

The Nigerian Co-Operative Societies Act, 2004: A Bridge still far

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ABSTRACT

The paper argues that salient aspects of the Nigerian Co-operative Societies Act, 2004 which is the principal legal framework for the practice of co-operative in Nigeria is replete with provisions which make the realization of the full import of co-operation unattainable and make suggestions on how the wheel could be reinvented to make the principal legislation responsive to the demands of modern co-operation.

INTRODUCTION

The need to co-operate, in the etymological sense of the word “to work together”, is almost as old as humanity itself. For without it, any form of civilization, however primitive would be impossible. Our forebears learnt early to combine their strength and skills in order to do things, that none of them could do alone; hunting large animals, defending themselves against their foes and engaging in one form of mutual co-operative or the other, either for social, economic or community projects. Yoruba’s of Nigeria are known to have traditional forms of co-operatives, like *ajo*, *aaro*, *esusu* and *owe*, which are still widely practiced.¹ *Gayya* and *adashe* among the Hausas and *isisie – ego*, *utu ummuna* and *oha* in Igbo speaking areas of Nigeria are also traditional associations with co-operative underpinning. However, the modern co-operative movement arose as a reaction to the social conditions and economic theories associated with the Industrial Revolution.² Fathers of the movement like Robert Owen, the British socialist, rejected practices of most capitalist forms and refused to accept mass poverty and social injustice. Together with philosophers of the time, like, Dr. William King, Friedrich Raiffeisen, H. Schulze-Delitzsch, a lawyer, Charles Fourier, and Louis Blanc, identified the weakness of the capitalist system and proposed and worked assiduously in enthroning co-operative as accepted and the most credible alternative to capitalism.

The genesis of the modern day co-operative in Nigeria is traced to the work of C.F. Strickland, a co-operative expert commissioned from India by the colonial government in the early thirties, to conduct a study on the possibility of introducing co-operatives into Nigeria. His report culminated in the promulgation of the Co-operative Societies Ordinance of 1935, which was modelled on the Indian Co-operative Societies Act of 1904 as amended in 1912.³ Following the sub-division of the country into semi-autonomous regions and later fragmented into states,

¹ These traditional associations are explained in the next sub-head.

² Allen, A. *The Co-operative Story*, Manchester, Co-operative Union Limited, 1954 p.3 et al

³ For his major work, see Strickland C.F. “The Co-operative Society as an instrument of economic and social construction”. *International Labour Review*, vol. 37, 1938 pp.729-753.

each region or state adapted the co-operative laws and regulations to suit its peculiar environment, which upon close scrutiny, were duplications of the ordinance of 1935.⁴ Although Co-operative societies and related issues had always been constitutionally under the concurrent legislative list,⁵ the states in reviewing their laws had made no attempt at tinkering with it, presumably for fear of the unpalatable consequence of inconsistency with a federal legislation on the same matter. An opportunity to tinker with the legislation came with the inauguration of a 12 member panel in 1977, headed by Mr. J. T. Caxton – Idowu, an experienced co-operative officer and the first Registrar of Co-operative of Lagos State, with a mandate to review all existing laws, principles, bye laws and regulations on co-operatives in the country and make recommendations to the Federal Government. The recommendations of the panel which was submitted in 1978,⁶ formed the *fons et origo* of the Nigerian Co-operative Societies Decree N. 90 of 1993, which is re-enacted as the Nigerian Co-operative Societies Act No.88 of 2004.

The paper is titled, “The Nigeria Co-operative Societies Act, 2004-A bridge still far”, an assertion which we intend to justify by situating salient provisions of the Act against universally accepted co-operative philosophy and ideology. The discourse is kicked off with an exposé on pre-co-operatives, co-operative concepts, co-operative principles and ideology.

