

**SUPERVISION AND CONTROL
OF CO-OPERATIVES IN ZAMBIA**



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**AN OBLIGATORY ESSAY SUBMITTED TO THE UNIVERSITY OF ZAMBIA
IN PARTIAL FULFILMENT OF THE REQUIREMENT FOR THE DEGREE
OF BACHELOR OF LAWS**

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**UNIVERSITY OF ZAMBIA
LUSAKA**

JUNE, 1990

To the memory of my
brothers Nkandu and Chola,
cousin Brig. Gen. Mulopa
cousin and best friend Noble

This is to the inspiring memory
of their unforgettable companionship

Acknowledgements:

I am thankful to all my colleagues in the Cooperative Movement, both employees and members, who provided me valuable assistance in acquiring the resources used in this essay in terms of both material and oral information.

My appreciation to Ms S Ngoma who typed the essay.

I am also greatly indebted to my supervisor Dr J Mulwila.

TABLE OF CONTENTS

iv

	PAGE
Title	i
Dedication	ii
Acknowledgement	iii
Table of contents	iv
1. AN OVER VIEW OF COOPERATIVES IN ZAMBIA	1
1.1. Introduction	1
1.2. Early Cooperatives	2
1.3. Pre-independence Cooperatives	3
1.4. Post Independence Cooperatives	4
1.5. Cooperative Structure Today	5
1.6. The Cooperative Societies Act, CAP 689	6
1.7. References	9
2. DEMOCRATIC CONTROL	
2.1. The structure of a Cooperative Government	10
2.2. The General Meeting	12
2.3. The Board of Directors	15
2.4. The Management (Executive) Committee	18
2.5. The Supervisory Council	20
2.6. References	24
3. GOVERNMENT CONTROL AND SUPERVISION	
3.1. Introduction	25
3.2. Promotion and Registration	29
3.3. Monitoring, Supervision and Control	32
3.4. Settlement of Disputes	35
3.5. Dissolution	38
3.6. Reference	41
4. CONCLUSION	
4.1. Continued Government Control v Cooperative autonomy	43
4.2. Enlightened Control by Members	44
4.3. References	47

CHAPTER I

1. AN OVER VIEW OF COOPERATIVES IN ZAMBIA

1.1. Introduction

The cooperative movement in Zambia has undergone dramatic developments since independence. From 474 cooperativesocieties in 1965¹ holding an individual membership of under 50,000 to 1,300 cooperative societies with an individual membership of about 205,000 in mid 1988.² However, a totally unprecedented development of major consequence came in July 1989 when the Government of the Republic of Zambia, in a major policy shift, announced the transfer of the Grain Marketing functions previously handled by the National Agricultural Marketing Board (NAMBoard) to the cooperative movement to be performed by Zambia Cooperative Federation Limited (ZCF) and its affiliated organisations, the nine Provincial Cooperative Unions (PCUs).

The transfer of the NAMBoard functions to ZCF brought the cooperative movement into the critical focus of the Zambian public who wondered how a non-governmental institution like cooperatives would be entrusted with such a national onerous task. Other critics wondered too whether the cooperative movement was not compromising its autonomous character and instead taking on the tentacles of a "parastatal agency" by accepting the responsibilities given.

This paper examines the issue relating to the autonomuos nature of a cooperative organisation vis-a-vis the supervision and control exercised by government over the democratic control

privilege reposed in the members. It analyses the reasons for and mode of such control exercised by both members and government and ends by discussing the resulting effect and the potential remedies thereto.

1.2. **Early Cooperatives**

During the era of the BSA company a Cooperative Societies Proclamation was enacted in 1914 to stimulate and promote the development of cooperatives. It borrowed heavily on the experiences of similar legislation in the United Kingdom and India. The proclamation provided for the registration and management of cooperative societies which were to have limited liability, plus the privilege of incorporation. Further they were to observe the **ROCHDALE PRINCIPLES** of open and voluntary membership, equality in participation, and limited dividends on share capital.

Under the proclamation, societies could be registered by the Registrar of the High court, but the right to veto registration was reserved to the Administrator of the territory, who could also appoint persons to investigate the books, accounts and affairs of the societies. The liberty enjoyed by the Administrator over societies was key to the development of cooperatives and, as has been argued by scholars and researchers, it was this liberty which was utilised to frustrate the early efforts of africans to participate in the cooperative movement.³

Consequently, between the formation of the first society, the North Western Farmers Society in 1914 and 1948, all the 8 societies registered were by settlers - even though between 1932 and 1945 independent efforts to establish groupings of African Farmers were made at Mapanza, Lundazi, Fort Jameson, Kawambwa, Mporokoso, Chinsali, Isoka and Balovale.⁴

1.3. Pre-independence Cooperatives

In response to a report by Mr W H Cambell, a former Registrar of Societies in Ceylon, done after a tour of the territory in which he observed that the 1914 proclamation was not suitable for registration of societies with african membership the colonial government appointed in 1946 a Registrar of Cooperative Societies and created a department of cooperatives in 1947. Subsequently in 1948 the Cooperative Societies Ordinance, was enacted as a model of the United Kingdom one - with changes in a few clauses only.

The 1948 ordinance provided formally for a Registrar of Cooperative Societies to be in charge of promoting and registration of societies, with also the powers, previously enjoyed by the Administrator, to veto and order audits of societies books.

