

**CO-OPERATIVES IN A LIBERALISED ECONOMIC ENVIRONMENT.**

**ARE THE LAWS PANACEA TO THE ILLS AFFLICTING THE CO-OPERATIVE MOVEMENT?**

**SUBMITTED BY: KIMATHI JOHN MARCELINO  
G34/1016/2000.**

**IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE LL.B DEGREE, UNIVERSITY OF NAIROBI.**

**SUPERVISED BY: MR TIM MWESELI.**

**IN THE FACULTY OF LAW, UNIVERSITY OF NAIROBI,  
SEPTEMBER 2004.**

## **DEDICATION**

**THIS DISSERTATION IS DEDICATED TO MY MOTHER, ISABELLA, WHO TAUGHT MY SIBLINGS, AND, I THE VALUE OF HARD WORK, HONESTY AND INTEGRITY AND ABOVE ALL THE ART OF COOPERATION AT AN EARLY AGE.**

## **ACKNOWLEDGEMENTS.**

This dissertation was written at a very demanding season in my life, and I am greatly indebted to many friends and colleagues whom I would like to share the glory with.

I am deeply indebted to my supervisor Mr Tim Mweseli for his valuable guidance and advice. Thank you for allowing me to drink from your cup of knowledge.

My family especially my siblings, Florence, Juliah and Silas for standing with me and cooperating hence making it possible the nurturing of the philosophy of cooperation in the family.

My friend Kellen for encouragement and constructive criticisms of this study not to mention her all weather friendship.

My roommate Karanja for bearing with lights on at late night hours as I prepared this dissertation.

Special thanks to Murungi Kibanga-secretary to the cooperative tribunal and C.G Mbogo-chairman –cooperative tribunal, for answering all my questions without tiring and allowing me to use their libraries for my research.

The staff at Kenya College of cooperatives library for all invaluable assistance accorded to me during my research.

To all my friends who each played a role in this dissertation and my life, for being those different threads that make up this beautiful cloth thank you.

Lastly, but definitely the most the good lord and saviour of my soul for all his faithfulness in my life.

# CONTENTS

- a) Table of contents
- b) Abbreviations
- c) The study
- c) Bibliography

## INTRODUCTION

Background to the study .....	1
Scope of the study .....	2
Statement of the problem .....	3
Objectives of the study .....	3
Hypothesis .....	4
Justification of the study .....	4
Literature review .....	4
Chapter outline .....	5

## CHAPTER ONE

Definition of co-operative societies.....	7
History and development of co-operative Movements in the world .....	9
Developments of co-operatives in Kenya.....	9
Development during colonialism.....	10
Development of co-operatives after independence.....	12
Co-operative principles .....	14
Conclusion.....	18

## CHAPTER TWO

Co-operative laws since independence.....	19
Organisational structure of co-operatives.....	22
The Co-operative Societies (Amendment) bill 2004.....	24
Conclusion .....	31



## **CHAPTER THREE**

Background of liberalisation.....	32
Liberalisation and co-operative movement.....	36
The role of government in co-operative societies In liberalised economy.....	40
Conclusion .....	44

## **CHAPTER FOUR**

Introduction to conclusion and recommendations.....	45
Education and training.....	48
Political interference.....	49
Finances.....	50
Legislation.....	51
Management.....	52
Amalgamation and subdivision.....	53
Other issues.....	54

## **LIST OF ABBREVIATIONS.**

SACCOS-Savings and credit cooperative societies.

SAPs-Structural Adjustment Programmes.

ICA-International Cooperative Alliance.

KCC-Kenya Cooperative Creameries

KFA-Kenya Farmers Association.

IMF-International monetary Fund.

FAO-Food Agricultural Organisation

KNFC-Kenya National Federation of Cooperatives.

NARC-National Alliance Rainbow Coalition.

WTO-World Trade Organisation.

HIV/AIDS-Human immuno Deficiency Virus/Acquired Immune Deficiency Syndrome.

## INTRODUCTION

‘No man is an island of himself’ so goes the old popular English saying, which emphasizes co-operation of mankind in all spheres of everyday activities, be they personal or social dealings.

A co-operative society is an engine for economic growth of our country, if well utilised; nationally it increases employment, capital formation, marketing of products and credit supply hence leading to poverty eradication. Co-operative societies engage in a wide range of activities; housing, industrial, agriculture, banking among others. There are over 10,000 registered co-operative societies with membership of above 5.7 million. Close to 80% of Kenyan population derive their livelihood direct or indirectly from the co-operative movement.<sup>1</sup>

Given the importance of these societies in our country, the government has sought ways on how to assist members of those societies reap maximum benefits. However, those interventions have encountered a myriad of challenges; mismanagement, leadership wrangles, negative effects of liberalisation, low levels of awareness and illiteracy, fluctuation and unpredictable prices, loss of members to HIV/AIDS pandemic and low patronage among others.<sup>2</sup>

Due to the above bottlenecks faced by societies the government has always responded by changing its policies and statutes pertain to the co-operative movements.

After independence, co-operatives were recognised as the best strategy to help mobilise people in the mainstream economy. Due to low literacy levels, the state had to play a major role in the day-to-day running of co-operatives. The co-operatives societies Act 1966, CAP 490<sup>3</sup> was enacted in 1966 and gave the government wide supervisory powers

---

<sup>1</sup> East African Standard – 3<sup>rd</sup> July 2004 page 22.

<sup>2</sup> *Ibid*

<sup>3</sup> The cooperatives societies act, cap 490 (1966)

over the co-operative movement. To supplement the Act, co-operative society rules 1969 were formulated<sup>4</sup>. The wide powers given to the government over co-operatives led to co-operatives earn for themselves a stigma of government institutions.<sup>5</sup>

By the 1990s a new economic order was replacing the old. There was emergence of new-classical economic school, which believed in market forces as the most effective mechanism for transmitting information and resource allocation. State controls were caving in to forces of free market economy. The tight government involvement over institutions, including co-operatives was to be relaxed through globalisation and liberalisation. This school had the support of International monetary found (I.M.F) and World Bank support through their tough conditionalities.<sup>6</sup>

The government had to bulge to this pressure. The policy and legislations instruments that had given the state unfettered and unchecked powers were to undergo reformation, hence the sessional paper no. 6 on co-operatives in a liberalised economic environment of June 1997<sup>7</sup> and the co-operative societies Act no 12 of 1997 which repealed the earlier Cap 490. There was also to follow subsidiary legislation of November 1998 (Co – operative rules of 1998).

As I write this dissertation there is Bill passed by parliament only awaiting presidential assent (Co-operations societies (Amendment) Bill of 2004). This bill intends to revert to the earlier regime of government control. Reason? The 1997 statute has failed to lead to a better co-operative movement in Kenya.

## **SCOPE OF THE STUDY**

Ideally a genuine co-operative society is one that emerges spontaneously from the people.<sup>8</sup> However since at independence Africans were not aware of the operations of

---

<sup>4</sup> Societies rules 1969

<sup>5</sup> Murungi K.M (2003) the development of co-operative law and policy in Kenya: Oscan Publications (2003).

<sup>6</sup> *Ibid*

<sup>7</sup> Sessional paper No.6 of 1997 on cooperatives in a liberalised economic environment.

<sup>8</sup> Eustace K. W (2002) management of co-operative movement. A case study of SACCO Schemes in Kenya



many institutions including co-operatives the government had to take the initiative of structuring the societies hence the statutes.

Despite the fact that Kenyan co-operatives are statutorily structured, for them to maintain the philosophy and character of co-operatives they must be democratically controlled popular movements run as per the accepted international co-operative principles on one hand and on the other hand they must be run in the highest economic efficiency in a competitive economic setting so as to benefit the members.

This double task requirement for co-operative societies has certainly confronted the societies with formidable problems especially in a global liberalised economy.<sup>9</sup> This study will focus on the efficacy of the legal regime envisaged in the 2004 Co-operative (amendment bill) in bringing about the balance between the democracy and sure management of cooperatives with state involvement in a liberalised economy.

## **STATEMENT OF THE PROBLEM**

Since early 1990's when the structural Adjustment programmes (SAPS) were adopted in Kenya, The co-operative sector has undergone very unpleasant times.

Despite the sector affecting almost every Kenyan life there has been scanty literature on the same. This study will identify, analyse and offer workable recommendations on how to revitalise this very vital sector of our economy in this era of globalisation and liberalisation.

## **OBJECTIVES OF THE STUDY**

The main objective of this study is to identify the main problems facing the co-operative sector, analyse them and offer recommendations. This study will have a more inclination on problems associated with the emerging issues of globalisation and unfettered competition brought about by liberalisation.

---

<sup>9</sup> *Supra* 5



## **HYPOTHESIS**

In order to achieve the study objective, two hypotheses will be tested.

1. Current or proposed/envisaged co-operative laws have/will not adequately promote the philosophy behind co-operative movement
2. Poor management, lack of understanding of co-operative movement by co-operators has led to retarded growth or death of our co-operatives societies.

## **JUSTIFICATION OF THE STUDY**

This study being on a vital sector which if well manned can eradicate poverty is important and justified, the co-operatives have enabled millions of Kenyans to acquire education, decent housing and meet other vital economic, social and cultural aspirations.

The knowledge about the challenges facing societies in a global economy will give an idea on how to formulate policy measures required to eliminate such problems. Hence this study could help rekindle the drying or help resurrect the already dead fire of cooperation. Also to those not already in the mess they will know what to avoid.

## **LITERATURE REVIEW**

**Sessional paper No 6** on co-operations in a liberalized economic environment June 1997 – This is the main policy paper, which marked the start of liberalisation of the co-operative sector.

**The co-operative societies, (Amendments) Bill 2004.** This is a bill already passed by parliament awaiting presidential assent. It provides for major amendments to the current statute thus reversing the control of co-operative movement back to the government.

**The co-operative societies Act No 12 of 1997** this is the Act which repealed the earlier CAP 490 and its aims were stated as to make co-operatives self relevant, self controlled and commercial viable organs in accordance to the internationally accepted co-operative principles.<sup>10</sup>

---

<sup>10</sup> National assembly official report 3<sup>rd</sup>, September 1997

From the **Development Of Co-Operative Law And Policy In Kenya** by Murungi Kibanga Manyara in Particular chapter three highlights the reasons for liberalisation

Victoria Mucai – Kattambo in his book **Co-Operatives, Formation Management And Settlement Of Disputes** – historical evolution and activities of co-operatives are discussed

Finally, from **Eustace Kajogi Njeru 'Management Of Co-Operative Movements A Case Study Of Savings And Credit Co-Operation (SACCO) Schemes In Kenya** he indicates some of the challenges facing the co-operative movement with bias to SACCOS in Kenya.