Pre-co-operatives

Traditional African associations existed and were found in many spheres of human endeavours before the arrival of modern forms of co-operative societies. These could be found in agricultural production and in finance, especially for credit mobilization. In agricultural production, a traditional group farming among the Yorubas is called *aaro*.⁷ The memberships of this group are peers, age groups, or friends, formed on ad-hoc basis, usually during peak periods of activities like weeding, cultivation and harvesting. Their modus operandi involves the group going to work on each member’s farm in turn, until everybody has been served. Another form of group farming is called *owe*, in which a group of able bodied men in the village team up to assist the elderly, the chiefs or the needy on their farms in turns.⁸ A traditional form of credit co-operative is the *esusu* or *esusu* in Yoruba or *adashe* in Hausa. Here a group of people come together to contribute equal amount of money at regular intervals usually weekly, fortnightly, monthly or even on every market day. Each member of the group takes the group contribution in turn until, it has gone round everybody, when they recommence contribution. This association enjoys the patronage of market women, petty traders, tradesmen and salary earners. The *esusu* association should not be confused with the popular *ajo* where a professional collector, the *alajo* goes round to collect people’s contributions, usually on daily basis, which are later returned to them, while the collector is paid a commission for his service.⁹ The main difference between *esusu* and *ajo* is that, the latter is not an association as such, the people who contribute to the

⁴ Compare, Co-operative Societies Law Cap. 35, Laws of Oyo State, Co-operative Societies Law, Cap 13, Laws of Ekiti State.

⁵ Constitution of the Federal Republic 1999, 2nd Schedule pt. II

⁶ Federal Government of Nigeria, *Report of the Review Panel on Co-operative Principles, Laws and Regulations in Nigeria*, Lagos 1977.

⁷ Ihimodu, I. I. *Co-operative Economics: A concise analysis in theory and applications*, Ilorin, Unilorin Press, 1988 p.

⁸ “Owe ” is also used for the demand made of an in law to work on the farm of the wife’s father.

⁹ Olusoji A.T. *Esusu system (Ajo), Problem and Prospects*, Ibadan, Ogidiolu Publishers, 1996 p.6

alajo need not know one another and in fact cannot, because of the large size of patronage and added to this, is the fact that, the contributions are not fixed but depend on the ability of each client.¹⁰

A notable feature of these traditional associations is that they are loose associations, in the sense that, a formal act of incorporation, is unknown to customary law, and as such they are not recognized by law. Lack of legal backing impugns their ability of taking advantage of credit from government or financial institutions. However, native jurisprudence treat these groups as legal entities, distinct from their members, but the leader or its representative, exercises the dominant rights of the group in the name of and on behalf of the group. The leader or representative when on a debt recovery drive exercises this function in the name of and on behalf of the group, without questions.¹¹ Traditional associations as discussed above are not considered as co-operatives in the modern sense, but as associations aimed generally at achieving the same goals as modern co-operative societies as in agricultural production or credit mobilization. To modern co-operatives we now turn.

Nature of Modern Co-operatives

The gradual denudation of the Nigerian traditional communal welfare system by colonialist and neo-colonialist to a society, where people tend to think of everything as business and essential services as being fragmented among investors, management and customers, that is, those who own, those who control and those who use, with each of the three elements looking after its own interests, are the very antithesis of co-operatives, for they are enterprises in which owners, those who control and those who use, are all the same people. It is essentially an integrated system. It is a business enterprise in which membership and participation in profit (surplus) is linked to the provision of labour or produce, or the use of facilities, rather than the contribution of capital. It may still be necessary to raise capital for the establishment and operation of such an enterprise, whether in the form of contribution from members and supporters or loans from ordinary commercial sources on a fixed interest basis. But this does not affect the formal basis of the association in which capital as such plays little part.

Participation in a co-operative, as in a simple partnership, is essentially personal. Any surplus resulting from a trading co-operative, after the usual provision for reinvestment, is shared among the members on some equitable basis. In a consumer or service co-operative, dividend payments are based on the use made by each of the members of the facilities provided. In a producer co-operative, they will be assessed on the basis of the amount of labour contributed. Thus, in a typical retail co-operative, members will receive a dividend on the total amount of their purchases. Similarly, in an agricultural marketing co-operative, members will receive individual payment at the market rate for their produce and a dividend based on the proportion of the total value of goods processed or sold which they have supplied. And in an agricultural service co-operative, members will pay at an agreed rate for materials or services and receive a dividend out of profits in proportion to the amount they have spent. The net result is not in any sense a rejection of the basic economic principle of evaluating and paying for goods and labour at a rate which is determined primarily by market forces. But the suppliers of capital are denied of share in profit over and above an agreed rate of interest on their contribution or loan. Any

