

LEGAL FRAMEWORK ANALYSIS

within the ICA-EU Partnership

National Report – Myanmar

ICA - Asia and Pacific (ICA-AP) is the voice of cooperative enterprises in the region, representing 105 member organisations from 34 countries (as of July 2019) across a variety of sectors. 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’ programme and includes knowledge building activities at the global (harmonised) and regional (decentralised) level.

The activities planned within the framework of the programme 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 is in charge of 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 Myanmar.

I. Introduction:

Myanmar is an agricultural country, and the agriculture sector is the backbone of its economy. The agriculture sector including Livestock sector contributes to 28.6 percent, of gross domestic product (GDP), 25.5 percent of total export earnings in 2015-2016 and employs 61.2 percent of the labour force (Myanmar Agriculture Sector in Brief -2016). Myanmar’s fertile soils and abundant water source provide favourable agricultural conditions. Nevertheless, agricultural productivity and income for farmers are among the lowest in Asia due to low education and knowledge of farmers with low technology acceptance resulting incorrect use of fertilizers and pesticides, and often without the right nutrients, low availability of agro-climatically suited quality seeds, and poor access to

irrigation. Lack of agricultural capital is another impeding the overall socio-economic development of Myanmar farmers. Well organized farmer organisations- and modern cooperatives are effective vehicles to realize higher agricultural productivity, to integrate farmers and their produce into the agricultural value chain so that they benefit more equally to other chain partners, to fasten economic prosperity and strengthen democratization and civil society engagement. Nevertheless, it is observed that a high share of farmers in Myanmar see farming not as a business and work as individuals rather than collectively, resulting in a weak position in the agricultural value chain. The Central Cooperative Society Limited (CCS) is an ICA member organization. The reference books and laws were collected from CCS.

Cooperatives benefit from regulations acknowledging their specificities and ensuring a level playing field with other types of business organizations. The absence of a specific legal framework for cooperatives or a weak legal framework may damage cooperatives, while in contrast a supportive regulation may allow their development. This is the reason why knowledge and evaluation of cooperative legislation is a necessary tool for ICA offices and members to support their advocacy and recommendations on the creation or improvement of legal frameworks, to document the implementation of cooperative legislation and policies, and to monitor their evolution.

The Objectives of the legal framework analysis (LFA) to be conducted within this project has three main interrelated objectives.

- 1) The first is to acquire **general knowledge of the national legislation on cooperatives**, including but not limited to the legislation in force in the 107 countries (as of April 2018) represented by ICA members, as well as of supranational cooperation legislation if existent, as is the case in the European Union, where Regulation no. 1453/2003 establishes and regulates the European Cooperative Society.
- 2) The second is to evaluate the national jurisdictions covered by the LFA according to their enabling environment for cooperatives, in order to compare national cooperative laws with the indicators found in the questionnaire, based on a scale of **“cooperative friendliness” of the national legislation**.
- 3) The third and final one is to provide **recommendations** for eventual renewal of the legal frameworks in place.

Political will is a first important step to create an enabling environment to develop bottom-up and business driven farmer organizations and cooperatives. Based on the study, there are policy, governance and business recommendations. At a policy side, it is recommended that a Cooperative Master Plan should be developed, reflecting the dynamics of market economy, liberalization policy, and strategic thrusts of the Agriculture Development

Strategy (ADS), and aiming to facilitate rural development and poverty reduction. Key focus areas would be to increase trust in cooperatives, improve cooperative management, facilitate market linkages and upscale business activities, enable access to finance, secure the use of advanced technology and enhance business planning. Next to that, current prosecution to the cooperative members under the existing law should be amended to sanction with specific punishment to the persons who violate the cooperative law. Governance recommendations are to limit the terms of Cooperative BOD members to a certain period. The organization of the Cooperative Department should be adjusted to concentrate on the education, knowledge sharing, international relation and business development rather than auditing and management on the cooperative societies. The Cooperative Department should act as guarantor to provide the revolving fund to the farmers as an advance payment (working capital) before selling their farm products to the market.