As a result of the changes indigenous people began to participate in earnest in cooperatives in the decade of the 1950s. Although at the beginning of 1948 there were only 23 registered societies with a membership of 3,567 by 1964 this had risen to 192 societies with a membership of 39,667.⁵

There were mainly three popular types of cooperatives in this era, the producer marketing cooperatives, consumer and supply and the thrift and loan savings societies.

1.4. Post independence Cooperatives

After independence the policy objectives guiding the formation of cooperatives between 1965-69 leaned towards meeting people's high expectations and creating business organisations in rural areas which would keep and provide people with a permanent source of income. Government, therefore, made a deliberate attempt to digress from the three earlier mentioned types of societies to communal farming cooperatives, for which it offered monetary and material incentives. Government felt these types promoted socialism and humanism ideas and were a way of paying back freedom fighters who had not been absorbed in formal employment.

Consequently between 1965 and 1970 many cooperatives, especially farming ones, mushroomed all over the country. Not surprisingly many of them collapsed for lack of commitment, and ideological orientation in the purpose of cooperatives, and not least due to inadequate supervision by an over-stretched, understaffed and immobile cooperative department.

Following these experiences the 1st National Cooperative Conference held in 1970 made recommendations that prompted the Government to introduce a Cooperative Societies Act (1970),

followed subsequently by the Cooperative Rules (1972) which made fundamental changes in the organisation and management of cooperatives in the country. The new legislation introduced various safeguards of democratic control by the owners as well as supervision and monitoring by government officials of the Department of Marketing and Cooperatives. Also introduced were ready made model By-laws for various types of cooperatives which were to become the starting point of cooperative enterprises.

1.5. Cooperative Structure Today

Cooperatives in Zambia between 1970 and 1985 experienced unprecedented growth so much so that they usurped the organisational and administrative infrastructure which the government had provided to promote their profitable growth. The boom and burst between 1965 and 1970 made the surviving cooperatives to call for the formation of their own umbrella/apex organisation which, among other things, was to spearhead the development of cooperatives. Zambia Cooperative Federation Limited (ZCF) was hence formed in 1973.

Later Government too, realising the immense growth of the movement and its large participation in the nation's economy created a Ministry of Cooperatives in 1983. The Ministry of Cooperatives is currently under the Prime Minister's office (since November, 1989).

The Zambian Cooperative Movement is now a three tier structure consisting of one tertiary apex organisation (ZCF), its directly

affiliated secondary cooperative associations: the Credit Unions and Savings, Association of Zambia (CUSA), the and National Marketeers Cooperative Union (NMCU), nine Provincial Cooperative Unions, and at the base 1,031 Primary Cooperative Societies affiliated through the various secondary cooperative associations and having a membership of about 205,000 people.¹⁰

With the recent transfer of NAMBoard functions to the movement, cooperatives are dominating the agricultural marketing and input distribution throughout the country.

2.6. The Cooperative Societies Act, CAP 689

The Zambian Act, compared with other Cooperative Laws in various countries, especially the Eastern block, is really a liberal legal provision for cooperative societies. The restrictions are usually legal or administrative prescriptions which do not interfere with the cooperative structure on which the society is established. Within the generally external regulations laid down in the Act, the members have full authority to define their objectives and draft their rules and also determine how they wish to establish and run their cooperative societies through their respective by-laws.

The financial capital, primarily required by other types of economic enterprises, i.e. partnerships or companies, is of less significance in the cooperative business. The Act leaves the living features of a cooperative society to be created by mutual cooperation among members and embodied in the By-laws.

Further, the Act in accordance with the ROCHDALE PRINCIPLES¹¹ emphasises that a cooperative is a voluntary association of private individuals desiring to establish a common economic enterprise through mutual support. Needless to say that this emphasises not only the economic but social side of cooperatives as well.

According to the main concepts of the Rochdale Principles we may define the cooperative as a:-

1. voluntary organisation to promote the mutual benefit of its members through self-help;
2. Socio-economic institution which performs economic services for its members and also promotes their social welfare.

¹²
As Valko observes the question of whether the economic or social purpose is predominant cannot be determined in a general way because it depends entirely on the conditions under which particular cooperatives are organised, their purpose, the intention of the members, and the influencing effect of the local environment.

The Zambian Act definitely perceives cooperatives as democratic institutions which provide equality in the membership through the "one man - one vote" principle.¹³ There is no profit seeking purpose involved, since the surplus of the cooperative enterprise

will be distributed among members according to their personal participation or patronage. Similarly capital gain is limited.

In a nutshell, the Act prescribes the external character of a cooperative society, and leaves the internal substance to be filled by the prospective members as embodied in their respective cooperative society's By-laws.
14

CHAPTER 2

2. DEMOCRATIC CONTROL

2.1. The Structure of a Cooperative Government

A cooperative society may be defined as "an association of shareholders, usually described as members, who have contributed a fund of capital to be employed under their collective direction for trading purposes in providing for their needs as producers or as consumers."¹

Just like a limited company, once it is registered under the Zambian Cooperative Societies Act, a society becomes a corporate body with perpetual succession, with the right to sue and be sued in its own name, and its members enjoy limited liability.² On the other hand registration also introduces some limitations on the members. For instance no individual may hold shares equivalent to one fifth of the share capital in a society, unless such a holder be another society.³

The Act generally gives societies broad powers to determine their relationships with the outside world, but the Act also stipulates the necessary conditions which a society has to satisfy to qualify for registration, especially which must be included in its proposed by-laws submitted together with an application for registration as a society. Some of these requirements are: terms of admission of members; mode of holding meetings; scale and right of voting; making, altering or rescinding rules;

appointment and removal of a manager; election of directors; provision for audit of accounts, mode of application of profit etc.