¹⁰ Ihimodu, op. cit. p. 27

¹¹ Yebisi, E.T., "Legal Issues in the Management of Primary Co-operative Societies in the Southwestern States of Nigeria", *University of Ado-Ekiti Law Journal* vol. 1 2002 pp55-56.

profit or surplus value created in the enterprise is divided exclusively among the members. In this wise, the rights of capital as such, are subordinated to those of production or consumption.

The co-operative approach basically tries to bring about some sort of equilibrium between producers and consumers in a market where the producers have long held sway. The producers on the one hand are builders, developers, landlords, mortgage lenders, planners, professionals and suppliers. Consumers on the other hand, are home buyers, tenants, mortgagors, borrowers, purchasers and users of the end product, whose bargaining strength had generally been feeble. For they have not written many of the rules and conditions.¹² A co-operative puts them in a position to do so, where they can at least bargain from the strength of a group. A co-operative has been defined as a group of persons who have united voluntarily to meet common economic and social needs through a jointly owned and democratically-controlled enterprise.¹³ The international labour office, define co-operative as an association of persons, usually of limited means, who have voluntarily joined together to achieve a common economic end through the formation of a democratically controlled business organization, making equitable contributions to the capital required and accepting a fair share of the risks and benefits of the undertaking in which members actively participate.¹⁴

The original co-operative objective of the Rochdale Pioneers¹⁵ was the mobilization of capital from the members to start a profit-making business, for the sole purpose of pecuniary benefit and improvement of the social and economic conditions of its members. It is the emphasis on the provision of services to members, rather than profits to investors which has resulted in co-operatives traditionally regarding themselves as organizations of people and not capital. Snaith,¹⁶ identifies central features of a co-operative thus: Voluntary and open membership; democratic control of the society by its membership; limited interest in the capital by the members (as opposed to shareholders in a company); distribution of surplus assets for the purposes of the society under its own rules; a commitment to the education of its members either generally or in relation to the use of their own property; and a federalizing tendency to act together with other co-operatives. The key concepts formulated on the values and principles and given international imprimatur by the International Labour Organization (ILO) and the International Co-operative Alliance (ICA)¹⁷ is summarized as follows:

- (i) Membership in co-operative is voluntary. Co-operatives are open without social, political, religions and gender discrimination to all persons able to use their services and willing to accept the responsibilities of membership.

¹² For a discussion on Consumer Protection, see Akomolede I.T. "Consumer Protection Law in Nigeria". A paper presented at the UNAD Faculty of Law Monthly Seminar on Thursday, January 14, 2010

¹³ Pherson I.M. "The Cooperative Identity" *International Co-operative Banking Association Journal*, Vol. 6 1994 p. 39.

¹⁴ I.L.O Co-operative Management and Administration,, Geneva, 1960 quoted by Mureith E.K, "Basic Values in a changing African Co-operative Develop context". *International Co-operative Banking Association Journal*. Vol 5 1993 p. 7

¹⁵ The Rochdale Friendly Co-operative Society was formed in Rochdale, England by a group of flannel weavers. It was the earliest attempt at cooperative efforts, culminating in the plan of the Rochdale Equitable Pioneer Society founded in 1844. a plan which was the first logical statement of the economic aim of consumer cooperatives and formed the model for virtually all consumer stores which developed later into successful Co-operative Societies

¹⁶ *The Law on Co-operative*, London, Waterlow, 1984

¹⁷ . The only two universal organizations which promote the development of Co-operative Societies.

