

THE CO-OPERATIVE SOCIETIES ACT, 2013 AND NEW TRENDS IN THE MANAGEMENT OF CO-OPERATIVES IN TANZANIA MAINLAND

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"The only thing that will redeem mankind is co-operation."²

Abstract

Co-operative Societies in Tanzania are regulated by, among other things, the Co-operative legislations. The latter represents the legal framework for the regulation of the co-operative societies. Co-operative legislations cater for many aspects in the functioning of the societies. These include their objectives, formation, management and their ultimate demise.

The Co-operative Societies Act, 2013 (hereinafter, the Act) is a recent legislation regulating the co-operative societies in Tanzania. Generally it caters for the regulation of co-operative societies in Tanzania Mainland. This article analyses the Act reflecting on the new trends in the regulation of co-operative societies in Tanzania Mainland. The establishment of the Tanzania Co-operative Development Commission and aspects generally attached with the management of co-operative societies are subject to the analysis.

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Key words: Co-operative Societies; Co-operative Societies Act; Principles; Values; the Commission; the Registrar; SACCOS; Co-operative Officers;

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1. General Introduction

The Co-operative law of Tanzania Mainland has a long history. Since 1932, when the Co-operative Ordinance³ was, for the first time sanctioned, there have been to and fro movements with regard to the development of the law. Various Co-operative legislations have been enacted for purposes of regulating Co-operative societies in Tanzania Mainland. The notable ones are the Co-operative Societies Act, 1968⁴; The Unified Co-operative Service Act, 1968⁵; The Ujamaa and Ujamaa Villages (Designation, Registration and Administration) Act, 1975⁶; The Co-operative Societies Act, 1982; The Co-operative Societies Act, 1991 and the Co-operative Societies Act, 2003. The latter was operational for almost a decade. It is just recently it has been repealed and replaced by the Co-operative Societies Act, 2013⁷. This paper analyses the Co-operative Societies Act, 2013 (hereinafter “the Act”) as a recent development in Co-operative management in Tanzania Mainland. It provides a discussion on the new features imposed by the enactment and the ultimate consequences on Co-operative management. The main issue in the discussion is whether the Act, based on the features observed, cherishes the Co-operative movement in Tanzania.

Briefly stating the new institutional structure; the mandatory formulation of Co-operative plans; new Co-operative societies’ leadership requirements; specific regulations on Savings and Credit Co-operative societies (SACCOS); and the structure of Co-operative societies will be part to the analysis. The challenges observed in the provisions and application of the Act will also form part of the analysis.

2. Co-operative Societies and Co-operative Legislations in Tanzania Mainland

2.1 *Understanding a Co-operative Society*

The most renowned association but, of lately, less cherished is a Co-operative society. With multiple forms in existence, it has not been an easy task to define a Co-operative society. That notwithstanding, there are various definitions from Co-operative legislations and various scholars. For purposes of this discussion, the definition that is adopted is one from the Statement of the International Co-operative Alliance (ICA) on the identity of a Co-operative society.⁸

³ Cap 211 of the Laws of Tanganyika

⁴ Act No. 27 of 1968

⁵ Act No. 44 of 1968

⁶ Act No. 21 of 1975

⁷ Act No. 6 of 2013

⁸ The International Cooperative Alliance (ICA) is an independent non-governmental organization which unites represents and serves Co-operative organizations in the world.

Under the statement, a Co-operative society is defined as an association of persons who have voluntarily joined together for the purpose of achieving a common need through the formation of a democratically controlled organization and who make equitable contributions to the capital required for the formation of such an organization, and who accept the risks and the benefits of the undertaking in which they actively participate.