These stipulations placed in the Act are no doubt important because they are clearly a safeguard of member control over the government and administration of their society. Such rules provide guarantees that officers will not subvert members rights or indeed grossly abuse their powers.

In practice, it has been found that members in Zambian Cooperatives rarely ever find the need to use these external instruments of control provided by the statute to remedy what they consider to be their grievances. Nonetheless these controls exist and the fact they may be invoked sets broad limits to any potential abuse of office and undesirable activities etc.. by the elected officials.

The "one member - one vote" principle also possesses a distinctively cooperative symbolism, because it is generally believed that one of the main objects of the pioneers of cooperation was to achieve a state of society in which capital would be the servant and not the master of labour. This indeed distinguishes a cooperative society from a limited company in which shareholders may exercise plurality of votes according to the type and number of shares held. By contrast in cooperatives

important to realise is that members' power of control of the business affairs of the society is generally not exercised through discussion of the reports in the general meeting but usually through their rights, at a special meeting, to amend the rules and through the general meeting's election machinery. As ⁷ Rose ⁸ put it when members disapprove of the committee's actions they can refuse to re-elect them when the opportunity arises but they cannot legally usurp the powers which the by-laws vest in the Board of Directors any more than the Board can usurp the powers given by the By-laws to the general meeting.

In the Zambia test case of CHIEF NALUBAMBA V ZAMBIA COOPERATIVE ⁹ FEDERATION LIMITED (ZCF), the appellant was the Chairman of ZCF and had in accordance with the by-laws called the Annual General Meeting. The notice of the AGM had also circulated an Agenda of the business to be conducted. During the course of the said meeting a purported internal Audit report, which was not on the Agenda, was circulated by the ZCF Chief Internal Auditor, who was not himself even a delegate to the meeting. The circulated document made a number of unsubstantiated allegations of mismanagement of funds against the appellant, in his capacity as Chairman, and his fellow Board of Directors. Based on the said report, which was adopted by the general meeting, Chief Nalubamba and his Board were removed after a vote of no confidence. Chief Nalubamba sued for wrongful dismissal and sought reinstatement.

In its ruling the court observed that the manner in which the delegates had removed Chief Nalubamba's Board was ultra vires

the by-laws of ZCF, and further questioned the implication of the general meeting appointing the Registrar of Cooperative Societies, who although present at the meeting was not a delegate, to chair the last part of the meeting following the removal of the incumbent chairman. The court ordered the reinstatement of Chief Nalubamba and his Board.

In the circumstances of the authority of the NALUBAMBA case and the foregoing explanations it would be fair to say, adapting Lindsay's argument,¹⁰ that sovereignty resides in the constitution, i.e. in a cooperative society's by-laws, rather than in a members general meeting.

Having laboured to qualify the above, the accepted view of the importance of a general meeting need not necessarily fall off since it is the main legislative organ of Cooperative Government, and together with the members right to elect office bearers, it is a vital means by which control may be exercised by the members. And as Ostegaard says "it is the principal means by which the society's committee gives an account of their stewardship and it is the chief means by which the members can gain information about how the society is being run, and give general directions to the committee by passing resolutions."¹¹

Even in our land, as an institution of democratic control, in which the electors directly confront their representatives, the

general meeting has no comparison in the sphere of public government in terms of effectiveness. The general meeting does not only choose the Board of Directors, whom it is also at liberty to dismiss at any time in accordance with the provisions of the by-laws, it can also amend, repeal or revoke the society's By-laws and above all it may decide to dissolve the cooperative society itself, powers which no other organ within the cooperative society possesses.

12

2.3 The Board of Directors

The Board of Directors is another important organ of a cooperative society charged with the responsibility of generally directing and supervising the business and property of the society. The Board exercises any other powers it may be given by the general meeting which are not reserved or restricted to the general meetings by the Act, rules or by-laws of the society.

13

The Directors in Zambian Cooperatives are elected at an annual general meeting. In primary cooperative societies they will be elected from the general membership, but in cooperative unions and other secondary or tertiary cooperatives the practice is that they are nominated to the general meeting from a separate electoral meeting held specifically for the purpose. The latter situation is in use where representation on the Board is either given to each affiliate or to a particular region/province/district covered by the respective cooperative society. They serve from one to six years, provided that one may not serve 6 consecutive years without stepping down for at least one year.¹⁴

According to the requirements of the Cooperative Societies Act, Rules and By-laws, the Board of Directors have specified duties, some of them being:¹⁵

- (i) To supervise and manage the society;
- (ii) To engage the best trained manager and determine the best working conditions for him and his supporting staff;
- (iii) To supervise the financial operations of the society, call for general meetings and propose the disposal of the net surplus after due deduction to various funds and share capital; *
- (iv) To decide on long term and short term budgets as well as enter into contracts on behalf of the society.

