ENABLING

Cooperative Development

Principles for **LEGAL REFORM**

USAID
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CLARITY
THE COOPERATIVE LAW & REGULATION INITIATIVE • 2006

About the Cooperative Law & Regulation Initiative (CLARITY):

CLARITY is an initiative of eight cooperative development organizations that are members of the Overseas Cooperative Development Council and the United States Agency for International Development. The aim of the project is to formulate and promote principles for legal and regulatory enabling environments for cooperatives. The project was initiated in recognition of the important role of laws and regulations in constituting a framework for successful cooperative businesses.

In the first year of the project, CLARITY partnered with the law firm of Spiegel & McDiarmid to publish this report and create an extensive annotated bibliography of cooperative laws, regulations, analytical documents, and other information pertaining to legal and regulatory enabling environments for cooperative development.

About Spiegel & McDiarmid:

Spiegel & McDiarmid is a Washington-based law firm with a nationally known litigation, regulatory, and government affairs practice. Spiegel & McDiarmid specializes in the representation of public sector, consumer-owned, and not-for-profit organizations. *www.spiegelmcd.com.*

About this Report:

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Free downloadable copies of this report, an extensive annotated bibliography, and links to research materials and organizations engaged in promoting legal enabling environments for cooperatives are available at the CLARITY website. *www.ocdc.coop/clarity/default.htm.*

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THE COOPERATIVE LAW & REGULATION INITIATIVE (CLARITY)

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

2006

National cooperative movements and international cooperative development organizations **have formed a new consensus for the reform of legal enabling environments.**

CLARITY Community Development Organization (CDO) Partners

Agricultural Cooperative Development International/Volunteers in Overseas Cooperative Assistance (ACDI/VOCA): ACDI/VOCA is a private, non-profit organization dedicated to improving the lives of people in developing countries through community development, financial services, enterprise development, and agribusiness systems. By providing technical and management assistance to entrepreneurs, small- and medium-scale enterprises, farmers and agribusinesses, financial institutions, associations, cooperatives, NGOs, government agencies, and research and educational institutions, ACDI/VOCA facilitates broad-based economic growth and creates vigorous civil societies. To solve the most pressing and intractable development problems, ACDI/VOCA provides a customized mix of resources and methodologies honed from over 40 years of economic development success in more than 145 nations. *www.acdivoca.org*.

The Americas Association of Cooperative and Mutual Insurance Societies (AAC/MIS): AAC/MIS was created in 1979 as a regional association of 38 cooperative and mutual companies in 21 countries throughout North, Central and South America, and the Caribbean. It is part of a global network with the International Cooperative/Mutual Insurance Federation (based in the United Kingdom) and three other regional associations in Europe, Africa, and Asia, which involve 141 people-based insurers in 67 countries. A major focus of AAC/MIS is to help people-based organizations reach and serve populations who currently have no access to insurance protections. *www.aacmis.org*.

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Land O'Lakes, Inc.: Land O'Lakes is one of America's premiere farmer-owned cooperatives. Land O'Lakes offers farmers, local cooperatives, and customers across the nation an extensive line of agricultural supplies, as well as state-of-the-art production and business services. Land O'Lakes conducts business domestically in all 50 states, as well as globally. Land O'Lakes' vision is to be one of the best food and agricultural companies in the world. For over 25 years, Land O'Lakes International Development has proudly delivered successful training and technical assistance to, and through, communities, industry organizations, producer groups, processors, and marketers covering a wide range of food and agricultural industries in over 60 countries. *www.idd.landolakes.com*.

National Cooperative Business Association's (NCBA) Cooperative League of the USA (CLUSA): Founded in 1916 as the Cooperative League of the USA, the National Cooperative Business Association is the oldest national cooperative development and trade association in the USA. NCBA is the lead, national membership association for cooperatives in all sectors of the economy. NCBA's mission is to develop, advance, and protect cooperative enterprise. NCBA provides qual-

ity cooperative educational programming, successful domestic public policy and development programs, including an effective international program that helps people in developing countries create member-owned businesses. *www.ncba.coop*.

National Telecommunications Cooperative Association (NTCA): The National Telecommunications Cooperatives Association, "the voice of rural telecommunications," is the premiere non-profit association representing more than 560 small and rural telephone cooperatives and commercial companies. NTCA is a full-service association, offering a wide array of member services, including a highly effective government affairs program, expert legal and industry representation, a broad range of educational services, a comprehensive assortment of regular and special publications and public relations programs, and a well-rounded complement of national and regional meetings. NTCA's international program works with governments, communities, and other stakeholders to enhance economic development in underserved areas of developing countries by expanding universal access to communication and information technologies. *www.ntca.org*.

National Rural Electric Cooperative Association International, Ltd. (NRECA): NRECA and its member cooperatives administer a program of technical advice and assistance in developing countries around the world. The original purpose of NRECA's international programs was to export America's model of rural electrification. Since 1962, 250 electric cooperatives have been formed in 14 developing countries. Today these utilities provide electric service to more than 34 million people. In addition, NRECA is currently working in nine countries to provide technical and management assistance, create cooperatives and other decentralized utilities, administer training programs, and introduce renewable energy programs (wind, solar, hydropower, and biomass). *www.nreca.org*.

World Council of Credit Unions, Inc. (WOCCU): As a worldwide representative organization, WOCCU is the world's leading advocate platform for knowledge exchange and development agency for credit unions. Members of WOCCU include regional and national credit union associations, cooperative associations, and business service organizations. WOCCU's vision of "Quality Credit Unions for Everyone" enables millions of people to grow by providing access to affordable financial services. Today, credit unions in 91 countries provide more than 136 million people worldwide with an opportunity to grow through access to safe savings, affordable credit, and the chance for a better tomorrow. *www.woccu.org*.

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Forward

In March 2005, eight Cooperative Development Organizations (CDOs) that are members of the Overseas Cooperative Development Council (OCDC), with support from the United States Agency for International Development (USAID), created the Cooperative Law and Regulation Initiative (CLARITY). The purpose of CLARITY is to create and disseminate a set of principles for cooperative law reform based on the collective experiences of the member organizations.

This report results from the first year of CLARITY. Over the course of the year, the CLARITY project, managed and assisted by the law firm of Spiegel & McDiarmid, held workshops and conducted research on cooperative law reform around the world. Outside experts were consulted, as well as field staff from the CDOs. Through this process of research and reflection, the CLARITY participants collectively drafted and unanimously endorsed a set of core principles for cooperative law reform that animate this report. The project also produced the enclosed analytical "rubrics" for evaluating legal enabling environments, and profiles reflecting legal reform efforts around the world.

In addition to this report, CLARITY established a website to disseminate information on cooperative law and regulation. The website, *www.ocdc.coop/clarity/default.htm*, features (1) an extensive annotated bibliography of cooperative laws, regulations, analytical documents, and other information pertaining to legal enabling environments for cooperative development; (2) a downloadable copy of this report; and (3) links to research materials and organizations engaged in promoting legal enabling environments for cooperatives.

We want to thank all the CDO members of CLARITY, USAID, and the numerous participants in CLARITY workshops who greatly improved the depth of our understanding. We wish to lend a special expression of appreciation to the staff of Spiegel & McDiarmid, whose contributions in drafting this report, organizing and chairing workshops, conducting research, compiling the extensive bibliography of cooperative law materials, and establishing the CLARITY website were invaluable. We also thank Tom Carter, whose inspiration and support for CLARITY have been instrumental. Finally, we want to recognize Go! Creative, who helped bring our ideas to life with inspirational design work.

Jim Cawley and Mebratu Tsegaye
Co-Chairs
CLARITY Steering Committee

Government control of cooperatives does more harm than good and all cooperatives, regardless of their level of development or country of origin, should share the same right to democratically and autonomously govern their business.

Introduction

Over much of the last century, cooperatives in many developing and post-command economies despite very different ideological, political, and colonial backgrounds, were subjected to a similar legal framework through which management was accountable to the state rather than to membership. Beginning with the "Classical British Indian" model in British colonies and extending through cooperative "parastatals" in French-speaking countries, and state and party dominated cooperatives in Latin America and the former Soviet Union, cooperatives around the world were subjected to a common legal framework. That framework diminished the role of members in the governing of cooperative businesses and substituted government or party officials, most often those working in the office of a cooperative registrar.

By the 1970s, the state-dominated cooperative development model reached its zenith. Cooperative laws around the developing world empowered registrars to appoint and remove managers and directors, to direct basic business decisions, to dissolve cooperatives performing below expectations, to order the amendment of by-laws, to prescribe membership requirements, and to serve as the adjudicatory body for all disputes involving cooperatives, including disputes involving the registrar. Cooperatives under these state-dominated legal frameworks often lacked the legal rights of other private businesses, including the right to sue or be sued, make contracts, or enter a new line of business without government permission.

Cooperatives under these state-dominated legal frameworks often lacked the legal rights of other private businesses, including the right to sue or be sued, make contracts, or enter a new line of business without government permission.

The tide has now turned. National cooperative movements and international cooperative development organizations have formed a new consensus for the reform of legal enabling environments. The new consensus emphasizes autonomy from governments and the removal of barriers to cooperative enterprise in all sectors of the economy. The Cooperative Law and Regulation Initiative (CLARITY) was formed by eight member organizations of the Overseas Cooperative Development Council to formulate a set of principles and analytical tools for evaluating cooperative laws and regulations in light of this new consensus.

Through a series of meetings, workshops, conference calls, and extensive literature review, CLARITY produced a set of principles for cooperative law enabling environments that animate this report. The principles are not a model law. CLARITY does not endorse any specific model law for all countries. Rather, CLARITY's principles are meant to be used by a local cooperative movement

to analyze a legal and regulatory environment and to institute a process for recommending necessary changes.

CLARITY's core principles for cooperative enabling environments are explained in more detail in the next section of this report. Those principles are presented in two analytical "rubrics" that can be used to examine specific legal and regulatory environments. Following the rubrics is a set of profiles prepared by CLARITY member organizations that explain how some cooperative movements have impacted legal reform in countries in which they work. At the end of the report are two appendices: one providing a short history of the development of cooperative laws and traditional cooperative principles; the second providing a set of contacts and citations to additional resources. Further resources and an electronic copy of this report can be found at the CLARITY website, *www.ocdc.coop/clarity/default.htm*.

The new consensus emphasizes autonomy from governments and the removal of barriers to cooperative enterprise in all sectors of the economy.

CLARITY Principles for Legal Reform

CLARITY Core Principles

Cooperative movements have long used principles of cooperative enterprise as organizing tools. The spread of cooperative enterprises in Europe in the mid to late 1800s followed the formulation and dissemination of principles of cooperation by the British Rochdale Society of Equitable Pioneers and the German Raiffeisen savings and credit cooperative. The principles adopted by these organizations were later refined and restated by the International Cooperative Alliance (ICA) and International Labour Organization (ILO) to promote cooperatives in developing countries. Although rooted in these and other efforts to articulate principles of cooperative enterprise, CLARITY is unique in its formulation of a set of comprehensive principles to specifically analyze legal and regulatory environments.

Some of CLARITY's principles flow from long-standing principles of cooperative enterprise. In particular, the principle that cooperatives must be subject to democratic control by the membership, and therefore be autonomous from the government and independent from persons or entities other than the cooperative's members, was central to the Rochdale Principles and other statements of cooperative values (*see* Appendix A). But this principle was frequently eroded in the legal frameworks of developing countries.

As explained in Appendix A, there was once a strong view among experts and government officials that cooperatives in developing countries needed the guiding hand of government to further their development. This view justified sacrificing the principle of democratic control in favor of powerful government offices with the authority to direct and control cooperative businesses. That consensus has now shifted. The more generally accepted view today, and the strong view of CLARITY, is that government control of cooperatives does more harm than good and that all cooperatives, regardless of their level of development or country of origin, should share the same right to democratically and autonomously govern their businesses.

CLARITY's first four principles flow from the need for law to protect and promote democratic control of cooperatives by the membership. CLARITY's principles affirm that legal and regulatory systems should:

- Protect the democratic character of cooperatives, vesting control of the organization in its members;
- Protect the autonomy and independence of cooperatives from the government, persons, or entities other than members of the cooperative;

- Protect the voluntary nature of membership in cooperatives, permitting membership to be determined by the cooperative, not mandated by law or government order; and
- Protect and promote the responsibilities of membership, including the duties to contribute equitably to and democratically control the capital of the cooperative.

