

# ICA-EU Partnership Legal Framework Analysis Regional report: Africa

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## Abbreviations

CFN	Cooperative Federation of Nigeria
EAC	East African Community
ESWAFCU	Eswatini Farmers Cooperative Union
FSRA	Financial Services Regulatory Authority
ICA	International Cooperative Alliance
LFA	Legal Framework Analysis
NCCR	National Cooperative Confederation of Rwanda
OHADA	Organisation pour l'harmonisation en Afrique du droit des affaires (Organization for the Harmonization of Business Law in Africa)
SANACO	South African National Apex Cooperative
SACCOS	Savings and Credit Cooperative Society
SASRA	SACCO Societies Regulatory Authority
TCDC	Tanzania Cooperative Development Commission
TZS	Tanzanian Shilling
UCA	Uganda Cooperative Alliance

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# I. INTRODUCTION

## 1.1 Objectives of the Legal Framework Analysis

Cooperatives benefit from regulations that acknowledge their specificities and ensure a level playing field with other types of business organisations. The research falls within the scope of the knowledge-building activities undertaken within the partnership for international development signed in 2016 between the European Commission and the International Cooperative Alliance (ICA), which aims to strengthen the cooperative movement and its capacity to promote international development worldwide. It demonstrates that the absence of a supportive legal framework for cooperatives, or the presence of a weak or inadequate legal framework, can negatively impact cooperatives and their evolution. In contrast, the existence of supportive regulations can foster cooperatives' creation and strengthening, acting as a driver of sustainable development. For this reason, further knowledge and evaluation of cooperative legislation will become a tool for ICA members, cooperators worldwide, and other key stakeholders such as policymakers and cooperative legal scholars. With greater knowledge and access to a global, country-based legal framework analysis, ICA members can advance their advocacy and recommendations on the creation or improvement of legal frameworks, document the implementation of cooperative legislation and policies, and monitor their evolution.

The main objectives of the legal framework analysis are to:

- (i) acquire general knowledge of the national cooperative legislation and of its main characteristics and contents, with particular regard to those aspects of regulation regarding the identity of cooperatives and its distinction from other types of business organizations, notably the for-profit shareholder corporation (the *Sociedad anónima lucrativa* in Spanish; the *société anonyme à but lucratif* in French).
- (ii) evaluate whether the national legislation in place supports or hampers the development of cooperatives, and is therefore "cooperative friendly" or not, and the degree to which it may be considered so, also in comparison to the legislation in force in other countries of the ICA region (or at the supranational level).
- (iii) provide recommendations for eventual renewal of the legal frameworks in place in order to understand what changes in the current legislation would be necessary to improve its degree of "cooperative friendliness", which is to say, to make the legislation more favourable to cooperatives, also in consideration of their specific identity.

## 1.2 About the Author

This report was prepared by Mr. Alphonse Paul Mbuya, the Regional Expert for the LFA research in Africa. Mr. Mbuya holds LL.B and LL.M degrees and is currently pursuing PhD studies at St. Augustine University of Tanzania. He is a lecturer, researcher and consultant at Moshi Co-operative University (located in Kilimanjaro, Tanzania) specializing in cooperative law and policy and human rights law. He is also a member of the ICA – Africa Cooperative Law Committee and one of the Independent Experts of the ICA Cooperative Law Committee.

## II. OVERVIEW OF COUNTRIES COVERED: AFRICA

This regional report is prepared following the completion of national reports under the Legal Framework Analysis research which was carried out in eighteen countries from North, East, West, Central and Southern Africa.<sup>1</sup> The national reports, which were prepared between November 2018 and May 2021, form the basis for preparing this regional report. While the national reports provide a more precise picture of the legal frameworks at the national level, this regional report synthesizes the reports by: identifying common features and trends, pointing out striking differences, earmarking unique aspects, and ascertaining best practices or lessons of significant value. Moreover, in some sections, the knowledge and experience of the regional expert on cooperative matters was used to add more substance on some specific and general matters relating to cooperatives in Africa. Overall, the presentation of national reports and this regional report aims to enhance the visibility of cooperative movements, networking opportunities and providing a basis for structured and principled advocacy for positive change in the legal frameworks governing cooperatives in Africa and the world at large. The experts who prepared the national reports and their respective organizations are listed in Table 1 below followed by the African map showing the countries covered by LFA research (Figure 1).

**Table 1: Countries covered and respective national experts**

No.	COUNTRY	NATIONAL EXPERT	ORGANIZATION
1.	Mozambique	Mr. Antonio Florindo	Associação Mocambicana de Promoção do Cooperativismo Moderno (AMPCM)
2.	Nigeria	Mrs. Odunayo Kolade	Cooperative Federation of Nigeria (CFN)
3.	Ghana	Mrs. Gloria Ofori-Boadu	Ghana Cooperatives Council
4.	Tanzania	Dr. Audax Rutabanzibwa	Moshi Co-operative University (MoCU)
5.	Eswatini	Mr. Sipho Dlamini	Eswatini Farmers Cooperative Union (ESWAFUCU)
6.	Kenya	Mr. Hebson Kiura	State Department of Cooperatives
7.	Rwanda	Mr. Robert Turyahebwa	National Confederation of Cooperatives of Rwanda (NCCR)

<sup>1</sup> For the avoidance of ambiguity and unless the context requires otherwise, 'countries' refer to the countries which were covered by the LFA research.