- (v) To regularly check estimates against expenditure and to take necessary measures and see to it that records and accounts are properly maintained by officers with sufficient knowledge and training for the purpose;
- (vi) To receive, consider and recommend to the general meeting applications for membership, and to recommend expulsion where necessary.

As can be seen from the above duties the position of a Director in a Cooperative Society is indeed an onerous one. The Board is the caretaker organ of the society entrusted by the members to ensure that things run smoothly in accordance with the intentions of the members. Consequently, the requirement that directors serve for a certain period and the power vested in the general meeting to even remove them earlier for a good cause, ¹⁶ causes the necessary fear ensuring that the Directors are subject to the control of the members. The whip being that when a Director seems to be serving a purpose other than that of the member, the members may remove such a Director or refuse to re-elect him when his term of office expires.

It is worth noting however, that the Boards of Directors of Cooperative Societies are not always composed of members nominated and elected by the cooperative members. Under the Act, the Registrar of Cooperative Societies is in certain

circumstances empowered to appoint special directors, not exceeding one third of the total membership on the Board. The practice has, however, been that the Registrar usually only appoints one special director to a Board.¹⁷ The tendency has also been to nominate local members of parliament or retired former civil servants, or even still serving senior government officials with some cooperative background or experience. The Special Directors are directly answerable to the Registrar and their tenure on the Board is entirely dependent on him.

What is of significance is that the Act empowers these Special Directors to use a veto power to require that a decision of the Board on any particular case shall not take effect until it has received the approval of the Registrar.¹⁸ As Mulwila rightly observes, to this extent the principle of democratic control of a cooperative society has certainly been edged.¹⁹

2.4 The Management or Executive Committee

In order to carry out its duties as required under the Act, Rules or by-laws, the Board of Directors of a Cooperative Society is empowered to appoint an Executive Committee (or special committee) consisting of the Chairman, Vice Chairman and one to three of the other Directors. The work of such a committee is none the less subject to general supervision and direction of the Board of Directors.²⁰

This committee, called the "Management Committee" in small cooperative societies and the "Executive Committee" in cooperative unions and other secondary cooperative organisations, is really a stop-gap measure for urgent or pressing matters that a society has to deal with in between meetings of the Board, or indeed represent the Directors in such other issues or exercises that may be too technical to be undertaken by the entire Board of Directors. In this light then usually the committee may be asked to do such things as signing contracts, interviewing personnel and receiving visitors to the cooperative society etc.

It is important to stress that just like the Board of Directors derives its powers from the General Meeting the Executive Committee too derives its existence from the Board of the Cooperative Society and can, therefore, only operate within the ambit of the Board's scope of authority and duties as discussed earlier.

Being a small body of people the Executive Committee can of course meet more frequently than the full Board and hence usually is given the task of immediate supervision of the hired management of the cooperative society on behalf of the Board of Directors. In this regard then one may liken the Executive Committee of a cooperative to the Executive Directors of a parastatal like Indeco, the basic difference being that the

Executive Directors in parastatals are full time whereas the Directors comprising the Executive Committee in Cooperatives are always part time. The other difference of more significance being that the Directors in cooperatives are not professional people usually, and consequently end up doing more listening than directing. As a result of this the more professional managers working in cooperatives tend to wield considerable influence on the members, and subsequently, needless to say, on the eventual direction of the policy passed at Cooperative Meetings.

2.5 The Supervisory Council

The division of functions between the various organs of a cooperative society need not present any special problems, especially as has been provided for by the Act and Rules, none the less as secondary and tertiary cooperatives have been set up in Zambia which have become larger in business volumes one problem has become paramount: The function and significance of the general meeting.

Of course it is the duty of the Board to present a report and a statement of accounts to the general meeting of members concerning the conduct of the cooperative society's business. This is why a general meeting must be held at least once a year.

However, it has been observed that a general meeting has lately ceased to exercise the kind of function for which it was created, because in large cooperative societies, especially at cooperative union level, when it is held the number of delegates is so large that a meaningful discussion is difficult to undertake. On the other extreme it would not be a truly representative meeting if most members were kept away.

Consequently, the practice has now turned out to be that in most general meetings of cooperative societies the powers of the Board of Directors is seen as being greater than what was originally intended.²¹ Thus their activities may not be subjected to the necessary criticism because the forum of the general meeting reduces their reports and statement of account to mere announcements, which are accepted even before the relevant documents have been properly studied.

For the general meeting to function properly a solution has to be found to this difficulty. Furthermore it is the duty of the Board to keep members with a reasonably good idea of the way the society's business is proceeding. Admittedly this is more difficult to do when the commercial transactions, as well as financial terminology besides being voluminous is such that even when the Board provides the necessary material it is beyond easy understanding of the ordinary member. Consequently, the Act

provides for the creation of a supervisory committee for the purpose of acting as watchdog for the members over the Board of Directors and Management and making its own independent signed report to the General Meeting. Under the Act the committee has a right to demand for reports or information on any transactions of the society, including making surprise cash counts.