The next two CLARITY principles for legal and regulatory environments focus on the relation between cooperatives and other businesses within the economy. Where the government is cast as the guiding hand of the cooperative movement, cooperatives have been restricted from entering certain lines of business by the paternalist dictates of government law or order. In addition, regulatory frameworks, including those enacted to promote the privatization of industries, often exclude participation by cooperatives through onerous regulatory requirements designed for large businesses or state-owned monopolies.

To promote the equitable treatment of cooperatives, the CLARITY principles advise that legal and regulatory systems should:

- Be no less advantageous to cooperatives than to other businesses in the same sector, while protecting and being sensitive to the mutuality of cooperatives; and
- Provide reasonable accommodations and incentives, where appropriate, that enable cooperative forms of business to operate within a sector.

Cooperatives are often registered, governed, and made subject to dispute resolution processes in the same agency, raising concerns about conflicts of interests between the different functions.

The final three CLARITY principles concern the institutional structure and operation of the regulatory framework. In many countries, the establishment of a separate bureaucracy for cooperative registration and supervision has led to great inefficiencies and procedural inequities not faced by other private businesses. For example, many cooperatives must receive affirmative approval to operate from the registrar of cooperatives or must complete a statutory waiting period, even though other businesses are presumptively approved to operate unless and until the corporate registrar determines otherwise. In addition, cooperatives are often registered, governed, and made subject to dispute resolution processes in the same agency, raising concerns about conflicts of interests between the different functions.

To minimize regulatory disadvantages that may dampen cooperative development, and to provide for equitable treatment of cooperatives vis-à-vis other businesses, the CLARITY principles admonish that legal and regulatory systems should:

- Be simple, predictable and efficient, should minimize bureaucratic delay and obstructions to business operation, and should avoid conflict and duplication of other laws;
- Accord due process of law, including applicable rights to hearings, representation, and impartial appeals for decisions of the state that impact cooperatives or their members; and

CLARITY Core Principles for Legal and Regulatory Enabling Environments

- **Protect democratic member control:** Law must protect the democratic character of cooperatives, vesting control of the organization in its members.
- **Protect autonomy and independence:** Cooperatives are private sector businesses. Law must protect the autonomy and independence of cooperatives from government, persons, or entities other than members of the cooperative.
- **Respect voluntary membership:** Law must protect the voluntary nature of membership in cooperatives; membership in cooperatives should be determined by each cooperative, not mandated by law or government order.
- **Require member economic participation:** Law must protect and promote the responsibilities of membership, including the duties to contribute equitably to and democratically control the capital of the cooperative.
- **Promote equitable treatment:** Law and regulation should be no less advantageous to cooperatives than to other businesses in the same sector, while protecting and being sensitive to the mutuality of cooperatives. Incorporation, law enforcement, dispute resolution, and licensing of cooperatives should be handled in the same manner as for other businesses.
- **Promote access to markets:** Sector-specific regulations should provide reasonable accommodations and incentives, where appropriate, that enable cooperative forms of business to operate.
- **Provide coherent and efficient regulatory framework:** Regulatory framework should be simple, predictable, and efficient; should minimize bureaucratic delay and obstructions to business operation; and should avoid conflict and duplication of other laws. Regulation with respect to the business of cooperatives should be handled by institutions with the most relevant specialized expertise.
- **Protect due process:** Cooperative organizations and their members should be accorded due process of law, including applicable rights to hearings, representation, and impartial appeals for decisions of the state that impact cooperatives or their members.
- **Avoid conflicts of interest:** The role of the state in law enforcement, dispute resolution, license, and promotion should be administered in a manner that avoids duplication, undue influence, and minimizes conflicts of interest.

- Administer the roles of the state in law enforcement, dispute resolution, license, and promotion in a manner that avoids duplication, undue influence, and minimizes conflicts of interest.

Each of the core principles described above is intentionally general. CLARITY has not endorsed specific legislative language that it believes should be adopted in particular contexts. The principles are designed to help a cooperative movement examine particular legislative language or a regulatory practice and conclude whether it adequately protects and promotes an enabling environment for cooperative development. The drafting of particular legislative language is left for local processes.

CLARITY Analytical Rubrics

To demonstrate how CLARITY principles may be used to examine legal and regulatory environments, CLARITY prepared two analytical "rubrics" for use by cooperative movements and other policy advocates. CLARITY collected and reviewed a large number of cooperative laws and conducted research on cooperative regulatory practices in many of the countries in which its members work. From this research, the project created two rubrics, one focusing on common elements of cooperative-specific laws and practices, the other focusing on common provisions in sector-specific regulations that impact cooperative participation.

In each rubric, CLARITY identifies how and why one or more of the core principles may be applied to a specific aspect of a regulatory framework. Suggestions of practices that may successfully implement the principles are included in each rubric, along with identification of the reasons that the area of law and regulation may be important to cooperative development. Specific examples of enabling or disabling practices from past and present laws and regulatory practices are included for comparative purposes.

The rubrics are not model laws. They are not intended to present model language or provisions that should be adopted in every country. Rather, the rubrics are intended to show how CLARITY principles may be used to analyze specific regulatory environments and debate needed regulatory changes. Further resources in this regard can be found in the appendices at the end of this report and at the CLARITY website, *www.ocdc.coop/clarity/default.htm*.

1 Formation and Registration of a Cooperative

Core Principles	Implementing Core Principles	Underlying Reasons
Provide coherent and efficient regulatory framework	**Time limits/default registration periods.** To minimize possibilities for long periods of bureaucratic delay, a time period may be set for approval of applications for registration, after which point the application is presumed to be granted.	In countries where the registration process is cumbersome, not timely, or filled with uncertainty, cooperatives frequently organize under non-profit or general company statutes.

Enabling Example: ***Philippines Cooperative Code, § 16, 1990:*** "All applications for registration shall be finally disposed…within a period of thirty (30) days…, otherwise the application is deemed approved."

Disabling Example: ***Ghana Cooperative Societies Decree, 1968:*** Law imposed a six month probationary period for cooperative registration that often stretches for two or more years.

Promote equitable treatment	**Register cooperatives in the same office as other businesses.** It may be preferable to locate registration functions in the same institution that registers other businesses.	Cooperatives will be dissuaded from using a registration process that is more onerous than that for other businesses.

Enabling Example: ***United States:*** Articles of incorporation are generally filed in accordance with the provisions of the general corporation law and are *prima facie* evidence of due incorporation.

Avoid conflicts of interest	**Streamline registrar's role.** Where a separate registrar is maintained for cooperatives, its role may be streamlined to eliminate non-registration activities such as promotion, supervision, and dispute resolution.	Combining regulatory and promotion functions in the same office creates an inherent conflict of interest that has compromised the neutrality of registration/regulation and the effectiveness of promotion efforts in many countries.

Enabling Example: ***South Africa:*** Moved its cooperative registrar from the Ministry of Agriculture to the Ministry of Trade and Commerce to separate sector-specific promotion efforts from the registration function.

Disabling Example: ***India Co-operative Credit Societies Act, 1904:*** The "Classical British Indian" model of cooperative legislation creates an inherent conflict of interest in the office of the registrar by vesting the office with both regulation and promotion functions.

Protect autonomy and independence	**Avoid mandatory model by-laws.** Registration process and statute should provide maximum flexibility for a cooperative to define its governance through by-laws and articles of incorporation.	Central to the success of cooperatives is the development of the capacity of their members to govern the organization democratically and to adopt the most beneficial structure given its line of business.

Enabling Example: ***Botswana, Co-operative Societies Act, § 125, Schedule 1, 1989:*** Statute provides minimum requirements for by-laws, such as including procedures for the appointment and removal of officers, without mandating specific language.

Disabling Example: ***Thailand Cooperative Societies Act, 1968:*** Registrar commonly imposes model by-laws on cooperatives.

2 Cooperative Supervision

Core Principles	Implementing Core Principles	Underlying Reasons
Promote equitable treatment Protect autonomy and independence	**Coordination of business regulatory functions.** Many countries integrate cooperative regulation functions in agencies with similar responsibilities for other businesses.	Cooperatives should be subjected to regulatory requirements that are comparable to those of other businesses. The main regulating mechanism for cooperatives should be empowering members to govern the organization.

Enabling Example: ***Philippines Cooperative Code, § 124(2), 1990:*** Prohibition on "[d]irect or indirect interference or intervention by any public official or employee into the internal affairs of a co-operative of which he is not a member."

Disabling Example: ***Uganda White Paper on the Affairs of all Co-operative Unions, 1968:*** "[T]he duty of the Government is to assist and guide [cooperatives]. In this connection, the Government intends to…bring the control of the Co-operative movement more directly under the control of the Minister."

Avoid conflicts of interest	**Separation of regulatory from promotion functions.** Regulatory functions should be institutionally separated from other functions, such as promotion or registration.	Entrusting the same agency with both promotion and law enforcement responsibilities may lead to conflicts of interest that compromise the efficacy and fairness of regulation.

Enabling Example: ***South Africa Co-operatives Bill 4, § 75, § 80, 2005:*** Cooperative Advisory Board advises the government and makes recommendations with regard to policy, but lacks a direct regulatory role over cooperatives.

Disabling Example: ***Philippines Cooperative Development Authority Act, § 3, 1990:*** Cooperative development authority is granted all powers of registration, promotion, and regulation of cooperatives.

3 Legal Status and Rights

Core Principles	Implementing Core Principles	Underlying Reasons
Promote equitable treatment Protect autonomy and independence	**Legal personhood.** A cooperative should have legal personhood similar to that held by other corporations. For example, cooperatives should have full rights to hold property, enter contracts, sue, and be sued.	A corporate entity generally has most of the legal rights of an individual in order to act as a single entity to hold property, contract, and resort to the legal system to enforce its rights. Legal personhood is one key element in establishing cooperatives as private entities vis-à-vis the state.

Enabling Example: ***Law of Ukraine on Cooperation, § 23, 2003***: "Cooperatives are entitled to conduct any activity stipulated by their statutes that is not prohibited by law."

Promote equitable treatment	**Liability/indemnification of officers and directors.** Similar to other corporate officials, directors and officers should be indemnified by the cooperative when sued because of their role in the cooperative, unless the liability was incurred because they willfully or negligently failed to perform a fiduciary duty owed the cooperative.	Cooperatives or their officials should not be insulated from generally applicable laws. To ensure accountability of officials to the cooperative, such officials should have the same fiduciary duties that apply to corporate officials.

Enabling Example: ***South Africa Co-operatives Bill 4, § 75, § 37(1), 2005:*** Directors, managers, and employees are not liable for action taken in the course of their duties if it does not involve willful misconduct, dishonesty, gross negligence, or reckless conduct.

Disabling Example: ***Sudan Cooperative Societies Act, § 6(a), 2003:*** "For the purposes of criminal responsibility, property of the Society shall be deemed to be public property and its employees shall be deemed to be public servants."

4 Membership

Core Principles	Implementing Core Principles	Underlying Reasons
Respect voluntary membership	**No compelled membership.** The state should not have the authority to compel membership in a cooperative.	Government mandated membership detracts from the democratic character of a cooperative and harms the accountability links between a cooperative and its members.

Enabling Examples:

South Africa Co-operatives Bill 4, § 75, § 3(1)(a), 2005: Cooperatives are deemed to comply with cooperative principles if "membership of that cooperative is open to persons who can use the services of that cooperative and who are willing and able to accept the responsibilities of membership."

Bosnia General Law on Cooperatives, § 5, 2003: Requires that men and women be treated the same with respect to membership in cooperatives.

Disabling Examples:

Egypt, 1952: Government mandates that farmers in certain sectors join agricultural cooperatives.

Zambia Co-Operatives Act, § 3, 1970: Government discretion to "take such measures as he deems advisable for encouragement of…co-operative development" is used to take over agricultural marketing functions and mandate membership in cooperatives.

Protect democratic member control	**Autonomy in determining size and qualifications for membership.** Cooperatives should determine through internal governance procedures any requirements for size and eligibility criteria for membership, subject to generally applicable non-discrimination laws.	The number and attributes of members required to create a cooperative will vary from case to case. It is for members and management to determine the attributes of membership that will best ensure success of the venture.

Enabling Example: ***Brazil Civil Law No. 10406, Clause II, § 1094, 2002:*** Permits cooperatives to establish a minimum number of members dependent on the cooperatives' administrative needs.