<b>8.</b>	Uganda	Mr. Moses Mugisha	Uganda Cooperative Alliance (UCA)
<b>9.</b>	Lesotho	Mr. Francis Noko	Cooperative Lesotho
<b>10.</b>	Ethiopia	Mrs. Bethelhem Zerihum	Awach SACCOS Limited (ASCCo)
<b>11.</b>	South Africa	Mr. Jan Theron	South African National Apex Cooperative (SANACO)
<b>12.</b>	Tunisia	Dr. Akram Rhouma	Expert senior en droit des coopératives, économie sociale et solidaire et planification stratégique des politiques publiques
<b>13.</b>	Egypt	Prof. Dr. Ahmed El-Borai	The General Authority for Construction and Housing Cooperatives (CHC)
<b>14.</b>	Morocco	Mr. Noureddine Bensghir	Office du Développement de la Coopération (ODCO)
<b>15.</b>	DR Congo	Mr. Ciceron Mulimbwa	Cooperative d'Epargne ET Credit de Nyawera (COOPEC Nyawera)
<b>16.</b>	Ivory Coast	Mr. Gbede Jonathan	FPC-CI Coop CA
<b>17.</b>	Guinea	Mr. Mamadou Traore	FECAAG
<b>18.</b>	Zambia	Mr. Zondani Lungu	Consultant

**Figure 1: African countries covered in the LFA**



### III. REGIONAL COOPERATIVE LAW: AFRICA

#### I. Regional Context

There is no continent-wide supranational law on cooperatives in Africa. However, initiatives have been taken to develop supranational cooperative legislation at the sub-regional level. In 2010 the Organization for the Harmonization of Business Law in Africa (*Organisation pour l'harmonisation en Afrique du droit des affaires*) (OHADA) proclaimed its Uniform Act on Cooperatives which only applies to the State Parties to the Treaty on the Harmonization of Business Law in Africa.<sup>2</sup> The application and implementation of the Act is still being examined to determine its effectiveness and impact in the OHADA geographical space. In fact, the Ivory Coast (a member of OHADA) LFA report calls for assessment of the OHADA Act, it states: “at the OHADA level, it is suggested to assess the implementation of the Uniform Act [on cooperatives], which has entered into force for almost 10 years. Such a global assessment could make it possible to better identify the difficulties in implementing the Uniform Act in order to find suitable solutions.”

In East Africa, the East African Legislative Assembly, the legislative organ of the East African Community (EAC), passed the East African Community Cooperative Societies Bill in 2014. This Bill shall become an Act of the EAC once approved by all Heads of the Partner States. According to the Bill, once approved it will “take precedence over the Partner States’ laws with respect to any matter to which its provisions relate”. In the event the Bill is approved and becomes operational, its application will be limited to the EAC. It is the regional expert’s observation that if the Bill enters into force, its implementation will be problematic in part because each EAC Member State has its own system of cooperative law and other laws related to establishment and operation of cooperatives. In view of this, supranational cooperative laws should be in form of normative guidelines which contain best standards and principles for creating an enabling legal and policy environment for cooperatives. States will therefore be able to make use the said guidelines in their processes to adopt new laws or reforming existing ones taking into account national contexts.

**Table 2: Existing Sub-regional Regulations**

REGULATION	LINK TO FULL TEXT	SCOPE OF APPLICATION	PARTICULAR ELEMENTS TO NOTE
<b>OHADA Uniform Act on Cooperatives, 2010</b>	<a href="https://www.ohada.org/en/cooperative-societies-law/">https://www.ohada.org/en/cooperative-societies-law/</a>	All cooperatives in the OHADA Region	The Act uniformly applies to all Member States of OHADA
<b>The East African Cooperative Societies Bill, 2014</b>	<a href="https://www.eala.org/documents/view/eac-cooperative-societies-bill-2014">https://www.eala.org/documents/view/eac-cooperative-societies-bill-2014</a>	All cooperatives in the EAC Region. However, its application is limited to matters which its provisions relate.	The Bill has not yet been endorsed by all the Partner States and is therefore not yet in force.

<sup>2</sup> Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Côte d'Ivoire, Democratic Republic of Congo, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Niger, Republic of the Congo, Senegal and Togo. <https://www.ohada.org/en/>



As far as a continental-wide law is concerned, the ICA and the Pan-African Parliament are working on a process to develop a model cooperative law for Africa. This process is expected to be participatory and consultative and is projected to bring out new insights on regional standards on cooperative law. The model law is expected to serve a number of purposes including: guiding the development of new cooperative legislation and review of existing ones; encouraging uniformity and harmonization of cooperative legislation in Africa; and elevating the cooperative agenda to the key African Union organs and platforms.