No doubt the task of the supervisory council is by no means an easy one. It is even made more difficult by the fact that in practice when it should confine itself to the main lines of management's actions or transactions it will also want to go deeper into even minor and petty issues. On the other extreme it may be that the committee is either composed of inexperienced and unenlightened members who may place too much confidence in a Board and consequently fail to form an objective opinion of the Board's proper conduct of affairs of the cooperative society.

This later problem has made most of the bigger cooperative societies, especially unions and secondary organisations - including Zambia Cooperative Federation Limited to dispense with the use of a supervisory committee. What they have instead done is to incorporate in their by-laws a requirement that the general meeting should appoint and fix the remuneration of a firm of Public Accountants to audit the books of the Cooperative Society and make a report on the state of affairs to the general meeting itself.

Hence now every cooperative society is free to have its auditing done by what ever body it, wisely or unwisely, prefers. In practice the smaller societies who cannot afford to have the services of public Accountants have had to depend on government employed Accountants or those provided by ZCF Professional Services, whose fees are more moderate because they are subsidised by the GRZ/SIDA ASSP Budget to audit rural primary cooperative societies.

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CHAPTER THREE

3. GOVERNMENT CONTROL AND SUPERVISION

3.1. Introduction

The Cooperative movement does not exist in a vacuum. It is part of an ordered society and an ordered state. Consequently, the government in Zambia impinges upon it at many points. Government must perform certain essential functions in conjunction with the cooperative movement. The Zambian government has, gone even further and has adopted a policy of actively promoting the growth of cooperative activities, which is essential given the level of development of our cooperative movement.

Furthermore, in plans for cooperative development, especially in the spheres of cooperative marketing, processing and warehousing the Zambian government has played a very complementary role to the cooperative movement's. In the past the government used to operate a system of subsidies and restitution to support the marketing of agricultural produce especially in rural areas. This has somewhat changed now with the scrapping of the National Agricultural Marketing Board, NAMBOARD. None the less the government is still very much involved in the provision of agricultural credit. For instance, in 1985 the government provided a grant of K80 million for the Cooperative movement to be utilised as a revolving fund for RURAL AGRICULTURAL SEASONAL CREDIT to be utilised by small scale farmers whose business volume was thought to be too small to be attractive to the other lending institutions, VIZ LIMA Bank and the other Commercial banks.

The government has also, in conjunction, with other foreign governments entered into technical agreements for the provision of storage warehouses, rice polishing and processing plants and transport fleets of which, among other things, the cooperative movement is the direct beneficiary.

Government participation is indeed most welcome because most of the new cooperative unions especially, operate in areas which lack adequate marketing structures. The cost of such infrastructure being borne by them is unimaginable, and hence government or donor agencies have to come in to boost developmental efforts in these rural areas.

Another area in which government assistance has really been necessary is with crop purchases financing. Every season the cooperative movement, which has completely taken over the agricultural marketing activities through out the country now requires about 3 billion kwacha to finance just the maize crop.

The big unions like the ones in Central and Southern provinces, with a marketable surplus, require individually over 1 billion kwacha each. Such large amounts of funds are of course difficult for a union to organise without the assistance of government in sometimes organising consortium loans on guarantee from the financial institutions.

In practice, this government participation in cooperative movement activities has led to a number of criticism being levelled at both the government and the cooperatives. Private

businessmen in the country have often questioned the government's continued protection and favour of cooperatives especially in agricultural marketing instead of liberalising the system and thus opening up to private traders purely on an economic basis. In the same breath the businessmen have also questioned the perceived autonomy of the cooperative movement if it will forever persist in operating, like a dependant government agency, on subsidy and restitution funds from government.

In such a situation it is plainly clear, that the government has a direct interest in the activities of the cooperative movement. It has to keep a monitoring role constantly on how these facilities are being utilised and ensure that they are being put to the best use as envisaged. The government has entrusted this task to the Ministry of Cooperatives, which in late 1989 was moved to the Prime Minister's office. The Ministry of Cooperatives hence plays the supervision and coordinating role with other ministries of government, like agriculture, and a lot of other non government agencies involved or collaborating in several projects involving the cooperative movement.

Although it is difficult to imagine that the colonial government would have perceived government involvement in cooperative activities in the manner undertaken today, it is none the less interesting to note that it set the standards of supervision and control in 1946 when, in ushering in the office of the Registrar, summed up his duties as follows:-

"one of the duties of the government cooperative department is to ensure that members are properly instructed in cooperative principles and that committees and office bearers know how to keep their books of accounts, but it is for the members to ensure that the business of the society is properly conducted and that the office bearers and the employees perform their duties in a satisfactory manner. This principle of self-help must also be upheld as regards the financing of societies. A society should only be directed by government in the early and experimental stages of the initiation of a government sponsored movement and, even then, it would be a mistake to be granted at sub economic rate of interest".¹

When studied properly one notices that the colonial regime had perceived government's role as being promotion and supervision leaving the control and management of the cooperatives to the members and their elected officials. However, as already explained, the nature and manner of government's financial involvement in the cooperative movement, after independence, perhaps necessitated that the aspect of control should also be included alongside promotion and supervision.

Consequently the Ministry of Cooperatives is as of now charged with the responsibility of promotion, registration, supervision, inspection, audit, education and training, control and liquidation of cooperative societies.