- (ii) Co-operatives are democratic and participatory organizations actively controlled by their members. They are administered by men and women elected or appointed by and accountable to the members.
- (iii) Co-operatives are organization of people who equitably contribute to the capital of their enterprises and share in the results of its efficient and prudent operation.
- (iv) Co-operatives are economically, socially and politically autonomous bodies controlled directly by their members within existing frameworks.
- (v) In order to meet the needs of their members and to enhance their economic efficiency, co-operatives work together at local, regional, national and international levels.
- (vi) Co-operatives rely on education and training for their development. They educate their members so that they can play their roles; their leaders so they can provide sound direction; their employees so they can improve their co-operative knowledge and professional competence; and the general public so they better understands the value of co-operatives.
- (vii) Co-operatives recognize their community responsibilities. While focusing on member needs, they respect and protect the global environment and serve the interests of their communities through democratically approved policies.

The uniqueness of co-operatives as compared to other business organizations arose from operations in conformity to these universally accepted ideals and values. These values of freedom, equality and mutual help are founded on the premise that, “few who work together can achieve more than, many who strive alone”. Whether emanating from the ICA or the ILO, these co-operative principles do not legally bind the state or its legislators. The ICA is a non-governmental organization whose decisions cannot be imposed on states, and the ILO recommendations do not have the mandatory character of its conventions. However, with the absence of the ideological divide of the world,¹⁸ attitudes have changed and many countries now consider themselves more at risk by not adhering to universally agreed principles.¹⁹

Co-Operative Identity the Nigerian Experience

In Nigeria, the aim of introducing co-operatives is summed up by Strickland thus:

“...not only a matter of increased or improved crops, nor even of increased credit to cultivators who wish to change their farming methods... but it is also a question of urban and rural thrift, of co-operative building, of labour contracts, afforestation and prevention of erosion and the preservation and expansion of handicrafts, of the supply of electric light, the organization of individuals for a better diet, for precaution against diseases, and for sanitary measures in towns and country, of the extension of education and of group agreements for the removal of social evils and the spreading of better customs”²⁰

Although co-operatives were expected to be introduced to all the spheres of the people's lives in Nigeria, they turned out to be institutions for exporting agricultural raw materials to the

¹⁸ With the end of the Cold War

¹⁹ Abegunde, B. *Public International Law*, Ado- Ekiti. Petoa Educational Publishers, 2009 p. 10

²⁰ Quoted in: Report of the Review Panel on Co-operative principles, Laws and the regulation Ministry of Information, 1978 .

home country of the colonial government and this culminated in abysmal failure to effectively portray or project the co-operative principles of concern and service to the whole community. Not only were the co-operative principles not well portrayed by the co-operatives formed during the colonial period, but even the basic co-operative values of equality, solidarity, self-help and democracy tended to be lost. Furthermore, the imported rules of operation brought in by the colonialist differed from local norms and values. In both the colonial and most part of the post-independence periods in which most co-operatives were set up, Nigeria has enjoyed little real democracy. The colonial government had suppressed all attempts to democratize social and political environment of the people. The prolonged military rule after independence, did not allow the people to enjoy full freedom either in their economic or political lives. This largely undemocratic environment under which the majority of the present-day co-operatives were nurtured for over three decades, partly explains why many of them are unable to effectively project the principle of autonomous and democratically managed institutions. The problem is accentuated by the lack of a strong culture among co-operative members to press for truly democratic institutions and management practices. The emerging economy after independence was characterized by heavy government presence and intervention in productive activities. It was the belief at that time that to achieve rapid transformation of the Nigerian economy, government had to play a leading role in virtually all sectors. This led not only to a major expansion of government and general bureaucracy, but also phenomenal increase in parastatal enterprises which brought governments into direct participation in most economies.²¹ As government became involved in all sectors of the economy, co-operatives were not spared. Government became heavily involved in the growth of the movement through registration and control of most of its activities, such as, supervision of elections, budgeting and expenditure control, investment, education and many others, by creating some government ministries or departments to be in charge of the co-operative institutions. While some level of government interest and involvement has facilitated the growth of the movement, there are cases where the involvement has been too heavy, making the co-operatives to acquire the image of just another government institution.²² As a recent World Bank study observed, co-operatives in some African countries had become defacto parastatal organizations.²³ In this wise, the co-operative principles of independence and autonomous existence had been compromised and the movement rendered an appendage of the government. With the co-operative becoming more or less a creature of the government, the ability to pursue the interest of the members remained forlorn. In the last double decade or more, economies have been most transformed from heavily state controlled to liberalized economies, where market forces of demand and supply, dominate in economic decision-making. This retreat from productive economic activities by government, presents co-operatives with an opportunity to completely adapt and not swim against the tide. The critique of the Nigerian Co-operative Societies Act, 1993, re-enacted as the Nigerian Cooperative Society Act, 2004 which follows, is set against this background.