## **METHODOLOGY**

To understand this complex study on co-operative calls for an extensive literature review. Primary as well as secondary sources will be reviewed. Relevant journals, thesis and dissertations of other researchers will be perused. Government documents, conference paper presented will be used.

Most primary sources will come from libraries, which contribute greatly to this study. Interview of some key personnel in the ministry of co-operative development and marketing will provide information to the study. Where interviews fail questionnaires will be used to get the primary data.

## **CHAPTER OUTLINE**

**Chapter one** briefly introduces the historical background/emergence of co-operative movements. The internationally accepted principles of co-operatives and the emergence of the movement in Kenya.

**Chapter two** delves in the legal regimes, which have been regulating the co-operative sector since independence and the reasons for their enactment and their subsequent repealing.

**Chapter three** will look at the current status of co-operative movement in Kenya, problems facing the sector and more specific the problems associated with liberalisation of the co-operative sector.

**Chapter four** will contain a critical analysis of the issues arising from the study, offer recommendation, and conclusion.

# CHAPTER ONE

## 1.1 HISTORICAL BACKGROUND OF CO-OPERATIVES

African socialism has a bearing on the need for cooperation. The author comes from a community where during initiation of boys to adulthood, the young initiates are called and each asked to break a single stick given to him. This the initiates do without much trouble. However when all the sticks are tied together and each initiate asked to try to break non-succeeds in doing so. The instructor would conclude the session by reminding them of the old saying that *together we stand divided we fall*. This type of practice within our African customs shows the emphasis put on co-operation by our communities. By bringing the little each of us has we make ourselves strong enough to withstand pressure from other quarters. This is the philosophy upon which cooperatives were formed. The movement as we shall see later evolved from the least economically endowed peasants so that they could combine efforts and be able to resist the exploitative nature of the few wealthy people.

Ideally a cooperative society should emerge spontaneously from the people<sup>11</sup>. The co-operative societies Act, 1997<sup>12</sup> does not clearly define what a co-operative society is. The definition section says that a co-operative society means a society registered under section 4, section 4 on the other hand only gives the principles upon which the society should be based on.

Given the vague definition given by the statute, we have to turn to legal scholars, of the subject so to explore clearly the meaning and scope of the co-operative societies.

C.R Fay defines a co-operative society as a

*...An association for the purpose of trading on such terms that all who are prepared to assume the duties of membership may share in its rewards in the proportion to the degree in which they make use of the association.*<sup>13</sup>

---

<sup>11</sup> *Supra*5

<sup>12</sup> Co-operatives societies Act 1997

<sup>13</sup> Calvert H – The law and principles of co-operative 5th ed pg 16.



Dr.G. Mladenatz says

*... Co-operative is an association of persons small producers or consumers who have come together voluntarily to achieve some common purpose by a reciprocal enterprise working at their common risk and with resources to which all contribute*<sup>14</sup>

These two definitions emphasize the attributes of voluntariness and mutual gain. . F.C Helm says that co-operatives could be defined in the widest sense as a voluntary organisation of economic units based on equality, carrying out an allocated or self given economic objective “ *... the co-operative society in its nature is neither capitalist nor socialist but a neutral means of organisation which can serve various aims and economic units.*”<sup>15</sup>

This definition by FC Hem at least recognises that cooperation can be used for various aims other than economic purposes. The definitions further makes it clear that the society is not driven by profit making (capitalist) enterprise or a social institution with no economic prospects. This denotes the double requirement of a society i.e. sound business management and not motivated by need for profits but empowerment of its members.

All above definitions were given during the early evolution of co-operatives. Some definitions cannot stand the changes brought about by globalisation and liberalisation in the movement.

Probably the most sound definition could be that given by the international co-operative alliance (I.C.A). Which emphasizes the basic principles of co-operation. The I.C.A says

*... A co-operative is any association of persons irrespective of its legal constitution and shall be recognised as co-operative society provided it has for its objects the economic and social betterment of its members by mean of exploitation of an enterprise based upon mutual aid and that it conforms with the principles of Rochdale.*<sup>16</sup>

---

<sup>14</sup> Chesma W. J M – Handbook for co-operative personnel in the Caribbean – 1<sup>st</sup> ed pg 49 - 50

<sup>15</sup> Helm F.C – Economics of co-operative enterprise 1<sup>st</sup> ed pg 5

<sup>16</sup> Victoria MK cooperatives formation, management and settlement of disputes-oxford university publication



This definition captures the changes undergone by the societies. In the early stages of co-operative evolution it was believed that only human beings would be co-operators, however in our present co-operative statute allow any legal person to be a co-operator. These are the changes encapsulated in the I.C.A definitions. This is also the definition captured by section 4 of the co-operative societies Act 1997

For the purpose of a working definition, I choose to take the one enumerated by I.C.A

## **1.2 HISTORY AND DEVELOPMENT OF CO-OPERATIVES MOVEMENT IN THE WORLD.**

In the 19<sup>th</sup> century Europe was undergoing pronounced social and economic changes. Due to the industrial revolution wealth was taken by a few groups of individuals and the rich left peasants vulnerable to exploitations. To fight back this exploitation and minimise the levels of poverty, workers and peasants formed associations through which they would assist one another and be self-reliant. These associations come to develop into modern co-operative societies.

Although various people had tried to start the movement earlier without much success, the modern movement is traceable in Rochdale society of equitable pioneers of 1844. This society was made up of a group of cotton weavers and other workers at Rochdale, Lancashire who met together to trade under the name of the society. Their success inspired others to form similar movements. This society had more or less the universal principles of co-operatives as they are presently known. These were modified in 1966 following the I. C.A recommendation, which resulted into formulation of the guidelines into six basic principles, which represent the essential features of the organisations<sup>17</sup>

## **1.3 DEVELOPMENT OF CO-OPERATIVES IN KENYA**

The co-operative movement was started in Kenya in the early 20<sup>th</sup> century through the initiative of European settler farmers. Since settlers established the movements to service

---

<sup>17</sup> *Supra* 12

their needs as plantation farmers, it followed therefore that most of those societies were agricultural based .Up to 1913 the settlers managed the co-operatives without government involvement. This changed in 1913 when the government passed the co-operatives ordinance, which apart from formalizing the existence of cooperatives in Kenya also had the effect of bringing the societies under government control. Some of the earlier co-operatives were the Kenya co-operative creameries (K.C.C) and the Kenya Farmers Association (K.F.A), which assisted farmers to market their produce, purchase farm inputs and provide research services.

This subheading on development of co-operative in Kenya shall be divided into two; parts one will be development during colonialism, and part two will be development after colonialism.

### 1.3.1 DEVELOPMENT DURING COLONIALISM

During the colonial period, co-operatives were characterized by non-participation by Africans. Africans were regarded as illiterates who could not understand the complex institution of co-operative society.

This position changed in 1946 when the government passed the co-operatives ordinance of 1945<sup>18</sup> which had the effect of allowing Africans to form co-operatives and more so the indigenous were for the first time allowed to grow cash crops such as coffee which was earlier restricted to ~~settlers~~ *settlers*.

Despite the skepticism expressed by the Europeans as to whether Africans could manage their co-operatives, the indigenous people on being allowed to join co-operatives and grow cash crops proved their critics wrong. The co-operatives society enjoyed a steady growth from then. A number of reasons have been advanced as for this steady growth of the movement.

---

<sup>18</sup>The co-operative ordinance of 1945

First there was a general change of attitude towards African Agriculture by the Britain. There was an economic depression and capital shortage due to the effects of Second World War, which depleted the agricultural and financial resources of the colonial economy. The colonial master took the idea that by encouraging African to engage in economic activities such as agriculture it would enable the colonies be self-dependent and hence ease pressure on the British government.

Secondly African themselves were determined to uplift themselves from this poverty. Many Africans entered into trading associations to compete with Asians.

In spite of the fact that these early enterprises were formed to compete with other races and the fact that members were drawn from African business people who stood to gain from the enterprise, hence not a co-operative *per se* these associations offered a chance for Africans coming together and cooperating for a given object. Later these institutions were to transform to co-operative societies, as we know them.

Thirdly there was a land reform policy that was evidenced by swynneton plan for land consolidation and settlement scheme. This enabled Africans to own land which they could use for production hence the need for co-operative to market their products.

After Second World War, the British government was faced with a dilemma as on how to handle the demobilized soldiers. The soldiers had to be absolved in some kind of employment to avoid them turning against the government. The solution was found in encouraging creation of co-operatives where ex-military could be absorbed either as operative staff or active co-operatives.

Despite the phenomenal growth of societies in the 1940's and 1950's the 1960's witnessed a drastic crumbling of the movement. This called for drastic steps to be taken to address the situation.<sup>19</sup>

---

<sup>19</sup> Victoria MK cooperatives formation, management and settlement of disputes-oxford university publication



### 1.3.2 DEVELOPMENT OF CO-OPERATIVES AFTER INDEPENDENCE

The movement was introduced without prior planning. The haphazard way of introduction combined with the fact that many Kenyans by that time were illiterate, the government had to chip in to help the movement stand. To the government co-operatives were a way of enabling Africans participate in their country's economy, the government had therefore to make deliberate efforts to promote the growth and development of the movement in the country.

In 1963 the government created the ministry of cooperative development whose major purpose was to facilitate the growth of co-operatives and also streamline and consolidate their management. The result of this was the rise of many societies although most of them were agricultural based.

The government also spelt its ultimate goal on public policy in Kenya in its sessional paper number 10 of 1965 titled 'African socialism and its application to planning in Kenya'.<sup>20</sup> These goals were expounded in various government statements and documents such as sessional paper number 14 of 1975 on co-operative development policy.

The government having taken recognisance of the fact that co-operative movement was one of the well-established institutional arrangements for conducting the economic affairs of the nation it had to do something to ensure success of the same. This was unequivocally stated by then minister for co-operative development Mr. R. Ngala when he said

*... Since the present government wants to own the cooperative movement more effectively to effect the efficiency and effectiveness and use it as an instrument. Which will give us prosperity and economic pattern in the country, the government has this policy of increasing their guidance and supervision in the co-operative movement.<sup>21</sup>*

---

<sup>20</sup> Sessional paper number 10 of 1965 on African socialism and its application to planning in Kenya

<sup>21</sup> Kenya House of Representative report, 1966 vol. 10

To achieve the above policy statements legal support was needed. This was given by the enactment of co-operative societies Act, 1966<sup>22</sup>, which empowered the commissioner of co-operative to such an extent, that he could interfere with day to day running of the societies.