3.2. Promotion and Registration

This aspect of government responsibility dates to the colonial era, after promugation of the cooperative societies ordinance (1948), when the department of cooperatives was formed. It would seem at that time, however, that the settler government was little interested in wholesale formation of cooperatives amongst indigenous people and consequently the Registrar and his staff remained somewhat a moribund department.

This situation changed in 1965 after independence when the government took initiatives to promote cooperatives and so expanded the department of cooperatives.

When the 1970 Cooperatives Societies act was introduced it made government's commitment to promotion of cooperative societies the base. The Minister of cooperatives is empowered to take any steps he may feel necessary and prudent to foster cooperative growth, such as and including making it possible for the societies to have access to financing, provision of necessary information and advice.²

The Act further provides that these measures which the Minister may institute should be administered under the responsibility of the Director of Cooperatives,³ supported by the Registrar of Cooperative Societies and other officers of the department.

The office of the Registrar has been given specific function by the Act relating to the pre-registration activities that may be necessary for societies. He may supply a standard set of By-laws to any person or group of persons intending to form a cooperative society or offer advice of any kind in any prescribed manner to facilitate the pre-registration requirements of individuals.⁴

In practice the cooperative officer at the district is usually the first person that a prospective cooperative group will meet. He, as a representative of both the Director and Registrar, will hold several discussions with the group of prospective members to guide them properly and ensure that they understand their roles and the role of the proposed society. He will also have to satisfy himself that they have all the information necessary to perpetuate successful cooperative society.⁵

The cooperative officer at the district has to ensure that an organising committee is elected from the most enthusiastic and knowledgeable members.⁶ Once he is satisfied with the preparations including an examination of the feasibility potential of the society he will organise the signing of an application form by ten of the founding members and then lodge the same, accompanied by four copies of the proposed By-laws and his recommendation to the Registrar of Cooperative Societies in Lusaka.

Whilst the application is with the Registrar of cooperative Societies the organising committee is allowed to begin collection

of entrance fees and share contributions, under close supervision of the cooperative officer, from potential members. The committee will elect a treasurer for the purpose who has to issue receipts for monies collected and also keep an account. If for any reason the society's application for registration is rejected by the Registrar the treasurer and the committee have to see to it that the money received as entrance fees and share contributing is refunded to the rightful owners.

The Registrar of cooperative societies may register the society if he is satisfied that:-

a) the By-laws are appropriate and not in contradiction with the Cooperative Societies Act, 1970, the rules and the cooperative principles.

b) the cooperative society has reasonable chances of success.

If registration is accepted, the Registrar will send back to a society a certificate of Registration, one signed copy of the approved By-laws together with a copy of the Cooperative Societies Act (1970) and the rules.

A society may only commence its business operations when it is in receipt of a certificate of registration from the Registrar.

Thereafter the founding members will hold a general meeting and elect a committee or Board of Directors, who in turn will engage a society manager and any other necessary subordinate staff to operate the business.

3.3. Monitoring, Supervision and Control

There can be no doubt that it is on the side of monitoring and control that government intervention seems to have found a place. It is also, needless to say, the area of contention between usually government representatives and the cooperative members. On the positive side where there are no intelligent, literate and self confident peasants or working men to take the lead, or indeed no leisured men with a professional training to act as unpaid advisers, some substitute must be found to fill the vacuum, and in the Zambia situation the government officials have greatly helped to do this. However, differences with members seem to arise in situations where the membership of a particular society feels that they are enlightened enough and competent to handle their affairs. In such situations the members have expressed indignation at what they have termed as persistent interference by government officials, in enforcing their supervision and control role, in the day to day running of the business of the societies.

Normally, the colonial cooperative societies ordinance of 1948 had only provided government officials with the duties of monitoring and supervision. It has been after independence that the government's policy of closer supervision due to its own heavy investment committed to the cooperatives, has become a necessary factor.

Government officials have themselves also argued that supervision of cooperatives has developed in response to failure of a great

number of cooperatives as a result of their inability to understand cooperative principles or to manage their affairs in a cooperative way. Government, it is also argued, was to constantly intervene so as to ensure that the wider interests of the majority of the membership in cooperative societies are not swamped by the domineering or self enlightened or educated members who may wish to take advantage of the possible illiterate or silently passive membership to further their own selfish interests by use of the cooperative society.

One very valid argument, which even members themselves cannot dispute, is that due to government financing given to cooperatives the government has a duty to ensure that these public funds are put to proper use. Government further argues that even where cooperatives have generated their own money and not utilised government loans or grants, still these funds belong to members who are part and parcel of the general public and therefore these funds have to be protected from misuse.

In order for government to execute this custodian role it justifies the use of its long arm of supervision, inspection and audit to monitor and control the activities of cooperative societies.

The supervision and control exercised by government is discharged mainly by the Minister and the Registrar of Cooperative Societies. The Act empowers the Minister, through the use of statutory instruments, rules or orders, to make proclamations

binding on any society.¹³ The Minister is further empowered to constitute a board of review to examine applications by societies¹⁴ for financial assistance from the government or its agency.