2.2 Guiding Principles and Values

The history of Co-operative societies reveals that before the era of the Rochdale Pioneer Society most of Co-operative societies that were formed did not last longer.⁹ Reasons were many. Pertinent to all was that of lack of the guidelines in the operations. Thus, having observed this, the Rochdale Pioneer Society, in 1844, came up with several principles and values which were meant to govern their operations.¹⁰ The ethical values, in their traditional perspective, were honesty, openness, social responsibility and caring for others.¹¹ The values have recently been developed to cover the aspects of: Self-help, Self-responsibility, Democracy, Equality, Equity and Solidarity¹²

In order to put the values in practice, there are several principles that were developed. These principles are: voluntary and open membership; democratic member control; member economic participation; autonomy and independence; education training and information; cooperation among cooperatives; and concern for community. The Cornerstone to the management of any Co-operative society is the values and principles. This is regardless of the structure.¹³ Thus, any Co-operative legislation that is enacted has to be reflective of the principles. The appropriateness of the particular Co-operative legislation is determined by the adherence to the principles.

2.3 Co-operative Legislations for Tanzania Mainland

The Co-operative law of Tanzania has a very long history. The first Co-operative legislation was the Co-operative Societies Ordinance, 1932¹⁴ (hereinafter to be referred to as "*the Ordinance*"). The Ordinance was introduced to Tanganyika by the colonial government with a view of controlling the then fast emerging Co-

⁹ See: G.D.H., Cole, *Full text of the Century of Co-operation* (Third Printing) George Allen & Unwin Ltd retrieved from <http://archive.org/stream/centuryofcoopera035522mbp/> on 12/10/2012 at 19:29

¹⁰ These values and principles are valid to date and the molding of the the Co-operative law of the modern day depends on their existence

¹¹ Reference to the Rochdale Pioneers Values is the traditional perspective

¹² See: The ICA statement on Co-operative Identity (supra)

¹³ See: M.S., Nkuhi. *The Effect of Co-operative Structure on Co-operatives: An Experience from Tanzania*, a paper presented to the Representatives of the Lagos Co-operative Federation who visited Tanzania, at the Ushirika Conference Centre of the Moshi University College on 2nd August 2013.

¹⁴ Cap 211 of the Laws of Tanganyika

operative societies.¹⁵ It conferred so much power to the Registrar of Co-operative societies. The latter could determine who can and who cannot become a member of a Co-operative society.¹⁶ The Ordinance was amended in 1944. The amendment conferred more powers to the Registrar to exercise control over the Co-operative societies.

In 1968, the Co-operative Societies Ordinance was repealed and replaced by the Co-operative Societies Act, 1968. The change was necessitated by the attaining of the independence. Particularly, the change was preceded by two important events. The first was the work of the Presidential Committee of Enquiry. The Presidential Committee of Enquiry was appointed to investigate and recommend on Co-operative agenda.¹⁷ The committee commonly referred to as the Mhavi's Committee came up with *inter alia* the finding that uninformed membership; shortage of man-power, lack of democracy, lack of skilled people; and political interference were the major defects in the Co-operative movement.¹⁸

The second incident was the independent government declaration on the Policy of Ujamaa and Self Reliance.¹⁹ The declaration had an effect on the legislation, particularly on Co-operative societies. Msanga²⁰ notes that the Act was no different from the 1932 Ordinance in terms of control. The powers of the Registrar remained notwithstanding critics and Committees recommendations.²¹ Consequently, the Act was a tool to implement the Ujamaa and Kujitegemea Policy of which co-operatives were necessary economic organisations. Banturaki²² states that the independent government was encouraged by the economic success of the co-ops during the colonial period.²³ The aforementioned government was also convinced that co-operatives were in line with

¹⁵ The societies looked as a threat to the existence of the colonial government

¹⁶ See also: I.R. Msanga *Co-operative Policy and Law in Tanzania with special reference to Multipurpose Co-operative Societies: The Case Study of Same District* at page 31

¹⁷ See also: Msanga I.R., *Co-operative Policy and Law in Tanzania with special reference to Multipurpose Co-operative Societies: The Case Study of Same District* at page 71 the author states that, the Commission was asked to review the staffing and, where necessary, the organisational structure of the Co-operative Movement and Marketing Boards in order to recommend what steps should be taken to benefit both producers and consumers. However, when the Committee met with the President on 15th February 1966, he directed it to deal with all aspects of the Co-operative movement and marketing boards.