Appraisal of Salient Anti-Co-Operative Provisions of the Act

²¹ The Western Region established the Western Nigeria Development Corporation. The Northern Region established the Northern Nigeria Development Corporation, while the Eastern Region established The Eastern Nigeria Development Corporation

²² For example Co-operatives established under the Fadama Project as well as those organized for accessing government credit and alleviation of poverty.

²³ Hussi, Pekka et al. "The Development of Co-operative and other rural organizations", *World Bank Technical Paper, No. 199 Africa*, 1993

The Nigerian Co-operative Societies Act, 1993 which took the military fifteen years to enact after accepting recommendations based on it is divided into ten parts. The act commences without a preamble or a policy declaration on Co-operative. The preamble would have afforded opportunity for the legislator to indicate the following: define what a co-operative is by distinguishing it from other possible forms of self- help organizations; the role and the function of co-operatives in the society in general and in the economy of the country in particular; the character of co-operatives as private and autonomous organizations having access to all lawful activity; the limited intervention of the government regarding the formation and promotion of co-operatives; and equal treatment of co-operatives with regard to other business organizations.²⁴

Regulation of Co-operatives

The Act, makes no pretence to the fact that, it is meant to regulate co-operative activities throughout the federation, when in its section 1 on registration of Co-operative Societies, confers power on the President and Commander-in-Chief of the Armed Forces, to appoint the Federal Director of Co-operatives and his assistant, while State Governors are given powers to appoint State Directors of co-operatives and their assistants. Co-operative which is a grass root development mechanism must have less central interference, and moreover, the section as it stands, is at variance with legislative concurrency as evinced by the Constitution of the Republic.²⁵ Section 2(1)(a) of the Act provides that no society may be registered unless the liability of the society is limited. Limited here therefore means, contribute to the assets of the society in the event of its being wound up. This section is at variance with corresponding sections in the laws of the federating state.²⁶ The states laws permit registration of societies with or without limited liability. Unlimited liability means that any or all the creditors may sue any single member of the society for their debts. This implies that, the creditor can always proceed against a wealthy member of the society to recover what remains undischarged in the event of the society folding up. The interest of creditors are more secured through this means than when liability is limited, and therefore may be attractive as the easiest means of attracting credit, but it will discourage wealthy individuals from joining co-operatives for fear of being singled out by creditors, when the society is unable to meet its obligations to them. We suggest that, the section should be amended to revert to the old proviso which allowed the registration of societies with or without limited liability, because of the potential of the latter to appeal to creditors or funds depositors, such as financial institutions. Section 2(1)(b) also requires that, the object of the society should be the promotion of the socio-economic interest of its members in accordance with co-operative principles. Although not in the Act or any other Nigerian statute before it, co-operative principles are the universally recognized co-operative principles or guidelines accepted by the International Co-operative Alliance at its 23rd Congress in 1966 and reinforced at its 1995 congress as a “significant statement of co-operative principles in a modern setting”, for the running of co-operative societies.²⁷ It is advisable to list these principles in the definition section

²⁴ See the project for harmonizing co-operative legislations in South-America (Proyecto de Ley Macro par alas cooperatives de America as elaborated by the *organizacion de las cooperatives de America* (OCA) for more ideas, concerning the preamble.

²⁵ Constitution of the Federal Republic 1999, Second Schedule

²⁶ See for example Co-operative Societies Law, cap 13, Laws of Ekiti State, 2010 s.4 : Co-operative Societies Law, cap. 35 Laws of Oyo State s.4; Co-operative Societies Law, cap. 33 Laws of Kano State s.4.