This control even though well intended led to watering down of the philosophy behind co-operatives i.e. member-controlled and autonomous. Prompting the renowned professor Munker to lament as follows

*.... In co-operative enterprises under prevailing system of over supervision and over intervention by, government officials do not leave co-operative manager with much to manage. Where co-operatives and bureaucratic system with seconded staff acting as managers, the margin for managerial decision-making are very limited. If for instance all major decisions are subject to approval of the government authority in charge of cooperative development the ultimate authority for decision-making is shifted from the cooperation to the respective government official.*<sup>23</sup>

With such lamentation from many quarters and subsequent embracing of the policy of liberalizing the economy by the Kenyan government. Control of co-operatives had to be withdrawn and management be handed over to the societies. This policy change towards co-operatives was contained in the sessional paper number 6 of 1997 on co-operatives in a liberalised economic environment.<sup>24</sup> To legally empower the policy there was the subsequent enactment of the cooperatives societies Act of 1997<sup>25</sup> which stripped off the government the overbearing nature it had over the co-operative societies and vested the same in the hands of members.

Forty plus years since independence the Kenyan societies seems to be unable to properly deal with their societies without the intervention of government. For less than decade since control by government was withdrawn co-operatives have undergone unspeakable

---

<sup>22</sup> Cooperative societies act 1966, cap 490

<sup>23</sup> Munkner, H.H 'co-operative society as an instrument of state sponsorship co-operatives, Geneva, I.L.O cooperative information, 1973

<sup>24</sup> Sesimal paper on 6 on co-operative in a liberalised economic environment, 1997



retrogression. As this research is being done there is a bill passed by parliament. The co-operative society (Amendment) bill 2004<sup>26</sup>, which seeks to revert control of cooperative to the government

#### **1.4 CO-OPERATIVE PRINCIPLES**

Since co-operatives are, like ordinary business, association supposed to be income generators. What distinguish them from ordinary business associations are the values upon which they are found on. Co-operatives are founded on the values of self-help, democracy, equality, equity, self-responsibility and mutual trust amongst the members. To achieve and maintain these values, they have to be run in the universal accepted principles so that they do not deviate from the philosophical foundation upon which the movement was formed.

Co-operative principles are said to be those practices, which are essential that is absolutely indispensable to the achievement of the co-operative movement purpose.<sup>27</sup>

In Kenya the co-operative society must apart from being for promotion of members economic interest also as a matter of statutory requirement achieve it's purpose within the co-operative principles.

The statute demands that before a society is registered it must have incorporated within its by-laws the following co-operatives principles.<sup>28</sup>

- (i) Voluntary and open membership
- (ii) Democratic member controlled.
- (iii) Economic participation by members.
- (iv) Autonomy and independence
- (v) Education training and information

---

<sup>25</sup> The co-operative society Act 1997

<sup>26</sup> The co-operative society (amendment) bill 2004

<sup>27</sup> Cooperative values in changing world –report of ICA congress Tokyo

<sup>28</sup> Cooperative societies act No 12 of 1997 section 4

- (vi) Cooperation among co-operative and
- (vii) Concern for the community

The above statutory requirements emanate from recommendations of I.C.A, which is a global co-operative organisation that has the aim of promoting trading and financial relations among its members in accordance with co-operatives principles and to spread the ideas of cooperation through education.

It is now necessary to analyze the contents of each principle so as later to be able to compare if the same is followed and if not what can be done to correct the situation

#### **1.4.1 VOLUNTARY AND OPEN MEMBERSHIP**

This can be said to be the cardinal principle. Open membership demands that no restriction be put as to membership in a co-operative society. It is a principle of non-discrimination as to entrance to be a member of a given society. This should not be constructed to mean that necessary limitations cannot be imposed, for example, if a person has to have a certain skill in order to be eligible for membership of a particular society then that requirement is a limitation but as a necessary one.

Voluntary aspect demands that no person should be coerced to join a given society. It should be membership out of free will. This principle has been sometimes misused by individuals to make large cooperatives be split into unviable societies since as per the principle they cannot be coerced to stay in a given co-operative. This is one of the mischief's the government is trying to address through the co-operative societies (amendments) Act 2004.

#### **1.4.2 DEMONCRATIC MEMBER CONTROL**

The people have defined democracy in political arena as *government of the people for the people and by the people*. The same meaning can be imported in the field of co-operatives.

The principle establishes various aspects to deal with the governing of the society affairs. Since not all members can sit and do the management of day-to-day affairs of the society the principle requires there be a small group (committee), which manages and administers the society on behalf of others. This committee must be elected by members and be accountable to them. The second limb to this principle is that all members are equal irrespective of the share contribution. Each member has one vote; this is based on the value of equality. No member is superior to the other due to his economic shareholding in the society.

Lastly the principle demands that the final authority be with the own of the society. This authority is expressed mostly on diverse annual general meetings or special general meetings of its members.

### **1.4.3 ECONOMIC PARTICIPATION OF MEMBERS.**

The movement was initiated due to the need to fight the evils of poverty. This noble objective cannot be achieved if members were not to participate economically in the society. The principle has two aspects. One is on the limited right of interest on capital. Since co-operatives are not motivated by profit making ideas but enhancement of the economic status of it's members; It follows that the share capital of a co-operative gets a limited rate of interests if any at all.

The other aspect of this principle relates to disposal of surplus, based on the value of equity, equality and fairness there must be a fair and distribution of the surplus. No member ought to gain at the expense of others. To achieve this fair and just distribution, surplus must be distributed in proportion to a member's business transaction with the society.

### **1.4.4 AUTONOMY AND INDEPENDENCE**

Independence and autonomy of a society is necessary to avoid manipulation of the society by some people for their selfish motives. Before Kenya adopted the policy of liberalisation the government could interfere with day-to-day affairs of societies. This



earned the societies the stigma of being taken as government institutions. Politicians took the societies as stepping-stones for achievement of their political mileage.

Luckily due to pressure from I.M.F and I.C.A the policy of liberalisation was adopted and the independence of co-operatives society was restored.

However freedom comes with responsibility most of our societies have been unable to handle this freedom.

#### **1.4.5 PROMOTION OF EDUCATION**

Knowledge is power, for a member of a society to be able to make any significance contribution to his society he must be informed about the organisation. He has to know his right and obligations so that he acts from a point of knowledge when he is discharging the same. Education should not be limited to society officials and employees. It must also go as far as to reach the co-operators.

The government after independence was faced with this problem of Low literacy level among its citizens to fight the setback the government started the co-operative college so as to offer a channel to people to learn. However in Kenya this still remains a problem one college cannot satisfy the country's needs.

#### **1.4.6 COOPERATION AMONG CO-OPERATIVES.**

*Kidole kimoja hakiui chawa.* (One finger does not kill lice) goes a Swahili saying. To kill this menace of poverty which was the main object of the early co-operatives. Co-operatives are encouraged to cooperate both vertically and horizontally. The potential of strong movement cannot be quantified. This issue is also addressed by the cooperative (amendment) bill 2004, which seeks to empower the commissioners of co-operative to regulate sub-division and amalgamations of co-operatives.

### **1.4.7 CONCERN FOR THE COMMUNITY**

As per F.C Helm co-operatives are neither capitalist nor capitalist in nature, they encourage the spirit of selflessness. They should work for development of sustainable developmental projects within their communities This has helped many communities get for example, delivery of tapped water and electricity, construction of schools and hospitals which all are good for the general public.

### **1.5 CONCLUSION**

Co-operative is a major institution which if well used can help in alleviation of poverty. Unlike ordinary business organisation, co-operatives are not motivated by profit making objectives but enhancement of social and economic standing of its members. To achieve this distinguishing character the movement is run in accordance to universally accepted principles. In Kenya co-operatives are regulated by statutes, some have been repealed since they have outlived their usefulness. The statute, which is currently in force, is also on the way to repealing. In our next chapter we will evaluate the legal regimes, which have served our societies since we attained independence .we, shall also delve into the shortcomings of those regimes and specifically narrow down to the efficacy of the proposed amendments to the current statute.



## CHAPTER TWO

### 2.1 CO-OPERATIVE LAWS SINCE INDEPENDENCE

Significant changes in relationships between citizens, their organizations including co-operations and state have to be continued. Then Co-operatives must make major adjustments in order to remain competitive. Consequently, in many countries, substantial change in legal systems and in some, entirely new ones have had to be adopted if co-operatives are to fulfill their potential of resolving societal problems.<sup>29</sup>

In Kenya prior to the attainment of independence the co-operative societies were governed by the cooperative societies ordinance – 1945<sup>30</sup>. This piece of legislation had outlived its usefulness in the changed circumstances i.e. granting of independence Hence need for new legal order.

In the 1960's the Kenyan economy was state controlled and regulated. The major government concern was how to inject developmental impetus within the rural areas especially in the agricultural sector, Since it is impractical to dish out money to people directly, an institution was necessary to facilitate the same. The only best placed institution was the co-operatives movement which had managed to mobilise many peasants together. Since cooperative societies were getting assistance from the government, and given that the country was characterized with low level of literacy. The government could not allow the taxpayers money it was pumping into these organizations to be squandered by illiterate managers .To keep watch on the taxpayers money and also to facilitate the movement stand on its own feet, the government had to get a legal way of facilitating this agenda<sup>31</sup>.

---

<sup>29</sup> Michael Cracknel-cooperation in the context of globalisation and liberalisation (Food Agricultural Organisation consultant)

<sup>30</sup> The cooperative societies ordinance 1945

<sup>31</sup> The cooperative policy of Kenya on cooperative in liberalised economy from 1997(booklet published by Kenya college of cooperatives)

Given the above scenario the cooperative societies Act 1966<sup>32</sup> was enacted. This act came into force on 31<sup>st</sup> December 1966. The aim of the Act was stated in its preamble as to make provisions concerning the constitution registration and regulations of co-operatives societies and purposes incidentals thereto.

To supplement the provisions of the cooperatives societies Act, 1966 the co-operatives society rules 1969 were formulated. The above legal regimes were the necessary legal back up needed by the government to achieve its policy.

The Act of 1966 embodied stern measures of control vested on the minister and the commissioner for co-operatives. The government was given wider supervisory powers argumentatively to enable it curb the serious malpractices which had become widespread within cooperative movement<sup>33</sup>.

Although the original objective and aims of hits Act were noble it started to show its shortcoming after serving the movement for two decades

The wide sweeping powers given to the government by the Act totally eroded the basic tenets upon which the cooperative movement the world over founded. The cooperative societies act made many people look at the movement as extensions of government institutions.

