Applying the CLARITY Principles to the Nicaraguan Cooperative Law

Workshop Report

Managua, Nicaragua

OCDC
US Overseas Cooperative Development Council

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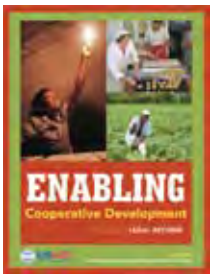
The Cooperative Law and Regulation Initiative

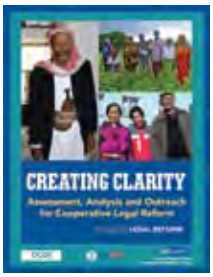
OTHER PUBLICATIONS IN THIS SERIES:

Enabling Cooperative Development: Principles for Legal Reform, Volume 1, 2006



The first report is the product of workshops conducted and research studies performed in different parts of the world over the course of the first year of the CLARITY project. Through this research intiative, CLARITY stakeholders jointly developed a set of nine core principles for cooperative law reform, which are the principles driving the report. The project also produced analytical rubrics for assessing enabling legal environments, along with project profiles describing ongoing legal reform efforts around the world (available in Adobe Acrobat format at the CLARITY website www.clarity.coop).

Creating CLARITY: Assessment, Analysis and Outreach for Cooperative Legal Reform, Volume 2, 2009



The second report summarizes the lessons learned and tools developed by cooperative development organizations in implementing CLARITY projects in conjunction with local partners, highlighting projects conducted in Mongolia, Nicaragua, Mozambique and Yemen. More specifically, it describes key lessons and tools for: (1) assessing the cooperative environment; (2) using CLARITY Principles in legal analysis; and (3) designing CLARITY advocacy and lobbying activities (available in Adobe Acrobat format at the CLARITY website www.clarity.coop).

Note:

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Downloadable copies of this publication, an annotated bibliography and links to research materials and organizations helping to create enabling legal environments for cooperative development are available at the CLARITY website www.clarity.coop.

CLARIFICATION

The opinions expressed herein are those of the authors and do not necessarily reflect any official position or view of Nicaragua's National Council of Cooperatives (CONACOOP) or National Institute for the Promotion of Cooperatives (INFOCOOP).

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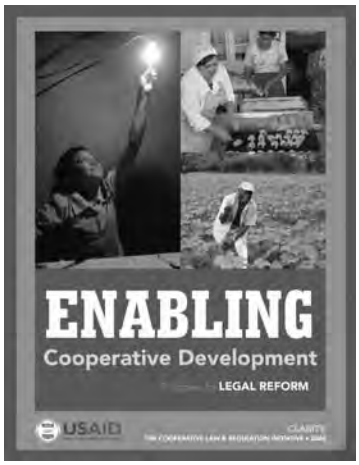
The CLARITY Project is designed to help cooperative movements understand, analyze and evaluate their legislative and regulatory environments so they can bring about change that creates an enabling legal environment for sound cooperative development.

PREFACE

The Cooperative Law and Regulation Initiative (CLARITY)

The Cooperative Law and Regulation Initiative (CLARITY) is an initiative of eight cooperative development organizations (CDOs) that are members of the U. S. Overseas Cooperative Development Council (OCDC) and is sponsored by the United States Agency for International Development (USAID).

The founders of CLARITY provide tools and technical assistance to local cooperatives in developing countries around the world. CLARITY emerged as a response to the shared experiences of international cooperative development organizations in countries where legal systems restricted efficient and effective cooperative development.



Available at www.clarity.coop

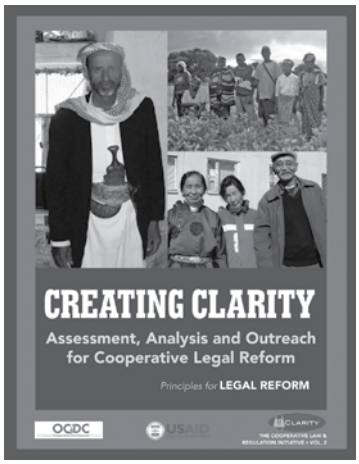
The CLARITY Project is designed to help cooperative movements understand, analyze and evaluate their legislative and regulatory environments so they can bring about change that creates an enabling legal environment for sound cooperative development. The project started as a recognition of the role of laws and regulations in creating a framework for successful cooperative business enterprises. The goal is to develop and promote sound principles of legal and regulatory reform that promote cooperative development.

In the first phase of the CLARITY project, the cooperative development organizations (CDOs) took part in a series of workshops, meetings and discussions to document their experiences, strengthen legal systems and establish guidelines for positive reform. This collaboration produced the first CLARITY report entitled *Enabling Cooperative Development: Principles for Legal Reform*, which contains an extensive bibliography on cooperative laws and regulations, analytical documents and miscellaneous information on enabling legal provisions for cooperative development. The report describes the historical policies and ideological movements leading to the current state of legislation in many developing countries, and establishes a set of guiding principles for cooperative legal reform.

The CLARITY Principles are a discretionary tool or instrument designed to be used as a guide. The decision and the course to take are up to each user. Since actual conditions will vary from country to country, there are no absolute right answers. CLARITY simply offers analytical tools and perspectives from an international point of view.

In the second phase of the CLARITY project, the CDOs facilitated a series of workshops and meetings during which the CLARITY Principles were put into practice in conjunction with the cooperative leadership in developing countries such as Mongolia, Nicaragua, Yemen and Mozambique. To that affect, they used the first CLARITY report as a training tool for cooperative leaders, government of-

ficials and other partners developed new tools and documented their experiences and the lessons learned.



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The groups analyzed and proposed changes to legislation hindering cooperative development; inspiring the second report *Creating CLARITY: Assessment, Analysis and Outreach for Cooperative Legal Reform*, which describes the experience of using the CLARITY Principles to study the legal environment in different countries. The lessons drawn from the CLARITY project in Nicaragua are the main focus of this report.

The report follows the order of the workshop *Applying the CLARITY Principles to the Nicaragun Cooperative Law* which took place in August 2008 in Montelimar, in Managua Department. The first section is an introduction to the initiative and the cooperative environment in Nicaragua. Sections two, three and four present snapshots of the Nicaraugan Cooperative Law and regulation, summaries of the 9 CLARITY Principles and an important tool referred to as the CLARITY Scorecard. The following sections focus on four main issues emerging from the CLARITY analysis of the Nicaraguan Cooperative Law:

- The formation and registration of cooperatives, including regulatory functions, training requirements and capital accounts;
- The governance and structure of cooperatives, including considerations such as absolute majority voting, access to information and discretionary authority over spending and investment;
- The relationship between the government and cooperatives or, in other words, an examination of government oversight mechanisms established by law, the rationale for, benefits of and problems with this oversight system and dispute resolution mechanisms; and
- The relationship among the Instituto Nicaragüense de Fomento Cooperativo (INFOCOOP) [the National Institute for the Promotion of Cooperatives], the Consejo Nacional de Cooperativas de Nicaragua (CONACOOP) [the National Council of Cooperatives] and Nicaraguan cooperatives, including an examination of ambiguities with respect to the obligations, responsibilities and functions of government agencies.

The last section of the report discusses the workshop's findings and outcomes and examines possible next steps for future action.

The report presents new tools and lessons learned in applying the CLARITY Principles and concepts. The CLARITY experience in training cooperative leaders and regulators in Nicaragua illustrates the flexibility and strength of the CLARITY concept and confirms that CLARITY works.

The lessons and tools presented in this report demonstrate the utility of the CLARITY approach and how other national groups of cooperatives can use CLARITY to better understand and analyze the existing environment and help create an enabling legal environment for national and international cooperative development.

"By applying this methodology, we can create an enabling regulatory framework for cooperative development in Nicaragua through an in-depth study of the law and its regulation, comparing their provisions to the CLARITY Principles and establishing how to incorporate these principles into the law."

- A CLARITY Nicaragua Workshop Participant

The goal of the workshop was to provide Nicaragua's cooperative movement with a set of tools to analyze the cooperative law and regulation and to start a process that identifies recommendations and necessary changes in current cooperative legislation….

WORKSHOP REPORT - APPLYING THE CLARITY PRINCIPLES TO THE NICARAGUAN COOPERATIVE LAW

Introduction

The idea of conducting a workshop in the Republic of Nicaragua on its General Law on Cooperatives and regulation for this law emerged from a project created by several U.S.-based international cooperative development organizations, including the World Council of Credit Unions (WOCCU), the Americas Association of Cooperative/Mutual Insurance Societies (AAC/MIS) and the National Cooperative Business Association (NCBA), and sponsored by the United States Agency for International Development (USAID).

The Cooperative Law and Regulation Initiative, or CLARITY, was created by eight member organizations of the Overseas Cooperative Development Council (OCDC) with the goal of developing a set of principles and analytical tools for evaluating cooperative laws and regulations.

The CLARITY Principles are a set of analytical principles for cooperative law reform designed to promote cooperative development, embodying the values of cooperative organization espoused by Rochale, who founded the Rochdale Society of Equitable Pioneers in Rochdale, England, in 1844.

As illustrated by Rochdale and later by different legal experts, a cooperative is a joint venture that is based on the principles of autonomy, independence, democracy, self-help and member equality - designed to meet the economic needs and serve the interests of its members and of a country's social sectors, regardless of cultural differences.

Workshop Participants: Representatives of Cooperatives on the Boards of INFOCOOP and CONACOOP

The workshop was targeted at board members of the Instituto Nicaragüense de Fomento Cooperativo (INFOCOOP) [National Institute for the Promotion of Cooperatives] and the Consejo Nacional de Cooperativas de Nicaragua (CONACOOP) [National Council of Cooperatives] representing the country's different cooperative sectors, addressing the provisions of Law No. 499 of 2005 (the General Law on Cooperatives) and related regulation. The law specifically creates INFOCOOP as the regulatory agency and CONACOOP as the agency representing and promoting the interests of Nicaraguan cooperatives.

INFOCOOP is a legal entity with administrative autonomy. Its main function is to make national policy for the protection, promotion and advancement of cooperatives. The law spells out its duties and functions in framing and implementing national policy on cooperatives. In addition to promoting the creation of new cooperatives, it provides training for current or prospective cooperative members. INFOCOOP is the agency in charge of approving and certifying the organization and operation of new cooperatives in accordance with the legal requirements for their formation and organization for purposes of their registration in the National Register of Cooperatives.

CONACOOP, which is also a legal entity, is an organization with broad functions - consultative, assessment, and advisory agency responsible for the development and presentation of promotional, advocacy, education, investment and development proposals, policies and programs for the formation of cooperatives designed to strengthen the cooperative movement.

CONACOOP appoints representatives of the cooperative movement to sit on the INFOCOOP Board. Its functions include approving its own internal regulations, appointing and, where applicable, removing INFOCOOP Board members representing different cooperative sectors.

Obviously, these are two different entities with independent legal standing and functions designed to improve relations and forge closer ties between different cooperative sectors and the integration of different agencies to help advance the cooperative movement. It is important to note, that under the previous cooperative law of 1971, no such entities existed. At the time, cooperatives were regulated by the Dirección General de Cooperativas (DIGECOOP) (the General Bureau of Cooperatives), which was actually a facilitating office for the cooperative movement within the Ministry of Labor.

INFOCOOP's Board consists of four members of the Executive Branch (cabinet ministers) and five members from the cooperative movement representing the country's different cooperative sectors. Thus, CONACOOP representatives of the cooperative movement in INFOCOOP clearly have a majority on its Board, as prescribed by the General Law on Cooperatives and its regulation, should give CONACOOP a clear advantage in protecting and promoting cooperative development in Nicaragua.

Another innovation in the new law and regulations is the presence of cooperative representatives in both INFOCOOP and CONACOOP and on INFOCOOP's Board, which benefits the cooperative movement, enabling them to use their membership on its Board to address the different needs of cooperatives.

Workshop Objectives

The goal of the workshop was to provide Nicaragua's cooperative movement with a set of tools to analyze the country's cooperative law and regulation and to start the process of identifying recommendations and necessary changes in the current cooperative legislation. The workshop did not aim to advocate any model law or regulation, but merely a process for reforming and tailoring cooperative legislation to the specific conditions and needs in each country.

The CLARITY Principles are used to examine legislation and regulation to ascertain whether they adequately protect and promote an enabling environment for cooperative development.

The workshop was preceded by studies, investigations and assessments of international cooperative law based on the collective experiences of different organizations and their field staff in more than 70 countries around the globe.

CLARITY's purpose in conducting the workshop was to provide information on how to increase cooperative participation in the local economy and promote local economic development. The idea is to create an enabling legal environment allowing cooperatives to grow and prosper and become an essential part of the local economy. Likewise, to furnish cooperatives with a legal framework for analyzing their governing law in a specific context to ascertain whether or not it works to their advantage and pinpoint those areas of the law which do in fact or are liable to hamper their development.

Another goal of the workshop was to spark a discussion by the participants, using the CLARITY Principles to examine the law and look for solutions for supporting and strengthening cooperatives and their contribution to the economy.

By establishing an enabling legal environment, there is an opportunity to highlight and review certain areas in which the law could be improved and to bring political pressure to bear. To this end, CLARITY is used as a tool for identifying the strengths and weaknesses of the General Law on Cooperatives and its regulation. This same model has been used in many countries as a skill-building tool in protecting the rights and interests of cooperatives and, thus, their ability to grow and prosper.

Creating an enabling legal environment for cooperative development is a long process. This report offers cooperatives a tool to guide them through this process. The cooperatives themselves will need to decide which path to take. The answers must come from the cooperatives themselves, in each country. The aim of the workshop was to show how to use the CLARITY Principles to create new opportunities from a global perspective, grounded in national realities.

By resolving inconsistencies of cooperative legislation and empowering cooperative movements to overcome existing challenges, cooperative law can be put back on the right track.

The CLARITY project started as an acknowledgement of the role played by laws and regulations in creating a framework for successful cooperative business enterprises.