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II. National cooperative law: Myanmar

i. General Context

Cooperatives were first introduced to Myanmar in 1904 with the enactment of the Indian Cooperative Societies and the government set up the Cooperative Department in December 1904. At first, cooperatives were used to counter usury lending practices with the 4000 credit cooperatives.

During the socialist era from 1962 to 1988, the cooperative sector played as the second pillar and it served as supportive body to achieve the means and goals of the socialist economy to change the socio-economic status of underdeveloped societies in rural areas of Myanmar.

The cooperative law, and its rules and regulations were enacted in 1970. Plans for cooperatives that set up in 1970 were very comprehensive and got the full support from the government, however, there were many reasons, such as control of central government, utilization of rights in wrong way, low capacity of official staff, etc, that made the implementation of agricultural cooperative business activities failed. When the country ended the centrally-planned socialist economy in 1988, the cooperatives inherited a bad reputation.

The 1992 Cooperative Law is currently active in Myanmar. Myanmar became the member of ICA only after the release of this law. In order to practice the law the Co-operative Society Rules are promulgated in 1998 and then these rules are replaced by the Co-operative Society Rules (2013) which are currently being used for the supervision and regulation of cooperatives in Myanmar.

In Myanmar, there are no special laws for particular type of co-operatives. However, the following business types are included in the different levels of co-operative societies-

- (a) Commodity production co-operative society;
- (b) Service co-operative society;
- (c) Trade co-operative society;
- (d) General co-operative society.

The types of a co-operative society can be determined according to the business which carried out mainly. It may carry out other business and co-connected business if obtained in the bye-laws confirmed in the general meeting of the society.

The ICA principles are explicitly referred to in the preamble of the Co-operative

Societies Law 1992. While there are only seven principles in ICA, there are ten principles in Myanmar Cooperative Laws as follows;

- (a) to form the society with persons who wish to participate of their own volition;
- (b) a member or a representative to have an equal right of one person being able to give one vote and to administer all transactions of the society only according to the wishes of the majority;
- (c) to restrict the benefit to be derived for the share subscribed in the society;
- (d) to apportion the net profits accrued from the business of the society according to the decision of the members;
- (e) to carry out dissemination of co-operative concept and technique;
- (f) to ensure effective co-operation among co-operative societies in and outside the country;
- (g) to enable the society to be only an organization carrying out economic and social activities of the society;
- (h) to raise the standard of living of the members and member societies by working with the objective of the interests of the same
- (i) to enable the members or member societies to become participants in the economic and social activities of the society;
- (j) to enable the society to become an organization administering according to the wishes of the majority by combining service and property in the interests of the members, member societies and equity business partners.

ii. Specific elements of the co-operative law

a) Definition and objectives of cooperatives

The law precisely defines a Primary Co-operative Society, Co-operative Syndicate, Union of Co-operative Syndicates and Central Cooperative Society registered under this Law. The main legal characteristics that distinguish Cooperatives from other legal types of business is the voting right which is one member one vote and socio-economic consideration. All decisions are subject to approval by Annual General Meeting (AGM). The Annual General Meeting is the supreme authority.

The objective of cooperatives is to fulfil the economic, social and cultural needs and aspirations of our co-operative societies, and strive towards sustainable



development, in accordance with co-operative values and principles. The Cooperative Law in Myanmar does not assign the co-operatives any specific purpose. The specific purpose of each type of societies is incorporated in the bylaw of each society. Member promotion by a cooperative is undertaken by Cooperative Department through member education programmes, organizing and regulating.

The cooperatives in Myanmar can pursue objectives other than member promotion by transacting business with members. The cooperatives in Myanmar can carry out any economic activity. Still, they need to get approval of Cooperative Department those are the regulators. For instance, to undertake insurance activity they need to take the approval of Myanmar Insurance under Ministry of Finance and Planning, for banking activities approval of Central Bank of Myanmar (CBM) is required.

b) Establishment, cooperative membership and governance

There is a specific register for cooperatives and registration is necessary for the establishment of cooperatives. The following steps are to be done for registration.

