required to hold an annual general meeting within one month after the Registrar has audited the cooperative's accounts, CSR r 23, enabling regular member supervision of committee performance. Also, members will generally elect the committee at general meetings (consistent with the cooperative's by-laws and CSR r 24) giving members some degree of control over the governance of their cooperative.

While these provisions afford a cooperative some degree of autonomy and independence it is worth also bearing in mind that, where there are issues regarding the governance of a cooperative, the Registrar may dissolve the committee of the society upon inquiry/inspection or the request of at least three-quarters of the members, and appoint an administrator, CSO s41.

The Minister may appoint special members to the committee of any secondary society if the society receives financial assistance from the Government or if the Minister considers such appointments to be necessary for the interests of the national economy, CSO s 62. Fines and disqualification from office may apply to committee members who are guilty of an offense involving unethical conduct, CSO s 65.

Annual audits must be conducted by a person approved by the Registrar, and cooperatives may be required to support this process by making contributions to the Audit and Supervision Fund, CSR rr 55 and 56.

Cooperative financial structure and taxation

Capital contributions

Cooperatives may issue shares to members, and a member is not entitled to exercise the rights of membership until they have made any payment to the cooperative required for membership or acquired the minimum number of shares as required by the cooperative's by-laws, CSO s 24. Fundraising by issuing shares is also subject to the requirement that a member may not hold more than 20% (1/5th) of a cooperative's share capital, CSO s 29.

CSR r 16 requires the establishment of a share transfer fund 'to meet expenditure which may be incurred by such society in purchasing the shares of members whose membership has been terminated with the consent of the committee. A member that withdraws from membership may be entitled to repayment of monies paid for shares, but this will be subject to any conditions for repayment including committee consent and approval by the Registrar, CSR r 16. A registered society has a charge upon the shares and interests of members and may set off any amount owed to it against such charge, CSO s 15. Shares may be transferred with the approval of the committee and subject to the CSO, CSR r 43.

Other sources of finance

A cooperative may receive deposits and/or loans from non-members subject to any by-laws in this regard, CSO s 33, and the by-laws must provide for the purpose to which funds may be applied, CSO s57(1)(d).

Any loans made by the cooperative must not exceed the amount agreed to by the members (CSR rr 20, 32(1)). This maximum liability must be approved, and may also be reduced, by the Registrar (CSR r20(2)).

A registered society may also apply for government financial assistance/loans/grants; however, this may involve the managerial and supervisory involvement of government through special membership of the committee (CSO s 62).

Distribution of surplus to members

At least 1/4th of the cooperative's net profit (as determined through an audit process set out under part VI) must be deposited into a general reserve fund for the purposes prescribed by the CSR, see CSO s 36 and CSR r 54, such as general business purposes or the meeting of occasional deficiencies, and sanctioned by the Registrar. Any remaining surplus may be divided among the members as a dividend, bonus or rebate (depending upon the cooperative type), or otherwise allocated to an approved fund, CSO s 36; see also CSR r 19.

No more than 1/10th of any remaining surplus (once the correct amount has been applied to the general reserve fund) may be applied to any charitable purpose or common-good fund, with approval of the Registrar, CSO s 36(2). Cooperatives may also be required to make contributions to an Audit and Supervision Fund at the request of the Registrar, CSR r 56. The payment of any dividend on paid-up share capital is limited to 5%, CSR r 19 (3).

Distribution of surplus upon dissolution

Part VII of the CSO deals with the dissolution of a cooperative. A cooperative's registration may be canceled due to a lack of members, CSO s 42. It may also be dissolved by the Registrar according to the findings of an inquiry of inspection conducted in accordance with s 39, CSO s 41. In any event, winding up must be approved by the Registrar, CSO s 41(4).

In the event of liquidation of the cooperative whose registration has been canceled, the CSO provides that any funds (including the general reserve fund) shall be applied first to the costs of liquidation, then to the discharge of the liabilities of the

cooperative, then to the repayment of share capital and, if permitted by the by-laws, then to the payment of a dividend at a rate not exceeding 10% per year for which no disposal of profits was made, CSO s 49(1). Any remaining surplus may be applied at the discretion of the Registrar for any cooperative purpose, CSO s 49(3).

Taxation of cooperatives

The Income Tax Act 1990 (ITA) provides in section 74 that the income of the Kiribati Cooperative Copra Society Ltd. is exempt from income tax. For all other cooperatives, income, except for income produced from copra, is subject to income tax at usual company rates, however, any bonus paid to members shall be allowed as a deduction. In CSO s2 'bonus' is defined as: "a share of the profits of a registered society divided among its members in proportion to the volume of business done by them with the society from which the profits of the society were derived." This means that similarly to other jurisdictions, any amount paid to members as a patronage refund can be treated as a deduction by the cooperative society. Cooperatives otherwise are taxed at the company tax rate of 20%

Other specific features

The CSO requires the Registrar to take an active role in monitoring and supporting the activities of cooperatives to ensure sound decision-making. For example, the Registrar is responsible for oversight of the annual auditing of cooperative accounts and has wide powers of inquiry and inspection, CSO part V1.