The Registrar of Cooperative Societies is also vested with several supervisory and control powers:-

- (a) not only to prescribe the manner in which a meeting may be called by a cooperative society, but also to call a meeting if a society fails to call one;¹⁵
- (b) to remove directors elected by members, to appoint special directors,¹⁶ and to appoint an administrator for a cooperative society;
- (c) to audit and investigate the accounts of every society and to inspect societies' books;¹⁷
- (d) to settle cooperative disputes or to refer them for arbitrating;¹⁸ and
- (e) to supervise the winding up of societies, including appointment of a liquidator.¹⁹

Recently the government has started to transfer some of its supervisory functions to Zambia Cooperative Federation Limited (ZCF), in line with the Party and its Government's intention that some of these be undertaken by the cooperative movement itself. Cooperative education and training for members and auditing of cooperative societies books are the examples. However, it is worth noting that the ZCF in practice needs formal written authorisation by the Registrar to undertake a particular society's audit, and the ZCF is obliged to file one copy of its audit report to the Registrar as appointing authority.

Whilst reasons for government supervision and control of cooperatives are quite plausible it should, as Mulwila rightly points out be appreciated that the practice of supervision and control erodes the autonomy of cooperatives and thereby run counter to the basic principles of self help.²¹

It may become necessary for both the government and the cooperative movement to in future consider introducing some safeguards in order to preserve cooperative autonomy as envisaged by the Rochdale pioneers.

Some of these maybe retirement of capital grants provided by govenment through prudent business sense. Government may also consider desisting from granting permanent financial assistance for short term credit needs of the cooperative movement, though it may assist by guaranteeing overdrafts with commercial banks, or long term loans for purely economic commercial enterprises expected to be renumerative to the movement. This is the only way continued dependence on government may be removed. At the same time government may also do well to consider scrapping the practice of wholesome placement of directors appointed by the Registrar on cooperative organisation's boards and should do so only when a particular situation or special circumstances warrant a need to.

3.4. Settlement of Disputes

According to S.154 of the Act, if a cooperative societies By-law do not provide for a manner of settling disputes they have to be

referred to the Registrar of Cooperatives Societies for a decision. The disputes envisaged by the Act may be:

- a) amongst members past or present or their representatives;
- b) between members past or present and the society or its board of directors or salaried officers;
- c) between the society or its board of directors and any officer of the society;
- d) between the society and any other society

Also deemed to be included here may be a claim by a society for any debt or demand due to it from a member past or present.²² The emphasis is that in order to invoke this machinery of settlement of a dispute it is generally accepted that the dispute must be a dispute arising from any activity within the ambit of the society's rules or By-laws.²³ Of special note is the fact that disputes involving cooperative society employees instead of office bearers would appear not to be covered by S.154, because such grievances are supposed to be handled by the industrial relations court or the high court.²⁴

However, recently the Registrar, in spite of S.154, in a Zambian test case,²⁵ had occasion to exercise his jurisdiction and appointed a tribunal to hear an appeal against dismissal brought by a former Chief Executive of Zambia Cooperative Federation, the apex organisation of the cooperative movement in Zambia.

S.154 provides that once the disputes covered by the section are referred to the Registrar he may either decide them himself or refer them to an independent tribunal for arbitration.²⁶

When the Registrar is deciding any dispute, he may at any time before deciding the dispute refer any questions of law to the High court.²⁷

In the test case referred to involving a Chief Executive and ZCF, the tribunal appointed by the Registrar was chaired by a High court commissioner who sat with a prominent executive of the Zambia Federation of Employers and a retired civil servant with experience and knowledge of cooperatives. The two parties were represented by two prominent Lusaka lawyers.

The Act further provides that if any of the parties is aggrieved by the Registrar's decision he can appeal to the Minister responsible for cooperatives, within two months of such decision.²⁸

Similarly, where a party is aggrieved by the award of an arbitrator, an appeal lies within one month, first to the Registrar and therefrom to the Minister whose decision shall be final.²⁹

The section, however, is unclear about whether appeals to the Registrar against an arbitrator's award is only in relation to arbitrators appointed under a society's By-laws or also includes those in which the arbitrators or tribunal has been set up by the Registrar himself. If the latter is included this would appear to be contrary to the rules of natural justice because the Registrar having appointed the tribunal cannot again be the same person to receive the appeal.

As already stated the decision of the Minister in all decisions of disputes, or indeed the decisions of both the arbitrators or the Registrar when not appealed against in the stipulated time shall be final and may not be called in question in any civil court and shall be enforced in the same manner as if the award decision had been a decision of the civil court.³⁰

But, as Mulwila observes the jurisdiction of the Minister can, however, be circumvented or narrowed in certain circumstances.³¹ First where a dispute involves complicated questions of law and fact, the Registrar, on his own part or at the behest of one of the parties, can suspend the proceedings to enable one of the parties to institute proceedings in a civil court to have the issue determined. Secondly, the Registrar, as already mentioned, may also at any timed time before deciding a dispute refer any questions of law for the opinion of the High court, which opinion so given is final and conclusive.³²

3.5. Dissolution

The affairs of a cooperative society can only be wound up by the order of the Registrar in writing.³³ This may be done by the Registrar first effecting cancellation,³⁴ and then appointing a liquidator in whom the assets of the cooperative society would vest, subject to the control of the Registrar and exercise of powers given in the order of appointments.³⁵

An order for cancellation of a society may be initiated by the Registrar or by the society itself. The Registrar may cancel