SNAPSHOT OF THE GENERAL LAW ON COOPERATIVES AND REGULATION

The overall examination of the cooperative law looked at its main features and analyzed each of its chapters, highlighting general issues to be explored at greater length over the course of the workshop, including the formation and registration of cooperatives, the governance and structure of cooperatives, the relationship between the government and cooperatives, and the relationship between INFOCOOP, CONACOOP and cooperatives.

Comments by Workshop Participants

The question posed to participants was how to improve the law and revise regulation in the face of national political realities.

The workshop participants emphasized the need to bear in mind the current political climate in Nicaragua, recalling the serious problems delaying publication of the new law by three years. It was initially declared unconstitutional, which delayed its enactment by two years. Nicaragua's cooperative system is run inefficiently and ineffectively. The operation of cooperatives is subject to government intervention which, as experience has shown, only serves to hamper cooperative development. The participants felt it important to clearly define the function of INFOCOOP and CONACOOP, in view of the many special interests involved in the enactment of the cooperative law.

Nevertheless, the law does have its strengths, along with areas in need of improvement. There is historical precedent for the existence of an agency like INFOCOOP with specific functions, which do not include interference in matters relating to CONACOOP, but what is most important is that both entities play policy-making and advocacy roles.

The new law does not solve all the problems faced by cooperatives.

- For example, corporations are formed privately, without government involvement, are officially registered, and any disputes are settled by courts of law. While it is true that the very nature of the cooperative movement may require government support; however, this does not mean that there should be direct government intervention. The participants pointed out that, under the previous law, cooperatives were regulated by the Dirección General de Cooperativas (DIGECOOP) [the General Bureau of Cooperatives] attached to the Ministry of Labor, which operated as a regulatory and oversight agency.
- A number of participants commented that, in creating INFOCOOP, there should have been a study of its duties and functions, along with an institutional training program to ensure that the work performed by its staff helps advance the cooperative movement. There are issues which need to be considered and studied in advocating a reform of the cooperative law and regulation and determining the right timing for these reforms.
- One of the problems with the law has to do with the admittance of new members. According to the law and regulations, the admittance of new members requires approval by the General Assembly, which creates red tape, with applicants forced to wait from three to five months

for a decision, depending on the length of the waiting list, which can include anywhere from 10 to 15 membership applications. The participants felt that there should be a specific provision putting this matter into the hands of the Board of Directors. The General Assembly of the cooperative in question should reserve the right to approve or reject new members after the Board has made its decision and explain its reasons for rejecting a particular member.

- Moreover, according to the law, the election of new members of the Board of Directors requires a 70% quorum at the General Assembly, which is really very complicated, causing problems and requiring a temporary "fix" by INFOCOOP, because such a quorum requirement is oftentimes unattainable. Moreover, many Boards of Directors do not have the support of the membership.

- The integration of cooperatives is another issue. There is talk of interaction between cooperatives, but this is not really true. This area of the law needs work. As currently framed, provisions addressing the issue of integration say only that a cooperative may join a union and may trade or enter into contracts with other cooperatives. Furthermore, the law allows for partnership arrangements, which means that two cooperatives, whether or not members of a union, can trade services or provide mutual assistance. The law should be very clear in this respect.

- Another problem is that "the law is unfavorable to the cooperative sector." Cooperatives are viewed simply as a social movement while, in fact, they are also an economic movement -- mobilizing 60% of the local population, and operating in different sectors with different forms of development. The future is in their own hands and any proposals should come from the country's economic base.

Conclusion

The cooperative law needs to be analyzed from a national economic perspective. The law cannot merely spout theory and ignore public needs and the objectives of cooperatives. The discussion needs to focus on solutions that further cooperative goals and objectives. Likewise, the regulations issued under the cooperative law also need to be amended or reformed, and this needs to come from INFOCOOP and CONACOOP.

The participants discussed how to further cooperative development without violating the law. In their opinion, the only way is to find common ground and create linkages between the two agencies (INFOCOOP and CONACOOP) to help them reach a consensus around what their policy and implementation expectations are and build on this to identify areas of the law and regulations which need to be amended. Everyone must join forces and synchronize their efforts to work towards this goal.

"It is our responsibility to improve the law. Cooperatives are important for economic development."

- CLARITY Nicaragua Workshop Participant

The CLARITY Principles help to examine a legislative and regulatory text in order to ascertain whether it adequately protects and promotes an enabling environment for cooperative development.

THE CLARITY PRINCIPLES

The CLARITY Principles are a reflection of our basic values as cooperatives, the foundation on which we construct and through which we come to understand our reality. Like a "North Star," principles can steer and guide us because they are unchanging. Although the scope of the law and regulation is vast and, at times, takes us into uncharted territory, as long as we can find the North Star, we can be sure that we are moving in the right direction.

– Edward Potter (AAC/MIS)

Table 1: The 9 CLARITY Principles

The 9 CLARITY Principles
1. **Protect democratic member control:** Law must protect the democratic character of cooperatives, vesting control of the organization in their members.
2. **Protect autonomy and independence:** Cooperatives are private businesses. Law must protect the autonomy and independence of cooperatives from government, persons or entities other than members of the cooperative.
3. **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.
4. **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.
5. **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 the same manner as for other businesses.
6. **Promote access to markets:** Sector-specific regulations should provide reasonable accommodations and incentives, where appropriate, that enable cooperative forms of business to operate.
7. **Provide a coherent and efficient regulatory framework:** Regulatory framework should be simple, predictable and efficient, should minimize bureaucratic delay and obstructions to business operations, 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.
8. **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.
9. **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.

The CLARITY Principles are defined as an analytical tool designed to help cooperatives understand and evaluate their governing law. The nine core CLARITY Principles (see Table 1) come from the internal features of and external factors affecting cooperatives. CLARITY Principles involving internal features of cooperatives are inspired by the Rochdale principles of cooperation, many of which are included in the cooperative law and regulation. Examples include: autonomy and independence, democratic member control, an open, voluntary membership and member economic participation. CLARITY Principles referring to external factors include: equitable treatment, access to markets, the provision of a coherent and efficient regulatory framework and the protection of due process to avoid conflicts of interests.

The CLARITY project developed a set of principles for the creation of enabling legal environments for cooperatives through a series of meetings, workshops, teleconferences and evaluations of related project profiles. These principles are not intended to be used to create a model law. CLARITY does not endorse any particular model law, nor does it recommend using the same model law for all countries. Instead, the CLARITY Principles are tools designed for local cooperative movements to analyze their legal and regulatory environments and begin the process of making recommendations and plans for the introduction of needed reforms.

Principles for Enabling Legal and Regulatory Environments

Many current cooperative laws and regulations are the legacy of a legal framework commonly associated with centralized twentieth century systems around the world. In Asia, for example, there were colonial systems (such as the British, French, Dutch, Spanish etc). In French-speaking African countries "parastatal" systems were created. Cooperatives in Latin America and the former Soviet Union were controlled by the state and the party in power at a particular point in time. These systems undercut the role of cooperative members in the management of their own business affairs, who were replaced by government officials or leaders of the party in power at the time.

At one time, government officials and experts were convinced that cooperatives in developing countries needed the government to chart the course of their development, which justified sacrificing the principle of democratic control in favor of control by powerful government agencies with the authority to manage and control their business affairs.

Thus, government agencies and political parties made decisions as to the appointment and removal of their managers and officers and on basic business matters, dissolved cooperatives, mandated amendments of their bylaws, set membership requirements and served as adjudicatory bodies for the settlement of disputes.

Cooperatives did not have the same legal rights as other private enterprises, such as the right to sue or be sued, enter into contracts or do business in other areas without proper government authorization.

The New Consensus

The past 20 years have been a transition period, as countries around the world moved from centralized to decentralized systems, with open market economies, free trade, working democracies and globalized economies.

The real challenge is that there are still many obsolete laws which have never been amended, much less relaxed, to allow cooperatives to grow and flourish. This has prompted national cooperative movements and international cooperative development organizations to forge a new consensus around the need for laws and regulations in sync with present-day realities.

Table 2: Comparison of the Rochdale Principles, the CLARITY Principles and Nicaragua's General Law on Cooperatives

Rochdale Principles, updated by the International Cooperative Alliance	Core CLARITY Principles	Principles of Nicaragua's Cooperative Law	Applicability
Democratic member control	#1 Protect democratic member control	Democratic control – one member one vote	These principles refer to the INTERNAL affairs and issues of cooperatives.
Autonomy and independence	#2 Protect autonomy and independence	Respect for and protection of the autonomy and independence of cooperatives	
Open, voluntary membership	#3 Respect the voluntary nature of membership	Free admittance and voluntary withdrawal of cooperative members	
		Equal rights and opportunities for members of both sexes	
Member economic participation	#4 Require member economic participation		
	#5 Promote equitable treatment		These principles refer to EXTERNAL factors and issues affecting cooperatives.
	#6 Promote market access		
	#7 Provide a coherent and efficient regulatory framework		
	#8 Protect due process		
	#9 Avoid conflicts of interest		
Education, training and information	(implementing mechanism)	Cooperative education	These principles are necessary for the effective use and implementation of the CLARITY Principles and Rubrics.
Cooperación entre cooperativas	(implementing mechanism)	Promotion of cooperation among cooperatives	
Concern for the community	(implementing mechanism)	Member solidarity	

One of the threats which needs to be addressed has to do with excessive government control, which is invariably restrictive, regardless of the country's stage of development, because cooperatives should have and share the right to manage their business affairs with real autonomy.

The importance of autonomy cannot be overstated, since cooperatives are businesses independent of the government and, in no way should they be regarded as appendages of the machinery of government. They are businesses meeting the needs of a local community, providing low-cost services or servicing areas not served by the government or other private enterprises (such as rural areas for example).

It is imperative to eliminate obstacles to the creation and operation of cooperatives in different sectors of the economy. The barriers confronted by certain types of cooperative businesses across all economic sectors must be torn down. These cooperatives deserve the same rights and treatment as any other business enterprise.

Origin of the CLARITY Principles

The CLARITY Principles, some of which are already included in Nicaragua's General Law on Cooperatives, are grounded in the Rochdale principles of cooperation. The matrix presented in Table 2 compares and relates the Rochdale principles, the CLARITY Principles and the principles underlying Nicaragua's General Law on Cooperatives.

The first four Rochdale principles of cooperation pertain to the internal affairs of cooperatives, such as democratic member control, autonomy and independence, open, voluntary membership and member economic participation.

These four principles coincide with the CLARITY Principles (column 2) and certain provisions of Nicaragua's General Law on Cooperatives (column 3). The other Rochdale principles of cooperation listed in column 1 (cooperative education, cooperation among cooperatives and concern for community/solidarity) are implementing mechanisms for the CLARITY process.

CLARITY Principles 5 through 9 in the second column of the table, including equitable treatment, access to markets, a coherent and efficient regulatory framework, the protection of due process and the avoidance of conflicts of interest, pertain to external economic factors and political processes affecting cooperatives.

The Nine CLARITY Principles

The CLARITY Principles are organized around three general issues:

1. The need to protect and promote democratic member control and encourage membership in cooperatives;
2. Equitable treatment of cooperatives within the economy; and
3. The need to minimize regulations detrimental to cooperatives.

The first issue involves the need to protect and promote democratic member control. The first four CLARITY Principles maintain that legal and regulatory systems should protect:

- The democratic nature of cooperatives by giving their members control over the organization;
- The autonomy and independence of cooperatives, as private enterprises, from the government or from government officials or entities, allowing decisions to be made by their members;

- The voluntary nature of membership in cooperatives, allowing decisions on membership to be made by each cooperative and not mandated by law or by the government; and
- The responsibilities which come with membership in a cooperative, including obligations to contribute equitably to and democratically control the cooperative's capital.

The second issue involves the promotion of equitable treatment for cooperatives. Thus, the next two CLARITY Principles refer to relations between cooperatives and other businesses in the economy. Government is the guide of the cooperative movement, which restricts its inclusion in certain business areas through paternalistic laws or government mandates. Moreover, regulatory frameworks, including regulations designed to promote the privatization of industry, oftentimes exclude cooperatives through cumbersome regulatory requirements designed for large businesses or government-run monopolies. CLARITY Principles for the promotion of equitable treatment for cooperatives advocate that legal and regulatory systems should:

- Not put cooperatives at a disadvantage compared with other businesses in the same sector and should protect and show sensitivity to the inherent nature of cooperatives as mutual societies; and
- Where appropriate, provide reasonable accommodations and incentives for the operation of cooperative businesses in a given sector.

The third issue involves ways of minimizing disadvantages. CLARITY advocates a simple, predictable, efficient, expeditious regulatory framework with minimal bureaucratic delays and red tape impeding the conduct of business and avoiding conflicts with other laws. Cooperative businesses should be regulated by agencies with specialized know-how.

The last three CLARITY Principles refer to the institutional structure and operation of the regulatory framework. In many countries, the creation of a separate bureaucracy for the registration and supervision of cooperatives has produced major inefficiencies and procedural inequities which other private businesses do not have to deal with. For example, many cooperatives must get approval from the office of the register of cooperatives in order to do business or are subject to a statutory waiting period, while other businesses have approval to do business unless or until the corporate register's office decides otherwise. Cooperatives are oftentimes registered, governed and subject to dispute resolution proceedings by the same regulatory agency, creating concerns over conflicts of interest among its different functions.

To minimize detrimental regulations liable to impede cooperative development and afford cooperatives equitable treatment compared with that of other businesses, the CLARITY Principles advocate that legal and regulatory systems should:

- Be simple, predictable and efficient, with minimal bureaucratic delays and red tape impeding the conduct of business, and should avoid conflicts and duplication with other laws;
- Accord due process guarantees, including applicable rights to hearings, representation and impartial appeals of government decisions involving cooperatives or their members; and
- Handle the government's role in law enforcement, dispute resolution, licensing and advocacy in a way that avoids duplication and undue influence and significantly reduces any conflicts of interest.