²⁷ Ante

of the Act, so as to guide against the likely complications which reference to external sources for interpretation could create in the application of law. This is not to mention the risk of false interpretations. The only caveat is the care that has to be taken, in not granting a limiting or definite value to the principles, because they are subject to change.²⁸

Membership

The Act, borrowing from western legal concepts, provides in section 3 that, only physical and legal persons may hold rights and hence be members of a co-operative. For a primary society, it may be registered if it consists of at least ten persons.²⁹ Any industrial society may be registered, if it consists of a minimum of six persons and it is economically viable.³⁰ With respect to secondary societies, membership is at least five registered societies and in the case of a federal apex society, it must have at least five registered state apex societies.³¹ In order to respect the freedom of association guaranteed by the Constitution,³² restrictions on the number of members of a Co-operative Society should be limited. The Act requires that, the number of members of a primary society should be at least ten persons. The economic viability of co-operatives with too few members is, generally speaking precarious. Under such conditions granting them legal personality might go against the interests of their potential partners and creditors. The experience of the country might require that different minimum members be fixed according to the types of co-operative. Thus, this number might be higher for consumer co-operatives than for producer co-operatives, the member for service co-operatives falling somewhere in between. Apart from restrictions on membership, the Act also contains restrictions concerning age. Accordingly, section 22(1)(a) provides that, a person who has not attained the age of sixteen years shall not be qualified for membership of a primary society, except that in the case of a school Co-operative Society, the age limit shall not apply. The admission of legal minors is generally an exception to the general civil law of this country. The possibility for minors to affiliate themselves to a co-operative, needs careful studying of the implications in terms of financial responsibility, the right to vote or the eligibility to posts of responsibility. While not discouraging their joining co-operatives which have the potential of instilling co-operative spirit early in them, their number and prerogatives must be limited. Notably, minors must be prevented from being able to control the co-operative and a fortiori the purse. Also a good number of co-operative legislations permit the exclusion from membership of persons who do not have a clean police record. Although the Act is silent on this, it is proposed that, unless the punished behavior is likely to harm the co-operative, such member should assume his general social duty. This will help to reintegrate such a person into society.

²⁸ At the 1995 ICA congress an additional principle was included. The drafting problem regarding future changes could be solved by the use of an expression such as “among others...” or “in particular...”

²⁹ Nigerian Co-operative Societies Act, s,3(1)

³⁰ Ibid s. 3(2)

³¹ Ibid s.3(3)

³² The Constitution of the Federal Republic, 1999, section 45(1)(b) which is on derogation against fundamental right may take care of the seeming lapse or contradictions between the Act and the Constitution. The proviso is to the effect that, the Constitution should not invalidate any law reasonably justifiable in a democratic society for the purpose of protecting the rights and freedom of other persons. Thus, the law could in constitutional terms justify the restriction placed on the minimum number of persons who could form a Co-operative Society.

Registration

The recognition and the protection of co-operatives by the state, manifests in the registration of its name and all other information justifying its status as a legal person in a public register. There are two types of registration: the quasi-automatic registration and the registration after approval by a public authority.³³ According to the first option which appears to be most suitable in a liberal and democratic environment, a co-operative must be registered once the conditions stipulated by the law are fulfilled. If on the other hand, a previous approval is necessary, the discretionary power of the approving authority must be strictly and effectively limited. The Act adopts a hybrid of the two, and thus gives the Director wide discretion as to the number of copies of the proposed bye-laws of the society which should accompany the application for registration.³⁴ Refusal to register a society is subject only to an appeal to the Minister or Commissioner in charge of Co-operative Societies and no more.³⁵ The recognition of co-operatives as economic organizations of the private sector makes it incumbent on those responsible for registering societies, not to hinder citizens from forming groups in the way which suits them best. The implementation of a speedy and impartial registration procedure is the first step by state towards facilitating the development of a genuine co-operative movement. To this effect, in a case of a refusal to register, the promoters may appeal to a court to be specified, which will give a decision within a stipulated and brief time limit, with the added proviso that, if within the time limit, no refusal has been notified, or if the court has not given its decision, registration will be presumed. Furthermore, the hallmark of a good legislation is one which prevents the excessive resort to administrative decisions.