¹⁸ *Ibid* at page 72, the government through its white paper had rejected the issue of democracy

¹⁹ Commonly referred to as the Arusha Declaration

²⁰ I.R. Msanga (1982), *Co-operative Policy and Law in Tanzania with special reference to Multipurpose Co-operative Societies: The Case Study of Same District*

²¹ *Ibid*

²² J. Banturaki, *Tanzania Co-operatives: Their Role in Socio-Economic Development*, at page 2

²³ *Ibid*

the efforts to build an African type of socialism.²⁴ Consequently, government leaders and TANU politicians proposed the formation of the Societies in all corners of the land.²⁵

To further the then intentions of the Government, the Unified Co-operative Service Act, 1968²⁶ was enacted. The Act was mainly intended to exercise control over the staff of co-operatives. A commission would be established to look into the affairs of the staff of the movement.²⁷ Msanga²⁸ translated this as connoting that the staffs of the movement were no longer under the members but under the Government.²⁹

While the Co-operative Societies Act, 1968 was operational, the efforts to implement the Arusha Declaration and more specifically the Policy of Socialism and Self-Reliance continued. Another piece of legislation was enacted for the implementation of the Policy. This was the Villages and Ujamaa Villages (Registration, Designation and Administration) Act.³⁰

The Villages and Ujamaa Villages Act was enacted with a view of registering, administering villages and designing Ujamaa villages.³¹ Thus Villages and Ujamaa Villages were registered under the Act.³² In any case where the Registrar was satisfied that not less than two hundred and fifty *kayas* have settled and made their homes within any area of Tanganyika and that the boundaries of such area can be particularly defined, he could register the area as a village.³³

The Villages and Ujamaa Villages Act contained a provision on Co-operative societies. According to the Act, a village and its various organs were required to perform their functions as if they were a multi-purpose Co-operative society.³⁴ The provision, as well, precluded the provisions of the Co-operative Societies Act, 1968 and its subsidiary legislations to apply to any of the villages established or their organs.³⁵

²⁴ *Ibid*

²⁵ *Ibid*

²⁶ Act No 44 of 1968

²⁷ *Ibid*, section 4(1)

²⁸ I.R. Msanga, *Co-operative Policy and Law in Tanzania with special reference to Multipurpose Co-operative Societies: The Case Study of Same District* at page 85

²⁹ *Ibid*, consequently, according to the author, these staff were not serving the interests of the members but those of the government

³⁰ Act No. 21 of 1975 hereinafter to be referred to as the Ujamaa and Ujamaa Villages Act

³¹ Refer to the Long title to the Act

³² See: Section 4

³³ Subject to any directions given in that of villages behalf by the Minister

³⁴ See: Section 13 of the Act

³⁵ *Ibid*

Notably, there was a change in perspective. Before 1975, Co-operatives were looked at as the basic unit of co-operation. After the enactment of the Villages and Ujamaa Villages Act, Ujamaa villages became the basic unit of co-operation. Banturaki notes that the old Co-operative institutions were substituted by new ones in the form of Ujamaa Villages.³⁶ Villages and Ujamaa Villages were thus registered as multipurpose Co-operative societies.

Similarly, in furtherance of the Socialism and Self-Reliance Policy, marketing Co-operatives were banned in 1976. The government decided to ban the marketing co-operatives justifying the decision with the reason that they have lost their representative nature amongst the rural peasants.³⁷ Thus, from 1976 to 1982, there were no primary marketing Co-operative societies in Tanzania mainland. Their role was taken by the Ujamaa Villages.³⁸ Alternatively, the Government introduced Crop Authorities. The latter performed tasks of the defunct co-operative unions. However, the Authorities did not meet the demand of the producers.³⁹ There were assertions amongst the people that the Authorities were not peasants based. They looked at the Authorities as part of the State. As a result, the Government had to inquire into the situation.