CLARITY Analytical Rubrics

CLARITY developed a series of analytical "rubrics" for the examination of legal and regulatory environments to illustrate how the CLARITY Principles can be used by cooperative movements and

other public policy-makers. These rubrics focus on common elements of laws and practices relating specifically to cooperatives.

Each rubric shows how and why one or more of the core CLARITY Principles can be applied to a critical area of a legal/regulatory framework for cooperatives. Included in each rubric are recommended practices for successful implementation of the CLARITY Principles (CLARITY Indicators, see Table 3). For comparison purposes, they provide examples of practices fostering an enabling and disabling legal environment for cooperatives drawn from current international law. These rubrics are not model laws, but are designed to showcase certain language or provisions which should be enacted by each country. The rubrics are designed to show how to use the CLARITY Principles.

Table 3: Example of an Analytical Rubric

Core Principles	Implementation of the Core Principles	Underlying Rationale
Describe different target areas of the cooperative law Define the basic goals furthered by the CLARITY Initiative with regard to cooperatives	Establish specific features of the law contributing to the achievement of the basic goals	Series of brief comments on compliance with the core principles
Formation and Registration of a Cooperative		
Provide coherent and efficient regulatory framework	Time limits/ default registration periods. To minimize possibilities for periods of long 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 application 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 of 1968*: Law imposes a six-month probationary period for cooperatives registration that often stretches for two or more years.		

"The CLARITY Principles are based on the need to strengthen the business activities of cooperatives in Nicaragua and around the world. We need to improve our law and regulation for the democratization of cooperative movements and organizations."

- A CLARITY Nicaragua Workshop Participant

The CLARITY Scorecard is a tool for examining the degree to which a country's cooperative law adheres to the CLARITY Principles in order to ascertain the extent to which the law enables or hinders cooperative development.

THE CLARITY SCORECARD

The CLARITY Scorecard is a tool for examining the degree to which a country's cooperative law adheres to the CLARITY Principles in order to have some idea of the extent to which the law enables or hinders cooperative development.

This analysis uses two types of materials: (a) the Scorecard (see Table 4); and (b) examples of laws, rules and regulations.

The Scorecard consists of a matrix with the 9 CLARITY Principles listed in columns running across the top and the 12 critical areas of the legal/regulatory framework for cooperatives on the left hand side, presenting indicators of practices (CLARITY Indicators) promoting successful implementation of the CLARITY Principles.

The figures recorded in the different cells of the completed matrix indicate the degree of compliance with the CLARITY Principles as established by a set of 30 questions relating the CLARITY Principles to indicators of practices promoting their successful implementation.

Each question is awarded points on a scale from 0 to 4 in which:

0 = Does not comply with the CLARITY Principle or contribute to the achievement of the underlying goal;

1 = Weak compliance with the CLARITY Principle and/or weak contribution to the achievement of the underlying goal;

2 = Partial compliance with the CLARITY Principle and contribution to the achievement of the underlying goal;

3 = General compliance with the CLARITY Principle and contribution to the achievement of the underlying goal; and

4 = Complete compliance with the CLARITY Principle and contribution to the achievement of the underlying goal.

A blank cell indicates that the law has no applicable references to the principle listed in that column of the matrix (in other words, there are no provisions in the law referring to that principle). This vacuum in the law with regard to a particular issue could be rather serious (requiring the inclusion of applicable provisions).

The last step is to add up the scores in the individual cells of the matrix, totaling the numerical values recorded under each column to obtain a total score for each core principle reflecting the extent to which a country's cooperative legislation contains enabling provisions for cooperatives embodying the CLARITY principles. The highest possible score is 120 points, representing the most enabling legal and regulatory environment for cooperative development, with a score of 0 representing the least enabling environment.

Table 4 is a sample blank CLARITY Scorecard (see Appendix II for a completed, scored version of the Scorecard).

Table 4: Sample CLARITY Scorecard
(see Appendix II for a completed, scored version)

CLARITY SCORECARD

CLARITY Principles	Protect democratic member control		Protect autonomy and independence			Respect voluntary membership
INDICATORS						
Questions	**a**	**b**	**a**	**b**	**c**	
1 - Formation and registration of a cooperative						
2 - Cooperatives Supervision						
3 - Legal status and rights						
4 - Membership						
5 - Member governance						
6 - Officers and Directors						
7 - Board of Directors						
8 - Capital accounts						
9 - Auditor						
10 - Dispute resolution						
11 - Dissolution/ amalgamation/merger						
12 - Apex organizations						
Actual Score						
Maximum Score						
Percentage	%		%			%

Maximum possible score Cooperative law indicators	120
Actual score Cooperative law indicators	
Percentage	

About the Scorecard: This Scorecard was made possible through the support provided by the U.S. Agency for International Development's Cooperative Development Program. The opinions expressed are those of the authors and do not necessarily reflect the views of the U. S. Agency for International Development.

SAMPLE

Require member economic participation	Promote equitable treatment		Promote access to markets	Provide coherent and efficient regulatory framework	Protect due process	Avoid conflicts of interest
	a	b				
%	%		%	%	%	%

The Scorecard was produced by the staff of the Cooperative League of the USA/National Cooperative Business Association, including Douglas Barcenas, Latin America Representative.

SAMPLE

How to Use the Scorecard

The first step is to compile and study a country's domestic laws and regulations governing co-operatives. It is recommended that the Scorecard Analysis be conducted with the help of a trained lawyer familiar with cooperative law. Next, it is important to familiarize yourself with each of the 30 CLARITY questions, related CLARITY Principles and corresponding explanations and examples of enabling and disabling legislation in other countries.

Table 5 contains examples of selected CLARITY Scorecard questions (see Appendix I for the complete set of CLARITY Scorecard questions).

Table 5: Sample CLARITY Scorecard Questions

CLARITY SCORECARD QUESTIONS				
Question	**CLARITY Principle and Explanation**	**Enabling and Disabling Examples**	**Score / Notes**	**Legal Reference**
1. Formation and Registration of Cooperatives			Score	Article
1a. Is there a time period set for the approval of registration applications (after which there is automatic approval)?	Principle #7: Efficient regulatory framework Explanation: the default for regulatory Inaction should be to approve the registration to minimize the impact of bureaucratic delay on cooperative formation.	Enabling: All applications shall be finally disposed of within 30 days or assumed to be granted. Disabling: Statutory 6-month approval period that in practice runs into years and prohibits operation until registration is formally approved.	1	Cooperative Law, Articles 23, 23a, 23b, 23c, 24, 27 2005 Regulations, Article 7
1b. Are registration requirements for cooperatives the same as for regular businesses?	Principle #5: Equitable treatment Explanation: How do requirements for starting a cooperative compare with requirements for starting a new business? Some groups may choose to register as an association or other type of business if it is easier and quicker than registering as a cooperative.	Enabling: Coops are required to file with similar requirements to corporation law. Disabling: There are many special requirements for formation of cooperatives that do not apply to other businesses.	1	Cooperative Law, Articles 146-150 and, in particular, Articles 145, 146b and 150e

The CLARITY questions are derived from the CLARITY Indicators (see Table 6 on the next page) showing how and why one or more core principles can be applied to a particular critical area of the legal/regulatory framework for cooperatives. The CLARITY Indicators are practices illustrating whether or not the CLARITY Principles are being successfully implemented. The CLARITY questions represent the vertical axis of the Scorecard matrix and the 12 critical areas of the legal/regulatory framework for cooperatives, with the related core CLARITY principle representing the horizontal axis.

The second step in this process is to review each provision of the cooperative law to identify the applicable core CLARITY principle or principles (there is a Scorecard Worksheet to help organize this information). Examples of questions raised by these principles include:

- Which legal provisions comply with the core principles?
- What are the effects of compliance with each of these principles and the achievement of their basic goals?
- Which legal provisions have no effect on the implementation of these principles and the achievement of their basic goals?
- Which regulations issued under the law do not comply with the core principles and what is the effect of their noncompliance on the achievement of CLARITY goals?

The third step is to analyze and answer each of the 30 CLARITY questions, assigning it a numerical value from 0 to 4 (see the previous description of the scoring scale) reflecting the degree of compliance with the related principle or principles. The scores recorded on this form are automatically transferred to the Scorecard. The scores in each corresponding cell of the Scorecard are totaled, column by column, to obtain a total score for each core principle or basic goal.

The maximum possible score is 120 points. However, as discussed below, this number is of less interest than the actual scores recorded in the cells of each separate set of matrixes and assigned to the corresponding CLARITY questions reflecting the existence of specific legal provisions and the achievement of basic CLARITY goals. Answering all the questions and completing the Scorecard should provide a good bird's-eye view of the strengths and weaknesses of the cooperative law in terms of its compliance with the core CLARITY Principles. This bird's-eye view is a good starting point for honing in on legal issues requiring further study and attention.

Scorecard Analysis

The cooperative development organizations (CDOs) hired an international legal expert and a Nicaraguan attorney to complete the Scorecard and based on the results, to conduct the Scorecard Analysis.

The analysis covered Nicaragua's entire cooperative law, generating an extensive report containing an explanation of the results of the Scorecard, an analysis of the issues, and recommendations for possible improvements to the law.

In short, the Scorecard Analysis put specific areas of the cooperative law under a microscope, generating enough detail and analytical data to enable the group to familiarize itself both with the issues and with possible solutions. The CDOs found that the combined perspective of an outside legal expert and local attorney made for an effective analysis of the country's cooperative law and a richer Scorecard Analysis. Table 7 contains a sample Scorecard Analysis.

Table 6: CLARITY Indicators

ENABLING PRINCIPLES OF COOPERATIV			
CLARITY PRINCIPLES	Protect democratic member control	Protect autonomy and independence	Respect voluntary membership
INDICATORS	**PRINCIPLES FOR COOPERATIVE LEGISLATION AND REGULATIONS**		
	REGULATORY FACTORS		
1 – Formation and registration of cooperatives		Avoid mandatory standard bylaws	
2 – Cooperative Supervision		Coordination of business regulatory functions	
3 – Legal status and rights		a) Liability/indemnification of officers and directors b) Legal personhood	
4 – Membership	Autonomy in determining size and qualifications of membership	Ban on government membership	No compelled membership
5 – Member governance	a) Majority voting rule b) Records subject to inspection		
6 – Officers and directors		a) Avoid detailed definitions of management functions b) No state appointments of managers c) Autonomous financial management	
7 – Board of Directors	The Board of Directors should be elected by the members of the cooperative.	By-laws determine the size and composition of board	
8 – Capital accounts		Allow reserves and capital funds	
9 – Auditor	Member selection	Member selection	
10 – Dispute resolution			
11 - Dissolution/amalgamation			Procedures for member approval
12 – Apex organizations		Permissive autonomy	

About the Scorecard: This Scorecard was made possible through support provided by the U.S.Agency for International Development's Cooperative Development Program.The opinions expressed are those of its authors and do not necessarily reflect the views of the U.S. Agency for International Development.

/E DEVELOPMENT FOR LEGAL REFORM

	Require member economic participation	Promote equitable treatment	Promote access to markets	Provide coherent and efficient regulatory framework	Protect due process	Avoid conflicts of interest
PRINCIPLES FOR COOPERATIVE LEGISLATION AND REGULATIONS						
REGULATORY FACTORS						
		Register cooperatives in the same office as other businesses		Time limits / default registration periods		Streamline registrar's role
		Coordination of business regulatory functions				Separation of regulatory and promotion functions
		Legal personhood				
	Distribution according to patronage					
				Availability of independent tribunals and traditional forums	Availability of independent tribunals and traditional forums	Availability of independent tribunals and traditional forums
					Procedures for member approval	

The Scorecard was developed by the staff of the Cooperative League of the USA/National Cooperative Business Association, including Douglas Barcenas, NCBA's Latin American Representative.

Table 7: Scorecard Analysis

(A complete Scorecard Analysis for the General Law on Cooperatives is available at www.clarity.coop.)

SCORECARD ANALYSIS ISSUE ANALYZED

Formation and Registration

SCORECARD QUESTION
1A

IMPLEMENTING PRINCIPLE

To minimize the possibility of 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.

RELATED CORE PRINCIPLE

Provide coherent and efficient regulatory framework

SCORE: 1.0

DISCUSSION:

There is a lack of automatic acceptance if registration is not timely completed.

The law sets a time period for approval of applications for registration (Cooperative Law, Articles 23 and 24).

The law does not presume that the application is granted if it is not acted on within the established time period. It is silent on that matter. One cannot know what happens if the registrar does not act within the time period allowed. However, one can assume that it would be dangerous for any applicant to proceed on an assumption of acceptance because of the absence of a timely notice of rejection. This is particularly true because, as noted below, no time period is established by the law for notification of a non-correctible or final rejection.

The registration process takes too long and is subject to unjustified delays.

The law does not minimize the possibility of long periods of bureaucratic delay.

The time period for acting on an application for registration takes too long: 30 days for the registrar to decide on the application; 15 days for the registrar to notify the applicant of rejection that is correctible; 20 days for the judge to notify of his decision on an administrative appeal; and 10 days for the registrar who rendered the initial application to submit his report to his superiors (Cooperative Law, Articles 23d, 24 and 27).

There are no limits in the law on the time in which the registrar must notify an applicant of a rejection for reasons that are not correctible. There are no time limits in which the registrar's superior must render a decision on an appeal.

Registration may be delayed because of the condition that founding members must take a 40-hour training course on cooperatives prior to registration (Cooperative Law, Article 23a). Two questions come to mind regarding this requirement. First, does training about cooperatives fulfill a public purpose that would justify making it a registration requirement? In market economies, people are free to form whatever business, charitable or social organization they choose without the government taking steps to ensure their competency to do so. The market weeds out those who are unable to perform. Why is that not permitted here? Secondly, why can this requirement not be fulfilled and a certificate of completion presented to the registrar within a short time *after* the cooperative is registered?