The Organs and Management of Co-operatives

The functioning of co-operatives, other than that of companies, depends on the participation of the members who must be able to exert an effective influence on the business of the enterprise. An essential distinctive feature of a co-operative is that, members are at the same time responsible for management. But surprisingly members often play a very small part indeed in the running of the affairs of their society. General meetings and even management committees are often very poorly attended and specialized committees are frequently non-existent. Current legislations tend to reinforce these shortcomings by not setting higher quorums or majorities. The statute under scrutiny is disturbingly also silent on this. In fact, it says nothing about the organs of the co-operative. It is suggested that, as a legal entity, a co-operative must be able to keep a certain independence, which is the essence of its being granted legal personality. Apart from having at least, a general assembly and a board of directors, which may also be called management committee, there must be provision for the existence of a control unit. This control unit, otherwise known as supervisory committee in some climes, must be independent from the board of directors, in order to be able to control the management on behalf of the members who often lack the necessary qualifications to do so themselves.

Property and Funds of Registered Societies

³³ Henry, op. cit. p. 22

³⁴ Section 4(3); Under section 3(2), the director may refuse registration if in his opinion a proposed industrial society is not economically viable

³⁵ Section 5

The Act, by section 30(1) places restriction or limitation on capital formation and investment. It forbids the granting of loan to a person who is not a member of the society, while section 33 tends to restrict the freedom of the society to make investments by listing the permitted areas of investment of co-operative funds, to include: a co-operative bank or any other bank approved for the purpose by the management committee of that society; in any securities issued and guaranteed by the Federal Government; and in any other manner approved by the Committee of the Society.³⁶ By a canon of construction, when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same type as those listed.³⁷ Thus, the section effectively restricts the permitted range of the investment of co-operative funds to banks and in government bonds. Privatization and market liberalization has opened up a wide range of opportunities for co-operative investment and trade, and if co-operatives are going to remain viable these controls must be loosen, to allow co-operatives to compete successfully in the market. Co-operatives must be responsive to new methods of capital formation. The changes worth recommending are: First that co-operatives enter the stock exchange market to allow fresh capital into the system. There is need to float shares to the public. However it should be arranged so that control is retained by member co-operators. Secondly, individual share contributions should change in response to changes in the market with control imposed on the upper limit. Also the old principle that co-operative movements should charge low interest rates to members and pay limited interest on share capital if any, should be discarded and replaced with market rates, if not co-operators will be disadvantaged and co-operative institutions will not be able to attract enough capital for investment.³⁸ The financial weakness of co-operatives, brought about mainly by the instability of the number of members and thus, the amount of share capital, is also the result of the economic rationality of the average member. As a rule, the members have limited amounts of cash, which they might not necessarily be inclined to invest in the co-operative. This behaviour is explained not only by the limited interest that they may expect from such an investment, but also by the fact that additional shares do not increase their power in decision making. The principle is one man one vote.

Audit

The purpose of the audit is to check that everyone respects the rules of the game. It is a periodical control of whether the attribution of the status of legal person continues to be justified. It helps to monitor the interests of third parties, managers and members. As such, it is a general tool for any kind of enterprise. Not expecting him to be bloodhound, the specificity of co-operatives requires the auditor to make additional investigations to ensure that co-operatives comply with the task of promoting their members. The fact that the objective of co-operators differ from the purely financial interest of company shareholders must especially be taken into account by the auditors who have to be trained accordingly. The Act by section 36(1) vests in the Society the power to appoint an auditor, but it is silent on the qualifications of the holder of the office. Furthermore, by

³⁶ Section 33(a-c)

³⁷ Eiusdem generis rule

³⁸ Co-operation loans are being obtained to purchase shares in joint-stock companies or kept in fixed deposit accounts because of attractive interest rates.