## II. Overview of National Contexts

The African Continent is not a homogeneous group by any measure; it is diverse in many respects including culture, language, and socio-economic systems. Colonial history and legacy partly inform the aforementioned. Although cooperation has been at the centre of African civilization and development, its organizational context (i.e. cooperatives) is not of African origin. Cooperatives were imposed through colonialism to mostly meet the needs of the colonialists. Cooperatives of the colonial times were devoid of their identity for one main reason; allowing them to operate in line with the internationally recognized values and principles would have defeated the very purpose of colonialism. After colonialism most African countries retained colonial cooperative legislation with minor modifications. With ICA's push and demands from cooperative movements, some of these laws were reformed especially in the 1980s and 1990s to reflect the internationally recognised principles and values and protect cooperative identity.

Cooperatives in Africa operate under different environments politically, economically and socially. Despite these operational variations, they fight for common goals and face a variety of similar challenges. The challenges include ineffective regulatory systems, inadequate laws, political interference, indifferent membership, dishonest leadership and inability of cooperatives to use competitive and innovative business practices. Constitutional recognition of cooperatives in the countries takes two main forms. First, a specific mention of cooperatives in the constitution which only appears in Egypt. Second, constitutional recognition of peoples' right to organize for social and economic purposes which includes formation of cooperative enterprises. At policy level, some countries have cooperative development policies whilst some do not. In some countries (e.g. Kenya, Tanzania, Lesotho, and Eswatini) cooperative development policies are the basis for the enactment of cooperative legislation, in the sense that a sufficient cooperative legislation must be informed by a sound cooperative policy. On the socio-economic front, records indicate cooperatives are playing a pivotal role in the associative economy. They provide opportunities for equitable participation in economic activities particularly because they serve low-income earners, such as small holder farmers and small business owners.

On the nature of existing legal frameworks, there are two main approaches. In most countries there is a main legislation which governs all cooperatives. In some others there are additional legislation for specific types of cooperatives. In Egypt for example, there are separate legislation for different types of cooperatives namely, public cooperation institutions, consumer, agricultural, housing, and educational cooperatives. This approach is also followed in DR Congo where there is a uniform law and separate laws for SACCOS, mining and agricultural cooperatives.

Apart from the laws which directly govern cooperatives, there are laws which regulate specific sectors or areas in which cooperatives operate. These include: agriculture, financial services, transportation, health services, industrial production, mining and education. Moreover, there are laws on various general matters which apply to cooperatives. These include laws governing companies, trade, labour issues, investment, banking, financial services, fair competition, and taxation. However, the LFA research only focused on specific legislation which directly govern cooperatives.

As far as the application of other laws in regulating cooperatives is concerned, regulation of SACCOS has given rise to conflicting and problematic regulatory issues in some countries, particularly in Eswatini and Uganda. All cooperatives, including SACCOS, in Eswatini were governed by the Cooperative Societies Act of 2003 until 2010 when the Financial Services Regulatory Authority Act was enacted. The Act establishes the Financial Services Regulatory Authority<sup>3</sup> which regulates all financial service providers, including SACCOS. The effect of the law is that the FSRA claims to have regulatory authority even on matters that are under the mandate of the Commissioner of Cooperatives (under the Cooperative Societies Act) and the Central Bank of Eswatini. The overlap of responsibilities invited a more serious question about which authority (between FSRA and Commissioner of Cooperatives) SACCOS are accountable to. To date the issue has not been fully resolved. The Eswatini LFA report suggests that the FSRA Act contributes to the unfriendliness of the laws governing cooperatives in part because, under the Act SACCOS are charged high levies (0.01% of total savings) per annum. Uganda faces a similar challenge in regulation of SACCOS which are regulated under Tier 4 in accordance with the Microfinance and Money Lenders Act, 2016. Their regulation has been termed a challenge due to the fact that the existing system fragments the licensing of SACCOS under three separate legal frameworks namely the Cooperative Societies Act which governs registration of all cooperatives including SACCOS, the Tier 4 Microfinance and Money Lenders Act of 2016 (licensing of small SACCOS<sup>4</sup>) and the Micro Finance Deposit Taking Institutions Act of 2003 (licensing of large SACCOS<sup>5</sup>). Moreover, the delay to enact regulations for operationalizing the Microfinance and Money Lenders Act compounds the existing ineffectiveness of the regulatory system for SACCOS in Uganda.