Disabling Examples:

Sudan Cooperative Societies Act, § 12(i), 2003: "The members of a Primary Society shall not be less than 20 persons. The registrar may fix a maximum number of members in a Society in special cases for social and geographical considerations."

Law of Ukraine on Cooperation, § 11, 2003: Requires payment of an entrance fee to join a cooperative.

Protect autonomy and independence	**Ban on government membership.** A cooperative law should not permit the government to be a member of the cooperative.	State participation in the membership of a cooperative sacrifices the business' role as an anonymous private organization.

Enabling Example: ***Philippines Cooperative Code, § 28, 1990:*** Any officer or employee of the Cooperative Development Authority, or any elected government official, is ineligible to become an officer or director of a cooperative.

Disabling Example: ***India Bombay Cooperatives Societies Act, 1925:*** Authorizes government to participate in the share capital of cooperatives.

5 Member Governance

Core Principles	Implementing Core Principles	Underlying Reasons
Protect democratic member control	**Majority voting rules.** A cooperative law should permit the by-laws of a cooperative to implement a range of voting rules that are consistent with democratic governance requirements, including one person one vote, super-majority decisions for alteration of a cooperative's structure, cumulative voting, and patronage requirements for voting.	Cooperatives should be required to be democratically governed, but given flexibility to define democratic procedures within the organization.

Enabling Example: ***South Africa Co-operatives Bill 4, § 75, § 3(1)(b), 2005:*** For Primary Cooperatives, "each member has only one vote."

Disabling Examples:

Hungary: Law dictates many decisions by unanimous vote.

Bosnia General Law on Cooperatives, § 30, 2003: Permits the right to vote to be weighted according to individual contribution to the cooperative.

Protect democratic member control	**Records subject to inspection.** To facilitate member control over management, business records generally should be open to inspection by any member of the cooperative.	A cooperative's members are ultimately responsible for supervising the board of directors and must be properly informed in order to perform this function.

Enabling Examples:

Cooperative Law of Mongolia, § 27(6), undated: Board of directors is responsible for keeping records, informing the auditing board of receipt of annual report, and presenting the report to members.

Law of Ukraine on Cooperation, § 12, 2003: Members have right to request "information about membership in cooperative, operation of the cooperative and its officials."

6 Officers and Directors

Core Principles	Implementing Core Principles	Underlying Reasons
Protect autonomy and independence	**Avoid detailed definitions of management functions.** A cooperative law may give general instructions on the core division of roles between the board of directors and management without being so detailed as to prevent necessary flexibility in organizing the business.	A cooperative's governance structure should reflect the best approach for that cooperative's sector and operational capabilities. Generalized structures may not be appropriate for a given cooperative.

Enabling Example: ***Cooperative Law of Mongolia, § 23, undated:*** The majority of members select the management board, auditing board, and the director, and determine their duties.

Protect autonomy and independence	**No state appointment of managers.** The state should not maintain any right to appoint managers of a cooperative.	Cooperation rests on a vital link of accountability and responsibility between members and elected officials, not between cooperative officials and the state.

Enabling Example: ***Wisconsin, U.S.A., Wis. Stat. § 185.35, 2004:*** "All officers shall have such authority and perform such duties as the bylaws provide, or as the board may determine not inconsistent with the bylaws."

Disabling Example: ***Zambia Cooperatives Societies Act, § 161(1), 1970:*** Grants registrar power to "appoint…one or more special officers to manage the affairs of a society."

Protect autonomy and independence	**Autonomous financial management.** Subject to general auditing requirements, cooperatives should have discretion over their expenditures and investments. Law should not mandate expenditures on specific functions or require government approval of basic business decisions.	Autonomy in management is a core characteristic of private enterprise. Cooperatives must learn to be successful businesses through self-management, not an overly protective state.

Enabling Example: ***Philippines Cooperative Code, § 9, 1990:*** Grants a cooperative powers to lease, mortgage, purchase, otherwise deal with real property, and "exercise such other powers…necessary to carry out its purpose or purposes as stated in its articles of incorporation."

Disabling Example: ***Zambia Cooperatives Societies Act, 1970:*** Registrar has the authority to approve a broad range of management activities, including borrowing, investing in stocks and securities, using society's assets, and leasing operations.

7 Board of Directors

Core Principles	Implementing Core Principles	Underlying Reasons
Protect democratic member control	**The board should be elected by the members of the cooperative.** The state should not retain any authority to select or approve board members.	Board members should be responsible to the members who elected them, not to the government or any outside party.

Enabling Example: ***Philippines Cooperative Code, § 38, 1990:*** Management of the affairs of the cooperative shall be vested in a board of directors "elected by the general assembly for a term fixed by the by-laws."

Disabling Example: ***Tanzania Cooperative Societies Act, § 127, 2003:*** "[T]he Registrar may, subject to the provisions of this section, appoint special members to the board of any registered society in receipt of financial assistance from the government or if the Registrar considers such appointments to be necessary in the public interest or in the interest of the society."

Protect autonomy and independence	**By-laws determine the size and composition of board.** Law should not prescribe quotas or other specific criteria for selecting the board of directors beyond an absolute minimum for collective decision-making (*e.g.* three or more members).	The appropriate size and composition of a board of directors depends on the cooperative's size, industry, and operational capabilities.

Enabling Example: ***Czech Republic Draft Act on Cooperatives, § 31(4), 2001:*** "The members of the Board shall be elected in the number specified by the by-laws, however, the Board shall have at least three members."

Disabling Example: ***Tanzania Cooperative Societies Act, § 63(1), 2003:*** "Every Board of a registered society shall consist of not less than five members and not more than nine members."

8 Capital Accounts

Core Principles	Implementing Core Principles	Underlying Reasons
Require member economic participation	**Distribution according to patronage.** Distribution of surplus of the cooperative should be required to be allocated according to patronage of the cooperative, rather than capital invested.	Patronage based distributions date to the Rochdale pioneers who saw the principle as a way to reward loyalty, pay back the majority of profits to consumer members, and distinguish their businesses from capital-based corporations. Thus, it is said that cooperatives are organizations of people, not capital.

Enabling Example: ***Wisconsin, U.S.A., Wis. Stat. § 185.45(3), 2004:*** After deducting operating expenses and costs, the remainder of the proceeds shall not constitute income to the cooperative, but "shall be distributed and paid to patrons in accordance with the ratio which their patronage bears to total patronage."

Protect democratic member control	**Allow reserves and capital funds.** Law should not mandate distributions such that a cooperative could not choose to build reserves or a capital fund for business investments, nor mandate a specific amount of contribution to such fund.	Building of reserve or capital funds for future investments is necessary for the maintenance and growth of many businesses. The amount that is appropriate to dedicate to a reserve fund will vary depending on the business.

Enabling Example: ***Wisconsin, U.S.A., Wis. Stat. § 185.45(4)(a), 2004:*** "Any of the net proceeds may be credited to allocated or unallocated surplus or reserves of the cooperative."

Disabling Example: ***Sudan Cooperative Societies Act, § 33, 2003:*** "A Society shall establish a reserve fund and shall in every year transfer to it at least 25% of its annual net profits."

9 Auditor

Core Principles	Implementing Core Principles	Underlying Reasons
Protect democratic member control Protect autonomy and independence	**Member selection.** The members of the cooperative should have the right to select their auditor of choice.	The purpose of an audit is to facilitate member control of the cooperative by assuring that affairs are being conducted in an honest and professional way.

Enabling Example: ***Law of Ukraine on Cooperation, § 18, 2003:*** Auditor "reports to the general meeting of the cooperative and shall be elected by the general meeting from within the members of cooperative organization in accordance with the voting procedure that is established by the cooperative's statute."

Disabling Example: ***Zambia Cooperative Societies Act, §§ 140-41, 1970:*** Registrar is given the authority to conduct, audit, or select a third-party auditor.

10 Dispute Resolution

Core Principles	Implementing Core Principles	Underlying Reasons
Avoid conflicts of interest Provide coherent and efficient regulatory framework Protect due process	**Availability of independent tribunals and traditional forums.** Any body entrusted to adjudicate disputes that involve cooperatives should be independent from promotion, supervision, and other cooperative oversight functions. Cooperatives should be free to access courts and other existing tribunals, as well as to voluntarily enter arbitration arrangements.	Dispute mechanisms must ensure impartiality by not involving officials with other responsibilities for promoting or regulating cooperatives. Existing adjudication and arbitration mechanisms for other businesses may minimize the duplication of resources.

Disabling Example: ***Malaysia Cooperative Societies Act, § 82, 1992:*** All disputes involving cooperatives "shall be referred to the Registrar-General for decision."

11 Dissolution/Amalgamation/Merger

Core Principles	Implementing Core Principles	Underlying Reasons
Respect voluntary membership Protect due process	**Procedures for member approval.** Law should provide procedures for changing or dissolving the organization, including quorum and voting requirements, procedures for notifying members, for permitting withdrawal, and for distributing assets remaining after dissolution.	Cooperatives are voluntary organizations, which implies the ability to change or cease to exist, as well as to form at the members' discretion.

Enabling Example: ***Botswana Co-operative Societies Act, § 90, 1989:*** Notice detailing the rights of members with respect to resolution to amalgamate "shall be sent to all the members and creditors" and any member "by notice in writing [may] intimate his intention not to become a member of the amalgamated society."

Disabling Example: ***Lithuania Cooperative Law No. I-164, 1993:*** Includes no provision for amalgamation, merger, or division.

12 Apex Organizations

Core Principles	Implementing Core Principles	Underlying Reasons
Protect autonomy and independence	**Permissive autonomy.** Law should permit the formation of apex organizations such as unions, federations, and confederations, without dictating their structure or requiring cooperatives to form or support such organizations.	The provision of services through apex organizations strengthens the democratic character and substantive expertise of the cooperative movement. Dictating the organizational structure of cooperative movements sacrifices the democratic autonomy of each cooperative and may promote inefficient practices that inhibit competitiveness.

Enabling Example: ***Philippines Cooperative Code, § 1, 1990:*** "[T]he state recognizes the rights of the co-operative sector to initiate and foster within its own ranks co-operative promotion, organization, training, information gathering, audit and support services."

Disabling Example: ***Tanzania Co-operatives Societies Act, § 17, 2003:*** Permits registrar of cooperatives to "require any two or more societies to form and apply for the registration of a cooperative union."

1 Participation in a Sector

Core Principles	Implementing Core Principles	Underlying Reasons
Promote access to markets	**Eliminate corporate form requirements.** Sector specific regulations should not dictate the corporate form of a business in a manner that excludes cooperative participation.	Cooperative businesses can and should be permitted to operate in any sector of the economy.

Enabling Example: ***International Labor Organization Rec. No. 193, § 7(2), 2002:*** "Cooperatives should be treated in accordance with national law and practice on terms no less favourable than those accorded to other forms of enterprise and social organization."

Disabling Example: ***Honduras:*** Regulatory statutes require that insurance companies be stock corporations, effectively barring cooperative entry.

Promote access to markets *(de facto)* **Promote equitable treatment**	**Accommodations in regulatory requirements.** Regulatory frameworks should avoid onerous requirements, including high capital reserve requirements in banking and insurance industries that are designed for large businesses.	Cooperatives commonly cater to populations that are underserved by traditional businesses, including poor or dispersed populations that cannot support high capital requirements or meet other regulatory requirements imposed on much larger businesses.

Enabling Example: ***World Council of Credit Unions, Inc. Model Credit Union Law, 2005:*** "Institutional capital of a credit union should be maintained at a minimum level of 10 percent relative to the credit union's risk weighted assets."

Disabling Example: ***Peru:*** Insurance regulations impose high minimum capital requirements that inhibit the formation of small insurance cooperatives that exist in many other countries.

2 Interconnection

Core Principles	Implementing Core Principles	Underlying Reasons
Promote access to markets **Protect due proces**	**Right to interconnect at non-discriminatory rates.** In infrastructure industries, such as telecommunications and electricity, new entrants must have a right to interconnect to the system of the dominant supplier at regulated, nondiscriminatory rates in order to serve consumers.	Monopolies in infrastructure industries often have strong incentives to refuse to deal with competitors or provide services at unreasonable rates.

Enabling Example: ***Poland, 1990:*** Under the privatization framework allowing new companies to compete with the dominant former state monopoly, two cooperatives (WIST and Tyczyn) negotiated interconnection and revenue sharing arrangements with the dominant provider.