As matters stand now, delays in cooperative formation may result from the government not providing an adequate schedule of course. The founding members will suffer the burden of not having courses available. If post-registration completion were allowed, the onus would be on the government to provide adequate course schedules to meet its desire for trained cooperative leadership, and registration would not be delayed.

Registration may also be delayed because of the requirement that the founding members of cooperatives include in their registration materials a feasibility study of the proposed cooperative (Cooperative Law, Article 23c). Delays due this requirement may result from the time needed to perform such a study or the unavailability of expert personnel or resources needed to do the job. This requirement also permits unintentional or, more ominously, purposeful bureaucratic delays because neither the law itself nor regulations specify the topics to be covered by the study or set any standards with regard to its content. Consequently, there is a wide latitude for the study to serve as a pretext for rejection of applications. Such rejection might considerably complicate and delay the application process because the absence of specifications as to topics and content means that there are no standards for appellate review, or only weak general standards of reasonableness. Furthermore, the requirements of such a study and its submission to the government as a condition for registration means that the judgment on viability of the cooperative is taken from the people who are forming it, who know the most about it, and who have the greatest interest in its success. The judgment on viability is given to a potentially politicized governmental agent who is likely to have less knowledge about the community to be served and other facts concerning the matter and less interest in the success of the cooperative endeavor. Registration may further be delayed because of the requirement that 25% of social capital be paid-in at the outset. (Law, Art. 23b). The law appears to allow the payment of share capital in kind; and the 25% requirement might be difficult or impossible to meet if a large portion of the cooperative's social capital is to be contributed in this form. In addition, there may be circumstances in which capital is scarce, a great deal of capital is not needed at the outset, and the business plan of the cooperative is to generate its member's capital contributions through surpluses over time. The question again arises as to whether, from the philosophical view of Nicaraguan culture, it is appropriate public policy to be concerned with whether economic entities, including cooperatives, are adequately capitalized, or whether this is a matter for the founders' judgment and determination by market forces through the success or failure of the business.

Registration Requires Too Much Information.

Finally, the law and regulations appear to require the submission of more completed acts, paperwork, and information than is needed for the registration and formation of a legal entity. (Law, Art. 23; R2005, Art. 7). Many of the mandatory submissions, including books of the general assembly, administrative counsel, and oversight board, and the registry of members inscriptions, appear to be necessary for governmental regulation and control but not for the orderly registration of cooperatives.

Table 8: The Underlying Purpose of Law-Making

The Underlying Purpose of Law-Making and How to Evaluate Legislation

We need to know the purpose of a piece of legislation in order to evaluate it or, in other words, to ascertain whether or not it meets its ultimate goal.

Examples of important purposes:

1. Achieve social goals: (i) help people organize and live together in harmony, as a community; and (ii) reflect social ethics. For example, many countries have laws requiring the separation of the Church and State, because they have a society with varying religious beliefs, and history has shown that people cannot peacefully coexist if the government intervenes in the religious affairs of different social groups.

2. Predict human behavior so that people can decide how they want to behave. For example, in our society, if someone steals from a supermarket, he (or she) goes to jail. Thus, each of us can choose how to behave because the result of our behavior is predictable.

3. Influence human behavior. This is the counterpart of points 1 and 2 above. Laws are passed to get people to do things, not to make things happen to people. For example, in the specific case of cooperatives, the law can force an executive to hold regular meetings, submit important matters to a vote by the cooperative's membership and disclose financial information to cooperative members. If such laws did not exist, executives would run cooperatives as they saw fit and not necessarily in the best interests of their members.

- Dr. William Wares, Esq.
Attorney and CLARITY Project Consultant

Benefits and Limitations of the Legal Scorecard Analysis

The CLARITY Scorecard Analysis is not meant to serve as a rigorous evaluation of the compliance of a nation's laws, rules and regulations with the CLARITY Principles. It is part of a subjective assessment process designed to identify those areas of the law warranting further review, with room for improvement, as well as those areas where the cooperative law is sound and deserves to be recognized as such.

The Scorecard Analysis is not refined enough to indicate whether a nation's cooperative laws are adequate or inadequate. It can, however, assess whether current legislation promotes the Rochdale ideals of self-help, self-reliance, democracy and equality. It is important to remember that different nations have different types of economies at different stages of development, along with what could be very different customs and cultures.

Given the different circumstances of each country, a particular government may consider laws embodying the CLARITY Principles and granting autonomy and freedom of action to cooperatives as unwise in the short term and, perhaps, even in the long run.

By the same token, in keeping with human nature, there is also always the possibility that governments or rulers will assert unjustified control over cooperatives to the detriment of their members, limiting their contribution to the nation's economic and social development.

Possible motives include the obsession of political leaders with power and control, the desires of elites to misappropriate corresponding profits, the entrenchment of bureaucracies, and the inability of a Congress or Parliament to change the law to reflect the nation's changing social and economic circumstances.

Input by Workshop Participants

The CLARITY Scorecard Analysis was based on two legal texts: (a) the *Ley General de Cooperativas* (Law No. 499) enacted on September 29, 2005 (Nicaragua's General Law on Cooperatives); and (b) Executive Order No. 91-2007 containing its Regulations, published in the Tuesday, September 11, 2007, edition of the Official Gazette.

The workshop participants discussed the question of how to use the CLARITY Principles in the specific context of Nicaragua.

They commented that cooperatives have always been businesses, though they have never been recognized as such, and talked about the need to advocate changes to the law to address productivity as well as economic issues.

Starting from the premise that government has a duty to safeguard the rights of its citizenry and, thus, provide and ensure health, educational and cultural services, the participants felt that the foundation of the cooperative model should help further other aspects of human development.

They also found that cooperatives help solve problems in their community, furthering the economic and social development of community members. Corporations are another matter entirely. Their goal is strictly to make a profit for their owners.

Alluding to the CLARITY Principles, the participants wanted a clarification of the insistence on the unvarying use of

the Spanish term "*Estado.*" According to its organizational structure, the "*Estado*" (in Nicaragua) is actually divided into four branches or powers (the Executive, the Judicial, the Legislative and the so-called Electoral power). There should be a distinction between the use of "*Estado*" and "*Gobierno*." In Spanish, the government (*gobierno)* is a temporary administrator for State functions (*Estado*). There is a similar distinction in American English between "the government" and the current administration.

There is a contradiction with respect to CLARITY Principles #5 (promote equitable treatment) and #6 (promote market access). On one hand, the principles says that regulations should not put cooperatives at a disadvantage compared with other sectors. On the other hand, it stipulates that corresponding regulations should provide accommodations and incentives for cooperatives.

The CONACOOP representatives felt that the role of government (the *Estado*) is important for setting limits on the management and control of cooperatives. Thus, certain regulations or formalities required by the General Law on Cooperatives and Regulations affecting the operation of cooperatives should be eliminated, while keeping those provisions benefiting cooperatives.

"**It is interesting to examine** the environment and use the CLARITY Scorecard to learn from other experiences in order to take stock of and evaluate any and all improvements made to date, step-by-step."

- A CLARITY Nicaragua Workshop Participant

Why are the formation and registration of cooperatives such important and timely issues?
Because they affect all cooperatives, they affect the very future of the cooperative sector, they affect opportunities for growth, and they affect opportunities for expansion into new areas.

FIRST DISCUSSION TOPIC: FORMATION AND REGISTRATION OF COOPERATIVES

Cooperatives must be organized and registered in accordance with Nicaraguan law, which also gives them legal standing.

The law needs to be flexible in order to help promote cooperative development. Registration requirements for cooperatives should be the same as for any other business. The bylaws of cooperatives should be decided by membership at the General Assembly.

Importance of the Issue

The formation of a cooperative requires legal standing and adherence to other established principles which, without coherent, flexible regulations, can affect the entire registration process and the very future of the cooperative sector, as well as the growth of the cooperative movement and opportunities for expansion into new areas.

Registration formalities should be the same for all types of businesses, including cooperatives, which should be subject to the same requirements as corporations as a way of promoting equitable treatment for all types of businesses.

The processing of applications for registration should be expedited and subject to set time limits. This process should not stretch on indefinitely, because it discourages cooperative members and creates uncertainty over whether the cooperative will ever actually be formed. Documentation requirements for cooperatives should be the same as for corporations.

The bylaws of cooperatives are important because they are dictated by the membership at the General Assembly, with no state or government intervention, which protects the autonomy and independence of cooperatives and allows them to choose the best management structure for their needs. This is vital to the success of efforts by cooperatives to build the capacity of their members to democratically organize and govern the cooperative. Registration requirements for cooperatives should not attempt to regulate their bylaws.

Legal Analysis of the Formation and Registration of Cooperatives

According to the cooperative law and regulation, a cooperative is created by a private document bearing the signatures of prospective members, duly authenticated by a Notary Public. Its formation is approved in the General Assembly, which then adopts bylaws, assigns shares and elects the members of the Board of Directors and Oversight Committee. The members of the cooperative must pay in at least 25% of its subscribed capital.

In order to acquire legal standing, by law, cooperatives must be recorded in the National Register of Cooperatives. This office has 30 days in which to approve applications for registration. The law is

unclear as to what happens if the register fails to act within this 30-day period and does not set any deadline for presenting the applicant with a remediable or final rejection notice or any time limit for a decision on an appeal by the head of this office.

According to the law, the National Register of Cooperatives is maintained by a department within INFOCOOP, whose functions include planning, conducting and supervising oversight activities involving cooperatives, in addition to approving or rejecting applications for registration, receiving and making referrals to other departments for the conduct of audits, and dissolving or liquidating cooperatives.

The extent of interaction between different departments within INFOCOOP is unclear. The notion of a single entity or department vested with registration, advocacy, supervisory and other functions by law is troubling in that this could lead to irregularities in decision-making caused by conflicts of interest.

The law does not clearly define the functions of this registration office. It is important to ask ourselves whether, in fact, the government should be involved in the supervision and promotion of cooperatives and, at the same time, resolve conflicts of interest caused by their operations and also play a role in their dissolution or liquidation. (In Nicaragua, this type of situation is referred to as acting as both judge and jury.) The function of the registration office in this regard is merely to record any changes in circumstances.

The law gives cooperatives the general right to establish or organize their own governance and oversight bodies, determine their form and draw up their own bylaws. However, it also establishes a number of requirements with regard to specific aspects of their governance and management relating to their General Assembly, their Board of Directors and their oversight and other committees, their general functions, regular meetings, rules for simple and absolute majority voting and requirements for convening meetings (Cooperative Law, Articles 56 and 83).

Group 1 Discussion

In this part of the workshop, the participants were asked to split up into two groups, assign priorities to the issues emerging from the analysis and choose the most important/pressing issue to resolve.

Group 1 addressed the issue of the ***formation and registration of cooperatives,*** including the matter of registration requirements and of unnecessary formalities and data for the creation or formation of cooperatives, as well as unnecessary registration formalities and data. The discussion looked at current requirements by the applicable INFOCOOP office in charge of the recording and registration of cooperatives.

One such requirement is that cooperative members present proof of completion of a 40-hour cooperative education course and that cooperatives register and obtain a license in order to do business.

The group unanimously decided that the 40 hours of cooperative education should be a post-registration training requirement and felt that it was restrictive, in that it required an investment of both time and money in this training.

The group agreed on the need to eliminate the requirement that a cooperative show proof of the capital paid in by its members in keeping with the provision of the law requiring the up-front payment of 25% of its capital. It decided that this requirement could be met later on. In other words, the cooperative would first be formed, after which the oversight agency (INFOCOOP) could confirm that it meets this payment requirement.

The group also wanted to eliminate the requirement for a feasibility study, considering it both unnecessary and restrictive, steering a cooperative's business activities in a specific direction in advance. It is also a large expense for the cooperative, which needs to hire an expert to conduct the feasibility study. It serves no practical purpose because, though the study is distributed to the members of the cooperative, it is simply not used. It is not put to good use because it is not rooted in an economic and social reality in which the members of the cooperative and their governance bodies want to conduct business.

Group 1 Findings

The licensing of a cooperative requires the filing of a letter of application, accompanied by articles of association and corresponding bylaws and seven books for recording the minutes of General Assembly, meetings of the Board of Directors and special meetings, including two ledgers for the recording of member share certificates, and the payment of corresponding recording fees.

The group discussed the question of whether **training should be regarded as a registration requirement or a requirement of the cooperative sector per se.**

The feeling was that the law's objective in requiring a course in cooperative education, to be coordinated with the Education Ministry (MINED), is to promote instruction in the principles of cooperation as early as the primary school level. Thus, the 40 hours of training are merely a requirement for starting a cooperative and, thus, are not perceived as individual instruction in cooperativism.

Group 2 Discussion

Group 2 addressed the issue of ***legal standing***. It found the approval process to be extremely complicated and cumbersome, involving a series of investments of time and money in the drafting of bylaws and the payment of a notary.

There should be a decentralized procedure for the review of bylaws and an individual delegated to approve the formation of the cooperative through an instrument drawn up by a notary public. Moreover, there is no time limit for granting its registration or approving its legal standing. In practice, the 30-day deadline established by the law is not enforced.

In discussing the up-front payment of 25% of the cooperative's capital, the participants pointed to the lack of economic support from any sector and the fact that these initial contributions were the only source of funding for starting the cooperative. The requirement to hire a notary to draw up bylaws and complete the registration formalities and corresponding fees impose expenses on the cooperative that other businesses are not subject to, and that undermine the viability of the coop.

Cooperative members should have a say in shaping INFOCOOP policy by pushing for the establishment of an internal technical assistance unit for cooperatives and the decentralization of INFOCOOP.

The INFOCOOP registration office should use the same registrar for cooperatives as that used for corporations. The legal culture also needs to change, to speed up the registration process and make it more equitable.

According to the participants, any group of individuals expressing their intent to do business in a given economic sector as a group, even the informal sector, is, by definition, a cooperative. They also agreed on the need to reform the General Law on Cooperatives and amend the regulation accordingly.