### III. Specific elements of the cooperative law

#### (a) Definition and objectives of cooperatives

##### DEFINITION

Across the countries, cooperatives are defined in terms of: level of operation (primary, secondary, apex, federation) and nature of activities performed. Regarding primary societies, there are varying provisions across countries which involve: adoption of the ICA definition, slight modification of the ICA definition (e.g. Eswatini), and somewhat vague definitions which usually regard a cooperative as a cooperative registered under a particular law which is the case in Kenya, Nigeria and Tanzania. Tertiary societies in the studied countries are defined differently in line with national contexts. However, the common forms defined are: secondary, apex, federation, and union. A federation or an apex in most countries is the national umbrella organization for cooperatives. The word tertiary is mostly used to refer to any cooperative society other than primary whole membership consist of registered societies and not individuals. In some cases (e.g. South Africa) tertiary and apex are used interchangeably in the same sense. As far as the nature of activities in concerned, the common types of cooperatives defined in by existing laws are: consumer, agricultural, housing, savings and credit, financial, industrial, marketing and supply, services, worker, social, and burial cooperative societies. Some laws define cooperatives from the perspective of occupation: e.g. school society (Eswatini and Tanzania), specialized skills society (Tanzania).

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3 The FSRA is responsible for the administration of financial services laws, licensing, regulating, monitoring and supervising the conduct of the business of financial services providers.

4 SACCOs whose voluntary savings do not exceed Uganda Shillings one billion five hundred million and institutional capital not exceeding Uganda Shillings five hundred million.

5 SACCOs whose voluntary savings exceed Uganda Shillings one billion five hundred million and institutional capital above Uganda Shillings five hundred million.

A well-adopted ICA definition is found in the South African law and provides:

*"co-operative" means an autonomous association of persons united voluntarily to meet their common economic and social needs and aspirations through a jointly owned and democratically controlled enterprise organised and operated on co-operative principles."*

Some laws define entities registered under cooperative legislation on a provisional basis. For example, the laws of Uganda and Tanzania define a probationary society as one which is provisionally registered pending fulfilment of the conditions for full registration. An aspect related to definition of cooperatives is that laws contain a provision which restricts the use of the word 'cooperative' to entities which are only registered as cooperatives under relevant cooperative legislation. In some of the countries (e.g. Eswatini, Kenya, Ghana, Rwanda) laws explicitly require cooperatives to operate in accordance with the cooperative principles. In Tunisia, although the ICA principles are explicitly mentioned in the general law governing cooperatives, their incorporation in specific laws governing specific types of cooperatives is inconsistent. For example, the principle of autonomy and independence and open membership are expressly excluded in laws governing agricultural production cooperatives. The Kenyan law specifically requires cooperatives to incorporate the seven cooperative principles in their by-laws. This is arguably the best approach in entrenching cooperative identity in cooperative legislation.

## OBJECTIVES

There are different approaches of stating the objectives of cooperatives. Laws provide that cooperatives are established to meet the economic and social needs of their members. Some laws categorically state the objectives of all the levels of cooperatives from primary to federation/apex level (e.g. Tanzania). Some laws mention the areas or sectors where cooperatives can operate (e.g. marketing and supply, financial services, industrial production and agriculture). In such cases, the objectives are implied in the type of activity which a cooperative undertakes. The Tanzania law for instance states that the objective of housing cooperatives is to facilitate access to housing by members (of housing cooperatives).

Moreover, laws provide a provision which empower each cooperative to develop by-laws and state generally what should be contained in by-laws. One of the contents is objects of the cooperative. In the by-laws, specific objectives of a cooperative are stated and they should be within the framework of national legislation. Objects are derived from the activity or activities of a cooperative and the common bond which binds the members together. In most countries cooperative law allows cooperatives to pursue economic activities in any sector of the economy. Most laws (e.g. Rwanda, Tanzania, Eswatini and Kenya) contain a list of some of the areas. The main categories under which they fall are: production and marketing, services and consumer, multipurpose, financial, housing, industrial, specialized skills, and worker cooperatives.

### **(b) Establishment, cooperative membership and governance**

#### ESTABLISHMENT

There are common requirements for establishment of cooperatives across the countries. The minimum number of persons who are required to form specific types of cooperatives is usually stated in national cooperative legislation. There are requirements for primary societies as well as tertiary societies. Moreover, some laws prescribe for a general requirement for all primary societies while others set different limits for different types of cooperatives. For example, in Eswatini and Kenya the minimum number required for a primary cooperative is seven and ten persons respectively while in Tanzania it is twenty for SACCOS, fifty for agricultural cooperatives, and ten for specialized skills and other types of cooperatives. The requirements for tertiary societies also differ from country to country. In Kenya, a union can be formed by two primary societies while in Tanzania the requirement is twenty for agriculture

and marketing and financial services unions and five for specialized skills unions. In Uganda, the law requires a minimum of thirty people for a primary cooperative a condition which has been identified as a challenge because it makes it difficult for groups of professionals like lawyers to form a cooperative.