Due to governmental influence and the face that government is made of politicians, the cooperative movement was made a conduit for rewarding politicians. The government by appointing its loyalist, adherents and sympathizers to be managers of the societies led to the strangling of management and development of the cooperative sector. This led to the inevitable inefficiency in our societies.

---

<sup>32</sup>The cooperative societies act 1966(cap 490)

<sup>33</sup> *Supra* 5

The societies, which were once vibrant organizations, became shell of their former glory in the late 1980's and early 1990's. They were characterized by rampant cases of mismanagement, misappropriation of funds and dishonestly amongst the leaders of those societies.

The Act empowered the commissioner to such an extent that he could veto almost each and every decision of a management committee of a given society. This led to lack of expediency due to the bureaucracy.

The cooperative societies Act 1966 was also wanting in the area of dispute resolution/settlement mechanism

The above problems associated with CAP 490, compounded with the lack of enough budgetary allocation to sponsor the movement as it was the case by the government, and owing to the liberalizations of the economy which demanded little of government influence on the society affairs, meant that the services rendered by CAP 490 laws of Kenya were less needed and hence a new legal order had to be ushered in.

This new legal order was attained by the enactment of Act Number 12 of 1997<sup>34</sup>, which had its aims and objects. As to:

- a) To repeal the existing CAP 490 laws of Kenya.
- b) To liberalize the cooperative sector.
- c) To Democratising and professionalism of the management of the co-operatives societies.

Despite government liberalizing the sector of co-operatives with good intention unscrupulous committees abused their newfound freedom and liberties to the detriment of members. The new legal order had led to withdrawal of state intervention in the day-to-day management of cooperative societies and unions. Since then the role of government in the sector has been of creating conducive environment for the growth of the

---

<sup>34</sup> The cooperative societies act no 12 of 1997



movement. Co-operatives have been managing their own affairs provided they do so according to the internationally accepted cooperative principles as modified to suit the Kenyan inhabitants and local circumstances<sup>35</sup>.

The statute established a comprehensive structure of the cooperative society but this structure also seems to have been unable to stand on its own.

## **2.2 ORGANISATIONAL STRUCTURE OF CO-OPERATIVES.**

Our cooperative societies Act 1997 recognises a three-tier structure of the cooperative movement. However, a fourth category has developed as a matter of practice.

### **a) The primary society**

This society has its membership restricted to individual's persons only. It is the lowest level of the structures of co-operatives, it is formed by individuals who have common economic interest and are desirous of promoting these interests by pulling their resources together and working as a team in order to minimise the cost of doing the same thing as an individual. These societies are the backbone of the cooperative movement in Kenya.

### **b) The secondary societies.**

Secondary as a matter of ordinary words comes from a primary. Therefore, it follows that these types of co-operatives come out of a union between primary societies. The secondary society is defined as a union of registered society whose membership is restricted to primary societies.

A union of primary cooperative serves its primary affiliates by making it easier and cheaper for them to obtain various facilities required for efficient operation of the societies.

---

<sup>35</sup> *Supra*, 5

### c) The Apex Society

The Apex society is defined as a cooperative society, the membership of which is restricted to cooperative union .it may include a society established to serve the cooperative movement by provision of banking or insurance services.

The Kenya National Federation of Cooperative (K.N.F.C) is the apex of our societies whose role is to act as mouthpiece of Kenya cooperatives and propagate cooperative principles which the movement is founded upon. To avoid the possibility of emergence of a plethora of apexes in the Kenyan cooperative movements to the statute, the K.N.F.C has been specifically given the role by the proposed amendments to the statute<sup>36</sup>.

We have witnessed that after independence the government adopted a legal regime where it was able to indulge in day to day running of cooperative societies. This was marred by shortcomings we have enumerated. To counter the shortcomings in the 1990's the government changed its legal approach and withdrew from the affairs of the societies. This freedom was also abused; The National Alliance Rainbow Coalition (NARC) on getting into power, the president re-established the ministry of cooperative development and marketing<sup>37</sup>. This ministry has presented a Bill in parliament- Cooperative Societies (Amendment) Bill 2004 which bill has been debated and passed by parliament only awaiting presidential assent to become law. This Bill is aimed at reviewing the 1997 societies Act in order to revitalize the cooperative movement and restore the movement to its former glory<sup>38</sup>. Keen analysis of the provisions of the proposed law; show that it will have the effects of the effect of restoring sweeping powers to government as they were in cooperative societies Act of 1966. The question is will this time these amendments be panacea to problems bedevilling our societies?

---

<sup>36</sup> Co-operative legislation: A paper presented to Delegates of Mwalimu Sacco Limited during their Education day on 27<sup>th</sup> day 2004, by Murungi K.M

<sup>37</sup> Presidential circular no 1 of 2003

<sup>38</sup> Kenya Times Monday, July 5<sup>th</sup> 2004, pg 21

### **2.3 THE COOPERATIVE SOCIETIES (AMENDMENT) BILL 2004**

Owing to the haste with which the current statute on cooperative was enacted with a lack of consultation with the stakeholders due to pressure from IMF and World Bank, the statute has failed to serve the movement. Various mischief's have been witnessed in our societies and it is these mischief's that were as a result of government abolishing the ministry of co-operatives in 1999 and subsequent withdrawal of supervisory role of the government. Since transfer of the responsibility to manage our societies was handed over to the cooperative movements various problems have been witnessed. There has been gross mismanagement of societies, wanton misuse and embezzlement of member deposits, the splitting of co-operatives into small unviable economic entities, unsanctioned investment into areas unrelated to the core business of co-operatives, instances of corruption and other unethical practices by some committee members, refusal to remit members contribution to the societies by many employers and unauthorized payments to committee members among others.<sup>39</sup>

To curb spread of the above evils, the cooperative societies (Amendment) bill 2004 proposes some major amendments to our current statute.

The reasons and objects of the amendment are stated as, to refine the legal framework governing the constitution, registrations and regulation of cooperative societies in order to enhance their operation in autonomy and ensure their efficient management.

The bill addresses the issue of bureaucracy and duplicity of functions, which is the situation in our current statute .to, avoid duplicity of functions, the bill proposes to merge the offices of the commissioner with that of the registrar. This change is expected to improve efficiency in the management of the societies.

The issue of corruption by committee members has contributed greatly to the fall of the cooperative movement. To minimise the possibility of having the corrupt members being



elected to the management committee, the bill proposes to make it difficult for people undischarged bankrupt, adversely named by the commissioner's inquiry or previously convicted of any offence involving dishonesty to be elected to management committees.

Prosecution of co-operative related cases has been a hindrance to growth of movement. The bill proposes to re-constitute and reconstruct the cooperative tribunal, which will be more independent. The tribunal is conferred unlimited jurisdiction in matters of cooperative dispute; this will probably eliminate the ambiguity, which has been there as to the definition of what a dispute is in reference to cooperative society Act. To strengthen justice in the cooperative sector further, there is a provision in the bill that allows the Attorney General (A.G) to appoint specific prosecutors for cooperative offences.

Funding of the cooperative activities has sometimes been dogged with a lot of uncertainties. To eliminate this uncertainty a section is inserted by the bill empowering the minister to establish a fund to be known as cooperative development fund whose purpose is to promote education, training, research consultancy and related activities in the cooperative sub sector.

To discourage violation of by-law the fine has been enhanced from Kshs 5,000 to Kshs 20,000.

Improper accounting of cooperative funds shall cost the management committee their positions if the bill is made into law. The refusal to call on annual general meeting is also addressed. As a matter of law all A.G.M must be held within months after end of any financial year. The commissioner is empowered to convene a special General meeting and direct what is to be discussed.

Non-remittance of members' contribution by employer has been another failing of our societies. The bill empowers the commissioner to institute legal proceedings on behalf of

---

<sup>39</sup> Management of Co-operative Movement: A case study of Sacco Schemes in Kenya, by Eustace Kajogi (Dissertation submitted to the University of Nairobi, Institute of Diplomacy and International Studies,

the society in a court of competent jurisdiction to get the contributions from the employers.

To avoid a possibility of a plethora of apexes for the Kenyan movement emerging, the bill has specifically placed that role on the K.N.F.C as the sole apex organisation for all co-operatives in the country.

The grounds upon which the commissioner can cancel the registration of a society will be increased to include fairer to file return or to achieve its objects when the bill becomes law. The bill also allows the commissioner to dissolve the management committee and appoint an interim one if upon an inquiry it is realized that the committee is failing in its duties.

Generally the government as represented by the minister in charge of cooperative and commissioner for co-operatives will no longer have little role

In the cooperative business but it will play a more practical role.

The question to ask at this stage is, will the cooperative movement be able to stand up again after the government takes an active role in their management?

As truly appreciated by the minister for co-operatives development and marketing Honourable Dwiga during this years celebration of international cooperative Day when he stated,

*...“The enactment of the bill could not be a panacea to all the problems afflicting the movement, there is therefore need to enhance and sustain partnership between the co-operatives and the government as this has been responsible for successful legislative process.”<sup>40</sup>*

Even before the bill becomes law. It has started to draw wrath of some stakeholders who ~~feel~~ that the bill fails to support the balance between autonomy and regulation. They

---

2003)

<sup>40</sup> P.N Ndwigwa, Key note speech delivered during 2004 United Nations Co-operative Day, 10<sup>th</sup> July 2004

argue that the regulative proposals are over enthusiastic on state laws that will both inhibit growth and performance of the movement.

All said and done whether the principle of autonomy and independence of societies has to be maintained there is nothing, which can justify government abrogation of its role of protecting. The weak must be protected from abusive tendencies by the stronger. Government has a legitimate role in supporting cooperative societies especially the rural based cooperative for the purpose of social equity, despite the constraints brought about by structural adjustment programmes. The private sector is inappropriate to handle services due to society for the weaker, poor and underprivileged sector of the population since they are patently unable to pay for those services.

Co-operatives in rural areas derive their justification of government protection due to these special features, which characterize them such as high levels of poverty and illiteracy of their members and geographical isolation.

In the co-operative societies Act of 1966 the commissioner had extensive control over co-operatives operation decision-making. As a consequence co-operatives staff considered themselves as government employees and this led to lack of respect for members whom they did not recognize as the owners of enterprises. Similarly the manager of cooperatives considered themselves as accountable to government, which they considered as their paymaster, rather than to membership.<sup>41</sup>

Legislation has a major impact on the operation of co-operatives and this can be negative or positive. In many situations unfortunately stakeholders do not always take reforms aimed at achieving certain objectives enthusiastically.

Government jealously cling onto power and when new laws are adopted there those who have enjoyed sway over cooperative activities restrict application.