Group 2 Findings

Eliminating a number of unnecessary requirements would make the regulatory agency more effective. Right now, INFOCOOP is incapable of registering a cooperative within the 30-day statutory registration period because of the need to rewrite many of the bylaws filed by cooperatives to bring them in line with the provisions of the new law and regulation, which is raising awareness of the importance of this function among the staff of INFOCOOP's registration office.

Among other things, the law requires the submission of a certificate attesting to the completion of 40 hours of cooperative education, articles of association, draft bylaws and proof of payment of 25% of the cooperative's capital. This is not a requirement imposed by INFOCOOP. It is spelled out in the law. One way of dealing with this, which many might view as impeding the creation of new cooperatives, is by resolving these problems in a regulation.

"This workshop is helping participants build their technical capacity. Speaking for myself, it has helped me better grasp the CLARITY methodology and taught me how to examine the cooperative law and regulations to suggest reforms designed to help improve our regulatory framework."

- A CLARITY Nicaragua Workshop Participant

One of the challenges facing Latin American cooperatives is the lack of appropriate administrative or governance systems for their own internal management, which is hindering their growth and preventing them from being a major player on the market.

SECOND DISCUSSION TOPIC: GOVERNANCE AND ORGANIZATION OF COOPERATIVES

It is important to ascertain whether a cooperative is well governed, since this affects its members. It is equally important to analyze how governance impacts the internal elements of the cooperative such as its managers, its officers and its Board of Directors and, by extension, the government.

These repercussions can be analyzed by using the CLARITY Principles as a way to examine the impact of different environments in sufficient depth to identify important values.

One of the challenges facing Latin American cooperatives is the lack of appropriate administrative or governance systems for their own internal management, which is hindering their growth and preventing them from being a major player on the market. There is a direct correlation between democracy and the cooperative principle of autonomy and independence. Cooperatives ensure democratic control by their membership through the majority voting rule.

It is for this reason that cooperative law must allow for the bylaws of cooperatives to establish different forms of voting for different situations and, in turn, must be consistent with democratic requirements for the governance or control of cooperatives.

A cooperative's governing body is important in that it is the Board of Directors which protects its autonomy and independence, avoiding detailed management functions. A cooperative should reflect its true focus, in terms of its target service area.

Legal Analysis of the Governance and Organization of Cooperatives

A legal analysis of the governance and organization of cooperatives should address all issues relating to their organizational structure as established by the General Law on Cooperatives.

Organizational Structure of a Nicaraguan Cooperative

General Assembly

1. **General Assembly**
   The membership's top governing body meets in regular and special sessions at the cooperative's legal headquarters.

2. **Board of Directors**
   The body in charge of the cooperative's administrative affairs and the executing agency for the General Assembly, with full administrative and management authority in handling the cooperative's affairs.

   The Board of Directors is responsible for the cooperative's legal representation, which is

embodied by the Chairman and, in his absence, the Vice Chairman. In the event of the absence of both of these officers, the Board will appoint another member to serve in this capacity.

3. **Oversight Committee**
The supervisory body for all activities engaged in by the cooperative. It consists of a coordinator, a secretary and from one to three committee members. This committee has oversight functions and reports only to the membership meeting. Its powers and duties are established in the cooperative's bylaws *(Article 78 of the Cooperative Law and Article 83 of the Regulation)*.

The Oversight Committee is in charge of supervising business and social activities and overseeing actions by the Board of Directors and other internal bodies and employees in accordance with the cooperative law and regulation, the cooperative's bylaws and internal rules of procedure and decisions set forth by the General Assembly.

4. **Cooperative Education and Development Committee**
Articles 81, 82 and 83 of the current Cooperative Law require all cooperatives to form a Cooperative Education and Development Committee in charge of framing and implementing cooperative education and development plans and policies through the education fund. This committee draws up annual training plans and corresponding budgets in keeping with the needs and interests of the cooperative. These plans must be submitted to the Board of Directors for approval and implementation.

One of the CLARITY Principles refers to the protection of democratic member control. As far as membership size and qualifications for membership are concerned, the number and type of members needed to start a cooperative can vary. The management of each cooperative should set eligibility requirements for membership to ensure that the business venture is a success.

Referring to this same principle, the government should not have the right to appoint any of a cooperative's managers, because such appointments are the responsibility and duty of its membership and of officers duly elected in accordance with the bylaws of each cooperative. In no case should such appointments be arranged between the cooperative's leadership and the government, or the government and its leadership.

Group 1 Discussion

There are two CLARITY Principles involving capital accounts, referring to member economic participation and the protection of a cooperative's autonomy and independence. Participants generally agreed that cooperatives should allocate funds to internal reserves. They felt that the cooperative movement needed to be able to raise its own internal funding to ensure its independence. The Cooperative Law sets minimum reserve requirements for cooperatives.

Any cooperative able to establish a larger education reserve is permitted to do so, since the law only sets minimum requirements. Nowhere does it say that the size of this reserve cannot be increased.

By law, all Nicaraguan businesses have a 10% minimum reserve requirement. Thus, this requirement must be met (corporations also have a minimum initial capitalization requirement). As far as education and reinvestment are concerned, the group expressed the opinion that cooperative movement has a need for more education and training and the reserve is therefore important for continuing support to the members.

In discussing the 2% contribution to INFOCOOP required by law, the group agreed on the need for compliance monitoring and auditing. The most important thing, as far as the group was concerned, is to know whether and how the money allocated to INFOCOOP is really being spent. As matters stand right now, there are some cooperatives which have no surpluses and which may even have losses but which are still required to pay this 2%. This is an enforcement issue and not a problem with the law per se.

A meeting of the INFOCOOP Board decided that even cooperatives with no surpluses should be required to pay a minimum of C$500.00 or C$1,000.00. In practice, however, this is impossible to do without a surplus and, thus, they should not have to pay the 2%.

Group 1 Findings

The participants found the law to be consistent with the core CLARITY Principle. They maintained that cooperatives were at a disadvantage compared with corporations, but considered the 10% requirement necessary for the operation of the cooperative system (assuming the 10% is a reserve requirement designed to strengthen the cooperative's institutional capital).

The group discussed the differences between a cooperative and a corporation. Traditional private enterprise has a social responsibility. Business executives are more concerned with their marketing strategy. Cooperatives earmark funds, money, for education, reinvestment, etc. Cooperatives are social organizations, which is one of their main features distinguishing them from traditional businesses.

Group 2 Discussion

As far as member governance is concerned, by law, all decisions are passed by a majority vote, except in the following cases:

1. Elections of members of the Board of Directors are, by law, subject to a 60% minimum quorum requirement and require the affirmative vote of at least 70% of those present, which complicates the election process because this requirement is hard to satisfy. A 51% minimum quorum requirement for voting purposes would be much better and less complicated.
2. Decisions on the dissolution and liquidation of cooperatives and on sales of assets, mergers, amalgamation, membership and their bylaws should, according to the group, be subject to a 60% minimum quorum requirement and require the affirmative vote of at least 70% of those present. Thus, with 100 members casting votes, 51 votes would constitute a simple majority and 70 votes would constitute a qualified majority.

Group 2 Findings

The group gave this issue a score of 0 with respect to the core CLARITY Principles due to its impracticality and inconsistency with the articles of association of cooperatives. The group suggested setting the quorum for an election at one-half plus one (51%), amending portions of the law and regulation and standardizing the articles of association for cooperatives, as in the case of corporations, to make them more effective and easier to understand. Discussions over the interpretation of the law and regulation raised additional problems relating to the impracticality of the minimum quorum requirement.

Conclusion

There was a difference of opinion between the two groups on the issue of the governance and organization of cooperatives. Group 1 gave this issue a score of "0," while Group 2 gave it a score of "4." The reason why Group 2 scored it so high was that, in its opinion, the only problem was the statutory quorum requirement for the election of members of governing bodies.

The members of Group 1 contended that the quorum for all types of decisions should be one-half plus one, while Group 2 advocated different requirements for different matters or types of decisions, or one percentage for a certain type of decision and another percentage for an election or other matter.

The law provides for the negotiation of forced consensuses. In other words, cooperatives are governed by political concepts more than anything else. The basic principle of a democracy is that the minority must yield to the majority.

The two groups had different viewpoints and findings. Thus, the issue of the governance and organization of cooperatives requires a great deal more study, discussion and debate by the cooperative community.

"**I appreciate CLARITY's contribution** to the international cooperative movement. The Rochdale principles have been updated to fit our times. This is an opportunity to take a look at how they've been implemented in different parts of the world."

- A CLARITY Nicaragua Workshop Participant

The Core Principles applicable to the relationship between the government and cooperatives are designed to: (1) protect democratic member control; (2) protect a cooperative's autonomy and independence; (3) require member economic participation; (4) promote equitable treatment; (5) provide a coherent and efficient regulatory framework; and (6) avoid conflicts of interest.

THIRD DISCUSSION TOPIC: THE RELATIONSHIP BETWEEN THE GOVERNMENT AND COOPERATIVES

The core principles governing relations between the government and cooperatives should be designed, first and foremost, to protect member democratic control. Under the law, the government should give cooperative members control over their own cooperatives.

The second goal is to protect the autonomy and independence of cooperatives. The law and its regulations should protect the autonomy and independence of cooperatives from government per se and any individuals and entities other than cooperative members.

As far as member economic participation is concerned, the law should protect and promote membership responsibilities, including obligations to contribute equitably to and democratically control the capital of cooperatives.

The promotion of equitable treatment for cooperatives is important to ensure that the businesses run by cooperatives are not operating at a disadvantage compared with other businesses in the same area. Where appropriate, reasonable incentives should be offered to allow cooperatives to do business in a given sector.

It is also important to provide a coherent and efficient regulatory framework for cooperatives. In other words, laws and regulations should be simple, predictable and efficient, should minimize bureaucratic delays and red tape and barriers to the conduct of business and should avoid conflicts with other laws and overlapping duties and functions.

Another important issue with regard to the relationship between the government and cooperatives is the need to avoid conflicts of interest. The government's role in law enforcement, dispute resolution, licensing and advocacy should be handled in a way that avoids duplication and undue influence and minimizes any conflicts of interest.

Legal Analysis of the Relationship Between the Government and Cooperatives

The three issues highlighted in this area were capital accounts, the appointment of auditors and dispute resolution, each of which was examined from a legal standpoint based on Nicaragua's General Law on Cooperatives and the CLARITY Principles.

The basic implementing principle as far as capital accounts are concerned is that any surpluses generated by cooperatives should be distributed based on business volume rather than on the amount of capital invested in the cooperative.

Thus, surpluses are distributed based on business volume, with the law recognizing the core principle of equity as it relates to cooperatives. Surpluses generated by cooperatives are to be distributed to their members on a yearly basis in direct proportion to their share of the cooperative's business turnover (Article 8[e]). In keeping with this principle, the law clearly requires surpluses to be distributed to cooperative members on this basis (Cooperative Law, Article 51).

The law does not specify how different types of cooperatives are supposed to make these distributions, except in the case of consumer cooperatives and credit unions, whose surpluses are to be distributed according to each member's patronage of the cooperative, irrespective of the types of products or services furnished (Regulation, Article 13). Cooperatives capitalize their shares or unit distribution rights as prescribed in their bylaws (Cooperative Law, Art. 51).

The law does provide for the contingency of a total or partial distribution of surpluses in proportion to the amount of capital investment by requiring that any payments of interest on this capital be made at a rate equal to the interest rate for bank deposits and the most advantageous borrowing rate.

In the event of the liquidation of a cooperative, the law stipulates that any remaining funds (after the payment of expenses, accrued interest, pending distributions of surpluses and loans) are to go to INFOCOOP or, where applicable, CONACOOP. In theory, there should not be any such surpluses, since any left-over funds are to be distributed to cooperative members according to their equity in the cooperative.

As a basic implementing principle, the law should not mandate any distributions which could preclude a cooperative from establishing reserves or a capital fund for business investments, nor should it require cooperatives to allocate a specific amount to such funds. The law encourages the creation of reserves, but does not establish any mandatory distributions liable to preclude a cooperative from establishing reserves. Article 50 of the Cooperative Law recognizes allocations of surpluses to reserve accounts as allowable deductions in calculating the amount of surpluses available for distribution.

Nevertheless, there are certain minimum required allocations. In fact, the law requires specific allocations to reserve funds. Article 51 requires the allocation of 10% of annual surpluses to a reserve for losses, another 10% to an education fund, yet another 10% to an investment fund and a 2% contribution by cooperatives to INFOCOOP, to be earmarked for use in the training programs conducted by that agency.

Turning to the issue of auditors, the implementing principle is that the members of a cooperative should have the right to hire an outside auditor of their own choosing, but the law does not give them the right to make this choice. It does give them the right to elect the members of the oversight committee and the exclusive right to ratify or veto appointments of managers by the Board of Directors involving outside parties.

However, there is no provision in the law giving cooperative members the right to choose the auditor or indicating who is responsible for choosing an auditor to close out the cooperative's books at the end of the fiscal year or to perform other types of work for the cooperative. The law is unclear in this respect, but the inference is that the auditor may be appointed by the INFOCOOP Governing Board, whose responsibilities include appointing outside auditors, either as a matter or course or at a cooperative's request, and furnishing cooperatives with a short list of internal auditors for the performance of year-end audits.

This ambiguity in the law and the lack of regulations in this respect can undermine the principle of democratic member control and deprive cooperative members of a source of reliable information for decision-making purposes.

Accredited dispute resolution agencies should be independent of agencies with advocacy, oversight or other functions involving cooperatives. Cooperatives should have free access to courts of law and the freedom to voluntarily elect to submit to arbitration.

In fact, under the law, cooperatives may petition the oversight agency or a court of law to allow them to voluntarily submit to arbitration and agree to mediation.

According to the law, the failure of a government official or agency to rule on a given matter within a period of 30 days may result in its referral to a superior official or agency, whose silence shall be construed as administrative procrastination. Nonresponsiveness by the head of a government agency is grounds for an appeal in which, either the official in question will be forced to respond by a superior authority, or the matter will be decided by the appellate court.