The Presidential Commission of Inquiry was appointed for the inquiry on the situation with co-operatives in Tanzania. Following the work of the Commission, eminently known as the Ngwilulupi Commission, the government re-instated the co-operatives immediately.⁴⁰ The same was through the enactment of the Co-operative Societies Act, 1982.⁴¹ It is argued that the period between 1982 and 1990 was the period of open government infringement of the Co-operative principles and values.⁴² This was in the management of the affairs of the reinstated societies.⁴³

Reforms on the Co-operative laws of Tanzania started in the 1990s. The Co-operative Principles and Values were used as a yardstick for the aforementioned

³⁶ J. Banturaki, *Tanzania Co-operatives: Their Role in Socio-Economic Development* (supra)

³⁷ *Ibid*, the reason was given by the TANU Leaders

³⁸ *Ibid*

³⁹ Many complaints arose and were all laid against the Crop Authorities Bureaucracy; Inefficiency; Corruption; Late payments for peasants crops

⁴⁰ See also: J. Banturaki, *Tanzania Co-operatives: Their Role in Socio-Economic Development* at page 5

⁴¹ The Act repealed and replaced, among others, the Co-operative Societies Act 1968

⁴² *Opcit*

⁴³ *Ibid*, the infringement is linked with the reasons for re-instatement. Co-operatives re-instatement was done under the condition that Co-operatives must be multipurpose; regional; and under the CCM structure. That is why the election of co-op leaders at all levels and employment of Co-op Unions' senior staff had to be screened and approved by CCM organs. No wonder in the 1985 CCM issued a Directive requiring all Co-operative societies to be registered as multi-purpose Co-operative societies by December 1987.

reforms. The legal and institutional framework had to be set up to create the environment on which Co-operatives would operate in accordance with the well-known principles and values. As well, there was a need to empower the members through education and training.⁴⁴

Thus, the Co-operative Societies Act, 1991⁴⁵ was enacted. It is this Act which, for the first time, incorporated the internationally recognised principles governing Co-operative societies in Tanzania.⁴⁶

In 1997 another development featured. Again, for the first time in Tanzania, there was formulated a Co-operative Development Policy.⁴⁷ However, the Policy did not last long. In 2002 another Co-operative Development Policy came into its place. It is argued that the 1997 Policy did not adequately address issues pertaining to the free market economy, environment, gender, roles of different stakeholders and the globalization phenomenon.⁴⁸

Thus, among other factors, trade Liberalisation had its effects on the Co-operative Legislation. The latter attributed to the structural changes in the Tanzanian Co-operative Laws. The Co-operative Development Policy 2002 led to the enactment of the Co-operative Societies Act 2003.⁴⁹ The Act was operational for about ten (10) years. It has now been replaced and repealed by the Co-operative Societies Act 2013.⁵⁰ The latter is discussed herein under as follows;

2.4 The Co-operative Societies Act, 2013

The Co-operative Societies Act, 2013 (hereinafter the Act) is an Act to provide for the establishment of the Tanzania Cooperative Development Commission; for the formation constitution, registration and operation of cooperative societies; for promotion of cooperative development; and for other matters incidental or connected thereto.⁵¹ The Act came into force on the 3rd day of

⁴⁴ *Ibid*, the author divides the development into two phases. Phase I was for the set-up of the institutional framework and Phase II was for the capacity building so as to strengthen the Co-operative movement.

⁴⁵ Act No. 15 of 1991

⁴⁶ See: Section 4 of the Act which required the society to be operated democratically on the basis of the principles, methods and procedures of cooperation. The provision further required the society to strive, in accordance with the cooperative principles: to improve the material living conditions of its members; to satisfy the cultural needs of its members as well as to increase their social and political awareness; and to promote cooperative education among its members.

⁴⁷ Since the enactment of the first legislation, there was no Policy on Co-operative societies for almost about seventy (70) years

⁴⁸ See: The foreword of the Co-operative Development Policy 2002

⁴⁹ Act No 20 of 2003 [Cap 211 Revised Laws of Tanzania]

⁵⁰ Act No 6 of 2013

⁵¹ This is according to the Long Title of the Act

January 2014.⁵² It underscores the role of the Government as one directed towards the provision and creation of conducive social, economic and legal environment for the development and prosperity of Co-operative societies.⁵³