Other common requirements relating to registration of cooperatives are: submission of application forms, payment of application fees, proposed by-laws, business plan, feasibility report. Some laws state one open-ended requirement namely 'any other requirement as may be required by the relevant registration authority'. In all countries, registration renders a cooperative a body corporate with all the powers of a legal person. In some cases, there are additional requirements for specific types of cooperatives particularly SACCOS which in some countries fall under the regulation of financial regulatory authorities (e.g. Eswatini) or Central banks (e.g. Tanzania).

In some countries (e.g. Tanzania and Lesotho), laws provide room for recognition of groups which have the potential to become cooperatives. In Tanzania, the law recognizes pre-cooperative groups (groups of economic nature) which can be given provisional registration pending fulfilment of the conditions for full registration. This approach is purposed to encourage and facilitate formation of cooperatives.

There are situations in some countries (e.g. Kenya and Tanzania) where dual registration of cooperatives has been identified as a challenge. In Kenya, there are cooperatives which are registered as cooperatives and as companies at the same time. In Tanzania a registered cooperative undertaking banking business has to be regulated under the banking and financial institutions laws and therefore registered as a bank. These two situations have been observed to pose a challenge in regulatory systems and thus cooperative laws must accommodate such situations in a manner that facilitates cooperatives to exploit all business opportunities without facing regulatory hardships.

## MEMBERSHIP

The principle of voluntary and open membership is the main common feature that forms the foundation of membership in cooperatives. The basic membership condition is the ability of a person to subscribe to the capital of a cooperative by acquiring the required shares and to meet other conditions of membership as required by by-laws and national legislation. In most countries the age requirement is 18, with a few exceptions in countries such as Tanzania, where a person below 18 can join a school society or an agricultural society. Withdrawal from membership is subject to conditions which are usually stated in the by-laws and national legislation. A member can also be suspended for reasons ranging from inability to pay shares, breach of by-laws, to failure to attend meetings. Dual membership of a member to two societies with similar objectives is restricted in most cases (e.g. Rwanda and Tanzania). In some cases, dual membership to different societies must be permitted by the relevant regulatory authorities. Some laws (e.g. Kenya and Tanzania) allow membership of entities to cooperatives subject to prescribed conditions. Membership of companies is restricted in most cases. However, joint venture arrangements between cooperatives and companies are allowed in some cases e.g. Tanzania.

## GOVERNANCE

The internal governance structure of cooperatives is usually made up of three components namely the general meeting (in some cases general assembly), the board of directors (in some cases management committee, board or management board), and employees who are in most cases not members. There are also committees some of which are mandatory. For example, in Tanzania, and Kenya every SACCOS must have a supervisory committee and a loan/credit committee. Only members can form the main governance organs namely General Meeting and Board of Directors while the management staff (e.g. manager, office attendants, and accountants) can be composed of non-members. However, the South African case presents an exception where non-members who are admitted as associate

members can qualify to be executive directors.<sup>6</sup> The general meeting is the supreme decision-making authority which handles key matters including: admission and suspension of members, election of board members, approval of budget, plans and policies, distribution of surplus and dividends. The general meeting/assembly can be annual, ordinary or extra-ordinary. The board is accountable to the general meeting and is responsible for day-to-day activities of a cooperative. Democratic member control is usually expressed in laws through the one member one vote principle regardless of shares held. An exception is usually in relation to tertiary societies where voting is done through an agreed representation arrangement.

### (c) Cooperative financial structure and taxation

#### FINANCIAL STRUCTURE

Some laws (e.g. those on establishment of SACCO in Tanzania and Eswatini) prescribe the minimum capital for establishment of a cooperative is prescribed while others do not (e.g. Lesotho). Laws provide room for several matters to be prescribed in by-laws including minimum share contribution, limitation of shareholding by each member (each country has its own limit: e.g. in Tanzania it is 20% while in Ethiopia it is 10%). The manner of distributing surplus among members and contributions to reserve funds also varies. The percentage of surplus which must go to reserve funds is: 25% - Kenya and Nigeria, 10% - Uganda, 20% -Tanzania, 5% - South Africa, and 30% - Ethiopia.

With regards to shares, the common legal position is that share contributions have a minimum and maximum limit meaning there is no requirement for members to contribute an equal amount. In Rwanda however, members of cooperatives hold equal shares in the capital of their respective cooperatives. Laws make provisions for refund of shares in the event membership ceases. However, this is always subject to fulfilment of conditions such as payment of debts and other dues owed by a member in question. Patronage refunds are recognized in some countries namely Kenya, South Africa, Lesotho, Ethiopia, and Eswatini. In Tanzania they are not recognized by national laws but some cooperatives recognize them in their by-laws. Moreover, some by-laws (particularly of SACCOS) make a clear distinction between patronage refunds and dividends. Dividends are mostly paid in proportion to the amount of shared held. In Uganda for example dividends may not exceed 20% of a member's paid-up shares.

