

THE CHALLENGES OF THE NEW COOPERATIVE LEGAL FRAMEWORK IN MADAGASCAR

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The cooperative legal framework is changing in Madagascar. A new cooperative law has been in force since August 2023, and its implementing decree is currently being drawn up. The aim of this contribution is to outline the limitations of the former law, as well as the reforms introduced by the new law. This post is very general and will soon be supplemented by a detailed paper on the new Malagasy cooperative legal framework, once the decree implementing the new Malagasy cooperative law comes into force.

Until 2023, cooperatives in Madagascar were governed by Law no. 99-004 of 21 April 1999 on cooperatives, supplemented by Decree no. 2014 - 1003 of 16 July 2014 implementing this law. An analysis of this former legal framework revealed a number of shortcomings, some of which are highlighted in the next paragraph.

Firstly, the law and the decree did not specify the registration deadlines, nor the rules relating to the publication of the registration of cooperatives. Secondly, the law and the decree granted the State significant incursions into the operation of cooperatives, to the point of jeopardizing their autonomy and independence. Thirdly, the law and the decree made no mention of the decision-making procedures at general meetings. Similarly, there was no mention of the arrangements for sharing patronage refunds within cooperatives, or of the conduct of audits. Fourthly, the law and the decree set limits on the range of activities of cooperatives. Finally, the law and the decree did not specify any rules relating to the transformation of cooperative societies. The same applies to the rules governing the creation and operation of apexes.

In 2018, the Malagasy Government, with the technical support of its partners, initiated a cooperative law reform project to correct these and other shortcomings in the law and decree. Using a participatory approach, a new law was adopted and came into force in 2023, Law no. 2023 - 016 governing cooperative societies in Madagascar. Its implementing decree is currently being drafted and will be adopted in the coming months.

The new law contains 240 articles and the definition of a cooperative contained in Article 2 is that contained in the ICA International Statement on Cooperative Identity. Similarly, the cooperative principles are listed in Article 3, with the clarification that cooperatives are constituted and managed in accordance with these principles. Similarly, the minimum number of members is set at 5, whereas under the former law there were differences depending on the sector of activity. In addition, the new law introduces two categories of members: cooperative

members and non-cooperative members.

With regard to registration, Article 21 of the new law sets out the deadlines for examining applications for registration, while Articles 25 to 27 relate to the publication of registered cooperatives. From now on, the State can no longer convene meetings in cooperatives or deal with conflict management. Its role has been limited to registering, monitoring and promoting cooperatives. An important element in the relationship between the State and cooperatives, as far as control is concerned, is the introduction of rules on auditing (Articles 176 to 181).

In regard to governance, the new law is clear: decisions are taken at a general meeting in accordance with the "one person, one vote" rule. In addition, patronage refunds are distributed to members in proportion to the activities carried out. Similarly, the new law specifies that cooperatives may engage in activities in all areas of human life (Article 4). Finally, the new law provides further details on the transformation of other entities into cooperatives and that of cooperatives into other entities (Articles 213 to 221), liquidation surpluses (Article 233), and the procedures for setting up and operating apexes (Articles 129 to 149).

The implementing decree currently being drafted will clarify certain articles of the new law. The new law is modernizing Malagasy cooperative law, in order to boost the cooperative movement. However, major steps need to be taken to disseminate the new law to the general public, in particular through capacity-building initiatives to secure support and compliance with the new law, to assist the government in setting up the register, to support the launch of the audit mechanism, and so on.