1. Find at least 5 people with the same business objective who want to work together in an agricultural cooperative
2. Make decision what type of agricultural cooperative should be formed based on the main business that the cooperative will conduct options:
 - (a) Commodity production co-operative society;
 - (b) Service co-operative society;
 - (c) Trade co-operative society;
 - (d) General co-operative society.

The cooperative may also conduct other businesses if these business activities are mentioned in the by-laws of the cooperative.

3. Make decision what will be mentioned in the by-laws of the agricultural cooperative. The Cooperative Department can provide examples. Options are:
 - a) name of the society;
 - b) type of the society;
 - c) address of the society;
 - d) sphere of business of the society;
 - e) way to join as a member in the society;

- f) objective of the society;
 - g) business of the society;
 - h) order of appropriation of the fund;
 - i) bye-laws to be abided by the persons who will be included as members, member society and representative of member society;
 - j) system of selection and system of acceptance of applicants as member and member society;
 - k) share to be subscribed by the members and member societies and their obligations;
 - l) manner of cessation of membership when a case in the section (13) of the Co-operative Society Law is happened;
 - m) liabilities and assets of the members and member societies;
 - n) manner of acquiring and formation of capital investment;
 - o) meeting of executive committee, general meeting and voting system;
 - p) system of division of the net profits gained from the business of the society;
 - q) system of transferring shares and rights of the members and member societies;
 - r) stipulated duty for compiling and maintaining accounts of society;
 - s) application form for permission to join as member or member society;
 - t) other requirements.
4. Organize an official general meeting with at least five people who want to form an agricultural cooperative. Official meeting minutes should be made during the meeting. Before this official meeting, the founders may have informal preliminary meetings to agree on options. During the official general meeting the following has to be agreed upon:
- (a) Democratic decision to form as an agricultural cooperative with a minimum amount of 5 members
 - (b) Democratic decision to agree on the main business activities of the agricultural cooperative
 - (c) Democratic decision on the by-laws that have been formulated in step 3

- (d) After the formal decision has been taken to form an agricultural cooperative, the members democratically elect the executive committee of the agricultural cooperative (board of directors).
5. The executive committee delivers the following documents to the cooperative department
 - (a) three copies of application requesting permissions to register including the original to form the agricultural cooperative;
 - (b) three copies of the minutes of the general meeting (see step 4) including the original held to form the primary cooperative society;
 - (c) three copies of the bye-laws of the primary cooperative society including the original as agreed and approved by the majority at general meeting held to form the primary co-operative society.
 6. Members can be a member of more than one agricultural cooperative.

A person who possesses the following qualifications has the right to become a member in a primary co-operative society;

- (a) a citizen, an associate citizen or a naturalized citizen;
- (b) a person who has completed the age of 18 years;
- (c) a person who has subscribed fully the value of one share determined under the bye-law of the society;
- (d) a person not of an unsound mind.

Persons who have completed the age of 12 years may be admitted as an associate member in a primary co-operative society.

Membership ceases when any of the following events occur;-

- (a) death;
- (b) cessation of citizenship;
- (c) resignation;
- (d) final transfer of all his shares;
- (e) being of unsound mind;
- (f) dismissal by the resolution of the general meeting of the society;

(g) permanently becoming a member of a religious order.

According to the basic principles of the society in the law mentions was that: "a member or a representative to have an equal right of one person being able to give one vote and to administer all transactions of the society only according to the wishes of the majority"

As per the rights of members, the voting system was mentioned in the laws that: "having the right to vote and the right to stand for election in accordance with this Law".

The governance structure consists of General Meeting, executive members or directors or leading committee members. Non-members of co-operatives cannot be directors.