The main source of capital for cooperatives across countries is share capital to which each member must subscribe by acquiring the required minimum number of shares. Some other common sources of financing include: loans, grants, various fines charged on members, membership subscription fees, and loan application fees. In some cases, the law provides for an open-ended source namely 'any other lawful source.' The distribution of surplus and dividends is mainly governed by by-laws. In most countries, cooperatives must have a reserve fund. In Uganda the reserve fund can be invested in a cooperative bank or any other way approved by the Registrar of Cooperatives. The Reserve Fund is usually used to pay liabilities during dissolution. In some countries (Kenya, Tanzania, and Eswatini), cooperatives may issue financial instruments in form of charges to their properties. In Lesotho financial instruments can be in the form of bonds or debentures and must be approved by the Commissioner of Cooperatives. There are also situations (e.g. in Tanzania) where co-operatives may admit a private or public company investor member through establishment of a cooperative joint venture with that investor, after being so approved by the Registrar of Cooperatives.

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<sup>6</sup> In the South African context, an associate member is someone who 'wants to provide support without becoming a member' of a cooperative or who 'may benefit without becoming a member in the ordinary sense.

The maximum limit for external borrowing by a cooperative is usually sanctioned by regulatory authorities. With regards to members' rights during dissolution, laws require residue assets to be paid to members after all the liabilities have been settled (Kenya, Tanzania, Eswatini). Investor members are allowed in some countries (e.g. Kenya) and prohibited in others (e.g. Ethiopia).

Transactions with non-members is allowed with some limits. In Uganda for example, non-members can invest in or lend money to a cooperative subject to conditions set out by the Registrar. The same can be prohibited if it is against cooperative principles. In Lesotho non-members can extend credit to cooperatives but cannot make deposits. With regards to share refunds in a situation a cooperative transform to another form of business organization, a good practice in Mozambique is noteworthy. The capital and residual assets must be distributed to members who have not approved the conversion of the cooperative into another business organization for the new organization to be registered.

## TAXATION

In all the countries taxation matters are governed by general tax regimes particularly on income tax and value added tax. In this sense, the manner in which cooperatives are taxed varies significantly as each country has its own tax arrangements. Special treatment of cooperatives in taxation matters also varies. Tax exemption approaches in Tanzania, Ghana, Ethiopia, Nigeria, Uganda, Rwanda and DR Congo are noteworthy. In Tanzania the Income Tax Act of 2019 exempts primary cooperatives engaged in agricultural activities from income tax, including activities related to marketing and distribution; construction of houses for members of the cooperative; distribution trade for the benefit of the members of the cooperative; and savings and credit society (corporate tax) whose turnover for the year of income does not exceed 50,000,000 TZS. Moreover, amounts derived by a crop fund established by farmers under a registered farmers' cooperative society, union or association for financing crop procurement from its members, are also exempted from income tax. In Ethiopia cooperatives are considered vehicles for addressing economic challenges and due to this, they are exempted from income and profit tax. However, individual members' dividends are charged income tax. This arrangement is rooted in the fact requiring cooperative to pay corporate tax and members to pay income tax will amount to double taxation. In Ghana, the nature of the tax regime on cooperatives recognizes the role of cooperatives in serving their members and the community at large. Thus, profits derived by cooperatives are not taxed. Instead, the law requires that at least 25% of the profit to be allocated to a reserve fund. Other businesses pay the similar amount (25% of profits) as corporate tax. According to the Ghana LFA report, "the tax regime is very supportive to the growth and expansion of cooperatives." In Nigeria, cooperatives are exempted from both State and Federal taxes with the aim of promoting conservation of cooperative funds to encourage cooperative activities. There is a slightly different approach in DR Congo where different types of cooperatives are treated differently by tax laws. While savings and credit cooperatives and agricultural cooperatives are exempted from certain taxes, mining cooperatives are required to pay many types of taxes. In Uganda cooperative legislation empowers the Minister responsible for finance to exempt cooperatives from duty or tax. Under this arrangement, registered and prospective SACCOS have been granted a special exemption—under the Income Tax (Amendment) Act, 2017—from paying corporate tax for a specified period i.e., 1<sup>st</sup> July 2018 to 30<sup>th</sup> June 2027. In Rwanda cooperatives are required to pay tax in accordance with the general tax regime. However, cooperatives which carry out approved micro finance activities are exempted from corporate tax for the first five years of their operations.

## (d) Other specific features

### EXTERNAL CONTROL

Laws establish regulatory bodies which are styled differently and charged with regulatory and promotion duties (registration, supervision, dispute settlement and promotion of cooperative development). A slightly different system exists in Kenya where there are two regulatory authorities, namely the State Department for Cooperatives and the Sacco Society's Regulatory Authority (SASRA) which specifically regulates SACCOS. In some countries, there are separate organs for settlement of disputes e.g., a tribunal in Kenya and Eswatini. Regulation of SACCOS has brought about a new system which involves microfinance regulatory bodies. For example, in Tanzania SACCOS are regulated by the Bank of Tanzania and in Eswatini by the Financial Services Regulatory Authority. This has, in some cases e.g., Eswatini, invited conflicting regulatory issues between the authorities involved. In some countries (Tanzania, Kenya) excessive powers vested in regulatory authorities has been identified as a challenge. As part of the solution, a good practice exists in Uganda where a society which feels that the Registrar is overstepping his powers, can seek legal redress in the courts of law.