---

<sup>41</sup> Impact of Marketing Liberalization on Daily Marketing and Daily Marketing System in Kenya, by Stephen G. Mbogoh-Department of Agricultural Economics, University of Nairobi.



From this type of scenario therefore it would be naive to dismiss the critics of the new proposed amendments as being pointless critics.

The buck always stops with the government; it is the role of State to provide a level playing ground to all enterprises both public and privates. A good legislation is needed which promotes participation and democracy and allow co-operatives to compete with private sector in less regulated arena. The legislation must be easier for members to understand, less intrusive and which aims at facilitating cooperative operations rather than controlling them. The legislation nevertheless must be capable of curbing vested interest and defending the weaker members. Once the societies become efficient and democratically functioning with well entrenched structures cooperative should be allowed to be self-regulatory just as other private business are the legislation ought to avoid contradicting other existing laws if it is not repealing them.

The question in our mind is this, is the proposed legislation without flaws such that it will be a panacea of ills afflicting our societies?

There is not doubt whatsoever that in a capitalist country like ours without new legislation and regulation some unscrupulous people are having their hey day in the cooperative movement. It is government responsibility through the appropriate legislation to tame their weird activities. However as we forge to the future with new legislation, we must remind ourselves that the old cap 490 had similar noble objectives as those envisaged by the proposed amendments, but the government, which was to protect our societies, ended up being the scavenger itself.

Despite the trials made by the government and its noble aims as expressed by the proposed amendments to the co-operatives Act, the new bill does not have what it takes to enable our societies stand on their fact. The bill has not addressed all shortcomings, which have been contributory to the fall of our societies, and if these are not addressed, sceptics will always be there as to the feasibility of the laws proposed.

The issues of balancing between government intervention and autonomy, democracy, member controlled- society is lacking. There is no guarantee that the commissioner who as a government appointee will not be used to reward government loyalists and adherents of certain political class by replacing the democratically elected managing committee under trumped commission of inquiry reports as witnessed in the earlier days when the commissioner had sweeping powers over our societies.

The issue of education is still neglected in the new proposed laws one college offering diplomas can not be expected to service the vast country which is experiencing phenomenal rise of awakening of the need of co-operatives. The sector also suffers from use of modern technology either due to lack of know-how or capital, the societies continue with the Stone Age equipment. We will therefore be out of our senses to expect such co-operatives to effectively compete with private institutions that have fully embraced the modern technology. Since this is not addressed in the proposed amendments it should be addressed in the subsequent cooperative policies.

Kenya lacks a strong mouthpiece for its co-operatives. Communication is a very heavy tool if used well. Most successful cooperative societies in the world have as, a matter of legal requirements to publish some literature. Our apex society has been dormant on this issue. Even if the proposed law specifically places the role of apex societies on K.N.F.C, if the society will not be funded for such programmes we will still remain behind. Few scholars have done research on this area. There is poor media coverage on the movement. As it is said if the 'trumpets gives forth a feeble blast no one will answer the call to battle' same to our movements if they do not devise a method of selling themselves. It does not matter the changes in the legislation.

A publication of cooperative would be a way of improving the image of our co-operatives. The non co-operators due to ignorance of what a cooperative is all about have formed at poor image of what this unique enterprise is. Some look at the enterprise as a scheme to exalt Money from the government, others see it as poor mans club and those in

towns see the enterprise as institution for the working class. If this myth has to be de-banked a good legislation should spell out mechanism of doing so.

As things stand our societies are run by a combination of laymen and technocrats. The management committee is from members no matter their qualification, on the other hand managers are people who have ideas on what good business acumen entails. Election of committees is based on popularity and not ability of the candidates. The committee being directly elected by members sometimes feel more authoritative while the manager being technocrats feel they are the most qualified to decide on issues<sup>42</sup>. This sometimes results in one side trying to overstep the others authority or trying to outdo one another. The upshot of all this is that our societies are mismanaged due to lack of consensus amongst leaders. Unfortunately this shortcoming that not been addressed in proposed amendments to the laws on cooperative. A good legislation ought to set the mandate of each party clear.

Splitting of societies to unviable entities has caused loss to co-operatives due to lack of economies of scale and other benefits associated with large societies. The proposed legislation empowers the commissioner to regulate subdivision and amalgamation of societies. No criterion is given as on how to regulate such transaction. If the societies become too large due to denial of splitting by commissioner, this may lead to monopoly, which goes against the competition laws. This is also going to clash with the principle of voluntary membership

If people genuinely want to separate from a given society and they are denied, then those people may lose personal commitment to the society. Personal commitment is very essential in a society, for a society to function well members must cling desperately to the collectivity of the movement and support the ideas of the society, after all that is what is the literal meaning of cooperation.

Large enterprises also may lead to decline in democracy in the societies. When societies merge, membership expands. The large member a society has, the most likely that they

---

<sup>42</sup>[www.copacga.org/idc/fao-idc2000.htm](http://www.copacga.org/idc/fao-idc2000.htm)



lose personal touch with their societies. Few care to attend society meetings, a quorum to decide issues is never there, this enables few people decide for the society hence it turning them to be undemocratic.

The philosophical wisdom informing the emergence of co-operatives was to fight poverty amongst its members. However in some instances especially the S.A.C.C.O.S and housing co-operatives where the elite and rich in towns have usurped leadership. These leaders end up setting rules, such as entrance share requirement to their societies being very high, most of the times such capital requirements are beyond the reach of the poor hence the poor ends up being prejudiced. Decisions like construction of Houses worth millions of shillings instead of affordable houses militates against the best interest of the poor. A good cooperative legislation should be based on the very philosophy informing the formation of the cooperatives lest they lose meaning and become ordinary investment schemes, where when the rich enter the poor exit and if poor dominate the rich feel too good for the organisation. This aspect is not captured by our proposed legislation.

## **2.4 CONCLUSION**

Since we got independence the problems of affecting the co-operatives society have been diverse as the changing environment has been. The government reaction to those problems has been change of laws and policies. This has not been the cure as evidenced by the different legal regimes used by the state.

The dilemma facing our government today as it enacts amendments to the existing cooperative laws is to maintain the image and productivity of the cooperative societies without making them look like parastatals and at the same time assist them become vibrant institutions, corrupt free and well run. The government has not abandoned its liberalisation policy. Its decision to revert control of cooperative societies to government will clash with this policy.

In the next chapter we shall evaluate what this policy of liberalisation is all about and it's connection with the running of our co-operatives societies.

## CHAPTER THREE

### 3.1 BACKGROUD OF LIBERALISATION

In the 1960s African countries were gaining independence. Kenya got its independence in 1963 from Britain. The decade of sixties witnessed positive general economic development and growth in Kenya. In 1970s there were a lot of military coups political upheavals, economic stagnation and down ward trend in economic growth and development, in the African continent. Kenya was not an exception to these problems in the black continent. As country – Kenya and even the whole of the African countries were starting to be left behind in the issues of development. Kenya had regressed from exporter of agricultural products to a receiver of food relief.

The donor communities were worried by this downward economic trend. A lot of foreign aids had been pumped into the country, grants, technical assistance and factories had been set up. All these efforts come to a halt, The World Bank and I.M.F concerned about this trend decided to find out what the problem was. Theories were developed to try and explain this unparalleled scenario.<sup>43</sup>

- 1) Import substitution was the first theory. It failed.
- 2) Export promotion was taken as the second theory. It failed.
- 3) Structural Adjustment policies (S.A.Ps) were adopted. They failed.
- 4) Privatisation and liberalisation was given a trial it hasn't also worked.

All the above theories were aimed at minimizing the effects brought about by the downward trends of economic growth the effects were *inter-alia*<sup>44</sup>.

- a) Scarcity of foreign exchange.
- b) Unemployment
- c) High rate of inflation.

---

<sup>43</sup> Harry Porvali-Public Policy on Co-operatives in East Africa

<sup>44</sup> *Supra*, 5

- d) Reduction of disposable income both in private and public sector.
- e) High cost of foreign loans.

Though none of the above theories has been able to stand on its own and authoritatively reverse the downward trend of the economy the donor communities have continued to be concerned about their money which they claim is being thrown into a bottomless pit. The citizens of those countries have come to suffer from what is known as ‘donor fatigue’ hence the continued downward for stopping of their taxes being thrown into this bottomless pit.

In response to the questions raised by their citizens, the donor community has adopted a theory that is inclusive of all the four theories tried before. This is the theory of conditionality its a theory whereby the recipient state agrees to abide by certain conditions attached to the loan or grant one of the most notorious condition is that of liberalization and privatization of the market. Hence the non-abandonment of the theory of privatization and liberalisation.

At first instance the government of Kenya was resistance to the pressure from I.M.F and World Bank of effecting the changes demanded before release of financial support. The Bretton wood institutions withheld financial support. They say a *neccesitor man is no free man*; and truly the government had no option but to swallow its pride and accept to implement the economic reforms demanded<sup>45</sup>.

In 1996 the Kenya government in collaboration with I.M.F and World Bank prepared. The policy framework on economic reforms for 1996 – 1998 in which the government clearly stated its willingness to implement the economic reforms demanded by the donor community. The government unequivocally stated as follows: -

*The government intends to move further away from dived participation in economic activity and toward the provision of enabling environment for private sector development*

---

<sup>45</sup> Murungi k m-the development of co-operative law and policy in Kenya



*with emphasis on policies which are environmentally friendly and which encourage labour using growth.*<sup>46</sup>

By this policy paper the government had ushered in one of the difficult economic reforms as it would prove later to most of the developing countries. Unfortunately there was no turn back on this path of economic policy. The new economic order was replacing the old. State controls' had to cave in to forces of free market economy. The tight government involvement over institutions including cooperatives was to be relaxed.

The way globalisation and liberalization policies have been taken in Kenya and other developing countries is a strong paradox, on one hand its repeated by some that 'we are committed to trade liberalization which is positive for and essential to growth and development' on the other hand many people and scholars have noticed and are now actively complaining that trade liberalization has net negative results for the developing countries economy.<sup>47</sup>

The neo-classical economists who stand for liberalization propound that in a free market consumer welfare is maximized. To them if the market is free, economic resources are allocated between different goods and services in precisely the quantities that consumers wish, their desires being expressed by the price they are prepared to pay to the market i.e. there's increased allocative efficiency.

As per the theory free market leads to increased efficiency and distribution that enable consumers to pay lower prices for goods and services. These gains lead to increased purchasing power of the consumer

It is also argued that free trade enables producers to be involved in large-scale production. This type of production for bigger market generates the economies of scale.