Such provisions place an extraordinary regulatory burden upon the Registrar, requiring attentive and careful administration of Kiribati's 300 plus cooperatives located across over 20 islands.

Additionally, the Registrar is empowered to approve and impose limits on annual expenditure and liabilities made by the cooperative, CSR rr 20 & 42. This requires extensive regulatory involvement and considered decision-making by the Registrar concerning the cooperative's business affairs.

Except the introduction of a special law for member-owned credit unions in 1990 (amended in 1993), the law governing cooperative societies has not been significantly revised since its adoption in 1977.

Degree of “cooperative friendliness” of cooperative law in Kiribati

The CSO is more cooperative unfriendly than friendly. This is because the law has not been reviewed or updated since it was adopted in 1977. Similarly to the COSA in Vanuatu, the CSO is based on a template colonial law known as the British Indian Pattern of Co-operation (BIPC).

The law assumes a well-resourced and funded cooperative registry to support cooperative development. The Registrar’s extensive powers to intervene in the affairs of cooperatives both undermines the fourth cooperative principle of Autonomy and Independence, and assumes that the Registry will have the resources, skills, and support to carry out this role.

The national expert suggests that the degree of ‘cooperative friendliness’ of Kiribati national cooperative law is considered more ‘unfriendly than friendly’ for the following key reasons:

- Significant authority rests with the Registrar (e.g. auditing, approval of maximum liability – budgets/finance). This reduces the independence of cooperatives and incentives to operate autonomously concerning business-related decision-making and risk management.
- The CSO does not encourage cooperation among cooperatives or cooperative education and training. There is a lack of training, education, and awareness of cooperative principles and governance practices among staff and officers.
- The CSO has relatively weak enforcement measures to prosecute officers and members who abuse and/or misuse cooperative property, commit fraud or misappropriation. This is a resourcing issue as much as a legislative issue.

Legal obstacles or barriers

It is important to note that the CSR is a ‘transplanted’ law that has not necessarily been adapted to suit local conditions and needs. Furthermore, the law has not been amended since it commenced in 1977.

The CSO requires a highly centralised system of supervision and administration. However, the CSO compromises the cooperative principle of ‘autonomy and independence’ by requiring the Registrar to approve many of the decisions that might otherwise be left to the cooperative, as with other jurisdictions.

The national expert has suggested that this may cause systemic delays, for example, a backlog in annual auditing may lead to annual general meetings not being held (and thus practical delays affecting the governance and management of the cooperative). This regulatory role must be appropriately balanced against the availability of resources available to ensure proper exercise of the Registrar's powers.

Expect for the secondary types of society that may be registered under s 4 (see Table 2 above), the CSO does not make specific provision for 'cooperation among cooperatives' or other sources of support, particularly to newly established cooperatives. For example, the CSO does not make special provisions for the promotion of tertiary cooperatives (i.e. peak bodies).

The requirement that a cooperative may not fix any limit on its membership, (CSR r 12) may not always be appropriate. While open membership might work well for some types of cooperatives, it does not work so well for others. Arguably it should not be mandated in legislation but left to the cooperative in its by-laws.

Features of the existing law that stand out as 'best practice'

The national expert suggests that because both the CSO and CUA are now quite outdated, most of the standards or practices are relatively out of date when compared with updated cooperative laws from other jurisdictions. For these reasons the national expert notes that: 'it is very difficult to identify best practices.' The public promotion of cooperatives by the Ministry of Commerce is commendable, e.g. International Day of Cooperative celebrations; however, at present, there are few incentives given to cooperative businesses, such as preferential treatment for public procurement.

Despite the age of this cooperative legal framework, the CSO is flexible enough to accommodate a variety of cooperative types including consumer, producer, and worker cooperatives. Importantly also, the CSO makes provision for a general reserve fund, which is an important prudential requirement to encourage cooperatives to save so that they can be resilient during times of financial stress. Lastly, the provision for an audit and supervision fund is an important mechanism for transparency and accountability for members, provided it's management is appropriately resourced.

Features from other jurisdictions that might encourage cooperative development in Kiribati.

The national expert has suggested that certain features of Fijian cooperative law (Co-operative Act 1996) provide a suitable template for reforming the CSO. The regional expert agrees that the recommendations made in the Vanuatu National Report have equal significance for Kiribati and are replicated here:

- Fiji replaced the BIPC model with the introduction of the Co-operative Act 1996 and although it is ready to revise and update that law, the 1996 Act has some features which are good practice, subject to the modifications suggested by Hagen Henry below:²
- The Fijian Co-operative Act (CAFJ) includes a definition of a cooperative in CAFJ s 2. Here it is based on ILO recommendation 127 which has been replaced by a briefer definition in ILO r193. Henry recommends that the definition should be tailored to suit the local context.³
- It includes a description of the objects of a cooperative, CAFJ s4. Henry suggests a Preamble to the Act which sets out in more detail the legislator's commitment to the cooperative as a distinct type of business organisation and the role that it will play in the economy and society (i.e. in that nation's context).
- The CAFJ Act requires cooperatives to observe the cooperative principles, CA s 5. Henry recommends that while a reference to the cooperative principles is important, the law should be clear in distinguishing between the principle and legal rules. Cooperatives should be asked to respect the cooperative principles and use them to guide their decision making.
- The CAFJ sets out procedures for establishment, and registration of cooperatives, the amendment of by-laws and its dissolution. Importantly it does this while significantly reducing the Registrar's powers to intervene in the internal decision making of the cooperative (see the extensive nature of those powers in COSA listed above).
- The CAFJ provides for the establishment of a supervisory committee for cooperatives with more than 50 members, CA s 76 – 79. Henry suggests that this can be an effective self-regulatory mechanism.⁴ Its effectiveness may depend on the local context, and member's access to skills, time, training and development.