3 Regulatory Framework

Core Principles	Implementing Core Principles	Underlying Reasons
Provide coherent and efficient regulatory framework	**Standardized reporting forms.** Standardized reporting forms may be provided by the government to enable efficient reporting.	Standardized quality control measures provide the government and lenders with a way to perform monitoring and benchmarking.

Enabling Example: ***United States:*** The Rural Electrification Administration requires electric cooperatives to submit a standardized "Form 7" to report operating and financial data. A similar method has been adopted in Bangladesh and the Philippines.

Promote equitable treatment	**Authority to set cost-based rates.** Regulatory systems should allow cooperatives to set rates adequate to cover the cost of their service provision; rate regulation should not impose arbitrary price restrictions based on the cost of subsidized or lower-cost suppliers.	Cooperative utilities often serve areas that are more expensive to serve and therefore arbitrary rate caps, based on the costs of the dominant supplier, may be confiscatory as applied to a cooperative.

Enabling Example: ***United States:*** Cooperatives are frequently exempted from state regulation of electricity rates in recognition of the democratic character of cooperatives.

4 Access to Finance

Core Principles	Implementing Core Principles	Underlying Reasons
Promote equitable treatment	**Incentives to serve underserved areas.** Governments may promote the development of cooperatives by extending loan guarantees or direct government loan finances to lower the cost accessing credit.	Without government guarantees or other provisions, cooperatives may face higher cost of capital on private markets than large private businesses. In addition, access to lower cost capital may be used to assist the cost structure of cooperatives that serve poor, dispersed, or other peripheral communities that are more expensive to serve.

Enabling Example: ***United States Rural Electrification Act, 1936:*** Cooperatives are given access to government subsidized low-cost credit and preferential access to low-cost government-owned power sources.

5 Taxation

Core Principles	Implementing Core Principles	Underlying Reasons
Promote equitable treatment	**Distinguish between member and non-member transactions.** Surplus distributed in proportion to a member's patronage of a cooperative should be exempted from taxation. Income derived from non-member transactions may be subject to the same income taxes as other corporations.	Surplus distributed in proportion to patronage of the cooperative is not profit but rather is refunded from excess charges. Where a cooperative transacts with non-members and charges above its cost, the surplus income may be considered profit and taxed accordingly.

Enabling Example: ***United States:*** Net margins are not taxable income to both the cooperative and the patron if they are distributed to patrons on the basis of business done with the cooperative.

Disabling Example: ***Russia, 1990s:*** Cooperatives are taxed based on their revenue, not a measure of profit, and therefore are burdened with very high tax rates.

6 Competition

Core Principles	Implementing Core Principles	Underlying Reasons
Promote equitable treatment	**Exemptions for cooperatives.** Competition law prohibitions on joint action between businesses should contain exemptions for cooperatives.	Many competition laws prohibit concerted conduct by independent businessmen, such as agreeing on prices, terms of sale, and to whom to sell. Such conduct is commonly undertaken by farmers and others that operate cooperative marketing associations, thus necessitating a legislative or interpretive exemption from competition laws.

Enabling Examples:

United States Capper-Volstead Act, 1922: Provides limited antitrust exemption for cooperative marketing associations that meet cooperative principles.

Philippines Cooperative Code, § 8, 1990: "No cooperative or method or act thereof which complies with this Code shall be deemed a conspiracy or combination in restraint of trade or an illegal monopoly."

Participation in the legal reform process by cooperative members will ensure that more appropriate legislation is adopted for the local context, creating a more enabling environment in which cooperative businesses may prosper in the long run.

Profiles

of Cooperative Law and Regulation Reform

NICARAGUA: Learning the Value of Early Engagement
By Americas Association of Cooperative/Mutual Insurance Societies (AAC/MIS)

GHANA: Building Consensus for Cooperative Law Reform
By National Cooperative Business Association's Cooperative League of the USA (CLUSA) International Program

MONGOLIA: Engaging Cooperatives in Legal Reform
By CHF International

PHILIPPINES: Crafting Specific Policies for Housing Cooperatives
By CHF International

DOMINICAN REPUBLIC: Promoting the First Electric Cooperative Within an Existing Legal Framework
By National Rural Electric Cooperative Association (NRECA)

SOUTH AFRICA: Transforming the Legal Framework for Telecommunications Cooperatives
By National Telecommunications Cooperative Association (NTCA)

UZBEKISTAN: Promoting Savings and Credit Unions Through Legal Reform
By World Council of Credit Unions, Inc. (WOCCU)

The response of the cooperative movement in advocating for a series of amendments and clarifications of existing laws shows the value of incremental and context-specific approaches to legal reform efforts.

Nicaragua: *Learning the Value of Early Engagement*

By Americas Association of Cooperative/Mutual Insurance Societies (AAC/MIS)

Project Summary

Because of a lack of attention on the part of cooperatives, little was known about an initiative to change Nicaraguan cooperative law until it was reported out of legislative committee. Cooperatives were not substantively involved in the reform process. Cooperatives did succeed in lobbying for some modifications to the bill reported out of Committee, which primarily benefited credit unions. After a revised law was passed, many cooperatives joined together to develop and lobby for a proposed implementation directive (reglamento) to address some of the remaining flaws and gaps in the law.

The Need for Change

Most Nicaraguan cooperatives were formed through donor efforts in the 1960s and 1970s, and later Sandinista land reform efforts in the 1980s. Other cooperatives, notably the large transport organizations, were formed solely to take advantage of tax reductions and custom exonerations.

Cooperatives are the major provider of services to groups of mostly poor, rural Nicaraguans and, hence, are frequent recipients of donor funds. Nicaraguan cooperatives traditionally view themselves as social organizations rather than businesses. This is slowly changing, however, with the introduction of operating standards in some credit unions and quality improvement and successful marketing efforts of organic coffee cooperatives.

Many cooperatives in Nicaragua are linked to political parties. This makes united action among all cooperatives very difficult. The current Bolanos government views Sandinista cooperatives as major organizers of social unrest.

The first national cooperative law was passed in 1971. Prior to that law, there was no government regulation or supervision of cooperatives. The 1971 law was administered under the Ministry of Labor, which did not have the political will, budget, or capacity to carry out its responsibilities of registration, promotion, and supervision. Cooperative development was further impeded by onerous requirements for cooperatives to support education and promote activities from their revenues.

Reform Process

Cooperative law reform was initiated in 1996. A new law passed, but it, along with all other laws passed during a specific period of time, was subsequently voided by the Supreme Court. Not until 2004 did a revised bill appear, which was drafted with very little engagement with the cooperative sector. When the draft

bill was reported out of a committee of the National Assembly, numerous cooperative leaders recognized significant flaws in the bill.

With the issuance of the committee report and its placement on the debate agenda of the National Assembly, some in the cooperative sector realized the importance in seeking to change the proposed law. A coalition of cooperative development organizations, including the National Cooperative Business Association, World Council of Credit Unions, Inc., and the Americas Association of Cooperative/Mutual Insurance Societies (AAC/MIS), facilitated a process to help different cooperatives reach a consensus on key changes needed in the bill. This group of cooperatives joined forces to lobby the National Assembly and were able to achieve some modifications in the draft legislation before its final passage. Perhaps because credit unions had remained more focused and well-organized, the accepted modifications mostly addressed credit unions' interests.

Although many cooperatives were encouraged by the legislature's adoption of proposed changes, many remained frustrated because the role and operation of the new Instituto Nacional de Fomento Cooperativo (INFOCOOP) was unclear, and it appeared bureaucratic and political.

Although many cooperatives were encouraged by the legislature's adoption of proposed changes, many remained frustrated because the role and operation of the new Instituto Nacional de Fomento Cooperativo (INFOCOOP) was unclear, and it appeared bureaucratic and political.

A second intervention by the cooperative development organizations served to define a process to prepare and promote an executive implementation directive or "reglamento" to deal with some of the gaps and flaws in the new law. All interested parties within the cooperative sector worked to prepare a draft "reglamento" which they presented to the division of the President's office responsible for such matters. Without the proposed implementation directive and effective lobbying within the President's office, a less than advantageous and ill prepared "reglamento" would likely have been produced.

Outcome

The new law, Ley General de Cooperativas, passed on January 25, 2005, created the Instituto Nicaraguense de Fomento Cooperativo (Nicaraguan Institute for Cooperative Promotion). Among the functions of INFOCOOP are to determine national cooperative policies, to serve as registrar, to promote and regulate cooperatives, and to channel finances to cooperatives.

The law provides for INFOCOOP to be headed by a nine member board consisting of four government ministers and five representatives named by the National Council of Cooperatives, also created by this new law. This structure virtually assures conflicts of interest resulting in weak regulation. The law also fails to guarantee that INFOCOOP is fully funded.

There are numerous provisions of the law that insert state discretion and fiat into the governing of cooperatives, thus compromising their role as legal, competitive businesses. The law requires 40 hours of training for all members, regardless of the members' actual needs. It allows for state intervention in cooperative business affairs if more than ten percent of the cooperative's members are foreigners, thus discriminating against classes of cooperatives based on their membership composition. The law demands that ten percent of net earnings

be spent on an education fund and two percent on financing INFOCOOP, rather than allowing cooperatives to set contribution levels though a self-governing process. The law imposes onerous governance requirements, including a 50 percent quorum at meetings and a 70 percent quorum to elect board members or change by-laws.

Despite the many problems with the new law, there are some positive aspects. The law allows cooperatives autonomy in determining their by-laws and policies, and designating their own financial auditors. It also widens the definition of services, allowing cooperatives more flexibility to take advantage of business opportunities.

The credit unions were most effective at securing desired changes through the legislative process, in part because they remained well-organized and focused on their needed reforms.

Lessons Learned

The main lesson learned by the cooperative organizations that engaged in the law reform process in Nicaragua is to engage in the processes early. Although the cooperatives assisted the legislature reforming the law by focusing on some overlooked critical issues, they were quite late in the process and failed to organize sufficiently to present a strong consensus position on the legal reform efforts.

The credit unions were most effective at securing desired changes through the legislative process, in part because they remained well-organized and focused on their needed reforms. Non-financial cooperatives might have had a greater lobbying impact if they had actively followed-up and participated in the dialogue and coordination process through local cooperative organization leaders.

Although cooperative leaders and members were included in some initial consultations by the committee of the National Assembly in charge of the bill, neither effort by the cooperatives, nor the committee, assured the ongoing involvement of cooperative representatives in the process leading to the committee report on the bill. A more inclusive, participative process might have been more productive and more effective. Instead, the cooperative leadership was left scrambling to explain the required changes in the law to its membership base. ■

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Ghana: *Building Consensus for Cooperative Law Reform*

By National Cooperative Business Association's Cooperative League of the USA (CLUSA) International Program

Project Summary

In 2004, the Cooperative League of the USA (CLUSA) designed the Ghana Cooperative Law Reform Project to build consensus for a law to replace the Cooperative Societies Decree of 1968. CLUSA's approach used a strategic planning process to mobilize stakeholders, analyze the legal and regulatory environments in which cooperatives operate, identify options to change existing laws and regulations, and develop and implement an advocacy plan.

The Need for Change

Ghana is widely recognized as a stable democracy in an unstable region. Agriculture accounts for 35 percent of the gross domestic product and employs 60 percent of the work force. Under the current administration, government policy recognizes the importance of cooperatives as a means to involve farmers, consumers, and small businesses in the national economy. However, by 2003, fewer than 1,000 of the 10,000 registered cooperatives were active.

Ghana's cooperative movement began in the 1920s when the colonial government organized producers' groups to improve the quality of cocoa for export. In 1929, the colonial government created the post of Registrar of Cooperative Societies within the Department of Agriculture to give cooperatives statutory recognition. Following the cooperative model in other British colonies in Africa and Asia, subsequent legislation in 1931, 1937, and 1968 expanded the powers of the registrar.

The Cooperatives Societies Decree of 1968 gave the registrar of cooperatives substantial powers that impeded cooperative autonomy and development. Section 53 of the decree empowered the registrar to dissolve the board of directors of a registered cooperative and appoint a caretaker to govern the business. Section 28 mandated that no distribution of surplus be effected unless the registrar approved the scheme. Section 46 gave the registrar power to countersign before any payment of checks issued by a cooperative and to disallow an expenditure not considered justifiable. The Department of Cooperatives used its broad powers to interfere in the business affairs of individual cooperatives. The Department was also inefficient in the execution of statutory duties; a mandatory six-month probationary period before a cooperative could become a legal entity often stretched into two or more years.