---

<sup>46</sup> Economic reforms for 1996-1998.the policy paper framework

<sup>47</sup> Policy Response to the Informal Economy, posted at <http://www.wiego.org/paper/policybooklet>

Although I.M.F and World Bank presented the theory of liberalization as godsend to developing countries, critics of the theory have not failed repeatedly to question claims of its ability to deliver its promise of prosperity. Almost every move by the neo-classical theorist in propounding the 'goodness' of liberalization it has met a challenge. The critics challenge the theory of the followings shortcomings.<sup>48</sup>

The theory roots for perfect competition i.e. unrestricted trading. If this is allowed domestic industries that are their infancy cannot withstand the aggressiveness of the well-established superior enterprises. Hence the domestic industries are driven out of the market leaving the economy in the hands for foreign institutions<sup>49</sup>.

On the death of domestic industries, the country starts to rely on imported goods. The importation of goods and services denotes exportation of employment and importation of unemployment by a country. This means that our citizens remain unemployed since there are no industries cropping up to absorb them.

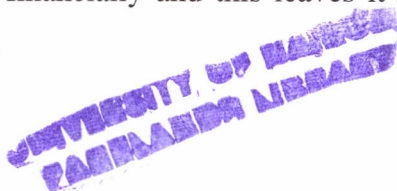
Free trade economy touches on the very core of states security. A country, which relies on imports, means it is not self sufficient if anything happens and it's diplomatic ties with its trading partners are severed then the country is ploughed into a crisis.

The balance of payment of an importing country can never balance. Always our exports cannot equate our imports and hence our balances of payment accounts are in debit. Equilibrium cannot be achieved.

The government kitty as also affected by liberalization. The full demands of liberalization are there be no barriers to trade. If this was taken and applied to the later, imports duty should not be levied. A country like Kenya which funds its social obligations by getting revenue from import duty will be weakened financially and this leaves it incapable of providing the requisite services to the citizens.

---

<sup>48</sup> *Supra*, 26



Despite the shortcomings of liberation, the Kenyan government doesn't seem to be harbouring any intentions of retreating on policy of liberalization. Globally Kenya is a member of world trade organization (WTO) and other various trading blocks that deeply support this theory.

### 3.2 LIBERALISATION AND CO-OPERATIVE MOVEMENT

Just like any other private sector, cooperatives were spared strict government control upon the introduction of the policy of liberalization. Prior to the embracing of the policy, the societies enjoyed such a government support, which provoked the Nehru of India to speak of them as follows: -

*“It seems to me that the only hope lies with cooperative effort. With the state helping no doubt. But again, I am anxious to root out this habit. Many our people are ingrained during colonial times of relying on someone to do things for them. I am anxious that the cooperative is imposed on the peasants and run by officials. I do not want state officials. I have too much to do with officials to want to see them cover the whole land with state apparatus and thus reduce the initiative of the peasants. I believe the only way out is to develop a sense of cooperation among our peasantry for real cooperation alone will lead to what one called small cooperatives each covering a village, or two to three small villages together.”<sup>50</sup>*

Though Nehru was talking in reference to Indian cooperative societies, the same was very true of Kenyan societies. Who after getting so used to assistance from the state could not stand on their own when state withdrew the assistance.<sup>51</sup>

---

<sup>49</sup> Capital Formation in Kenyan Farmer owned Co-operative-A case study by Food and Agricultural Organisation of the United Nations Rome, 1999

<sup>50</sup> Frontline Magazine, volume 19, Issue 7 (Indian's National Magazine from the publishers of the Hindu)

<sup>51</sup> Dr. Eusebius J. Mukhwana-Problems Challenges and Opportunities of Marketing Maize in a liberalized system in Kenya, a paper presented at the cereal Farmers' Association Workshop at Eldoret, on 22<sup>nd</sup> September 2000.



In Kenya in 1966's when the cooperative sector had problems due to illiteracy levels in the country and other related ills, government response instead of looking at the appropriate response to the problems which would have been providing the requisite know-how to the committees which were in charge of societies, it usurped the control and vested it in the commissioner.

Ironically, when the government was willing to surrender back the control to the members of the societies after being pushed on the Bretton-wood institutions to the wall, the cooperative societies were not prepared for this new reality, they were lacking adequate organization, information and financial resources as well as business acumen, hence not experienced in this heavy responsibility placed unto them. Also there were issues of contradictory signals emanating from various government officers as to the effects of liberalisation. In the midst of this unclear stand from the government, co-operators were wrongly or rightly made to conclude that liberalisation was bad for them hence lack of enthusiasm to embrace the new changes.<sup>52</sup>

With liberalisation of the cooperative sector, it was expected that the societies to keep with the stiff competition offered by other private institutions would venture outside their mainstream activities. This was not the case; few societies moved out of their traditional role and looked for strategic alliances to partner with such as banks, since the government had withdrawn its partnership with them. Instead the majority of societies remained lethargy as before and still ill prepared for the challenges ahead of them. The management committees that took over the control of cooperative affairs from the state had very little exposure to decision making<sup>53</sup>.

Before the enactment of the co-operative societies act, 1997 that legalized the policy of liberalisation in the cooperative sector, the government under the old legal regimes had virtually all control over the societies.

---

<sup>52</sup> Supra, 47

<sup>53</sup> [www.wiego.org/paper/policybooklet](http://www.wiego.org/paper/policybooklet)

The cooperatives societies Act, cap 490, which had empowered the commissioner to almost interfere with all day to days running of the cooperatives, placed the following functions on the ministry of cooperatives and development.<sup>54</sup>

- Registration of societies.
- Enforcement of cooperative societies Act
- Policy formulation and implementation
- Advisory management services.
- Audit supervision.
- Inspection inquiries and investigation
- Liquidation of societies
- Education and Training
- Cooperative credit and finance
- Cooperative bank
- Amalgamation and subdivision of societies
- Approval of budgets, capital expenditure and allowances
- Hiring and dismissal of graded staff.
- Removal and election of management committees
- Settlement of disputes and institution of surcharges

This over control by states was supposed to diminish gradually as the societies matured in their management capacities, but ironically the control was becoming tighter by the passage of time<sup>55</sup>. By the time the policy of liberalization was being implemented cooperative societies had become synonymous with state owned enterprises.

With the liberalization of the sector, the role of the government on the cooperative society was left to that of creating conducive environment for the societies growth. Cooperatives were to manage their own affairs so that they could be independents self-reliant, and member controlled institutions. The role of government was reduced to

---

<sup>54</sup> Paper by Manyara k m 'cooperative development policy and legislation'

1. Registration and liquidation of cooperatives
2. Enforcement of cooperative societies Act
3. Formulation of cooperative policy
4. Advisory and creation of conducive environment for cooperatives growth and development
5. Carrying out inquiries investigations and inspections

With this radical departure from largely government-dominated structure, the movement was unable to adapt to the new situation thus plunging the societies into more problems. The unscrupulous management committees abused the freedom and autonomy granted to the societies. By the close of the 20<sup>th</sup> century, the negative consequences of liberalizing the cooperative sector were clearly pronounced. By<sup>56</sup>:

- Large cooperatives were split into unviable entities
- Management committees mismanaged cooperative societies through the acts of corruption nepotism and general gross mismanagement.
- Some cooperatives diverted member's money to areas, which were not related to their core business with large amounts of members' funds being used.
- Since the commissioner powers to enforce inquiry were removed. It was the annual general meeting to decide what action to take on the inquiry recommendations. This was very unreliable since management committee members mostly happened to be composed of influential members of the society who would fight any attempt to investigate their conduct in the running of the societies.
- The societies were always in financial problems they always sought government assistance. The government could not perpetually continue rescuing cooperatives.

With these mischiefs brought about by liberalizing the cooperative sector, the government which had abolished the ministry of cooperative development in 1999, in January 2003, upon the election of new NARC government, the president restored the

---

<sup>55</sup> *Supra* 5

<sup>56</sup> Highlights on the cooperative societies amendment bill 2003-article prepared by Murungi Kibanga secretary to the cooperative tribunal.



ministry of cooperatives development and marketing vide presidential circular no 1/2003.

The mandate of the re-established ministry included.<sup>57</sup>

a) Policy formulation and

b) Cooperative legislation and extension services.

The new ministry immediately resuscitated the review of cooperatives societies act 1997, with a view of revitalising the cooperative movement. This review is aimed at reverting control of cooperatives to the government.

The dilemma in which the government is finding itself is; should it follow the path of free trade and watch helplessly as the cooperative societies die? Or should it go ahead and repossess control over the societies and contravene its international trade obligations as to free the market?

It is the author's submission that the government can fulfil its objectives both to its cooperative societies and trading partners simultaneously.

### **3.3 THE ROLE OF GOVERNMENT IN CO-OPERATIVE SOCIETY I WITHIN A LIBERALISED ECONOMY**

As emphasized earlier, a cooperative society, which is overwhelmingly controlled by the state, loses the tenets and values upon which the movement was founded upon. The principles of autonomy and democratic control are very cardinal to the maintenance of these values.

On the other hand withdrawal of government interference in the management of the societies should not be misinterpreted to mean that the government has no role to play in the affairs of the society. This is what happened in 1997 when the government liberalised the cooperative sector. The management committees of the societies misinterpreted the law to mean that the government had no role in their affairs and that they were not

---

<sup>57</sup> *Supra* 5

accountable to the members or to the regulator. The ministry staffs also shied away from their responsibility thus there was a breakdown of the management of the cooperatives. Instead of achieving its desired objectives, the 1997 cooperative Act in fact led to anarchy in the movement<sup>58</sup>.

Liberalisation should never be interpreted as free for all. The weakest member of society, be it in society at large or a cooperative society have a perfect right to claim some form of protection in law from the 'stronger.'<sup>59</sup>

Deregulation cannot excuse government responsibility to ensure a minimum of equity. Although withdrawal of excessive support to cooperatives by government is invariably a positive factor for cooperatives development, it should be planned and announced well in advance. When it takes place suddenly in response to foreign dictate, the economic and social consequences will usually be disastrous. This was the problem in the Kenya cooperative movement. The government due to pressure from the so-called development partners pre-maturely abandoned the movement so suddenly that it was impossible for the societies to absorb and control the impact.

Government role in the development of cooperatives, should not form an excuse for the state to overbear the movement such that it can only be compared with the mythological Indian god trinity *Vishnu* (the creator), *Mahesh* (the preserver) and *Shiva* (the destroyer) of cooperatives i.e. the government becomes everything to the running of cooperatives societies<sup>60</sup>.

