Nicaragua: *Learning the Value of Early Engagement*

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

Project Summary

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

The Need for Change

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

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

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

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

Reform Process

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

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

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

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

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

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

Outcome

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

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

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

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

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

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

Lessons Learned

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

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

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

For more information, please contact Ed Potter, Karen Schwartz, and Chris Baker, AAC/MIS, at (703) 245-8077.