Reform Process

In an effort to revitalize the cooperative movement, in 2001 the Department of Cooperatives drafted a new cooperatives bill (Bill 2001) to replace the 1968 Cooperative Societies Decree. Bill 2001 would have supported the autonomy

and independence of cooperatives, substantially reducing the powers of the registrar to intervene in cooperative decision-making. By the end of 2004, however, Bill 2001 had not been enacted.

The Ghana Cooperatives Council (GCC) approached CLUSA to develop a plan to advocate for the adoption of Bill 2001. Because cooperatives had not been consulted when Bill 2001 was drafted, CLUSA developed an inclusive, participatory process to conduct a thorough review of the bill and proposed changes.

With funding from USAID's Cooperative Development Program, and the assistance of a United States cooperative specialist, CLUSA helped the Ghana Cooperative Council organize four two-day regional cooperative law reform workshops. Ninety cooperative representatives from all organizational levels, from farmer-members to senior management and board members, met with staff from the GCC and the Ghanaian Department of Cooperatives.

With funding from USAID's Cooperative Development Program, and the assistance of a United States cooperative specialist, CLUSA helped the Ghana Cooperative Council organize four two-day regional cooperative law reform workshops.

In preparation for the workshops, a workbook was designed which contained background information on the Decree and Bill 2001. On the first day of the regional workshops, facilitators organized small groups with a broad geographic and cooperative sector mix. The groups then conducted a paragraph-by-paragraph review of Bill 2001. On the second day of the workshop, each groups' recommendations were presented and documented. A three-day National Cooperative Law Reform Workshop took place six weeks after the regional workshops. Participants included national cooperative leaders and two Ghanaian attorneys knowledgeable about cooperative law. A national workbook was designed which incorporated recommendations from the regional workshops and the case study of a major grassroots cooperative victory in the United States. After spending two days reviewing the workbook, the national workshop participants spent a day developing an advocacy plan to promote the passage of a revised bill (Cooperatives Bill 2004).

Outcome

During the workshops, the close inspection of Bill 2001 and subsequent discussions fueled participants' passion for change. Virtually all participants in the regional workshops agreed on the same basic problems and solutions. As a result of these workshops, GCC created an Advocacy Committee and five sub-committees focused on fundraising, media, education, lobbying, and coalition building. By the end of 2004, the committees had developed materials for the media, cooperative members, and the

public to generate support for Cooperatives Bill 2004. The bill has been submitted to the government and will soon be considered by the Cabinet and Parliament.

Lessons Learned

The future success of Ghana's cooperatives depends on the members' ability to advocate legal reform on their own behalf. Ghana's cooperative law reform project is a work in progress, evolving in changing political and economic environments.

To remain effective, the cooperative law reform process should begin with cooperative members who understand how successful cooperative businesses operate and why a supportive legal and regulatory environment enables businesses to function well. Because these cooperative members may doubt their ability to affect national policy, the challenge is to identify leaders who can build consensus among cooperatives and inspire members to organize and advocate for change.

Another lesson learned throughout the process is that planning is essential. A cooperative legal specialist should have been consulted earlier, during the preparation phase of the workshops, to ensure that critical information on legal provisions was included in the regional and national workbooks. Workshop materials should be presented several days in advance of the workshop to ensure that participants have time to review them and generate informed questions and understandings beforehand.

Finally, CLUSA's experience in Ghana demonstrates the importance for implementing organizations to conduct periodic monitoring and to remain actively involved in the advocacy process. CLUSA is currently adapting this approach and methodology to implement similar initiatives in Angola, Mozambique, and Nicaragua. ■

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Mongolia: *Engaging Cooperatives in Legal Reform*

By CHF International

Project Summary

Mongolian cooperative law reform began in the mid-1990s as part of the general socio-economic shift from state-owned to market-oriented and democratically-run cooperatives. Since that time, the national cooperative law has been amended several times in response to lobbying campaigns by cooperative support organizations, each time changing the minimum number of cooperative members needed to register. While the number of members needed to register a cooperative in Mongolia is still under debate, the Mongolian experience displays the capacity of the cooperative movement to effect legal change, and will hopefully lead to a strengthening between grassroots cooperatives and their representative institutions.

The Need for Change

Since emerging from communist control in 1991, Mongolia has developed a market economy and undertaken legal reforms to encourage the development of the private sector. In the initial period of economic privatization, many formerly state-owned farms and factories began calling themselves "cooperatives," although they were not managed according to cooperative principles.

In 1995, Mongolia enacted its first cooperative law to regulate the newly developed cooperative sector. The law stipulated that a cooperative may consist of as few as three members. Mongolians were not familiar with cooperative principles and did not differentiate between cooperatives and small businesses. Thus, many small businesses registered as cooperatives despite a lack of intention to operate according to cooperative principles.

Leaders of cooperative unions and foreign agencies recognized that many registered cooperatives were not following cooperative principles. The German Agency for Technical Cooperation (GTZ) noted a particular problem with small cooperatives not being managed democratically and proposed that the minimum number of members be increased.

Reform Process

With limited knowledge and experience in developing private, free-market business laws and regulations, the Mongolian lawmakers looked to foreign agencies for guidance in drafting the 1995 law and subsequent amendments. The International Labor Organization sent consultants to Mongolia to speak at workshops organized by the Union of Production and Service Cooperatives. Additionally, the International Cooperative Alliance hosted a conference for cooperative stakeholders in Mongolia, in coordination with the Union of Consumer Cooperatives. GTZ organized a series of training sessions and sponsored two trips to Germany for Mongolian Ministers and Members of Parliament

to study the German model of cooperative law. Working with GTZ, the cooperative unions in Mongolia collaborated to lobby the government to amend the 1995 Cooperative Law of Mongolia to bring it closer to the German model. The German Cooperative Societies Act dates to 1867, one of the first cooperative specific laws in the world, and is unique in its focus on consumers and credit cooperatives.

As part of their reform proposals, the cooperative unions advocated increasing the minimum number of members from three to nine to encourage the democratic management of cooperatives. The cooperative unions hoped this membership requirement would encourage multiple households to join their small businesses to form a single cooperative and that democratic management would evolve naturally.

Primary cooperatives in Mongolia were generally not involved in the decision-making process regarding developing and advocating for legislative reform.

Primary cooperatives in Mongolia were generally not involved in the decision-making process regarding developing and advocating for legislative reform. Cooperative support organizations and unions had undergone extensive training to reach these decisions, and believed that primary cooperatives did not yet understand internationally accepted principles of cooperation. The cooperative unions were presumed to represent the interests of individual cooperatives. However, it is not clear whether the unions received direct guidance regarding the needs and opinions of their members.

Outcome

The cooperative unions successfully lobbied the Ministers and Members of Parliament to write a new cooperative law in 1998 which included a nine member minimum. The 1998 law also called for an association of cooperatives to serve as an apex organization of the cooperative sector. The unions created the Mongolian Cooperative Training and Information Center (MCTIC) to serve as this apex organization. The cooperative union leaders now sit on the board of directors and rotate its leadership.

In recent years, the membership requirement under the cooperative law has again come under debate. MCTIC and its union representatives are now lobbying the Members of Parliament to lower the minimum member requirement, along with changes to the cooperative law's auditing regulations and tax rates. Some unions, such as the Union of Production and Service Cooperatives, want to lower the minimum member requirement to five to allow small cooperatives to operate as formal entities. Without the ability to register as formal businesses, some small cooperatives have been unable to obtain loans from commercial banks or receive payments from large businesses.

In 2005, Mongolian cooperative policymakers formed a working group to study proposals to reform the law. The working group included the Ministry of Agriculture, MCTIC, seven cooperative unions, MongolBank, GTZ, and the Asian Development Bank. The involvement of local constituencies, however, is still very limited.

Lessons Learned

Throughout the legal reform processes to date, there has been insufficient engagement of local grassroots cooperatives and business groups working in informal sectors. This lack of engagement may partially explain the shifting definitions of the minimum member requirement for cooperatives. Engaging grassroots stakeholders in the cooperative debate may result in more effective, responsive, and realistic legislation.

The current cooperative sector structure assumes that cooperative unions represent the breadth of the sector, though this may not be the case. Allowing for feedback from stakeholders at the local level, as well as national policymakers, will help prevent the abuse of systemic "loopholes" when decisions are made by select interest groups. Participation in the legal reform process by cooperative members will ensure that more appropriate legislation is adopted for the local context, creating a more enabling environment in which cooperative businesses may prosper over the long run.

CHF is working to help the Mongolian cooperative movement achieve a more participatory process for policy deliberations. The movement is working to generate effective feedback and communication mechanisms for local cooperatives to voice their needs and opinions in addition to opinions of union leaders. It is also working to allow the majority of smaller primary cooperatives to engage in public debate and build relationships with the larger, more influential primary cooperatives. ■

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Philippines: *Crafting Specific Policies for Housing Cooperatives*

By CHF International

Project Summary

In the Philippines, a complex and conflicting system for regulating housing construction and operation has dampened the development of housing cooperatives despite the passage of a general cooperative law that has promoted cooperative development in other sectors. The response of the cooperative movement in advocating for a series of amendments and clarifications of existing laws shows the value of incremental and context-specific approaches to legal reform efforts.

The Need for Change

In the first 14 years after the passage of the Cooperative Code and the establishment of the Cooperative Development Authority in 1990, the number of registered cooperatives increased by 700 percent to nearly 30,000 registered and operating cooperative organizations. But the vast majority of cooperatives operate in the agricultural sector. Philippine cooperatives in the service sector comprise under three percent of all registered cooperatives.

The Cooperative Code mentions housing as one of the activities that a service cooperative may engage in, and therefore there is no legal barrier to the formation of housing cooperatives. Indeed, the first housing cooperatives in the Philippines date to the 1970s, before the passage of the Cooperative Code. In the 1990s, an acute housing crisis led governmental housing agencies and foreign development organizations to increase investments in cooperative housing projects and other housing reforms.

Since the late 1990s, the promotion of cooperative housing projects has been a primary goal of the government and international development organizations. The complexity of the regulatory framework for forming and operating cooperative housing, however, was a key barrier to cooperative growth in the housing sector.

There are five national government offices with responsibilities for housing-related regulation, in addition to the regulatory responsibilities of many local agencies. To further complicate matters, each agency operates independently, requiring lengthy documentation before permits are issued and development activity can proceed.

Another key barrier to the growth of the cooperative housing sector was the lack of low-cost capital for development projects. In 2001, the state-owned Land Bank set up a loan fund of ten million dollars exclusively for cooperative housing development. But the Land Bank was slow to approve applications to cooperatives seeking assistance from the fund.

Reform Process

Beginning in 2003, a group of stakeholders within the local cooperative movement, including the National Confederation of Coop-

eratives, SLU-SVP Housing Cooperative, Tuy Market Vendors, Community Multi-Purpose Cooperative, and Basud Development Cooperative, created an informal coalition to identify and address policy barriers to cooperative housing development. The coalition held meetings, consultations, and policy forums to identify, discuss, and propose concrete solutions to reform government policies on cooperative housing.

The policy forums were particularly effective at promoting legal and regulatory changes. The success of these forums was in part due to the participation of key government agencies involved in housing, as well as representatives of selected legislatures. The policy forums developed a set of specific housing policy recommendations that were published in a leading newspaper and presented to government agencies and the Philippine Congress.

Outcome

One of the key recommendations that grew from the policy forums was to streamline and restructure the various document requirements for cooperative housing projects through the creation of a one-stop shop for all housing-related permits. Cooperative housing supporters also advocated for including cooperative housing projects within various exemptions and tax privileges granted to socialized or public housing.

The cooperative movement drafted and advocated for specific amendments to the national Cooperative Code and other housing legislation. A key suggestion was for the addition of a special housing section to the Cooperative Code. The proposed section defines housing cooperatives in two classifications depending on the ownership structure of the housing units. The first type of housing cooperative allows individual ownership of housing units and cooperative ownership only of common areas, while the second type maintains cooperative ownership of all housing units, including the common areas.

The changes in the Cooperative Code would also include giving preferential treatment to cooperatives seeking state funding and technical assistance for social housing. For example, housing cooperatives would be given preferential rights to acquire or lease idle government lands and buildings earmarked for housing development. Housing agencies and government financial institutions would also finance housing projects with interest rates and terms that are favorable to cooperatives.