Ideally, in providing support to cooperative societies, government and foreign donors assistance should be left to the board and management, possibly after appropriate training and under directions from members free to manage the resources provided without imposing paternalistic interference. Maybe the government can use certain parameter

---

<sup>58</sup>Hon .P N Ndwiga minister for cooperative and marketing as quoted in –Murungi km 'the development of cooperative law and policy in Kenya

<sup>59</sup> *Supra* 27

<sup>60</sup> *Supra* 48

indexes such as: management efficient, adequate financial resources, credibility of the society in the surrounding countryside and member participation. Using such indexes the states can be able to sort out the amount of support needed for each society, level of government interference needed and even some societies can be de-classified as cooperatives societies.

It will be very subjective of us to also dismiss the government effort of liberalisation as having no positive value on the movement. The condition imposed to the country to liberate the markets is not limited to liberalisation alone. The state is also required by I.M.F and World Bank to have good governance policies. Good governance is a critical success factor for cooperatives to do well. It should not also be forgotten that most of the cooperatives in the developing countries were created by state. One of the conditions attached to liberalisation is democratisation of whole society. A democracy in society as a whole helps people to organise freely and operate in autonomy. This freedom and autonomy augurs well for cooperatives that have been schools for democracy with their principle of one-man one vote (democracy and equality) and autonomy.

If we have to trace the origins of cooperative as represented by the Rockdale pioneers in U.K, we realise that they formed the society due to poverty and conditions brought about by industrial revolution for mutual help and self help. This scenario has been repeated with the adoption liberalisation policies. Many people have been retrenched, poverty has cropped in and scarcity of jobs cannot get worse. This may be a blessing in disguise for the cooperative sector. People in a bid to fight the effects of poverty have learnt the art of combining the 'little' they have to overcome their problems. The phenomenal growth of women groups (merry- go- rounds) and examples of various graduate groupings to form drama groups or other self-help organization can attest to this. This effect of globalisation and liberalisation can be tapped to develop self-reliance citizens through cooperatives.

Liberalisation and globalisation has brought with it the use of cutting edge information. Goods produced anywhere can be sold anywhere. Prices have thus become competitive. The market has been taken over by Multinational Corporations. Those multinationals can



be temporal as they can relocate anywhere and no government can stop them. If countries like ours destroys its local social and economic systems like cooperatives, then in the event the multinationals relocate we will be left in the cold. Given this type of fear then it would be naive of any government to fail to give constructive support to cooperatives to pre-empt any eventuality and also create employment to its citizens.

The above discussion clearly shows that as much as a strong involvement of state in the cooperative sector may result to stagnation of the growth of movement instead of promoting growth, still it will be proper to admit that external assistance to cooperative is and will remain in the near future, crucial to the survival of the cooperatives rehabilitation and development.

For the government to move out of its current dilemma, that is promote liberalization on one hand and secondly get involved in the cooperative affairs on the other hand without performing a self defeating mechanism. It needs to adopt a proper strategy. What is needed in our societies now is neither full withdrawal of government from activities of the societies nor the full indulgence of state and its machinery into the affairs of societies, but a redefinition of state functions within a re-focused strategy of cooperative development; creating better condition for supply and motivation of cooperative entrepreneurs creating and securing a higher level of autonomy for cooperatives and making cooperative management at all levels more accountable to the members<sup>61</sup>.

This type of strategy is only possible if there is a legal framework in place that is capable of striking the requisite balance between the cooperative principles and at the same time accommodating all issues of economy that is liberalised.

A legal framework will not be enough if the society membership and their leaders do not realize that they have an arduous responsibility to ensure that cooperative's survive the turbulent tides brought about by economic liberalisation and the abolition of the state

---

<sup>61</sup> Progress report on the cooperative decade (1985-1993)

monopolies accorded to the cooperation in the old economic order. Presently there is neither such a legal framework nor are members aware of their responsibilities.

### **3.4 CONCLUSION**

Cooperatives are founded on the philosophy of empowering their members; they are neither capitalist nor socialist in nature. Most of the people presently and even historical who form the majority of cooperatives are the poor. Those movements are governed by certain universal principles.

In Kenya we have people who subscribe to the theory of free trade (Liberalisation). To them they believe in letting the market free and allowing the fit to survive in it. Given the existence of these two types of groups, co-operators and neo- economist who mostly subscribe to individualism then this creates a dilemma for the government.

Since the government is for both the poor and the rich, then it must be able to create an environment whereby neither the cooperatives die nor does it suppress the neo-economist agendas. That kind of environment can only be possible if there was a good legal framework to assist the government, since government rules by law. It is unfortunate that currently the present legislations or even the proposed ones do not address this dilemma.

As a way of concluding our study, in the next chapter we are going to offer workable recommendations on how, the government can be able to create this compromised environment that does not eliminate our societies out of market and at the same time reap the benefits of liberalisation as propounded by the neo- economist.

## CHAPTER FOUR

### 4.1 CONCLUSION AND RECCOMENDATIONS

In this study I intended to evaluate how the co-operative movement can be sustained in the world where liberalization and privatization have become the favoured economic policies. This task I undertook to evaluate it in three chapters.

In chapter one, I discussed the history of the movement in Kenya and in the world at large. In the same chapter the philosophical basis on which the movement was founded was evaluated. The tenets or universal principles upon which the co-operative movement is governed were also considered.

In chapter two, I discussed the various legal regimes, which the government has used to ensure that the movement copes with the changing circumstance. I discussed the proposed legislation changes, the failures of the former regimes and the shortcomings of the present statute.

In chapter three, I set out to discuss the emergence of the policies of liberalization and privatization and their subsequent adoption in the Kenyan economy. The significance of this policy on cooperatives was also discussed in this chapter.

From the study it has emerged clearly that the positive played by co-operative societies in both social and economic sector of the community cannot be underrated. The role can be summarized from the statement of George J Holyoke that

*“Cooperation touches no mans fortune it seeks no plunders, it causes no disturbance in society, it gives no trouble to statesmen it enters no secret associations, it contemplates no violence, it subverts no order it envies no dignity. It asks no favours, it keeps no term with the idle and it will break no faith with the industrious. It means self-help, self-dependence and such share of the competence as lab our skill or thought can win and this it intends to have<sup>62</sup>.*

---

<sup>62</sup> See George J. H cited in ICA report ‘progress report on the co-operative development decade 1985 – 1993’



Cooperatives are vehicles for social economic development. They contribute to economic growth and development in various ways. The advantages include *interalia*.

1. Collection, transportation. Processing and marketing of agricultural produce.
2. Mobilization of savings and channelling the funds to individual members for specific development projects.
3. Support to agricultural production through distribution of farm inputs.
4. Dissemination of applied technology to members.
5. Provision of credit to members for defraying urgent expenses such as school fees, funerals, hospital bill etc at affordable rate.
6. Creating employment directly through engagement for various cadres of staff and more important self-employment to members as farmer's or artisan.
7. Assisting in income distribution by participating through enabling large sections of population to engage in various income-generating activities.
8. Being an institutional frame through which governments can indigenously its economic policies<sup>63</sup>.

In a society where everybody is striving to empower him/herself economically co-operatives societies provide the best mechanism of realizing such aspirations. It is on this ground that if Kenyan men and women are to remain civilized then the art of cooperation must continue. No serious government can wish to dispense away with co-operative societies more so a government of a third world state like Kenya.

Kenya, is also part and parcel of the global community, if the country is not to be a black sheep in the world affairs it must follow their footsteps. The international community has on its part accepted the policies of liberalization and privatization. Kenya is signatory to various international instruments such as world trade organization treaty (WTO) which roots for the free trade through its principles of most favoured nation principle and national treatment principle. It follows that therefore Kenya cannot abandon this policy of

---

<sup>63</sup> Murungi KM 'Role of co-operatives in national development. (Handout)

liberation without breaching some international promises and probably resulting sanctions that would be catastrophic.

(This policy of liberalisation if haphazardly implemented in an economy that is young and unstable like ours then there's is a very high likelihood of having catastrophic results especially in relation to home-grown institutions like co-operative societies.

This need to sustain our homegrown societies and at the same time keep up with the international accords puts the government in a dilemma. Our economy cannot be compared with that of United States or United Kingdom where policies like liberalization can be implemented almost instantaneously without major casualties in their economic set-up.

For Kenya to move out of this dilemma. It must formulate a policy which must be implemented strategically otherwise we will kill all our institutions, chasing policies which have not been fully tested and their effects known. Let it not be the case of *loosing 9 while chasing 1*

Co-operative like, fire requires constant rekindling lest it disappears forever and man will have to let it be raw! Concerted efforts are required from all, both nationally and internationally to keep the fire alive and burning. Co-operative societies and the government are partners in development and they should therefore appreciate each other as such<sup>64</sup>.

Government in its endeavour to move out of its current quagmire has enacted a bill which on becoming law is expected to bring some reforms to the movement aimed which are aimed at revitalizing it. These steps so far undertaken by government in reforming the movement are welcome but there is still more to be done. This research also cannot be conclusive on what should be done but I will try to give some of the areas that the government has overlooked and which if enhanced could be more appropriate in

---

<sup>64</sup> Murungi K.M 'The development of co-operative Law and policy in Kenya – Oscan publications

enhancing the co-operatives efficiently and effectiveness. These areas are some of the weak areas bringing our cooperatives societies down and should be given priority. The following are some of the areas that are inadequately addressed, and if nothing else is done other than changing the legislative provisions the movements will still remain in the position it is in:

**a) Education and Training**

For the co-operative movement to survive the present competition, they will need services of high-level management cadre, to facilitate high performance levels and instil the necessary confidence for penetration of more and more complex business ventures.

It goes without saying that for any group to form itself into an economic entity it must be knowledgeable about the business in wishes to undertake. Active participation is an obligation of every co-operative member. The current market situations also dictates that for co-operatives to keep thriving in the market, they have to adjust themselves from their tradition operation modes and adopt a more modern aggressive system.

Co-operatives based on intelligent and sound founded decision making procedures is a very important aspect in determining the efficiency in which the society is run.

All the above positive attributes will remain a pipe dream if the requisite education and training is not imparted on both staff and members of the society

This the government can achieve by ensuring that the government owned broadcasting station spreads the knowledge. The government should also open up more institutions in various parts of the country to ensure that each and every co-operator gets an idea of what this movement is all about.



The universities especially those, which are public owned, should encourage degree courses based on the issues of cooperatives so that no manpower shortage can be experienced in the future.

For posterity and perpetuity of the movement, the youth ought to be given a front door into the co-operative knowledge. These are the people who will be co-operators, leaders and managers of the movement. This can be done only by the ministry of cooperative development in coordination with that of education to ensure that issues of co-operation are taught as early as in primary school level. Literature on the movement should be made available .as a matter of policy requirement the apex cooperative should be made to publish monthly if not weekly magazines or something of that effect on the progress of the co-operative societies.