With the role aforementioned, the Minister responsible for Co-operative affairs is required to take relevant measures to enhance the development of self-sustaining Co-operative movement.⁵⁴ The measures include the formulation and review of Policy and Regulatory frameworks; the monitoring of the functioning of the Commission and the Board; and the encouragement of teaching, research and consultancy activities by the educational institutions.⁵⁵

The Act recognises the role of Co-operative societies.⁵⁶ This is in so far as the promotion of economic and social interests of the members is concerned.⁵⁷ It calls for the application of Co-operative methods and principles in the operation of Co-operative societies.⁵⁸

2.4.1 The Establishment of the Commission

The major change brought by the Act is the establishment of the Tanzania Cooperative Development Commission (herein referred to as the Commission).⁵⁹ The commission is expected to work as an independent department of the Government.⁶⁰ The Commission is a body corporate and has perpetual succession and its own seal.⁶¹ In terms of the Composition, the Commission is composed of the Chairperson and ten (10) other members.⁶² The chairperson is an appointee of the President.⁶³ The other ten (10) members are appointed by the Minister responsible for Co-operative affairs.

Functions and Powers of the Commission

The Commission is entrusted with two general tasks.⁶⁴ The first is regulatory and the second is promotional. For the purpose of regulating co-operatives in

⁵² Vide GN No. 1 Vol. 95 dated 3rd January 2014

⁵³ See: Section 4

⁵⁴ See: Section 5(1) of the Act, the measures are to be taken after consultations with the Tanzania Co-operative Development Commission

⁵⁵ See: Section 5(2) of the Act

⁵⁶ See: section 3 (1) of the Act

⁵⁷ *Ibid*

⁵⁸ See: section 3 (2).

⁵⁹ Section 6(1) of the Act

⁶⁰ Section 6(2) it is supposed to work under the Ministry responsible for cooperative affairs

⁶¹ See: section 6 (4).

⁶² See: section (7)

⁶³ *Ibid*

⁶⁴ See: section 8 of the Act

Tanzania, the Commission is entrusted with several specific functions.⁶⁵ The Commission is responsible for the registration and deregistration of Co-operative societies in Tanzania.⁶⁶ As well, the Commission is responsible for the inspection and supervision of Co-operative societies.⁶⁷ It is therefore required to keep and maintain the register of all Co-operative societies and ensure that the names of societies (registered or de-registered) are published in the government *Gazette*.⁶⁸

Co-operative disputes settlement is another area which the Commission functions. The Act has entrusted the Commission with the task of determining disputes and complaints arising from the Co-operative societies.⁶⁹ Together with the above functions, the Commission is supposed to collaborate with the Regional Administrative Secretaries on implementation of its regulatory functions of Co-operative development.⁷⁰

In so far as the promotional aspect is concerned, the Commission is required, in the first place, to supervise, co-ordinate and collaborate with sectoral ministries, local government authorities and such other stakeholders undertaking Co-operative promotional activities.⁷¹ It has to encourage and promote the development of the viable and sustainable Co-operative societies.⁷²

Consequently, the Commission is required to raise awareness to the general public, youth and other groups on the nature and benefits of Co-operative societies.⁷³ It is, as well, required to facilitate the formation of the societies and provide education and training to the members of the societies.⁷⁴ Hand to hand with the aforementioned tasks, the Commission is also required to facilitate the formation of co-operatives in the country.⁷⁵ It is also required to provide education and training to members and staff of the Co-operative societies.⁷⁶ The education and training referred to above is one on the area of Co-operative management.

⁶⁵ See: section 8(2) (a)

⁶⁶ *Ibid*

⁶⁷ *Ibid*

⁶⁸ *Ibid*

⁶⁹ *Ibid*, paragraph (v)

⁷⁰ *Ibid*, paragraph (vi) the Commission is, as well, vested with the task of supervising the performance of all the regulatory functions which arises in the framework of the Act.