Lessons Learned

In the Philippines, cooperative development organizations found that the many layers of overlapping legal and regulatory requirements posed a barrier to cooperative development. Rather than increase confusion and complexity with a separate cooperative housing law, the coalition developed a strategy of advocating for small amendments in existing statutes that clarify and simplify the regulatory burdens for cooperative housing projects.

The cooperative movement in the Philippines is continuing to work toward addressing the funding needs of cooperatives. Government and social activists are finding an increasing need for a cooperative housing sector for low-income people as deregulation and fiscal austerity programs are decreasing the supply of government resources for public housing projects. At the same time, low-income cooperative housing projects cannot develop and survive without some form of financial assistance. ■

For more information, please contact Rachel Blum, CHF International, at (301) 587-4700.

Dominican Republic: *Promoting the First Electric Cooperative Within an Existing Legal Framework*

By National Rural Electric Cooperative Association (NRECA)

Project Summary

In the Dominican Republic, both the government and consumers see electric cooperatives as a possible option for resolving commercial and quality-of-service issues of electric supply in rural and "peri-urban" areas. These problems have proven resistant to the typical unbundling/ capitalization/ regulated private sector model. The organization of the Cooperativa Eléctrica Fronteriza is a test case for promoting electric cooperatives within the context of existing national laws and regulations that were not tailored for electric cooperatives.

The Need for Change

Beginning in 1959, the government-owned Corporación Dominicana de Electricidad (CDE) was responsible for generation, transmission, and retail distribution of electricity. Although CDE was successful in extending electric service to almost 85 percent of the homes in the country, it was unable to establish a sustainable commercial environment.

Under CDE management, there were thousands of unregistered consumers, many registered consumers who had no meters, and metered consumers who rarely paid their power bills. As a consequence of this commercial failure, the financial situation of CDE, and of the Dominican government which relied on electric revenues for its budget, deteriorated significantly. By 1997, power cuts resulting from deferred maintenance and inadequate investments resulted in blackouts that hobbled the economy.

The government's first response to the crisis in the CDE was to restructure the electric sector along lines similar to other Latin American countries. The electric sector was unbundled into generation, transmission, and distribution business segments, with transactions between the segments regulated on an arms-length commercial basis. The generation business was subject to the competitive market, while the transmission business would operate as a government monopoly. In the distribution sector, three large distribution companies (discoms) were created and a controlling interest in each was sold to members of the private sector.

The introduction of private sector principles was expected to break the cycle of poor service, theft and non-payment, and to help reconstruct infrastructure, leading to improved service. But the planned improvements did not occur. The large discoms remain poorly situated with high levels of power theft and customers who refuse to pay their bills. Service quality has worsened due to the discoms' inability to pay the generators. In 2003, the private operator of two discoms sold its shares back to the government, effectively renationalizing the bulk of the distribution system.

Reform Process

After the renationalization of two private discoms in 2003, a group of consumers began working with the National Rural Electric Cooperative Association (NRECA) to take over the concession in a third service area located along the Haitian border. This move would establish the first electric cooperative in the Dominican Republic and would also be the first instance of consumers taking over a nominally electrified, but non-performing utility service area.

The organizers of Cooperativa Eléctrica Fronteriza had to negotiate existing cooperative and electric laws. Each framework posed barriers to the development of the cooperative: (1) no electricity cooperative had ever been registered under the general cooperative law; and (2) the electric law prohibits a newly formed cooperative from acquiring an existing concession without going through a competitive bidding process.

While the government supported efforts to establish this electric cooperative, it was not willing to commit to immediate legal restructuring, preferring instead to consider the Cooperativa Eléctrica Fronteriza an experiment. Thus, the organizers focused their efforts on membership recruitment and the establishment of the cooperative within existing laws, leaving the task of specific regulatory modifications for later efforts.

Cooperatives in the Dominican Republic are registered with and monitored by the Cooperative Development Institute (IDECOOP). IDECOOP is a government agency that deals with cooperatives of all types and has no particular expertise in any business sector. Although there was no specific legal barrier to developing an electric cooperative under the general cooperative law, electric cooperatives had not been previously authorized under the law and therefore the registration officials had to be sensitized to this new form of business.

The process of establishing a cooperative is heavily politicized. IDECOOP staff may be replaced from top to bottom whenever a new party assumes control of the government and all cooperative registrations must be personally approved by the President of the Republic.

While the idea of cooperative development has enjoyed the government's support, it was necessary to expend significant time and effort in educating IDECOOP staff and developing model by-laws for the electric cooperative. This effort then had to be repeated when the party in power changed in 2004 and the staff of the agency was transformed. Fortunately, the new government supported the cooperative concept. In September 2005, two years after initial organizing meetings, the Cooperativa Eléctrica Fronteriza obtained its organizational charter.

A key element in the successful organization of the Cooperativa Eléctrica Fronteriza was an alliance with the successful savings and loan cooperative movement in the Dominican Republic. The Cooperativa Central, a large savings and loan cooperative located in the town of the proposed Cooperativa Eléctrica Fronteriza, actively supported the organization of the electric cooperative, allowing itself to be identified with the new cooperative in membership drives. Once organized, the Cooperativa Eléc-

While the government supported efforts to establish this electric cooperative, it was not willing to commit to immediate legal restructuring, preferring instead to consider the Cooperativa Eléctrica Fronteriza an experiment.

trica Fronteriza benefited from the participation of many experienced Cooperativa Central employees on its board of directors.

Existing electric law has posed further challenges. It does not allow a newly formed cooperative to acquire a concession as an electric service provider. While the law allowed for the abandonment of a concession, the regulator is required to competitively bid the territory among organizations, pre-qualified based on financial solvency and technical experience, to operate the concession. The existing power system within the Cooperativa Eléctrica Fronteriza's territory was in shambles, and the cooperative struggled to develop financing mechanisms for the construction of facilities and an independent power supply.

Outcome

Although organizing the cooperative was a significant milestone, the task of obtaining an electric concession lies ahead. The strategy that has been developed to date is for the existing concessionaire to return the relevant portion of the concession and facilities to the government, which would subcontract the operation of the facilities to the cooperative for a period of three years. After meeting a series of goals for loss reduction, consumer service reliability, and bill collections, a final concession would be issued to the cooperative. The government hydroelectric facilities will supply power at cost, freeing the cooperative from the need to attempt to negotiate a power supply agreement on the open market.

The contract implementing this approach will involve many parties, including the existing concession holder, the electricity regulator, the government, Cooperativa Eléctrica Fronteriza, and NRECA as a technical assistance supplier to the cooperative. A separate agreement has been signed between the government and NRECA to reconstruct the area's electric facilities. In this reconstruction agreement, both parties agree to invest in a system reconstruction effort and transfer control of the facilities to the cooperative.

Lessons Learned

Cooperativa Eléctrica Fronteriza's story is one of meeting legal and regulatory challenges in creative and novel ways. Early in the process, it became clear that the new electric cooperative would have to demonstrate its capacity to organize, and ultimately operate the utility, before the legal framework would be amended to facilitate similar projects in the future. The cooperative movement accepted that any attempt to lobby for modifications of cooperative law or electric sector laws in advance of demonstrating the successful operation of the Cooperativa Eléctrica Fronteriza would have failed. Having accepted this point, the organizers were able to work with a supportive government to craft creative solutions to legal barriers, such as having the government take direct ownership of the utility and subsequently subcontract its operation to the cooperative.

Cooperativa Eléctrica Fronteriza's story is one of meeting legal and regulatory challenges in creative and novel ways.

The schedule might have been accelerated had the entire package… been formulated from the beginning rather than crafted in sequential fashion as individual hurdles were crossed.

A key lesson learned from the process of organizing the Cooperativa Eléctrica Fronteriza was the importance of associating with a successful cooperative movement in a related field. Without support from the Cooperativa Central, a respected, solvent, successful cooperative, the recruitment of membership and the navigation of registration procedures with the government would have been much more difficult.

Another lesson from the project was the importance of maintaining government support. Given the political nature of IDECOOP and the need for government support during the cooperative's construction and initial operation, it would not have been possible to arrive at the point of registration if two successive Dominican governments had not both supported this idea. The cooperative worked to give both governments credit for the project's success.

In retrospect, the schedule might have been accelerated had the entire package – organization and certification of the cooperative, negotiation of facility reconstruction agreements, and establishment of a mechanism for obtaining a franchise – been formulated from the beginning rather than crafted in sequential fashion as individual hurdles were crossed. ■

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South Africa: *Transforming the Legal Framework for Telecommunications Cooperatives*

By National Telecommunications Cooperative Association (NTCA)

Project Summary

As regulated businesses, telecommunications cooperatives are impacted by general cooperative laws, as well as by the sector-specific telecommunications regulatory framework. Both of these legal frameworks have been transformed in South Africa with the downfall of apartheid. The very different processes and interests affected in each law reform effort has led to disparate impacts on the potential development of telecommunications cooperatives in South Africa.

The Need for Change

For the duration of apartheid rule, South Africa's telecommunications sector was the exclusive domain of Telkom, a state-owned sector monopoly. Service was predominately confined to urban, wealthy, and white communities. Many rural communities, especially in the formerly autonomous "bantustan" regions created by apartheid, remained with little or no access to telecommunications services.

While South Africa has a long history of cooperative activity dating to the late 19th century, the bulk of activity, and institutional support, has centered on cooperatives designed to protect the ownership and economic status of the white minority. The Cooperatives Act of 1981, which governed this sector until late 2004, contained provisions only for agricultural cooperatives, special farmers cooperatives, and trading cooperatives. The registrar, located within the Department of Agriculture, had limited powers and was unable to accommodate or support a multi-sector approach. Social fragmentation and economic distress during the apartheid era prevented uniform application of the law, which reduced the effectiveness of the sector. Public support and funding for cooperatives was provided exclusively to white minority patrons.

Reform Process

After South Africa's political transformation, a consultative telecommunications sector reform process identified universal service to poor, underserved, and rural areas as a major policy goal. At the same time, "managed liberalization" of the telecommunication sector was adopted as a primary objective. Both of these policy goals were included in the Telecommunications Act of 1996.

Although the 1996 Act stated an intention to prioritize the delivery of service to rural and underserved areas, specific provisions in this regard were not enacted until 2001. During the deliberative process leading to the 2001 amendments, National Telecommunications Cooperative Association (NTCA) engaged the Department of Communications and the Universal Service Agency in a program of advocacy and education. NTCA made explicit recommendations regarding interconnection policy, ratemaking, establishment and application of universal service mechanisms, and financial

For the duration of apartheid rule, South Africa's telecommunications sector was the exclusive domain of Telkom, a state-owned sector monopoly.

and institutional support for telecommunications cooperatives.

To facilitate market entry, NTCA recommended that cooperatives be given exclusive rights to operate in defined geographic areas. To simplify and facilitate access to the telecommunications cooperative model, NTCA recommended that the Department of Communications serve as the lead agency in developing and assisting telecommunications cooperatives, and that regulatory burdens on telecommunications cooperatives be kept to an absolute minimum.

Parallel to the process of revising the nation's telecommunications laws, South Africa considered reforms to its general cooperative law. Impetus for reform in the cooperative sector came from the highest levels of the South African government and was singled out as a key element of a development strategy designed to strengthen small, medium, and micro-enterprises. This commitment resulted in an inclusive process of consultation and cooperative strategy development which included a number of prominent civil society and business groups.

Outcome

NTCA and local cooperative advocates made a strong case for the empowerment of a "bottom-up" telecommunications national strategy. Ultimately, however, policymakers chose to address the issue of rural and underserved areas by adopting a weakened version of NTCA's recommendations and model. Rather than targeting, empowering, and licensing cooperative systems in underserved areas, policymakers established Underserved Area Licenses (USALs), which directed operating subsidies to areas selected by the national government.

USAL selection criteria contained incentives that encouraged community groups and historically disadvantaged individuals to participate; but a dedicated telecommunications license for cooperatives was not created. Nor did the new legislation contain specific provisions designed to financially or institutionally support telecommunications cooperatives. Many issues regarding the right of cooperatives to access infrastructure, such as setting interconnection rates and unbundling local loops, were left to be interpreted and enforced by an independent regulator with limited resources. As a result, many of these crucial questions remain unanswered, creating regulatory uncertainty for cooperatives and other new market entrants.