### **b) Political Interference**

Politics has reared its ugly face in the co-operative movement for long. There are individuals who aspire to be elected into societies leadership solely for the purpose of ascending into the national local leadership. These people if elected into society leadership use their position to the co-operative as platform to politics. Their aim is not to serve the society members but to pursue their political interest and increase their political mileage. This political mileage is sought at the expense of the co-operative members, leading to inefficient performance of the co-operative societies.

The political manoeuvring of the societies by their leaders has led many to have a bad perception of the movement. If the movement has to clear this perception, it must reinvent and rediscover itself and steer away from divisive politics.

To avoid divisive political factions permeating our societies, the co-operative laws should be drafted in a way that they bar any incumbent or aspiring members of management committee from getting into the position of management committees. The cooperative

societies (amendment) Act 2004<sup>65</sup> has a provision to try to rectify the possibility of corrupt members entering into societies leadership. The same ought to be done for those in national or local politics.

If the bar of politicians from being leaders of societies were very radical then I would propose that the Agenda for any societies meeting be vetted/approved by a neutral party such as the district co-operative officer so that political agendas are not allowed to ruin our societies. This might seem, as intrusion in the running of the societies but looking at the potentiality of divisive politics killing a society then this would be the lesser evil.

#### **a) Finances**

Cut throat competition by other financial actors who are targeting the same co-operative members might drive the co-operative movement of the field. Some banks and micro-finance institutions are offering cheap credit and at times loans without tangible collaterals. To assist the SACCOS in being attractive and be able to provide products at affordable rate. The government has enacted the SACCO societies regulatory bill 2004<sup>66</sup>.

Although the government has looked into the SACCO's, there are other types of societies that owes other financial institutions colossal sums of money both as interest on loans and capital. The government reaction in the recent past has been wanting. Writing off the loans owed by societies cannot solve the problem *'teach a person how to fish and he will not come to you tomorrow rather than giving him the fish for a particular meal'*.

Efforts should be made to set up co-operative financial institutions to supplement the co-operative Bank. This will discourage co-operators from seeking alternative investments outside the movement since they can get finances at low cost. Cooperatives should also strive to deploy manpower trained to analyze, plan and implement project in a cost

---

<sup>65</sup> Co-operative societies (Amendment) bill 2004

<sup>66</sup> The SACCO Regulatory bill 2004.

effective business manner to avoid unresourced investments and deviations from the core business for which the societies were established.

The international co-operative movement through I.C.A should revise the principle of limited interest on capital that negates today's concept of profitable return on investment. Capitalism has been embraced almost worldwide and hence it would be naive for cooperatives to expect members to willingly contribute to an investment which they are not pursuing any return.

## **b) Legislation**

Legislation has a major impact on the operation of co-operatives. This impact can be negative or positive. Legislation, which confers excessive control of co-operatives to the government, might lead to the movement being turned into another government institution.

On the other hand to leave the co-operatives completely autonomous might lead to some unwelcome repercussions as we have witnessed before.

Legislation, which facilitates emergence of leaders with vision and skills to organize members and involve them in co-operative work, is the best legislation.

A good legislation should concentrate on

- 1) Professionalizing<sup>ing</sup> co-operatives management for delivery of services to owner-members.
- 2) Protecting the assets of co-operatives
- 3) Giving the members the right to elect and recall their officials
- 4) Giving members the right to demand accountability to ensure owner use benefit and control<sup>67</sup>.

---

<sup>67</sup> Ibid 3



The legislation should also accommodate all the issues of economy that is liberalized so as to strike the requisite balance between the principles of co-operation and the normal control of institutions under the state jurisdiction.

It is my view that the proposed co-operatives Bill 2004 does not strike that requisite balance.

To avoid fighting over legislation always, I propose that we accept the proposed amendments but with intention of changing them gradually so that at the last point the government should be able to relinquish all control it has over the societies. The government should therefore set out guidelines on when to relinquish certain controls over given societies so that at last the movement will be able to stand on their own and be member owned and controlled.

I propose that the ministry should set up an index. In the index they would use certain principles such as management efficiency, adequate financial resources raised by members, credibility of the society and member participation. Such an index parameter could be a guide towards sorting out those co-operatives to be let free from government control, those to be put-on probations before registration and probably those to undergo pre-co-operative stages.

### **c) Management**

Co-operatives are governed and managed not by their owners, or founders but through a process of agents known as management committee.

The management committee is defined as ‘the governing body of a co-operative society to whom the management of its affairs is entrusted and includes a board of directors.’ The committee is entrusted with the management of the co-operatives on behalf of **members**.

To survive the hurdles of liberalization the co-operative must be run on the premise that the highest standards of ethics, integrity and responsibility will and shall be maintained. Abuse of power, corruption, laziness, conflict of interest, theft and other related vices have ruined our societies.

The co-operatives movement has been let down in Kenya by the very people entrusted to propel it to greater heights. The manager and committee members have been in a hurry to make money for their selves lest they are not appointed or elected in the next elections hence going out empty handed.

The leader of a cooperative is a trustee and this demands that he be the fair most and must be most honest in dealing with co-operative activities.

To curb this disease of mismanagement all newly elected committees should be inducted on the provisions of the public officers Ethics Act<sup>68</sup> and the Anti-corruption and Economic crimes Act, 2003<sup>69</sup>. The government should also move swiftly in enforcing the aforementioned acts so that those who envy the misconduct of the corrupt officers can be deterred before executing their evil thoughts.

The societies also must remunerate officers well so it avoids a situation where they are poached by the more lucrative private institutions.

#### **d) Amalgamation and subdivisions.**

Large institutions enjoy economics of scale, which are very necessary in this era of cutthroat competition. However if the society becomes too large, there is a danger of members losing personal touch with their enterprise, the consequence of which is that they lack any motivation to participate in the society activities.

---

<sup>68</sup> The public officer Ethics Act no 4 of 2003.

<sup>69</sup> The Anti – Corruption and Economic crimes Act 2003.

The co-operative societies (Amendment) Bill 2004 gives the commission, power to regulate the splitting of co-operative to ensure that they remain viable entities. This is a well thought out idea but the question is how large should the co-operative society be so that they would be viable economic entities and at the same time ensure that members Don't lose touch with the organization. Control of amalgamation and division in a way also infringes on the 'voluntary membership principle not to mention the constitutional right of association<sup>70</sup> and respect to private property.

It is my submission that although control is necessary in regard to mergers and division, this problem should be sieved at the onset of registering the society. The government can ensure the societies have viable membership by ensuring the minimum member for registering a co-operative society in at least 100 members. These will ensure the society has a sizeable number and ensure that co-operators agree to work together before they are agree registered as body.

**e) Other issues to be addressed.**

The co-operative societies should embrace modern technology both for record keeping and disseminating information. The use of Internet would expose the management to ideas on functioning of other societies both in and out of the country without incurring much expense for seminars and workshops.

Using the modern technology it would be easy for societies to locate the best market for their products hence avoiding unnecessary loses.

We are in the global village and it would be unsafe for our co-operatives not to try out international co-operation with other societies abroad. This will not only expose co-operators into the world but also learn the true philosophy of cooperating since most of our co-operators do not seem to appreciate the values, philosophy and principles of co-operative.

---

<sup>70</sup> The Kenya constitution chapter 5 section 75



If co-operators have to achieve the goal as to why they incorporated, they must not lack the initiative as they have exhibited before, always waiting for someone else to *bell the cat as it were*. They must have a vision and articulate that vision; they must chart a common way forward for the movement and face the future threats to the movement collectively. After all, it is the shoe wearer who knows where it hurts most, hence its co-operators, who know their problems best, government and other stakeholders can be regarded as *amicus curie* to the societies.

# BIBLIOGRAPHY

## TEXTS.

- 1.Murungi K.M (2003) the development of co-operative law and policy in Kenya: Oscan Publications (2003).
- 2.Victoria MK cooperatives formation, management and settlement of disputes-oxford university publication.
- 3.Calvert H – The law and principles of co-operative 5<sup>th</sup> Ed
- 4.Impact of Marketing Liberalization on Daily Marketing and Daily Marketing System in Kenya, by Stephen G. Mbogoh-Department of Agricultural Economics, University of Nairobi.
- 5.Michael Cracknel-cooperation in the context of globalisation and liberalisation (Food Agricultural Organisation consultant)
- 6.Management of Co-operative Movement: A case study of Sacco Schemes in Kenya, by Eustace Kajogi (Dissertation submitted to the University of Nairobi, Institute of Diplomacy and International Studies, 2003)
- 7.Harry Porvali-Public Policy on Co-operatives in East Africa

## REPORTS AND ARTICLES

- 1.Economic reforms for 1996-1998.the-policy paper framework
- 2.Policy Response to the Informal Economy, posted at <http://www.wiego.org/paper/policybooklet>
- 3.Capital Formation in Kenyan Farmer owned Co-operative-A case study by Food and Agricultural Organisation of the United Nations Rome, 1999
4. Frontline Magazine, volume 19, Issue 7 (Indian's National Magazine from the publishers of the Hindu)
- 5.Dr. Eusebius J.Mukhwana-Problems Challenges and Opportunities of Marketing Maize in a liberalized system in Kenya, a paper presented at the cereal Farmers' Association Workshop at Eldoret, on 22<sup>nd</sup> September 2000.
- 6.Paper by Manyara k m 'cooperative development policy and legislation'
- 7.Highlights on the cooperative societies amendment bill 2003-article prepared by Murungi kibanga secretary to the cooperative tribunal

8. The cooperative policy of Kenya on cooperative in liberalised economy from 1997 (booklet published by Kenya college of cooperatives)
9. Cooperative values in changing world –report of ICA congress Tokyo
10. Kenya House of Representative report, 1966 vol. 10
11. National assembly official report 3<sup>rd</sup>, September 1997
12. Progress report on the cooperative decade (1985-1993)

## **STATUTES AND POLICY PAPERS**

1. The SACCO Regulatory bill 2004.
2. The public officer Ethics Act no 4 of 2003.
3. The Anti – Corruption and Economic crimes Act 2003
4. The Kenya constitution.
5. Cooperative societies act No 12 of 1997.
6. The co-operative society (amendment) bill 2004.
7. The co-operative society Act No 12, 1997
8. The cooperatives societies act, cap 490(1966)
9. Sessional paper No.6 of 1997 on cooperatives in a liberalised economic environment.
10. Sessional paper number 10 of 1965 on African socialism and its application to planning in Kenya.

UNIVERSITY OF NAIROBI  
PARLIAMENTARY LIBRARY