⁷¹ See: Section 8 (2) (b)

⁷² *Ibid*

⁷³ *Ibid*

⁷⁴ *Ibid*

⁷⁵ *Ibid*

⁷⁶ *Ibid*

At times, the Commission's promotional role is advisory. The Commission is required to advise the Minister responsible for Co-operative affairs on all matters relating to Co-operative development and management.⁷⁷ Together with the aforementioned roles, the Commission has many other roles in the promotion of the Co-operative societies.⁷⁸ For proper carrying out of the aforementioned duties, the Commission is empowered to establish such number of divisions, sections, units and offices.⁷⁹ It may as well appoint agents or employ such number of staff. This is in so far as the management, administration or performance of its functions is concerned.⁸⁰

Under the Act, the office of the Registrar is under the Commission.⁸¹ The Registrar, according to the Act, is the appointee of the President.⁸² In terms of the responsibilities, the Registrar is the Chief Executive Officer of the Commission and overall in-charge of the operations of the Commission.⁸³ Subject to the functions of the Commission,⁸⁴ the Registrar is required to deal with a number of activities. Foremost, the Registrar is entrusted with the administration and management of the affairs of the Co-operative societies.⁸⁵ He is also responsible in the management of funds, property and the business of the Commission.⁸⁶

The functions extend to include the custodianship for the seal; the maintenance of the Commission activities records; and the establishing, keeping and maintenance of the register of Co-operative societies.⁸⁷ Under the Act, the Registrar performs works under the Commission. And the latter may direct any work to the Registrar for the proper carrying out of its functions.⁸⁸ In the

⁷⁷ *Ibid*

⁷⁸ *Ibid*, the roles are extended to: provision of services designed to assist in the formation, management, organisation and operation of the societies; co-ordination of the economic plans of the Co-operative societies for the incorporation in the National plan; implementation of policies on Co-operative development; creation the conducive environment for the Co-operative movement networking; maintenance and dissemination of information pertaining to co-operatives and Co-operative development to stakeholders; research for the development of Co-operative societies; advice to primary, secondary and other societies on formation of federation Co-operative societies; and monitoring the formed Federations.

⁷⁹ See: section 9

⁸⁰ *Ibid*, paragraph (b)

⁸¹ See: section 10

⁸² *Ibid*

⁸³ *Ibid*, sub section (3)

⁸⁴ As stated in section 8

⁸⁵ See: section 10

⁸⁶ *Ibid*

⁸⁷ *Ibid*

⁸⁸ *Ibid*

carrying out of such duties, the Registrar will be assisted by the Deputy Registrar and several other Assistant Registrars.⁸⁹

2.4.2 Structure of Co-operative Societies

The other notable change brought by the Act is on the structure on which co-operatives are supposed to operate and the minimum requirements for the registration of a Co-operative society. In terms of the structure, the Act prescribes for primary society at the grass root level and a federation at the top level.⁹⁰ It, however, recognises the middle level and secondary society.⁹¹

As earlier stated, there is a change in the in minimum requirement for the formation of Co-operative societies. The number of members required for registering agricultural co-operatives is slightly changed.⁹² Under the Act, an Agriculture Co-operative society may be established by twenty to thirty members.⁹³ The minimum number of members for the Savings and Credit Co-operative Societies (SACCOS), specialised Co-operative societies and other types of Co-operative societies has remained intact.⁹⁴

2.4.3 Sensitization and Public Awareness

The Act has also billeted the requirements of sensitization and creation of public awareness.⁹⁵ The two are prior, during and post Co-operative formation activities. Their undertaking does not wait the formation nor does it end when a society is formed. Sensitization and public awareness creation are enduring and endless. They are tasks imposed both to a Co-operative officer and a Co-operative promotion officer.⁹⁶ According to the Act, the previous officer exercises the task of providing education and awareness on issues related to cooperative societies during their formation. The officer is bound to provide such education and awareness on various issues.⁹⁷ On the other hand, the Co-operative promotion officer undertakes the task of providing education and

⁸⁹ For further details refer to Section 11 and 12 of the Act

⁹⁰ See: Section 19 (1) of the Act

⁹¹ See: Section 19 (2), the formation of the two is left with the members. It depends on their wishes.

⁹² See: Section 20 (1) of the Act

⁹³ *Ibid*, paragraph (a)

⁹⁴ *Ibid*, paragraphs (b), (c) and (d), twenty and ten and more, respectively.