Management of the Co-operative Societies

- a) The general meeting is the highest organization of authority on the society and has the right to decide conclusively on all matters of the society. The executive committee shall be responsible to the general meeting and shall manage the daily activities of the society.
- b) As the executive committee of the union of co- operative syndicates and central co-operative society formed by the leading committee, the executive committee shall undertake the businesses stipulated by the leading committee and shall also be responsible to relevant leading committee;
- c) At the Region or State or Union Territory or Self – administered Zone, under Rule 17, the members of the leading committee of union of co-operative society and central co-operative society assigned duty undertake the business allocated by the executive committee of the relevant society and shall be responsible to the executive committee;
- d) The staff of the co-operative societies shall carry out the prescribed businesses in accordance with the stipulation under the supervision of the persons in charge of the business and shall be responsible to them.

In Chapter XII of Cooperative Rules (71)

- a) The co-operative societies may appoint salaried staff and piece work wages earners who are necessary for the business;
- b) The staff of the co-operative society are entitled to right permitted by the co-operative society;
- c) The staff of the co-operative society are entitled to a stipulated amount of bonus from the net profits of the society;

- d) The staff of the co-operative society also have the right to join as members in their society in accordance with the bye-laws of the society;
- e) If a member personally participates and carries out the business of the society, he shall have the duties and rights to the extent of his performance.

In Chapter XII of Cooperative Rules (72): The co-operative societies shall:

- (a) collect and maintain the Co-operative Society Law, Rules, procedures, orders and directives;
- (b) maintain the records related to the members, associate society, member of leading committee, members of the executive committee or board of directors or staff and minutes of the meetings.

Supervision

- (a) The co-operative societies shall be managed and supervised according to the wishes of the members, member societies and member of the leading committees;
- (b) The leading committee, executive committee shall supervise the society under the resolutions of the general meeting in-between two general meeting;
- (c) The working bodies of the co-operative society shall be supervised by the executive committee or board of directors.
- (d) The staff shall be supervised by the executive committee or board of directors or by the assigned working body.

c) Cooperative financial structure and taxation

A minimum share capital isn't prescribed by law for the cooperative establishment, but the minimum amount of capital and the number of shares with which the society is formed shall be mentioned in the bye-law of the society.

As the society is an organization subsisting on its own finances, the following are included in the capital of the society: -

- a) shares, savings and investments;
- b) profits and funds;
- c) local and foreign grants;
- d) advances;

- e) bank loans and other loans;
- f) other lawful receipts.

The society shall apportion the following funds by a resolution of its general meeting: -

- a) business expansion fund for the expansion of the economic enterprises of the society;
- b) social and cultural fund for the promotion of the social and cultural activities;
- c) general fund for unforeseen losses and expenditures in the business of the society.

The society have to determine the following allotments according to the financial year: -

- a) allotment for depreciation of capital assets;
- b) allotment for payment of all forms of taxes.

The society have to determine the following dividends according to the financial year: -

- a) dividend on the share;
- b) dividend on the investment;
- c) dividend for the executive committee members and staff of the society;
- d) refund for purchase or sale of goods.

A cooperative cannot issue financial instrument in Myanmar. A cooperative cannot also admit “investor members”.

In Myanmar Cooperative Society Law, it was mentioned as Liquidation. The Director-General may liquidate the relevant co-operative society when any of the events contained in section 25 of this Law. If such an order for liquidation is passed, a liquidator must be appointed and his duties and powers determined under section 26 of the Law. Any officer from the Department or any other suitable person or board of auditors recognized by Government may be appointed as liquidator. If necessary, a body may be formed and assigned duty.

In liquidating the society, if the members and member societies have been compensated to the extent of their shares subscribed, for compensation by the society, the liquidator shall issue a certificate of termination of the liability to

compensate to the relevant members and member societies.