Input by Workshop Participants

Cooperatives should operate exactly like other businesses. Cooperative legislation is out of touch with reality, as in the case of provisions prohibiting a credit union from operating as a bank. This is a problem with the law and with the way in which the law makers framed the law. However, Article 12 of the law and stipulates that cooperatives may engage in any of the activities referred to therein and requires that they be afforded equal treatment.

Members of cooperatives face two types of problems:

1. Internal operating problems, which can be resolved through executive orders and regulations; and
2. Problems created by differences in the treatment of cooperatives compared with corporations, putting them at a disadvantage, which cannot be resolved.

Reforms are necessary. Cooperatives need to be able to compete on the market. Otherwise, the market will drive them out. It is imperative to reexamine current regulations and present proposals to the President's Office.

For example, a corporation can be a member of a cooperative. This is permitted by law which, by the same token, prohibits a cooperative from being a shareholder in a corporation.

Moreover, local governments do not honor the tax exemptions granted cooperatives under the law during their first two years in business. Apparently, this matter is open to interpretation by whatever mayor is in office at the time.

Furthermore, certain cooperatives are audited either by INFOCOOP or by the DGI (Nicaragua's Internal Revenue Service) attached to the Ministry of Finance and Public Credit, claiming they need to conduct a tax audit, without their members receiving any prior training in this area.

Conclusion

Chapter II of the law on the organization, formation and licensing of cooperatives contains a number of ambiguities. According to Article 12, cooperatives may engage in any and all types of business activities, but attempts to form insurance cooperatives face a series of hurdles.

Article 14 allows for the creation of any and all types of cooperatives, but parties interested in forming insurance cooperatives and credit unions contend that the Insurance and Banking Superintendent is telling them otherwise. Anyone wishing to start a cooperative to engage in this line of business must do so with the legal status of a corporation, subject to the capital requirements for this type of enterprise. This is only one example of overlapping functions, conflicts of interest and the inequitable treatment of cooperatives.

The time is right for a new collaborative effort by cooperatives to promote and foster cooperative development.

FOURTH DISCUSSION TOPIC: THE RELATIONSHIP AMONG INFOCOOP, CONACOOP AND COOPERATIVES

The time is right for a new collaborative effort by all cooperatives to promote and foster cooperative development. The main function of INFOCOOP is to foster, promote, spread and support the cooperative movement.

CONACOOP is the information, consultative and advisory agency in charge of presenting proposals for promotional, advocacy, education, investment and development programs and policies for the formation of cooperatives designed to strengthen the cooperative movement.

These two agencies and cooperatives have an interdependent relationship. Each needs to work with the other to create an enabling environment for cooperative development in Nicaragua. It is important that the law clearly define the roles and functions of each of these entities.

INFOCOOP is the top oversight authority for cooperatives while CONACOOP is the umbrella organization for the cooperative movement. Among the functions of the latter is bringing different cooperative sectors closer together and improving relations between these sectors.

CONACOOP's main goals are to promote and expand the cooperative system and study the various problems confronted by cooperatives. Its function with regard to INFOCOOP is to constantly push for the effective formation of representative cooperatives.

Legal Analysis of the Relationship among INFOCOOP, CONACOOP and Cooperatives

INFOCOOP is a regulatory and oversight agency for the operations of different types of cooperatives and, thus, cannot be a development and advocacy agency, since its duties and functions are clearly defined by law as regulatory in nature. Accordingly, engaging in advocacy and cooperative development activities would thwart its goal and the purpose for which it was created. Consequently, INFOCOOP has authority over CONACOOP and all cooperatives.

INFOCOOP, CONACOOP and cooperatives are interconnected and each has its own sphere of activity. It is important that INFOCOOP not interfere in any of the activities engaged in by cooperatives or by CONACOOP. Certain provisions of the law are rather flexible with respect to the autonomy and independence of the activities engaged in by cooperatives. Their interdependent relationship, as established by law, requires their collaboration in creating an enabling environment for cooperative development.

The law's flexibility with respect to the autonomy and independence of cooperatives is a recognized fact. It allows for the formation of apex organizations such as unions, leagues, federations and confederations. The government or any decentralized government agency should be excluded

from membership in a cooperative in order to protect its autonomy and independence. Government membership in a cooperative would preclude its ability to function as a private business enterprise.

As far as the financial autonomy of cooperatives is concerned, general rules of auditing set prudential standards for spending and investment. The law should not have any say with respect to the expenditures made by cooperatives in connection with specific functions. It also should not require government approval for basic business decisions. Cooperatives should learn to run successful businesses through independent business management and not depend on the government to protect them.

There should not be any conflicts of interest with regard to the functions of INFOCOOP and CONACOOP, with all regulatory functions to be vested in INFOCOOP and all advocacy functions vested in CONACOOP.

The law gives cooperatives the freedom to make their own decisions on membership in apex organizations and on appointments of assistant managers and officers. However, there are three areas which warrant further study, namely capital accounts, the appointment of auditors and conflict resolution.

One of the basic implementing principles for the core CLARITY Principle of protecting the autonomy and independence of cooperatives is that the law should allow for the formation of apex organizations such as associations, federations and confederations, without requiring cooperatives to join or support such organizations.

The law adheres to this core CLARITY Principle, giving cooperatives the general right to associate with any and all types of other legal entities. However, it does impose certain restrictions, such as the requirement that such a relationship further the cooperative's own objectives, that it not be prejudicial to its inherent nature as a cooperative and that no benefits, privileges and exemptions granted solely to cooperative-type organizations be extended to other types of enterprises or legal entities through such a relationship.

The law gives cooperatives the right to organize and work closely together, in effect, transforming them into apex organizations (Articles 95 through 99, 104 and 91 of the Regulation).

The law does not give the government any right to require cooperatives to form apex organizations, though it does require apex organizations to register in the same manner or subject to the same formalities as primary cooperatives. The law establishes a hierarchy of specific types of apex organizations which can be formed by cooperatives, which include leagues of five or more of the same type of cooperatives, unions of five or more cooperatives in the same region, federations of three or more leagues, unions or leagues and unions, and confederations of three or more federations (Articles 96, 97, 98 and 99 of the Cooperative Law).

The law is vague as to whether cooperatives and apex organizations can associate with national and international cooperative organizations. Article 13 guarantees cooperatives the general right to freedom of association. Article 104 grants cooperatives and corresponding apex organizations the right to join any type of international integration organization, but makes no mention of national organizations. Moreover, the regulation for the cooperative law allow federations and confederations to join national and international apex organizations but do not say whether primary cooperatives, leagues or unions have this same right (Article 91 of the Regulations).

The law puts certain restrictions on the rights of cooperatives to freely organize and form apex organizations. Thus, a primary cooperative may not belong to more than one league or union (Article 88 of the Regulations), and a federation may not belong to more than one confederation (Article 88 of the Regulations).

In short, cooperatives are not required by law to organize or to form or support apex organizations. Cooperatives cannot be denied the right to associate with other organizations in any of the types of apex organizations established by law (leagues, unions, federations and confederations), in keeping with the principle of protecting the voluntary nature of membership.

The same requirements with regard to the management or governance structure of cooperatives also apply to apex organizations. Thus, the law applies to all aspects of basic cooperatives, including provisions relating to their management or governance structure.

There are two dynamics driving the creation of cooperatives under the law. The first involves the concepts of self-help, self-reliance, democracy and equality, which are the very cornerstone of the CLARITY Principles. The second is the belief that, at Nicaragua's current stage of development, government regulation of cooperatives and the training of cooperative members are important for their success.

As a result, we have a law which gives the founding members of cooperatives a great deal of freedom and, accordingly, embodies many of the CLARITY Principles but, at the same time, puts restrictions on this freedom by giving State or government agencies broad supervisory powers and rights to intervene in the internal affairs of cooperatives.

The success of the cooperative movement is largely dependent on whether law-makers or regulatory agencies abuse their broad powers under the law or use them for the benefit of cooperatives.

Suggested improvements in the framing of the law include adding clear, comprehensive definitions of all important terminology and adhering to these terms in the language used in its provisions.

Another recommendation involves the inclusion of rules applied only in cases where a particular matter is not addressed by a cooperative's own articles of association and bylaws, in that this would help familiarize members of cooperatives with the issues to be covered in instruments such as articles of association, bylaws and decisions.

Group Discussions

INFOCOOP, CONACOOP and cooperatives have somewhat of an interdependent relationship in the sense that they need to work together to create an enabling environment for cooperative development in Nicaragua. Thus, it is important to clearly define the functions and roles of each entity under the law.

One of the CLARITY Principles for apex organizations related to Core Principle 2, which protects the autonomy and independence of cooperatives, allows for the formation of apex organizations such as associations, federations and confederations, without requiring that cooperatives join such organizations.

Government membership in cooperatives is not recommended, because its governmental functions undermine the role of a cooperative as a business enterprise. Cooperative laws in certain countries such as Hungary, for example, prohibit government membership in cooperatives.

Regulatory functions should be institutionally separate from other functions such as advocacy or registration. Otherwise, this could create conflicts of interest in officials with oversight functions, undermining the efficacy and impartiality of regulation.

Though Nicaragua has had a cooperative movement for a long time, it is still in an embryonic stage. There is no networking and some cooperatives are uninvolved and isolated. Actually, these are

new entities. CONACOOP is Nicaragua's most representative organization, in contact with and close to its cooperatives.

To prevent exclusion, the cooperative movement should be extensively involved in and well informed about the issues addressed by INFOCOOP, with a view to working together to find different ways of solving problems. There have been some good experiences, but the unity of the cooperative movement is still an issue.

Input by Workshop Participants

All stakeholders in this area should be clear as to their sphere of competence and corresponding powers and duties to prevent confusion over their respective roles under the law. The law defines their functions. INFOCOOP, CONACOOP and cooperatives should have their own internal regulations.

It is clear that INFOCOOP and CONACOOP are to form a Board of Directors, but what is not made clear is that there are many other parties involved in this matter. These discussions should be conducted at the department level and not only between INFOCOOP and CONACOOP. The members of CONACOOP are not autonomous. On the contrary, they are appointed by their base and should work together to ensure that all cooperative members are strengthened by this movement.

Some of the participants disagreed with the notion that INFOCOOP and CONACOOP are created by law because, according to the law itself, what it creates are cooperatives, and cooperatives are not government appendages. The government has an agency which regulates cooperatives, which is also an advocacy agency. Actually, the most important issue is how to synchronize the work of INFOCOOP and CONACOOP to avoid piecemeal decision-making.

The leadership of the cooperative movement must make an effort to fully understand the role they are expected to play and convey this information to their base and to the members of all cooperatives.

Conclusions as to the Relationship among INFOCOOP, CONACOOP and Cooperatives

The division between the responsibilities, powers and functions of INFOCOOP and CONACOOP is unclear. The opening of a dialogue by the 314 cooperatives electing the members of CONACOOP is imperative for the formulation of strategies for strengthening the movement.

"It is good to quantify the cooperative movement. Viewing cooperative leaders as an integral part of a joint effort is productive."

- A CLARITY Nicaragua Workshop Participant

The positive results achieved with the help of CLARITY in different countries show that it works and that it is useful in the planning and implementation of cooperative legal reform projects.

WORKSHOP FINDINGS AND OUTCOMES

El Ley General de Cooperativas de Nicaragua (Nicaragua's General Law on Cooperatives) enacted in 2005 created two basic organizations for the country's changing cooperative environment. For the first time, this workshop, *Applying the CLARITY Principles to the Nicaraguan Cooperatives Law,* brought together the cooperative leadership from two new organizations vital to the future of all Nicaraguan cooperatives, namely CONACOOP (the National Council of Cooperatives) and INFOCOOP (the National Institute for the Promotion of Cooperatives).

The purpose of the workshop was to equip Nicaragua's cooperative movement with a set of tools for analyzing the cooperative law and its regulation and approaching the task of identifying recommendations and necessary changes in current cooperative legislation and regulation. CLARITY (the *Cooperative Law and Regulation Initiative*) was designed to help cooperative movements around the world study and improve their legal environments. The goal is to develop and promote principles for legal and regulatory reform with the overarching goal of creating enabling environments for cooperative development. The CLARITY Principles are inspired by the Rochdale principles of cooperation, which are also included in Nicaragua's General Law on Cooperatives.

The CLARITY methodology can be used as part of a process for adapting and tailoring cooperative legislation to specific conditions and needs. The workshop was also designed to provide participants with a neutral forum for openly discussing the law and its regulation. Thus, the discussions and debates conducted during the course of the workshop were merely a preliminary, open dialogue by the leadership of Nicaragua's cooperative movement and do not reflect the official position of either CONACOOP or INFOCOOP. The CLARITY Principles are a tool or instrument designed to be used as a guide. The decision and the course to take are up to each user.

Using the CLARITY methodology, the workshop prompted the participants to engage in an open, constructive discussion of different areas of the law and its regulation. Through this analysis, they were able to uncover new opportunities and solutions for supporting and strengthening cooperatives operating in the private sector. They discussed prejudicial issues, experiences, and indicators helping them decide how to approach legal reform and procedures so as to frame clear, concrete proposals for the cooperative sector.

Examples of some of the findings and recommendations by workshop participants are outlined below.

- There should be a decentralized procedure for the review of bylaws, and someone should be delegated in the presence of a notary to form the cooperative. The participants singled out unnecessary formalities and data for the registration of cooperatives, such as proof of completing a 40-hour course in cooperative education.
- The INFOCOOP registration office should use the same registrar for cooperatives as that used for corporations. The legal culture also needs to change, to speed up the registration process and make it more equitable.