### COOPERATION AMONG COOPERATIVES

Laws in all countries provide a framework for facilitating cooperation among cooperatives through horizontal and vertical structures that vary from country to country. At the top there is usually a national umbrella organization (federation or apex or confederation) that represents the whole cooperative movement in national and international affairs. At the horizontal level, the common practice is that cooperatives operating in a particular economic area can form a higher level/tertiary society to create a platform for facilitating their activities. Generally, the legal frameworks provide room for formation of various vertical and horizontal structures of cooperative movements. At the lowest level are primary cooperatives whose members are individuals. The common terms used to designate higher level societies are secondary, union, apex, and federation. The word tertiary is used (e.g. South Africa) as a collective term for all higher level societies. In some cases (e.g. South Africa) apex and federation are used interchangeably. There are laws (e.g. Tanzania, Rwanda, Uganda, Eswatini, South Africa) which specifically state the functions or role of different levels of integration. The roles can broadly be categorized into two namely facilitative (facilitating the activities of their member societies) and representative (representing member societies in various fora). In each country there are legal requirements for formation of tertiary societies. In Uganda for example two registered primary societies can form a secondary society, two secondary societies can form a tertiary society and two or more secondary societies can form an apex society.

## IV. DEGREE OF “COOPERATIVE FRIENDLINESS” OF THE LEGISLATION IN THE REGION

The overall picture from the national reports shows national laws provide a fairly conducive environment for cooperatives to grow. Laws are therefore more cooperative friendly than not. Reasons for unfriendliness of the laws are almost common across countries. These include excessive powers or mandates of regulatory authorities. In some situations, the failure of taxation laws to treat cooperatives differently (grant exemptions or special privileges) and overlapping mandates in regulating SACCOS (Eswatini) have been identified as contributing to the unfriendliness of the legal frameworks governing cooperatives. Some other factors include laws which give political leaders powers to interfere in cooperative affairs (Tanzania), and a long process of registering cooperatives. In some cases (Egypt) existence of multiple legislation (plurality of laws) governing different types of cooperatives hinders smooth development of cooperatives.

Different from all other reports, the Ghana report expressly rated the legal framework as unfriendly despite the tax exemptions earlier mentioned. The main reasons advanced are: overregulation by the government through the registrar, ineffectiveness of the law in strengthening the financial and managerial competence of cooperatives and in creating an enabling environment for cooperatives to operate as autonomous private enterprises. All these challenges are associated with the fact that the current law was enacted during the military rule in Ghana and reflected the interests of the regime then in power.

A key question arising from the subject of ‘friendliness of cooperative legislation’ is whether ‘unfriendliness’ of laws is directly linked to the performance of cooperatives and their ability to meet their members’ needs. Two reports have responded to this question directly or indirectly. The Kenyan report shows the legal framework in place is not satisfactorily friendly but is more cooperative friendly than not. However, the Kenyan report states, “despite the hindrances in the law, the cooperative movement in Kenya is very successful. Cooperatives comply with the law and as a result they are able to achieve their objective of promoting members’ interests, social and economic welfare.” Another dimension of this question is depicted in the South African report which indicates that, existence of an enabling legal and policy environment does not necessarily lead to a successful movement because cooperatives may be unable to exploit the opportunities in the legal framework. As the South African report observes, “cooperatives generally do not have the capacity to exploit legislative provisions that are intended to benefit them, probably because they are locked in a struggle to survive economically.” It can therefore be said a good cooperative law does not necessarily lead to a thriving cooperative movement.



## V. RECOMMENDATIONS FOR THE IMPROVEMENT OF THE LEGAL FRAMEWORKS IN THE REGION

The recommendations provided in the national reports mainly correspond with the challenges identified. Although the recommendations are based on the specific national contexts, most of them are similar. The overview of the recommendations is summarized while paying attention to those which appear to be unique to specific countries.

On regulatory arrangements, there is a call for governments to put in place effective and efficient systems including balancing the powers of authorities which are often unnecessarily excessive to the extent of impairing the autonomy and independence of cooperatives. The question of taxation has been an area of concern in most reports. Governments are called upon to recognize the unique nature of cooperatives and their role in empowering local communities (including small scale farmers, small entrepreneurs and other low-income earners), improving livelihoods and alleviating poverty. In this regard, taxation of cooperatives should ensure special and fair treatment of cooperatives. It is therefore important for States to ensure cooperatives are taxed fairly by for example exempting them from certain types of tax particularly income tax (corporate tax). The bottom line is that cooperatives should not be subjected to the general national tax regime without any special consideration/treatment. A recommendation from the Ivory Coast report appears to be relevant for all countries to adopt, of course subject to specific national contexts. The report recommends adoption of a tax system specific for cooperatives but with two dimensions namely, rules for taxing all cooperatives and rules for taxing specific types of cooperatives depending on their objectives and activities. In our view, this approach has the potential to achieve tax justice for cooperatives. In many reports the idea of subjecting cooperatives to the general tax regime without any preferential treatment is regarded as unfair. However, the Kenyan situation is in stark contrast to this position. The existing tax system which requires all cooperatives to pay tax with no exemptions is regarded as “consistent and supportive to the growth and expansion of cooperatives.”