Every co-operative society shall maintain the following appropriations according to the financial year:

- (a) appropriation for depreciation of capital assets for restitution of normal wear and tear of capital assets owned by the society;
- (b) appropriation payable of all forms of taxes for the taxes and fees payable to the Government by the society;
- (c) appropriation for bad debts not to affect the investment in circulation of the society due to debits to be credited by the society within the target period;
- (d) appropriation for premium payable for the necessary insurances.

Under the provisions of the Union of Myanmar INCOME-TAX LAW (As amended up to November 2011), Co-operative Societies are liable to pay tax like individuals and other organisations. But according to cooperative rules, the payment of duties and taxes, the expenses spent for restitution of wear and tear of capital assets, appropriation for bad debts, general provident fund for staff of the society are included in the expenditures of the co-operative society. The balance in favour of the society after paying such sums are the net profits of the society. Such net profits shall be appropriated and utilized as follows -

- (a) allocating dividends on shares as the first priority;
- (b) giving service bonuses to the executives committee, directors and staff of the society as the second priority;
- (c) paying the refund for purchase or sale of goods as the third priority;
- (d) allocating profit on the investment as the fourth priority.

d) Other specific features

In auditing the statement of the co-operative society at least once a year, auditor of co-operative Department or expert in accounts team of auditors certified by the Government, shall audit the statement of co-operative society in accordance with the wish of the relevant co-operative society. Audit reports shall be approved at the general meeting. The entering of accounts, drawing up of annual statements and auditing of annual statements of co-operative society shall only be the responsibility of relevant co-operative society. The account of the co-operative society shall be audited by the expert in accounts once every six months and the annual statements and shall be audited at the end of the year. The audit reports shall be sent to the relevant Co-operate Department and confirmed it.

When any member or member society is dissatisfied and complain for the benefit of society, that complaint is considered to be reasonable ground, one level higher rank of co-operative Department and different levels of societies shall form the board including relevant representatives and statement of co-operative society and shall be audited the list of the Co-operative Society.

In Myanmar, the principle of co-operation among cooperatives is institutionally implemented in the national as well as state legislation. Myanmar adopted a four-tier cooperative structure in accordance with the 1992 Cooperative Society Law. A Primary Cooperative Society is formed with individual cooperative members. A Township Cooperative Syndicate is formed with selected primary cooperative societies' representative. Similarly, a Union Cooperative Syndicate is formed with selected Township Cooperative Syndicates' representatives, and Central Cooperative Society is formed with selected Union Cooperative Syndicates' representatives and is the apex institution of cooperatives in Myanmar.

III. Degree of “cooperative friendliness” of the national legislation

There are no precise legal obstacles or barriers. The reasons are described below. The Ministry of Agriculture, Livestock and Irrigation (MoALI) became the responsible ministry for cooperative sector development in Myanmar after merging the former three ministries, i.e, Ministry of Agriculture and Irrigation (MOAI), Ministry of Cooperatives (MoCoop) and Ministry of Livestock, Fishery and Rural Development (MLFRD) into one ministry in April 2015. One of the key objectives of MoALI is: “To improve the livelihood and income generation of the rural people through the development of cooperative enterprises and system”. The Agriculture Policy (2016) has been developed by the Ministry of Agriculture, Livestock and Irrigation (MoALI) for a second five-year short-term plan. One of the key objectives of Agriculture Policy (2016) is to: “Advance and upgrade the agricultural sector by organizing farmers’ associations and cooperatives inclusive of small holders and subsistence farmers with promotion of gender role”. The Cooperative Department laid down a policy to organize one cooperative in each village under the previous regime.

The best practices of co-operative legislation in Myanmar are the democratic governance and at the same time regulation by the Cooperative Department. The promotion of the cooperatives in Myanmar is a public function. There are no incentives to cooperatives in the legislation on public procurement. In conclusion, about the degree of “cooperative friendliness” of Myanmar legislation are mentioned as below.