Registration if satisfied, among other things, that registration was obtained improperly; that the society exists for an illegal purpose, or if it has failed to observe provisions of the Act, the rules or By-laws; or the society is no longer in operation or is unable to continue in business.³⁶

The Registrar may also order cancellation upon receipt of an application from the society made in pursuance of a special resolution requesting such cancellation. Such a cancellation order when made is subject to appeal to the Minister, within sixty days, by any member of the society wishing to contest cancellation, and may not take effect until the sixty days has lapsed or the appeal has been disposed of.³⁷

Once the cancellation order takes effect, all property of the society vests in the appointed liquidator who, subject to the control of the Registrar, has the task of winding up the affairs of the society and in so doing has power to summon and enforce attendance of parties and witnesses, and to compel production of documents of either assets or of claims against the society.³⁸

Any party aggrieved by any act, decision or instruction done or given by a liquidator or Registrar, can appeal to a subordinate court of first class, provided written consent of the Attorney-General has been obtained.³⁹

In the liquidation of a society, the funds of the society have to be applied in the following manner:⁴⁰

- a) first to cost of liquidation;
- b) then to the discharge of the liabilities of the society;

- c) then to the payment of share capital; and
- d) to payment of dividend not exceeding 6 per cent of net surplus (provided By-laws allow this)

All the claims against the society have to be made within two years of publication of the closing of the liquidation in the Gazette otherwise they shall be cancelled.⁴¹

After two years of publication of notice in the Gazette any surplus remaining thereafter has to be paid to the members of the society at the time of the dissolution (or their representatives) in proportion to their patronage with the society over the preceeding three years, or if no business was done in preceeding three years, in proportion to their share capital held at such date. And where this is impracticable the surplus will be paid, subject to the approval of the Registrar, to local organisations with objects beneficial to the community.⁴³

The Act further stipulates that except as provided for within the Act no civil court has any jurisdiction for any matters of dissolution of a society done in accordance with the Act.⁴⁴

3.6 REFERENCE

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40. S.153(1)
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42. S.153 (3) (a)
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44. S.152

4. CONCLUSION

4.1. Continued Government control v Cooperative Autonomy

It seems that the controls exerted by government over cooperative societies are quite clearly spelt out in the Act and the rules, albeit, their criticism for being an encroachment on the cardinal issue of cooperative autonomy underlining the organisation of these societies. There is also, admittedly, a big problem of reconciling this perceived necessary autonomy of cooperative institutions against the equally necessary duty of government to ensure that the huge public funds invested in cooperatives in the provision of infrastructure viz: storage facilities, transport and distribution network and training institutions, are secure.

This is more so that cases of mismanagement have continued to occur in scattered instances and have fittingly been always well publicised by our ever observant press. The government has also expressed indignation at the continued cases of inefficiency seen in some cooperatives hence the need for its continued supervision and control roles.

On the other hand cooperative see themselves as "growing children" who expect that the government will relax their supervision and control as they become more self reliant with an increased capability of self sustenancy up to full maturity when they would be fully autonomous.¹

Admittedly, however, the cooperative movement cannot expect to continue to suck from the government and then also shout

about independence. Theirs is a truly dependent situation and changes in the manner and style of control exerted by government, and as enshrined in the Act, may only come when positive steps are taken to reduce this dependence. It would be impractical to expect a total wipe out of government assistance in forms of loans, grants etc altogether in the near future. This is basically because the very nature of the activities undertaken by cooperatives are either economically central to the country's well being (like maize marketing) or have a developmental aspect close to the government's own policy intentions (like provision of rural agricultural credit and rice mills) that the government would like to use the cooperative network established to further its own plans.

In such a situation then government control is no doubt going to continue for some time. One however may wish to see a progressive moderation of its hold on the cooperative movement, through introduction of mutually agreed or accepted safe guards of the cherished autonomy. The present situation if allowed to continue may negate cooperative societies autonomy to such a situation as where their features begin to look exactly synonymous to those of the parastatal organisations.

4.2. Enlightened Control by members

It has been observed that a cooperative can only retain its true character if it is owned and controlled by its members in a democratic manner. This principle hinges on an enlightened and

well informed membership in order to exercise the right as custodians of the supreme authority of the cooperative society. It is therefore imperative that the members should be aware of their rights, duties, responsibilities and privileges.²

The members need to understand for instance that they have the right to control the affairs of their society through their participation in general meetings.³ Such an enlightened membership would also minimise the number of cases whereby a few powerful or influential members dominate the affairs of the society, because cooperatives must represent a happy mean between the forces of extreme individualism on one hand, and socialism or communalism on the other. Cooperatives would, therefore, do well to ensure that individual rights moderated by consideration of justice, equity and fair dealing between man and man are safe guarded.

This is why from its beginnings, the cooperative movement all over the world has been founded and consciously construed on democratic foundation that must be preserved.

Above all to ensure that control is not wrested from them the members should insist on prompt general meetings and make sure that they attend, because when they don't attend they are denying themselves self government. The members' meeting should elect the Board of Directors and appoint auditors, who are expressly answerable to the members for the affairs.

Its important for the members to be aware that they can only overcome the challenges of today's business environment by combining what ever business efficiency they may master with a vital and genuine democracy.

4.3. REFERENCES

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