² H Munkner, "Ensuring Supportive Legal frameworks for Co-operative Growth" Paper presented at the ICA Regional Assembly, Nairobi, 2014, 7; Hagen Henry, Guidelines for Co-operative Legislation, 3rd Edition, ILO 2012, Part 3.

³ Henry, n 15, 65

⁴ H Henry, n15, 89.

- The CAFJ includes the power to federate and sets out the role and function of secondary and tertiary cooperatives and the apex organisation.
- COSA leaves the requirements for setting up a committee or board to carry out the executive functions of the cooperative to its by-laws, The CAFJ and Australian CNL both provide for the requirements for a Board including membership, requirements, disqualification, quorum, duration of term and election and removal from the Board in the law.

Where there is a divide between customary law and a transplanted law, participatory lawmaking should have a strong role to help to bridge the gap. An example is where the cooperative law prescribes that regulations under the law can only be made after hearing the views of the elected representatives of the cooperative movement. The CAFJ provides for the establishment of a Co-operative Advisory Board to advise the Minister on any amendments to the cooperative law or other laws that might have an impact on cooperatives, CAFJ s 49.

The introduction of a simplified option with less administrative burden – especially for smaller cooperatives with low-profit levels:

- A non-distributing model as recognised in Australia’s CNL is one option, with simplified processes for formation and registration. The CNL also expressly distinguishes between ‘small’ and ‘large’ cooperatives and recognises that ‘small’ cooperatives (distributing or non-distributing) do not have the same reporting obligations as large cooperatives. (see CNL s 271)
- Other options include Common Initiative Groups (CIGs) adopted in Cameroon and described by Munkner as "light legal structures which give their members the choice between models with or without share capital, with or without members’ liability for debts of their organisation, between remaining a local group, joining a cooperative society or transforming itself into a cooperative society, forming unions or federations."⁵

⁵ H Munkner, Worldwide Regulation of Co-operative Societies - An Overview, (2013, Euricse, Working Paper, 53) 19.

Recommendations for the improvement of the national legal framework

As a first step, it is recommended that the cooperative law empowers cooperatives to independently organise and implement auditing, reporting and business development (including budgeting and finance). This is something that should apply especially to smaller cooperatives with a lower risk in terms of community impact if the cooperative fails. This will reduce the regulatory burden on the Registrar and provide greater opportunity for the government to invest in cooperative promotion and development.

Despite the benefits that the legislative amendment may bring, the national expert has cited ‘lack of capacity, knowledge or skill’ on the part of cooperative officers and members as an ongoing reason for cooperative failure in Kiribati. To this end, investment in a wider regulatory program towards education, training and information is a key priority for further development of Kiribati’s cooperative sector. Increased registration and annual fees may contribute to a cooperative sector development fund.

Importantly also, the national expert has recommended the incorporation of new technologies, e.g. an e-registration/e-reporting system to minimise regulatory burdens on cooperatives across Kiribati’s many islands, particularly at the formation stage.

Improved processes for the prosecution of offenses, along with an updated fines scheme, may also increase efficiencies in the regulatory system and encourage investment in education, training, and information along with better cooperation among cooperatives. Taxation and government procurement contract incentives for cooperatives may also support the flourishing of member-owned business structures across Kiribati – and help to promote sustainable regional development.

Conclusions

Kiribati’s cooperative law is outdated and requires revision. However, Kiribati’s government has demonstrated its commitment to cooperative development and is currently working on developing a national cooperative policy and revising its law. The government also engages in a range of promotional activities such as offering

17



free training to all registered cooperatives in the Outer Islands, South Tarawa and the Line and Phoenix Group Islands; conducting awareness programs; working on development projects for strengthening cooperatives; and celebrating International Cooperatives Day. Instead of legislative reform, these are examples of best practice in the promotion of cooperative business structures in Kiribati.

Kiribati might also draw upon existing legislative frameworks for inspiration e.g. Fiji, Australia, South Africa and should be guided by Hagen Henry's Guidelines for Co-operative Legislation for best practice recommendations. Most importantly policymakers and legislators in Kiribati should be guided by their assessment of the strengths and weaknesses of their current laws and how new laws might best adapt to their economic, social cultural and geographic conditions.

Published: September 2019

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 this report are not necessarily those of the ICA, nor does a reference to any specific content constitute an explicit endorsement or recommendation by the ICA.