¹ Myanmar Agriculture Sector in Brief (2016)

- a) It is very much so
- b) It is quite/rather/significantly so
- c) It is only limitedly so
- d) It is more cooperative friendly than not**
- e) It is more cooperative unfriendly than friendly
- f) It is cooperative unfriendly

The reasons why **the degree of 'cooperative friendliness' of Myanmar legislation is appropriately described as 'd) is more cooperative friendly than not' are as follows** : It is more cooperative friendly than not, are that 1) all departments under MoALI has regular coordination, 2) each of cooperative department at every township level is doing the regulations to all cooperatives, 3) educating the cooperative legislations by cooperative departments are regular term, and 4) each primary cooperative, township cooperative syndicate and union cooperative syndicate are communicating each other's' on announced directives and instructions from cooperative department most often.

If we compare our national legislation with a foreign legislation, we think the Indian legislation could be a source of inspiration for Myanmar. Because the Myanmar's cooperatives were established in 1904 and the law at that time was based on the Co-operative Credit Societies Act of India which was passed on 25th March 1904 when was nearly same as the establishment of Myanmar's cooperative. The Myanmar legislations are almost same as the Indian legislation. In India, the law precisely defines an apex, central and primary society in the State Co-operative Societies Act. All decisions are subject to approval by the General Body. The General Body is the supreme authority. However, the Registrar of Co-operative Societies through the Act is given the power to regulate the co-operative societies.

In Myanmar's legislation, the law precisely defines a Primary Co-operative Society, Co-operative Syndicate, Union of Co-operative Syndicates and Central Cooperative Society registered under this Law. The main legal characteristics that distinguish Cooperatives from other legal types of business is the voting right which is one member one vote and socio-economic consideration. All decisions are subject to approval by Annual General Meeting (AGM). The Annual General Meeting is the supreme authority. In both Indian and Myanmar Legislations, it fully coincides that the main legal characteristics that distinguish Co-operatives from other legal types of business is the voting right which is one member one vote.

IV. Recommendations for the improvement of the national legal framework

- (1) Review the 1992 cooperative society law and the 2013 cooperative society rules in accordance with the current policy landscape and find the way for amendments and substitutions. For examples are as below:
 - Current prosecution to the cooperative members under the existing law should be amended for the specific punishment with equal repercussion to the members who violate the cooperative rules
 - The period of duties and responsibilities of the elected BOD should be limited to a certain period and newly elected BOD members should be substituted.
- (2) With the liberalization principles of the cooperative societies, involvement of the cooperative department will be decreasing in auditing, monitoring and management. Therefore, organization of the cooperative department should be adjusted to concentrate on the education, knowledge sharing, international relation and business development rather than auditing and management on the cooperative societies. The changes in the law are not definitely required for specific sectors because each cooperative has their own bylaw.
- (3) Develop a legal framework which can support the systematic development of farmer organizations
 - A legal framework to establish the farmer organizations is lagging. It is important to listen the voice of farmers through lobbying process by farmer organizations.

V. Conclusions

The recommendation resulting from this study express that updating the regulatory framework is required by a thorough review on the 1992 cooperative law and the 2013 cooperative society rules to grant more autonomy to cooperatives. Myanmar is still relying on agriculture for its economic and social development. Agricultural sectors play a key role in reducing poverty in developing countries. The World Bank (2008) project that economic growth in agriculture is on average at least twice as effective in reducing poverty as growth outside of agriculture. Well-organised farmer organisations- and cooperatives are effective vehicles to reduce income inequality; fasten economic prosperity and strengthen democratisation and civil society engagement. The main economic objectives of farmer groups are to increase bargaining power, reduce transaction costs, and gain economies of scale and to share risk. Farmer organisations- and cooperatives deliver value when the following conditions are met:



- Organised bottom-up
- Clear benefit to members
- Commitment and transparency by members
- Capitalization by members for investments
- Members work as entrepreneurs
- Members can raise their voice
- Trust among members and between members and government

Published: March 2021

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.