- The group proposed setting the quorum for an election at one-half plus one (51%), amending portions of the law and its regulation and standardizing the articles of association for cooperatives, as in the case of corporations, to make them more effective and easier to understand.
- Cooperatives should operate exactly like other businesses. Cooperative legislation is out of touch with reality and Chapter II of the law (on the organization, formation and licensing of cooperatives) contains a number of ambiguities.
- The division between the responsibilities, powers and functions of INFOCOOP and CONACOOP is unclear. The opening of a dialogue by the 314 cooperatives electing the members of CONACOOP is imperative for the formulation of strategies for promoting and strengthening the movement.
- The cooperative law needs to be studied from a national economic perspective. The law cannot merely spout theory and not meet public needs and the objectives of cooperatives. It is essential to find common ground and forge closer ties between the two agencies (INFOCOOP and CONACOOP) to help them reach a consensus around what they are going to do and pinpoint areas of the law and its regulation which need to be amended, with everyone joining forces and synchronizing their efforts to work towards this goal .

Among other things, the assessments helped create a better understanding of the law, its regulation, the CLARITY Principles and the CLARITY Scorecard tool. The findings by the assessment show a change in priorities with respect to the functions of and relationship between CONACOOP and INFOCOOP. The participants' engagement, interest and dedication were "proof positive" of the workshop's success.

Attended by the leadership of Nicaragua's cooperative movement, this workshop is an example for the entire cooperative community, illustrating the positive outcomes achieved with the help of CLARITY and showing that the tool is useful in the planning and implementation of cooperative legal reform projects.

This report contains new tools and lessons learned for the implementation of general CLARITY Principles and concepts. The CLARITY experience in the training of cooperative leaders and regulators in Nicaragua illustrates the flexibility and strength of the very concept of CLARITY.

Last but not least, the experience in Nicaragua shows that CLARITY indeed works. The lessons and tools presented in this report illustrate its efficacy and how other national cooperative movements can use CLARITY to understand and analyze the current environment and help promote a more enabling legal environment for national and international cooperative development.

The next step in the CLARITY process will focus more clearly on tools and lessons learned for strengthening advocacy skills. In the interim, community development organizations will continue to help cooperatives around the world analyze current legislation and regulations with new tools and resources which can be accessed through the CLARITY website at www.clarity.coop.

APPENDIX I: CLARITY Scorecard Questions

Go to www.clarity.coop to view and download the complete, final version of the CLARITY Scorecard questions.

Question	CLARITY Principles & Explanation	Enabling & Disabling Examples	Score/ Notes	Legal Reference
1. Formation and Registration of Cooperatives			Score:	Article:
1a. Is a time period set for the approval of registration applications (after which there is automatic approval)?	**Principle # 7** – Efficient regulatory framework **Explanation** – the default for regulatory inaction should be to approve the registration to minimize the impact of bureaucratic delay on cooperative formation	**Enabling** – All applications shall be finally disposed of within 30 days or assumed to be granted **Disabling** – Statutory 6 month approval period that in practice runs into years and prohibits operation until registration is formally approved	1	Cooperative Law, Articles 23, 23a, 23b, 23c, 24, 27; 2007 Regulations, Article 5
1b. Are registration requirements for cooperatives the same as for regular businesses?	**Principle # 5** – Equitable treatment **Explanation** – How do requirements for starting a cooperative compare with requirements for starting a new business? Some groups may choose to register as an association or other type of business if it is easier and quicker than registering as a cooperative	**Enabling** – Cooperatives are required to file with similar requirements to corporation law **Disabling** – There are many special requirements for formation of cooperatives that do not apply to other businesses	0	Cooperative Law, Articles 113-115

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Question	CLARITY Principles & Explanation	Enabling & Disabling Examples	Score/ Notes	Legal Reference
1c. Are the Registrar's duties combined with other cooperatives promotion or regulation activities?	**Principle # 9** – Conflict of interest **Explanation** – Combining promotion and regulatory tasks can create conflicts of interests in the agency – an agency devoted to promoting cooperative formation should not also be in charge of enforcing regulatory mandates	**Enabling** – Registration functions are handled by a separate ministry than those charged with cooperative promotion and technical assistance **Disabling** – Registrar of cooperatives is also charged with cooperative promotion, regulation and dispute mediation	3	Cooperative Law, Articles 113-115, 145; 2007 Regulations, Article 98
1d. Does the government impose mandatory bylaws or otherwise restrict member governance?	**Principles #1 & 2** – democratic governance and autonomy **Explanation** – A central characteristic of a cooperative that supports their vitality is the vesting of ultimate governance of the organization in its membership	**Enabling** – Membership has maximum ability to shape the structures and processes of the organization through bylaws, law imposes minimum requirements applicable to other businesses, such as procedures for appointing officers **Disabling** – Mandatory bylaw language is imposed for all cooperatives	4	Cooperative Law, Articles 9, 10, 11, 20, 56-83; 2007 Regulations, Article 7

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Question	CLARITY Principles & Explanation	Enabling & Disabling Examples	Score/ Notes	Legal Reference
2. Cooperative Supervision/Regulating a Cooperatives			Score:	Article:
2a. Are cooperatives subject to the same or similar regulatory requirements as other businesses?	**Principle #5:** Equitable treatment **Explanation:** Cooperatives should be subject to the similar minimal regulations as other forms of business. The main force for regulating cooperatives is member governance.	**Enabling:** Cooperatives are subject to the same regulator agency and laws as other businesses. **Disabling:** Cooperatives are subject to much more onerous reporting and oversight requirements than other private businesses.	2	Cooperative Law, Articles 113, 114, 118, 148
2b. Does the law protect cooperatives from government interference in cooperative business decisions?	**Principle # 2:** Autonomy and independence of cooperatives **Explanation:** Cooperatives, like other businesses, should be empowered to manage their businesses, free from the dictates of government officials.	**Enabling:** The law prohibits government interference in the internal affairs of cooperatives. **Disabling:** Government officials are given the authority to control or approve cooperative business decisions.	2	Cooperative Law, Articles 113, 114, 118, 148
2c. Are the regulatory and promotion functions separate offices or a separately controlled agency/ institution?	**Principle #9:** Conflict of interest **Explanation:** Entrusting the same agency with promotion and regulation could result in conflicts of interest and compromise the efficacy and fairness of regulation.	**Enabling:** Creation of an promotion office that gives technical assistance but with no control over regulating cooperatives. **Disabling:** One agency is granted all power over registration, promotion and regulation of cooperatives.	2	Cooperative Law, Articles 114, 115; 2007 Regulations, Article 98

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Question	CLARITY Principles & Explanation	Enabling & Disabling Examples	Score/ Notes	Legal Reference
3. Legal Status and Rights of a Cooperative			Score:	Article:
3a.1. Is a cooperative granted the same legal rights as other businesses (the right to sue, enter into contracts, hold assets, etc.)?	**Principle # 2:** Autonomy **Explanation:** Businesses form corporations, in part, in order to obtain the same legal rights to enter into contracts and utilize legal processes as individuals have, known as having "legal personhood." Cooperatives, like other businesses, must have these rights in order to do business effectively.	**Enabling:** An explicit statement giving cooperatives the same rights as individuals to cooperatives (access to courts, contracts). **Disabling:** Requiring government approval for entering contracts, engaging in legal processes or other activities normally undertaken by individuals or corporations.	4	Cooperative Law, Preamble, Articles 12-15, 92-102, 110
3a.2. Is a cooperative granted the same legal rights as other businesses (the right to sue, enter into contracts, hold assets, etc.)?	**Principle # 5** – Equitable treatment **Explanation** – Businesses form corporations in part to obtain the same legal rights to enter contracts and utilize legal processes as individuals have – known as "legal personhood." Cooperatives, like other businesses, must have these rights to do business effectively.	**Enabling** – An explicit statement giving the rights of individuals to cooperatives (access to courts, contracts) **Disabling** – Requiring government approval for entering contracts, engaging legal processes or other activities normally undertaken by individuals or corporations.	3	Cooperative Law, Articles 19, 10; 2007 Regulations, Articles 6, 10, 12-56

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Question	CLARITY Principles & Explanation	Enabling & Disabling Examples	Score/ Notes	Legal Reference
3b. Are cooperative officials given the same legal liability as corporate officers (not held personally responsible for coop matters, unless they act fraudulently)?	**Principle 5 –** Equitable treatment **Explanation –** Cooperative officials should owe fiduciary duties to the cooperative (as in corporate law), but be protected from legal responsibility (unless there was dishonesty or fraud) because it allows them to confidently represent the cooperative in all situations without fear of personal reprisal.	**Enabling –** Stating that coop personnel owe fiduciary duties to the cooperative, but are not liable (i.e. are indemnified) in the course of their duties, unless there was willful misconduct **Disabling –** Considering law suits against cooperatives or their officers to be suits against the government.	1	Cooperative Law, Articles 74, 75, 76, 79

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Question	CLARITY Principles & Explanation	Enabling & Disabling Examples	Score/ Notes	Legal Reference
4. Membership in a Cooperative			Score:	Article:
4a. Can the government require specific individuals or groups to be members of cooperatives?	**Principle #3:** Respect for voluntary membership **Explanation:** Government mandated membership undermines the democratic nature of cooperatives and harms the accountability links between a cooperative and its members.	**Enabling:** Allowing cooperatives to set requirements for membership and permitting (not requiring) membership based onuses on cooperative services. **Disabling:** Requirement that certain groups (e.g. dairy farmers) be members of a national cooperatives.	4	Cooperative Law, Articles 8a, 33f
4b. Can the government dictate size and qualifications for membership in a cooperative?	**Principle #1:** Democratic member control **Explanation:** The number and attributes of members for a given cooperative will vary depending on the goals and services. These decisions should be left to the members and management.	**Enabling:** Permits cooperatives to determine the minimum number of their members and qualification requirements for a given cooperative. **Disabling:** Requires that a cooperative have at least 20 members.	3	Cooperative Law, Articles 8a, 11a, 19, 28a, 28b, 28c, 29, 30, 35; 2007 Regulations, Articles 58, 63, 64, 65, 99
4c. Does the law permit government agencies to be members of cooperatives?	**Principle #2:** Autonomy and independence of cooperatives **Explanation:** If the government was a member it would not provide the independence needed for the cooperative to be regarded as a private organization.	**Enabling:** Banning a member of the cooperative regulatory authority from being an officer or director of a cooperative. **Disabling:** Allowing the cooperative regulatory authority to appoint officers of a cooperative.	2	Cooperative Law, Articles 28, 108d, 108e, 114e, 114g, 114q, 126

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Question	CLARITY Principles & Explanation	Enabling & Disabling Examples	Score/ Notes	Legal Reference
5. Member Governance – Democratic Member Control			Score:	Article:
5a. Does the law require one-person-one-vote democratic governance?	**Principle #1:** Democratic member control **Explanation:** Unlike stock corporations, where voting shares are distributed according to capital invested in the corporation, cooperatives are governed by their members based on the "one member one vote" principle.	**Enabling:** Each cooperative member has only one vote, which may be voted through a variety of means (e.g. cumulative voting). **Disabling:** Permitting votes to be weighted by the contribution to the cooperative.	4	Cooperative Law, Articles 8c, 33, 65
5b. Does the government require business records to be open to inspection by members?	**Principle #1:** Democratic member control **Explanation:** Access to information on the operation of the cooperative is necessary for members to effectively perform their role as owners and governors of the cooperative.	**Enabling:** Requiring the cooperative to make its records, auditing reports and other essential information available to any member upon request.	3	Cooperative Law, Articles 33d, 47, 48, 108a

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Question	CLARITY Principles & Explanation	Enabling & Disabling Examples	Score/ Notes	Legal Reference
6. Regulation of the Officers and Directors of Cooperatives			Score:	Article:
6a. Does the government have the authority to dictate the roles and responsibilities of management?	**Principles #1 & #2:** Democratic member control and autonomy **Explanation:** The membership of the cooperative should remain responsible for defining the division of responsibilities between the Board of Directors and management (e.g. through the bylaws) depending on the nature of the sector in which they do business.	**Enabling:** Gives the members the authority to define the responsibilities of the Board of Directors and Management. **Disabling:** Dictates the adoption of generalized structures for governance that may be at odds with business necessity.	4	Cooperative Law, Articles 33, 56, 57, 66, 69, 75, 77, 82; 2007 Regulations, Article 79
6b. Does the government have the power to appoint or remove officers of a cooperative?	**Principle #2:** Autonomy and independence of cooperatives **Explanation:** Cooperatives must remain responsible to their members, who should be the sole electors of the Board and Management, not to government officials.	**Enabling:** Giving all authority to appoint officers and directors of the cooperative to members. **Disabling:** Granting the cooperative regulatory authority power to appoint or remove officers of a cooperative.	4	Cooperative Law, Article 72
6c. Does the government retain power to dictate or supervise cooperative financial arrangements?	**Principle #2:** Autonomy and independence of cooperatives **Explanation:** Subject to auditing requirements, cooperatives should have complete autonomy over their expenditures and investments like other businesses.	**Enabling:** Granting full discretion over financial management decisions, subject to financial audits. **Disabling:** Mandating certain expenditures or investments or requiring government approval of financial decisions.	3	Cooperative Law, Articles 14, 18c, 20b, 51, 54; 2007 Regulations, Chapter III, Articles 6, 10, 12-56

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Question	CLARITY Principles & Explanation	Enabling & Disabling Examples	Score/ Notes	Legal Reference
7. Regulating of the Boards of Directors of a Cooperative			Score:	Article:
7a. Does the government have the authority to appoint or remove members of the Board of Directors?	**Principle #1:** Democratic member control **Explanation:** The Board should be responsible to the members who elect them and not to the government or any other outside entity.	**Enabling:** All responsibility for electing or removing directors belongs to the cooperative's members.. **Disabling:** Cooperative regulator has authority to appoint or remove board members.	4	Cooperative Law, Articles 69, 78, 80
7b. Can the government dictate the size of the Board?	**Principle #2:** Autonomy and independence of cooperatives **Explanation:** The size (above the minimum number for decision making, e.g. 3) of a Board of Directors should be determined by the members through the bylaws; the appropriate number will depend on internal factors to the cooperative and should not be dictated by government.	**Enabling:** The Board shall be elected in the number determined by the bylaws and be at least three members. **Disabling:** Requiring the Boards be no less than five and no more than nine members.	3	Cooperative Law, Articles 69, 70, 82