The USAL mechanism has been largely ineffective in encouraging rural and underserved sector development. While 27 areas were originally identified for licenses, only a handful of operators have been licensed. Less than half of current license recipients have initiated even the most elemental business operations, such as re-selling mobile minutes of existing carriers. There is growing speculation that the window of opportunity might be closing on the USAL approach, and sector managers have privately questioned the government's continued commitment to this policy.

In August 2005, the deliberative process around the country's general cooperative law led to the passage of a new cooperative act. The new law makes allowances for a wider variety of cooperatives and conforms to accepted international cooperative practice, including the protection of cooperatives from undue interference from the state. Registration and support functions have been moved from the Department of Agriculture to the Department of Trade and Industry (DTI). At the time of this writing, a Cooperative Development Unit is being formed within the DTI.

Lessons Learned

The experiences of cooperatives in obtaining beneficial legislative concessions has been very different in the telecommunications re-

form process than in the process to reform the general cooperative law.

In the telecommunications sector, the legislative process was driven by well-resourced companies, including the privatizing legacy monopoly. Cooperative interests, though well organized, were not able to fully overcome this competing vision. The result was a top-down, technology-push subsidy program for rural and underserved areas that limited community-level engagement. This model has done little to stimulate investment and service delivery in disadvantaged areas.

Support and commitment from key political leaders, along with major civil society institutions, such as the Congress of South African Trade Unions, assisted greatly in efforts to implement reforms.

For the general cooperative law reform process, integration of cooperative development into a high-level economic strategy allowed the reform process to succeed with a minimal amount of controversy, delay, or resistance. Support and commitment from key political leaders, along with major civil society institutions, such as the Congress of South African Trade Unions, assisted greatly in efforts to implement reforms. While pockets of resistance to the reforms continue to exist in segments of the business community, they have no natural constituency in government – in contrast to the telecommunications reforms case in which the government continues to be a major shareholder in the legacy telecommunications monopoly. ■

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PROFILE

Uzbekistan: *Promoting Savings and Credit Unions Through Legal Reform*

By World Council of Credit Unions, Inc. (WOCCU)

Project Summary

In Uzbekistan, the implementation of a legal and regulatory enabling environment helped speed the development of financially sustainable credit unions.

The Need for Change

While under the Soviet Union's control, cooperatives in Uzbekistan were established as direct arms of the state, subject to central planning. These cooperatives were primarily agricultural and did not function as member-controlled institutions.

In Uzbekistan, as in other former Soviet countries, the banking system was owned and operated by the state, so there was no legal framework permitting the establishment of credit unions or other non-bank savings and credit institutions. Banks largely focused their efforts on larger commercial and industrial investments, excluding the majority of the population from accessing credit.

Today, the banking sector in Uzbekistan is largely privatized, but continues to be dominated by large banks that do not cater to the needs of the majority of the population. In most rural areas, there are no institutions that accept small deposit amounts or give small loans. The large banks continue to focus on large-scale commercial lending, and are not interested in taking the business or financial risks associated with maintaining branch offices in rural areas. The lack of institutions available to consumers has contributed to a low savings rate in Uzbekistan; Uzbekistan's domestic savings is approximately five percent of the gross domestic product, one of the lowest rates in the world.

Although the first credit unions in Uzbekistan were established in 1992, for ten years they lacked a legislative and regulatory framework. Perhaps as a result, 150 credit unions are in violation of accepted management standards and are at risk of failure.

In neighboring countries, development projects have focused efforts on developing micro-level savings and credit organizations without reforming the existing legal and regulatory framework. Although these efforts have shown that savings and repayment rates in communities can be high and have demonstrable developmental impacts, the projects have been limited to a small scale and lack an institutional mechanism to ensure financial sustainability over time.

Reform Process

A project by the World Council of Credit Unions, Inc. (WOOCU) and U.S. Agency for

International Development, was initiated to work with the Uzbekistan government to establish a legal and regulatory framework to support the growth and sustainability of the credit union sector. Under the project design, activities to develop new credit unions in Uzbekistan were planned only after the regulatory environment had been created.

The initial phase of the project concentrated on determining and recommending necessary national policy and legal reform, and engaging the Government of Uzbekistan and officials of the Central Bank in dialogue and training sessions. The activities determined the lack of any legal basis for registration and supervision to be the single largest factor precluding the sustainable development of savings and credit unions.

The initial phase of the project concentrated on determining and recommending necessary national policy and legal reform, and engaging the Government of Uzbekistan and officials of the Central Bank in dialogue and training sessions.

Following the needs assessment stage, the project began working with the government on regulatory design and capacity building. The project produced a number of regulatory and guidance documents, including:

- Draft legislation and by-laws for credit unions;
- Regulations/prudential operating standards for the Central Bank to use in licensing and supervising credit unions;
- Examination procedures and forms for supervising savings and credit unions; and
- Organizational and operational procedures for credit unions.

The policy blueprint also called for the creation of a Savings and Credit Union Development Organization, an apex organization of participating credit unions to represent the credit unions in partnerships with government and provide technical training, services, and management assistance to its members.

Outcome

In May 2002, a credit union law and regulation implementing the project's policy framework was enacted. By the end of 2002, seven new credit unions had been formed. Uzbekistan now has 20 registered credit unions that provide financial services to over 33,000 members and manage approximately $6,000,000 (U.S.) in member savings and total outstanding loans. Approximately two-thirds of the outstanding loans are for agriculture or microenterprise purposes. Savings growth rates are increasing by more than 50 percent a month in the country.

WOCCU is monitoring credit union financial ratios with PEARLS Financial Performance Monitoring System, which is similar to the standards used by United States financial institutions to assess safety and soundness. The project is now working to develop the Savings and Credit Union Development Organization to provide financial and technical support, including a deposit insurance fund to the credit union sector.

Lessons Learned

The project's experience in Uzbekistan displayed the value of focusing credit union development efforts on the legal and regulatory environment. Prior to the establishment of a proper legal and regulatory enabling environment, many credit unions entering the market did not operate with sufficient safety and soundness measures to ensure the protection of savings deposits with a productive earning asset structure. Once a proper regulatory environment had been established in Uzbekistan, the development of financially sustainable credit unions proceeded at a swift pace.

Based on the experiences in Uzbekistan, WOOCU has endorsed the following general principles of legal and enabling environment reform:

- Credit unions should be treated as regulated businesses;
- Government should lead the development effort by creating an enforcement/regulatory agency that is internally supported by the credit unions and the Central Bank (this creates a system similar to the United States National Credit Union Agency, which is independent of the credit unions and the government); and
- An incentive system should be built into the regulatory agency in order to enforce regulations and implement sanctions, overseen by an independent authority or agency. ■

For more information, please contact Catherine Ford, WOCCU, at (202) 638-0205.

Today, there is a new consensus among cooperative movements and development practitioners that rejects separate standards for laws for cooperatives in developing countries and strongly endorses the autonomy of all cooperatives from government control.

Appendix A

A Short History of Cooperative Law and Regulation Reform in Developing Countries

Sean Flynn, Esq.

In contrast to the bottom-up evolution of cooperatives in Europe and North America, where cooperative laws generally followed and recognized the initial development of a cooperative sector, colonial administrators in many developing countries sought to promote cooperatives from the top-down. Cooperative law in many countries, beginning in India at the start of the 20th century and spreading to countries of varied colonial and ideological backgrounds, created a government bureaucracy to guide and develop, rather than merely grant legal recognition to a co-operative sector. The promotion of cooperatives was, in turn, often linked to colonial development projects; cooperative laws were introduced "as a means to increase the production and quality of crops meant for export, to drag the indigenous population into the monetary economy which would lead to easier taxation and to introduce a system of politically controlled economic activity."[1]

Cooperative Development in India

The birth of the model of state dominated cooperatives can be traced to India's 1904 Cooperative Credit Societies Act. That Act was loosely based on 19th century British Industrial and Provident Societies Acts, which set legal requirements for cooperative formation and provided for registration through a specialized government entity known as the Registrar of Friendly Societies.[2] The British registrar for cooperatives functioned much the same as the registrar for companies – recording the formation of cooperatives, receiving annual accounts and reports, and investigating abuses.[3] But the Indian role of the registrar went much further, serving as a promoter, regulator, and advisor to cooperatives.[4]

The goal of what became known as the "Classical British Indian" model of cooperative law was to involve the state directly in guiding the cooperative movement as a "friendly adviser."[5] The registrar was to offer advice, help craft by-laws, and teach cooperative principles to the develop-

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1 Hans-H. Münkner & A. Shah, Int'l Labour Office, Creating a Favourable Climate and Conditions for Cooperative Development in Africa, Working Paper 7 (1993); *see also* Hans-H. Münkner, *General Report, in* Comparative Study of the Relevant Law on Cooperative Societies and Other Self-help Organizations in Africa 26 (1986) (describing introduction of cooperatives "to fight against social problems such as dependence of farmers on merchants or money lenders, and to spread the value systems and norms of behaviour of the colonial master among the indigenous population (acculturation).").

2 Rita Rhodes, *Colonial Co-operatives through the eyes of their Cooperative Registrars, in* 100 Years Co-operative Credit Societies Act, India 1904, 228 (Hans-H. Münkner ed., 2005).

3 *Id.* at 229-30.

4 Madhav V. Madane, *A Century of Cooperative Legislation: From State Control to Autonomy to State Partnership, in* 100 Years Co-operative Credit Societies Act, India 1904, 55-57 (Hans-H. Münkner ed., 2005).

5 Hans-H. Münkner, *The Classical British Indian Pattern of Cooperation: From State-Sponsorship to State Control, in* 100 Years Co-operative Credit Societies Act, India 1904, 106-14 (2005).

ing societies, but lack the power to coerce and punish.[6] Over time, the role of the registrar was to diminish as the developing cooperatives achieved economic sustainability and the capacity for self-governance.

Daniel Hamilton, a member of the Imperial Legislative Committee that drafted the 1904 law, described the active role of the colonial state in cooperative development as linked to the broader colonial ambitions of the British government. "[N]ever forget," he explained, "it is to weld India into one and so enable her to take her rightful place in the world, that the British Government is here and the wedding hammer in the hand of the government is the Cooperative Movement."[7]

Contrary to the original intent of diminishing government role in cooperative development, subsequent legislative enactments responded to perceived weaknesses or slowed growth of the cooperative sector by increasing the registrar's powers.

Contrary to the original intent of diminishing government role in cooperative development, subsequent legislative enactments responded to perceived weaknesses or slowed growth of the cooperative sector by increasing the registrar's powers. The Bombay Cooperatives Societies Act of 1925, for example, authorized the government to participate in the cooperatives' share capital, thus inserting the state directly into the cooperative business.[8] The Madras Cooperative Societies Act of 1932 gave power to the registrar to supercede the managing committee of a cooperative at its discretion.[9]

The trend toward increasing state control of cooperatives continued after India gained its independence. In 1955, a government sponsored study observed that rural credit cooperatives were not meeting farmers' needs and proposed a new model for "[s]tate partnership in cooperatives at different levels."[10] Subsequent laws provided registrars with powers to dissolve cooperatives, order the amendment of by-laws, approve loans, prescribe maximum managing committee membership, appoint or remove management, and serve as the adjudicatory body for all disputes, including disputes involving staff of the registrar.[11]

Growth and Crisis of State-Dominated Legal Frameworks

In other countries, both within and outside of British colonial influence, similar patterns of increasing state roles in the control and management of cooperatives were followed. In British colonies, the "Classical British Indian" model of cooperative legislation was widely replicated.[12] In French colonies, cooperatives were commonly formed as parastatal organizations rather than indepen-

6 *Id.* at 113-14.
7 Quoted in Ake Eden, *Oriental Economic Thoughts and Cooperative Development on the Pre-Colonial Indian Subcontinent, in* 100 Years Co-operative Credit Societies Act, India 1904, 22 (Hans-H. Münkner ed., 2005).
8 Madhav V. Madane, *A Century of Cooperative Legislation: From State Control to Autonomy to State Partnership, in* 100 Years Co-operative Credit Societies Act, India 1904, 62 (Hans-H. Münkner ed., 2005).
9 *Id.* at 62.
10 *Id.* at 65.
11 *Id.* at 66-69.
12 Hans-H. Münkner & A. Shah, Int'l Labour Office, *Creating a Favourable Climate and Conditions for Cooperative Development in Africa*, 9-13 (1993); *cf.* Krishan Taimni, Int'l Labour Office, Creating a Favourable Climate and Conditions for Cooperative Development in Asia (1994) (discussing implementation of the Classical British Indian model in Asian countries).