section 36(6), the Director of Co-operatives is imbued with powers to either personally or through his appointee at all times to have access to all the books, accounts, papers and securities of a registered society. The legislation has to be reviewed to ease government control and limit its involvement to policy issues. The establishment of an audit system independent from the state and co-operatives must be a priority task. Only when an external audit cannot be carried out by a union, a federation or a confederation of co-operatives or by duly qualified private auditors, may a public authority audit co-operatives. In no case must an administrative unit in charge of the promotion or the registration of co-operatives audit co-operatives

Dispute Settlement

The pertinent question is whether disputes within the co-operative movement, i.e. between members, between members and their co-operative, between organs of a co-operative, between co-operatives, between co-operatives and their secondary or tertiary organization, must be subject to general or special arbitration before the parties may access a general or a special court of law. Under the Act, the Director of Co-operatives is empowered to intervene in any dispute concerning the business of the co-operative society.³⁹ This he does, by settling the dispute himself or by reference to an arbitrator. A party aggrieved by a decision of the Director or the award of the arbitrator may appeal to the Minister or Commissioner in charge of Co-operatives whose decision shall be final and conclusive.⁴⁰ Here again governmental interference is noticeable. The settlement of disputes which ordinarily should be the preserve of a court or tribunal is not only usurped by government. The Minister or the Commissioner is constituted the final adjudicating body. While arbitration will be preferred over regular courts for financial reasons, delays and also because it allows for the consideration of local human and social issues, an arbitrator appointed by an official of government may unduly interfere with the autonomy of co-operatives. Rather, the legislation should recognize and attempt to preserve traditional modes of mediation, after which the parties may approach a special court or tribunal designated for this purpose.⁴¹ This is to avoid the expense and time involved in referring trivial cases to court.

CONCLUSION

Unless the law recognizes and clearly defines what the real purposes of co-operative are, no co-operative can plan development on co-operative lines or have any real idea of what a society should be. We have argued in this paper that salient aspects of our current legislation on co-operatives are a cog in the operation of co-operative properly called and have made suggestion as to how the wheel could be reinvented through necessary modification so as to reposition our legislation, specifically, the Nigerian Co-operative Societies Act, 2004 for the realization of the full import of co-operation. In going about this, we have not adopted the approach of a pessimists who chooses to see a “half-full glass as half empty”, but as optimists,

³⁹ Section 49(3)

⁴⁰ Section 49(8)

⁴¹ See General Section 76 of the Kenya Co-operative Societies Act, 2004 for an example of an Act setting up a special Tribunal independent of government for the settlement of Co-operative disputes

we have made suggestions regarding not only how to get to the bridge, but also how to cross to the other side and beyond.

We have already noted that, a key area to creating a favourable identity for the sustenance of co-operatives, is to ensure that those institutions have the complete freedom to organize themselves and operate without heavy restrictions and supervision by government in their management and other business activities. This would enable the co-operatives cease to be regarded as public sector institutions, under the jack- boot of a Director of Co-operatives. The role of the state will be confined to creating the appropriate and enabling environment for co-operatives to carry out their activities. An enabling environment will include freedom of co-operatives to decide on the type of activities to participate in, allowing them to practice trading activities that offer adequate rates of return not only to cover their operating expenses, but to generate capital resources for further expansion of their activities; establishment of a simplified legal regime and a general reduced role of government in terms of less control and supervision.

The relationship between a good legislation and culture has also been noted. The traditional associations as discussed in the introductory part of our paper aim generally at achieving the same goals as modern co-operative societies as in agricultural production or credits mobilization. Rather than look down on these associations, it would be reasonable to legally find a means of using them as base for the modern co-operative organizations. The fact that they had been employed in the rural areas with a high degree of success implies that, modern co-operatives that emanate from them would be easily acceptable and embraced. For example, *esusu* is similar to modern thrift and credit societies. It can be used to encourage the formation of co-operative thrift and credit societies.

Finally, a contemporary co-operate statute should incorporate provisions for gender equality, which is now a global priority for the International Co-operative Alliance which at its Centenary Congress noted that “shared influence and shared responsibilities between women and men are keys to co-operative excellence.”⁴²

⁴² Chavez, M.E. “The Role of the ICA in the Advancement of women in Co-operatives”, *Review of International Co-operation*, vol. 89 No.1 1996 p.43.