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Question	CLARITY Principles & Explanation	Enabling & Disabling Examples	Score/ Notes	Legal Reference
8. Capital Accounts			Score:	Article:
8a. Is the surplus income from cooperatives distributed according to patronage of the cooperative rather than capital investment?	**Principle #4:** Require member economic participation **Explanation:** A key distinction between cooperatives and share holding corporations is that in cooperatives, surplus income (i.e. profits) are distributed according to use of the cooperative rather than capital invested.	**Enabling:** Requirement that after deducting operating expenses and costs, the remainder of proceeds shall be distributed to members according to the ratio of their patronage of the cooperative. **Disabling:** Permitting the cooperative to distribute surplus income according to the capital invested.	4	Cooperative Law, Articles 8a, 45, 51, 91d; 2007 Regulations, Article 13
8b. Does the government mandate distributions to funds for capital, reserves, education or other activities?	**Principle #1:** Democratic member control **Explanation:** Although investments in reserves, education or for other purposes may be prudent and should be permitted and encouraged, mandating specific contribution levels sacrifices democratic member control and could be unwise under specific circumstances.	**Enabling:** Law allows, but does not require the creation of reserves and distributions to education funds. **Disabling:** Requiring a cooperative to put at least 25% of their annual surplus to a reserve fund for education.	2	Cooperative Law, Articles 33, 34, 50, 51

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Question	CLARITY Principles & Explanation	Enabling & Disabling Examples	Score/ Notes	Legal Reference
9. Regulating the Auditor			Score:	Article:
9a1. Does the law allow cooperative members to select an auditor of their choice?	**Principle #1:** Democratic member control **Explanation:** Purpose of an audit is to facilitate member control of the cooperative by assuring affairs are being conducted in an honest and professional way, to serve this purpose, members should be empowered to select an auditor that they trust.	**Enabling:** Requiring the auditor report to and be appointed by the general members. **Disabling:** Giving the cooperative regulator the authority to conduct an audit or appoint an auditor itself.	2	Cooperative Law, Articles 49, 66m, 69, 78
9a2. Does the law allow cooperative members to select an auditor of their choice?	**Principle #2:** Autonomy and independence **Explanation:** Purpose of an audit is to facilitate member control of the cooperative by assuring affairs are being conducted in an honest and professional way, to serve this purpose, members should be empowered to select an auditor that they trust.	**Enabling:** Requiring the auditor report to and be appointed by the general members. **Disabling:** Giving the cooperative regulator the authority to conduct an audit or appoint an auditor itself.	2	Cooperative Law, Articles 49, 66m, 69, 78

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Question	CLARITY Principles & Explanation	Enabling & Disabling Examples	Score/ Notes	Legal Reference
10. Regulations Regarding Dispute Resolution			Score:	Article:
10a. Is the entity that adjudicates disputes independent of the agency that promotes or regulates cooperatives?	**Principle #9:** Avoid conflicts of interest **Explanation:** Dispute mechanisms must ensure impartiality by being independent of officials with promoting or regulating cooperatives in other settings.	**Enabling:** Empowering an independent mediator office with no cooperative oversight responsibilities to handle disputes between cooperatives and a third party. **Disabling:** Referring all disputes involving cooperatives to the cooperative registrar or cooperative regulator.	1	Cooperative Law, Articles 27, 116; Regulations, Article 98
10b1. Do cooperatives have access to courts or existing tribunals and can they voluntarily elect to use alternative dispute resolution agreements?	**Principle #7:** Provide a coherent and efficient regulatory framework **Explanation:** Cooperatives should have equal access to the same tribunals as any other businesses to minimize duplication of resources and promote equal treatment between cooperatives and other businesses.	**Enabling:** Permitting cooperatives full access to the courts as any other businesses. **Disabling:** Mandating that all disputes involving a cooperative be brought before the registrar or cooperative regulator or considered a dispute with the government.	1	Cooperative Law, Articles 27, 116; Regulations, Article 98
10b2. Do cooperatives have access to courts or existing tribunals and can they voluntarily elect to use alternative dispute resolution mechanisms?	**Principle #8:** Protect due process of law **Explanation:** Cooperatives should have equal access to the same tribunals as any other businesses to minimize duplication of resources and promote equal treatment between cooperatives and other businesses.	**Enabling:** Permitting cooperatives full access to the courts as any other businesses. **Disabling:** Mandating that all disputes involving a cooperative be brought before the registrar or cooperative regulator or considered a dispute with the government.	1	Cooperative Law, Articles 27, 116; Regulations, Article 98

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Question	CLARITY Principles & Explanation	Enabling & Disabling Examples	Score/ Notes	Legal Reference
11. Regulation of the Dissolution, Amalgamation & Merger of Cooperatives			Score:	Article:
11a. Does the law provide for the dissolution and the distribution of assets after the dissolution of a cooperative?	**Principles #3 & #8:** voluntary membership and due process **Explanation:** Cooperatives are voluntary organizations which have the right to cease to exist, as well as the right to be formed; law should ensure that any dissolution is truly voluntary, with adequate notice and procedures for involving the membership.	**Enabling:** The law permits the dissolution and provides procedures for notifying members to approve and fairly distributing all assets of the business to the members. **Disabling:** Lack of provisions for how to dissolve a cooperative.	4	Cooperative Law, Articles 8a, 18e, 21, 33f, 34-94, 105; Regulations, Articles 86-89
11b. Does the law provide for the merger and amalgamation of cooperatives through the definition of procedures to notify members?	**Principles #3 & #8:** voluntary membership and due process **Explanation:** A cooperative should have the right to change its shape through mergers or amalgamations to grow and provide better services to its members, while protecting the rights of members.	**Enabling:** Including the procedures needed to complete a merger and member rights to abstain from membership in the new society. **Disabling:** Lack of provisions for cooperatives to merge or amalgamate.	3	Cooperative Law, Articles 8a, 18e, 21, 33f, 34-94, 105; Regulations, Articles 86-89

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Question	CLARITY Principles & Explanation	Enabling & Disabling Examples	Score/ Notes	Legal Reference
12. Regulation of Apex Organizations for Cooperatives			Score:	Article:
12a. Are the laws surrounding unions/ apex organizations permissive (not requiring cooperative membership in them)?	**Principle # 2:** Autonomy and independence of cooperatives **Explanation:** The allowance of apex organizations can be a great support to cooperatives; however requiring membership in them or certain structures can undermine the efficiency and uses of apex/unions.	**Enabling:** Allowing cooperatives to create structures that will promote, train and provide resources for cooperatives themselves. **Disabling:** Permitting the government to mandate cooperatives to join a cooperative union.	4	Cooperative Law, Articles 13, 95-99, 104; Regulations, Articles 88, 91

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"Knowing the law is very interesting. I never expected to be able to do this. It helps you better understand how to improve the law and make an impact."

- A CLARITY Nicaragua Workshop Participant

APPENDIX II: CLARITY Scorecard

CLARITY Principles	Protect democratic member control		Protect autonomy and independence			Respect voluntary membership
INDICATORS						
Questions	**a**	**b**	**a**	**b**	**c**	
1 - Formation and registration of a cooperative			4			
2 - Cooperatives Supervision			2			
3 - Legal status and rights			4			
4 - Membership	3		2			4
5 - Member governance	4	3				
6 - Officers and Directors			4	4	3	
7 - Board of Directors	4		3			
8 - Capital accounts	2					
9 - Auditor	2		2			
10 - Dispute resolution						
11 - Dissolution/ amalgamation/merger						4
12 - Apex organizations			4			
Actual Score	18		32			8
Maximum Score	24		40			8
Percentage	75%		80%			100%

Maximum possible score Cooperative law indicators	120
Actual score Cooperative law indicators	80
Percentage	67%

About the Scorecard: This Scorecard was made possible through the support provided by the U.S. Agency for International Development's Cooperative Development Program. The opinions expressed are those of the authors and do not necessarily reflect the views of the U. S. Agency for International Development.

Complete Scored Version

Require member economic participation	Promote equitable treatment		Promote access to markets	Provide coherent and efficient regulatory framework	Protect due process	Avoid conflicts of interest
	a	b				
	0			1		3
	2					2
	3	1				
4						
				1	1	1
					3	
4	6			2	4	6
4	16			8	8	12
100%	38%			25%	50%	50%

The Scorecard was produced by the staff of the Cooperative League of the USA/National Cooperative Business Association, including Douglas Barcenas, Latin America Representative.

APPENDIX III:
List of CLARITY Workshop Participants

Consejo Nacional de Cooperativas (CONACOOP) (National Council of Cooperatives)

Title	Name	Organization
President	Martha Heriberta Valle	FEMUPROCAN
Vice-President	Rafael Quinto	URECOTRACO
Secretary	Jorge Martínez	CARUNA
Treasurer	Cairo Laguna / Juan Ramón Pérez	FENIPESCA
Board Member 1	Merling Preza / Alfredo Chávez	PRODECOOP
Board Member 2	Rafael Lovo	UCANSOMOTO
Board Member 3	Mauricio Martínez	COOPERIO, RL
Auditor 1	Juan M. Altamirano	CCACN
Auditor 2	Andrés Lara	Sacuanjoche League
Auditor 3	Julio Zamora	CIPRES
CONACOOP Staff	Blanca Lidia Tórrez	CONACOOP
	Santiago Largaespada	CONACOOP
	Modesta González	CONACOOP

Instituto de Fomento Cooperativo INFOCOOP (National Institute for the Promotion of Cooperatives)

Cargo	Nombres	Organización
Chairman	Pedro Haslam (representado por Dr. Roberto Gutiérrez)	FENIAGRO
Vice-Chairman	José Adán Rivera	SIFINA- Central Financiera
Assistant Secretary	José Vidal Almendáres	FENICOTAXI
Treasurer	Javier Pasquier	CIPRES
Board Member 1	Leonel Vargas	FECAMPO
Executive Director	Olga Isabel Picado	INFOCOOP

Workshop Team:

William Báez ..... Consultant

Roberto Arana ..... Consultant

William Wares ..... Consultant

Beth Melby ..... NCBA
Douglas Barcenas ..... NCBA
Catherine Ford ..... WOCCU
Megan Webster ..... WOCCU
Edward Potter ..... AAC/MIS

Logistics:

Mario José Machado Amador ..... CLUSA Nicaragua
Carlos Sánchez Perez ..... CLUSA Nicaragua
Pablo Guerrero ..... CLUSA Nicaragua
Luz Marina Rizo ..... Journalist

APPENDIX IV: Workshop Organizers International Cooperative Development Organizations

The Overseas Cooperative Development Council (OCDC) The Overseas Cooperative Development Council is a partnership of U.S.-based cooperative development organizations building a more prosperous world through cooperative development. OCDC's mission is to champion, advocate and promote effective international cooperative development, which brings people together in democratically governed businesses to meet their mutual needs. OCDC serves as the umbrella organization for the work of the Cooperative Law and Regulation Initiative (CLARITY). Several additional phases of this project are expected, which will continue to develop tools and approaches for cooperators so they can effectively create the legal and regulatory environment that permits cooperatives to grow. The ultimate goal of the CLARITY initiative is the formation of institutions that reduce poverty and involve citizens in economic and social growth in many developing and transition economies.

The Americas Association of Cooperative/Mutual Insurance Societies (AAC/MIS) AAC/MIS was created in 1979 as an inter-American association of 63 cooperative and mutual insurers in 20 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 that involve 206 cooperative and mutual insurers in 72 countries. A major focus of AAC/MIS is to help people-based organizations reach and serve populations that currently have no access to insurance protection. *www.aacmis.org*

National Cooperative Business Association (NCBA)/Cooperative League of the USA (CLUSA) Founded in 1916 as the Cooperative League of the U.S.A., NCBA is the oldest national cooperative development and trade association in the United States. NCBA is the lead national membership association for cooperatives in all sectors of the economy. Its mission is to develop, advance and protect cooperative enterprise. NCBA provides high-quality cooperative educational programming, and contributes to successful domestic public policy and development programs. The organization also encompasses an effective international program that helps people in developing countries establish member-owned businesses and mobilize local resources to tackle challenges related to promoting economic growth in rural areas, community health, natural resource management, and democracy and governance. *www.ncba.coop*

World Council of Credit Unions, Inc. (WOCCU) WOCCU is the global trade association and development agency for credit unions. WOCCU promotes the sustainable development of credit unions and other financial cooperatives around the world to empower people through access to high-quality, affordable financial services. WOCCU advocates on behalf of the global credit union system before international organizations and works with national governments to improve legislation and regulation. Its technical assistance programs introduce new tools and technologies to strengthen credit unions' financial performance and increase their outreach. *www.woccu.org*

The founders of CLARITY are providing tools and technical assistance to local cooperatives in developing countries around the world.

ACRONYMS

AAC/MIS	The Americas Association of Cooperative/Mutual Insurance Societies
CDO	Cooperative Development Organization
CLARITY	The Cooperative Law and Regulation Initiative
CONACOOP	*Consejo Nacional de Cooperativas de Nicaragua* (National Council of Cooperatives)
DIGECOOP	*Dirección General de Cooperativas* (General Bureau of Cooperatives)
DGI	*Dirección General de Ingresos* (Nicaraguan Internal Revenue Service)
INFOCOOP	*Instituto Nicaragüense de Fomento Cooperativo* (National Institute for the Promotion of Cooperatives)
NCBA	National Cooperative Business Association
OCDC	U.S. Overseas Cooperative Development Council
USAID	U.S. Agency for International Development
WOCCU	World Council of Credit Unions

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OCDC
US Overseas Cooperative Development Council

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aac/mis
The Americas Association of Cooperative/Mutual Insurance Societies

NCBA
National Cooperative Business Association ■ www.ncba.coop

WOCCU World Council of Credit Unions

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