The Rochdale Principles for Cooperative Enterprises

1. **Open membership.**

The cooperative allowed everyone to join and for the newest member to pay the same entrance fee as the oldest member.

2. **Democratic control** *(one person one vote)***.**

Voting was to be based on the Chartism principle of one person one vote, regardless of the number of shares controlled by each person.

3. **Distribution of surplus in proportion to trade.**

In order to reward loyalty and return the majority of profits to the consumer members, surplus was divided according to trade with the cooperative rather than ownership interests.

4. **Payment of limited interest on capital.**

By paying a set, rather than speculative, interest rate on capital invested, the Society was able to use the additional surplus to provide better wages and working conditions, and to further reward usage. Shares in the cooperative were maintained at par value, rather than decided in the market.

5. **Political and religious neutrality.**

The Rochdale Society added this principle in response to the experience of some politically motivated cooperatives which were frequently boycotted by consumer groups protesting their controversial stances.

6. **Cash trading.**

One of the major failures of previous cooperatives had been extending credit to members, which required raising prices to cover losses.

7. **Promoting education.**

After the registrar allowed cooperatives to set aside monies for education, this principle was added. Whereas, before, cooperatives had illegally set aside money for education.

The rules governing Rochdale Society practices later became known as the Rochdale Principles, which were used to form other consumer cooperatives around England and elsewhere.

dent businesses.[13] And in socialist or former Soviet countries, cooperatives were made arms of the party and state responsible for implementing central planning decrees.[14]

Similar to the history in India, many indigenous governments in the post-independence period amended their laws and regulations to increase the role of governments over cooperatives.[15] By the 1960s and 1970s, common elements of the legal and institutional frameworks in eastern block and post-colonial countries included:

- Cooperative departments with powers to appoint and remove cooperative management officials and to approve basic business decisions;
- Cooperative employees treated as employees of the state;
- Legal restrictions on cooperatives to access courts, make contracts, or assume debt without obtaining permission of the government;
- Restrictions of cooperatives to certain lines of business, often excluding them from profitable sectors, such as export agricultural markets;
- Restrictions on forming federations to provide necessary services, including insurance, education, and auditing assistance;
- Subsuming of cooperatives by formal political party structures; and
- Mandatory membership in cooperatives for farmers or other workers in certain sectors or residents of specific areas.

In addition to crippling cooperatives economically, heavy state restrictions on business practices led cooperatives in many countries to acquire the stigma of being a state-dominated enterprise. Membership enrollment and involvement in many cooperatives dwindled. State subsidies became increasingly necessary to sustain enterprises, stressing state budgets.

In the 1980s, structural adjustment programs dictated by the International Monetary Fund and the World Bank began targeting government expenditures generally, and expenditures on cooperatives in particular. In many countries, when subsidies were decreased or cut off, cooperative businesses failed.

The Development of Principles of Cooperation

The rapid spread of cooperative enterprise in Europe and North America in the mid to late 1800s has been credited in part to the formulation and dissemination of principles of cooperation by the British Rochdale Society of Equitable Pioneers and the German Raiffeisen savings and credit cooperative. The principles published by the Rochdale Society in the 1840s through the 1860s have been particularly influential.

The Rochdale Society was founded by 28 flannel weavers in 1844 as a consumer cooperative. The original members of the Rochdale Society each subscribed £1 to buy goods in bulk to be sold

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13 *Id.* at 10-11.

14 Int'l Labour Office, Coop. Branch, Creating a Favourable Climate and Conditions for Cooperative Development in Central and Eastern Europe, 17-18 (1996).

15 *See* John Joseph Ogola, *Structural Changes in Cooperative Movements and Consequences for Cooperative Legislation in Different Countries in Africa*, Background Paper No. 1, Int'l Labour Office Colloquium on Structural Changes in Cooperative Movements and Consequences for Cooperative Legislation in Different Regions of the World (Ashish Shah ed., 1993) ("[N]early all African governments, after independence, resorted to a series of legislative and administrative measures which have effectively put African Cooperatives under government control, and reduced them to a level where their directors and managers have less power than those possessed by managers of parastatals.").

ILO Recommendation 127 (1966), Part III. A. Legislation

10. All appropriate measures, including the consultation of existing cooperatives, should be taken:

    a. to detect and eliminate provisions contained in laws and regulations which may have the effect of unduly restricting the development of cooperatives through discrimination, for instance in regard to taxation or the allocation of licenses and quotas, or through failure to take account of the special character of cooperatives or of the particular rules of operation of cooperatives;

    b. to avoid the inclusion of such provisions in future laws and regulations;

    c. to adapt fiscal laws and regulations to the special conditions of cooperatives.

11. There should be laws or regulations specifically concerned with the establishment and functioning of cooperatives, and with the protection of their right to operate on not less than equal terms with other forms of enterprise. These laws or regulations should preferably be applicable to all categories of cooperatives.

12.

    1. Such laws and regulations should in any case include provisions on the following matters:

        a. a definition or description of a cooperative bringing out its essential characteristics, namely that it is an association of persons who have voluntarily joined together to achieve a common end through the formation of a democratically controlled organization, making equitable contributions to the capital required and accepting a fair share of the risks and benefits of the undertaking in which the members actively participate;

        b. a description of the objects of a cooperative, and procedures for its establishment and registration, the amendment of its statutes and its dissolution;

        c. the conditions of membership, such as the maximum amount of each share and, where appropriate, the proportion of the share due at the moment of subscription and the time allowed for full payment, as well as the rights and duties of members, which would be laid down in greater detail in the by-laws of cooperatives;

        d. methods of administration, management and internal audit and procedures for the establishment and functioning of competent organs;

        e. the protection of the name "cooperative";

        f. machinery for the external audit and guidance of cooperatives and for the enforcement of the laws and regulations.

    2. The procedures provided for in such laws or regulations, in particular the procedures for registration, should be as simple and practical as possible, so as not to hinder the creation and development of cooperatives.

13. Laws and regulations concerning cooperatives should authorise cooperatives to federate.

to members at no profit. As the Society developed, it increased its margins and sold goods at normal retail prices, with the profits shared among the members on a *pro rata* basis according to the amount spent on purchases during the year. The rules governing Rochdale Society practices later became known as the Rochdale Principles, which were used to form other consumer cooperatives around England and elsewhere.[16]

Variations on the Rochdale Principles were used by national and international cooperative movements around the world, including by the Patrons of Husbandry (the Grange) in the United States in 1876[17] and the International Cooperative Alliance (ICA) in 1937.[18] The initial cooperative development efforts of colonial governments were often based on the Rochdale Principles in form. But their efforts to cast the state as the official leader of the movement challenged the principle that cooperatives are subject to democratic control of their members.

In 1995, ICA adopted a new Statement on Cooperative Identity that applies equally to all cooperatives, and highlights the need to recognize all cooperatives as autonomous businesses, independent from governments.

In 1966, ICA distinguished between principles applicable to "fully developed" cooperatives and cooperatives at the "beginning of their development."[19] For fully developed cooperatives, ICA explained that "democracy in the management of cooperative organizations necessarily implies autonomy in the sense of independence of external control." But in the "newly-developing countries," ICA concluded that "people who are just beginning to learn cooperation are not always sufficiently well equipped by themselves to manage their societies successfully."[20] Thus, the report concluded that governments in developing countries may "insist" that "proper technical advice is being taken," including by "ask[ing] that its representatives shall sit on boards of management for a time."[21]

In the same year, the International Labour Organization (ILO) adopted Recommendation 127 concerning the role of cooperatives in the economic and social development of developing countries.[22] Although the Recommendation provides a positive set of principles for legal reform, the section on "Administrative Aid" endorsed imbuing cooperative supervisory authorities "for an initial period only," with the kinds of powers to appoint cooperative staff and "give guidance and advice" that were then being used to dominate cooperatives in many developing countries.

The problems faced by state-dominated cooperatives through the 1970s and 1980s prompted a reexamination of the state role in cooperative development.[23] In 1995, ICA adopted a new State-

16 David Thompson, *Cooperative Principles Then and Now*, 53 Cooperative Grocer (July-Aug. 1994), *available at* www.cooperativegrocer.coop/articles/index.php?id=158.

17 James R. Baarda, Cooperative Principles and Statutes: Legal Descriptions of Unique Enterprises, U. S. Dep't of Agric., Agric. Coop. Serv. Research Rep. No. 54 (1986).

18 *See* Int'l Co-op. Info. Ctr., Principles, *available at* www.wisc.edu/uwcc/icic/def-hist/gen-info/.

19 Int'l Coop. Info. Ctr., *Report of the ICA Commission on Co-operative Principles* (1966), *available at* www.wisc.edu/uwcc/icic/def-hist/gen-info/Report-of-the-ICA-Commission-on-Co-opera1/index.html.

20 *Id.* (explaining that "it must be recognised that, in co-operatives which are themselves at the beginning of their development, their democratic organs also are very probably underdeveloped and, likewise, the capacity of their members for carrying out democratic procedures efficiently and for submitting readily to democratic discipline.").

21 *Id.*

22 Int'l Labour Office, Recommendation 127: The Role of Cooperatives in the Economic and Social Development in Developing Countries (1996).

23 *See* Alfred Hanel, State-sponsored Cooperatives and Self-reliance: Some Aspects of the Reorganization of Officialized Cooperative Structures With Regard to Africa (1989); Hans-H. Münkner, *African Co-operatives and the State in the 1990s*, *in* Yearbook of Coop. Enter. (1992); Int'l Labour Office, The Relationship Between the State and Cooperatives in Cooperative Legislation: Report of a Colloquium Held at Geneva, 14-15 Dec. 1993 (1994); Sanjeev Chopra, Ctr. for Co-ops. & Rural Dev., Co-operatives: From Controls to a Regulatory Framework: Policies for the SAARC Region (Book World 1999).

ICA Statement on Cooperative Identity (1996)

DEFINITION: *A co-operative is an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise.*

VALUES: *Co-operatives are based on the values of self-help, self-responsibility, democracy, equality, equity and solidarity. In the tradition of their founders, co-operative members believe in the ethical values of honesty, openness, social responsibility and caring for others.*

PRINCIPLES: *The co-operative principles are guidelines by which co-operatives put their values into practice.*

1. **Voluntary and Open Membership**: Co-operatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.

2. **Democratic Member Control**: Co-operatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary co-operatives members have equal voting rights (one member, one vote), and co-operatives at other levels are also organised in a democratic manner.

3. **Member Economic Participation**: Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of that capital is usually the common property of the co-operative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing their co-operative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the co-operative; and supporting other activities approved by the membership.

4. **Autonomy and Independence**: Co-operatives are autonomous, self-help organisations controlled by their members. If they enter into agreements with other organisations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy.

5. **Education, Training, and Information**: Co-operatives provide education and training for their members, elected representatives, managers and employees so they can contribute effectively to the development of their co-operatives. They inform the general public—particularly young people and opinion leaders—about the nature and benefits of co-operation.

6. **Co-operation Among Co-operatives**: Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional and international structures.

7. **Concern for Community**: Co-operatives work for the sustainable development of their communities through policies approved by their members.

ment on Cooperative Identity that applies equally to all cooperatives, and highlights the need to recognize all cooperatives as autonomous businesses, independent from governments.[24] Soon thereafter the ILO initiated a multi-year process to reconsider Recommendation 127, resulting in the adoption of Recommendation 193 in 2002. Recommendation 193 eliminates the previous endorsement of administrative intervention in cooperative affairs and adopts ICA's Statement on Cooperative Identity as applying to all cooperatives.[25]

Today, there is a new consensus among cooperative movements and development practitioners that rejects separate standards for laws for cooperatives in developing countries and strongly endorses the autonomy of all cooperatives from government control.[26] CLARITY evolves out of this new consensus and aims to push its ideals into implementation.

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24 Int'l Coop. Alliance, Statement on Cooperative Identity (1996).

25 Int'l Labour Office, Recommendation 193: Recommendation Concerning the Promotion of Cooperatives (2002).

26 *See* Int'l Coop. Alliance, Co-operative Values in a Changing World (1992) (recognizing that in many developing countries "there have been problems in establishing the correct relationship with the State in order to operate effectively as a co-operative."); United Nations: Status and Role of Cooperatives in the Light of New Economic and Social Trends, Report of the Secretary-General, A/54/57 (Dec. 23, 1998).

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