Regarding the nature of existing legal frameworks, there is a recommendation (particularly from Egypt and DR Congo) to unify the laws which govern different types of cooperatives and replace them with a single legislation for purposes of putting in place a common law for all cooperatives and thus safeguard cooperative identity. There is also a recommendation unique to Ghana namely enactment of a whole new legislation to replace the existing legal framework, which has been labelled archaic and which still contains inhibitive provisions which were enacted during the military rule in Ghana. The new law should, *inter alia*, reduce and clearly define the registrar’s powers, recognize the ICA principles, and make regulation a shared function between the registrar and the cooperative movement. The challenge of multiplicity of laws also exists in Tunisia where there are three separate laws for: Establishing the General Regulations Applicable to Cooperation; providing for Cooperative Units of Agricultural Production on State Owned Agricultural Land; and Mutual Societies for Agricultural Services. The Tunisia report regards the system as overly complex and calls for a consolidation of the laws. There is a recommendation to ensure laws are reformed to keep pace with global, regional and national dynamics. This requires streamlining and updating regulatory systems, enhancing governance and financing arrangements, enhancing production and value addition, and promoting ICT use and research and education. All these should be accommodated by existing legal frameworks.

On cooperative financing, most reports indicate existence of inadequate financing arrangements in cooperatives including limited access to capital for large-scale activities. An important recommendation from the Morocco report is that cooperative movements must fight for establishment of cooperative banks at local and national levels in order to ensure access to capital through terms which are anchored in cooperative principles and values.

Mismanagement of cooperative funds needs legislative response. In some countries (e.g. Eswatini and Tanzania) it has been identified as a chronic problem. A holistic approach is needed particularly to strengthen three pillars of governance in relation to cooperatives namely: external governance, internal governance and individual governance. External governance is the regulatory framework set up by the government while internal governance involves the internal management structures of a cooperative—general meeting/assembly, board, committees and staff. Individual governance concerns the participation of every member in the governance of his/her cooperative. Weaknesses in any of the three pillars affects the performance of cooperatives. To strengthen governance there is also a need to integrate enforceable codes of conducts for leaders and even for members to ensure active participation and address the problem of indifferent membership which has often provided room for dishonest leaders to disregard members’ interests and rights.

## VI. CONCLUSIONS

The overall findings of the LFA study show that there are patterns of enabling and disabling legal provisions across countries. On the question of management and regulatory frameworks, the findings show there is a need to strengthen provisions on self-regulation of cooperatives, ensure accountability of members and leaders is firmly instituted, ensure regulatory frameworks are balanced and designed in a manner that allows cooperatives to operate as free private business organizations and not 'quasi-public bodies'. The study also revealed the main challenges facing cooperatives including overregulation, political interference into cooperative affairs, existence of cooperative legislation which do not adhere to the cooperative values and principles, and ineffective regulatory bodies. Moreover, there are challenges within cooperatives such as poor governance, indifferent membership, dishonesty leadership and limited innovation in cooperatives.

Although overregulation and vesting too much powers in regulatory authorities and political interference are common challenges cited in almost all reports, it should be noted that absence of strong and coherent cooperative movements and numerous challenges facing cooperatives are, in some cases, a cause. In South Africa for example it is has been indicated the government's approach (instituted by the current cooperative law) of regulating cooperatives with a lighter hand has its own problems which "are exacerbated by the absence of cohesive cooperative movement." This means limitation of government regulatory powers may be meaningless if cooperative movements are not strong. Therefore, challenges within movements inevitably invite government intervention and sometimes interference and enactment of stricter laws for addressing the challenges and protecting the interests of members and the public at large. In this regard, the call for less government involvement in cooperatives should go hand in hand with strengthening cooperative management and cooperative movements. This will also pave the way for effective institutionalization of self-regulation within cooperative movements and make regulation a shared and collaborative function between movements and regulatory bodies. The question of ensuring cooperative laws are available in languages which can be understood by ordinary people came up. In this regard, countries are advised to adopt the approach used in Rwanda where cooperative law is presented in three languages namely English, French and Kinyarwanda.

## VII. ANNEXES

Contacts are listed below.

### Contacts

Further details on the legal framework analysis research and other country reports are available on [www.coops4dev.coop](http://www.coops4dev.coop)

The production of this report was overseen by staff from the ICA-Africa Regional Office. For any further information or clarification, please contact [legalresearch@ica.coop](mailto:legalresearch@ica.coop)

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