⁹⁵ See: section 28 and 69 of the Act, respectively.

⁹⁶ *Ibid*, the two are distinguished under the Act based on their functions. See: section 2 of the Act.

⁹⁷ See: Section 28 of the Act, the issues includes significance; benefits; types of cooperative societies and procedure for formation; sustainability and management; operations and roles of Co-operative societies in community development; and such other matters relevant to the formation and development of Co-operative societies.

awareness to members of registered society.⁹⁸ The education and awareness is on the duties and privileges of the particular registered society. Such education and awareness includes the manner to access the aforementioned privileges.⁹⁹ They are also required to provide public education or awareness to the members on their rights, obligations and liabilities as members of the Co-operative society.¹⁰⁰

2.4.4 The Co-operative Development Office and the Mandatory Formulation of Co-operative Development Plans

The Act has also embodied with it a mandatory requirement on the facilitation for the establishment of the Co-operative development office and formulation of Co-operative development plans. The sectoral ministry, regional secretariat and the local government authorities are required to facilitate on the establishment of a Co-operative development office in their respective areas.¹⁰¹

The requirement does not end with facilitation in the establishment. It requires the aforementioned authorities/institutions to ensure that the Co-operative development offices are allocated with resources for the effective discharge of their functions.¹⁰²

According to the Act, the Co-operative officers who will be employed in the offices established under the sectoral ministry, regional secretariat and the local government will be, when executing their functions, deemed to be performing the functions of the Commission.¹⁰³ With the establishment of the offices, the Act also places a requirement to the sectoral Ministry and the local government authorities to formulate Co-operative development plans.¹⁰⁴ The formulation of such plans, however, is in accordance with the guidelines issued by the Commission.¹⁰⁵

⁹⁸ See: Section 69

⁹⁹ *Ibid*

¹⁰⁰ See: Section 50 (1) of the Act

¹⁰¹ See: Section 14(1) of the Act

¹⁰² *Ibid*

¹⁰³ See: Section 14 (2) of the Act, this is particularly when the officers are performing the promotional functions outlined under section 8(2) (b) of the Act

¹⁰⁴ See: Section 15 (1) of the Act

¹⁰⁵ *Ibid*

2.4.5 Management of Co-operative Societies

The management structure has remained intact. The General Assembly, the Board and other organs¹⁰⁶ have been preserved.¹⁰⁷ However, the Act has set a bar in the holding of leadership positions in Co-operative societies. In the management of cooperative societies, the Act has set a *no politicians and public officers' leaders rule*.¹⁰⁸ This is to say that Politicians and Public Officers are prohibited to engage with the management of Co-operative societies.¹⁰⁹

Politicians and public officers are both defined under the Act.¹¹⁰ A political leader or a person elected in the political position is defined to include: *a village chairman; village council, village executive officer, councillor, district commissioner, regional commissioner, a member of the parliament; or any other person serving as a leader in a political party*¹¹¹. Thus, if a person is serving any of the aforementioned posts, he or she is automatically disqualified from becoming a leader in co-operative societies.

However, the disqualification does not apply when a political leader is serving the co-operative society within a political party¹¹². This is to say that if a *village chairman; village council, village executive officer, councillor, district commissioner, regional commissioner, a member of the parliament; or any other person serving as a leader in a political party* is also serving a Co-operative society formed within the office of the respective political area, there is no bar on the holding of such leadership positions.¹¹³ A leader of a political party may also be a leader of the cooperative society formed by the party.

On the other hand, a Public Service Officer is defined with the meaning ascribed to it by the Public Service Act.¹¹⁴ Similarly, Public Service Officers are not precluded to be leaders of the Co-operative societies established in the respective public organisation.¹¹⁵

¹⁰⁶ Including the supervisory committee, management, employees and staff of the particular cooperative society

¹⁰⁷ See: the third schedule of the Act

¹⁰⁸ Section 132

¹⁰⁹ *Ibid*

¹¹⁰ See: Section 132 (4) of the Act

¹¹¹ *Ibid*

¹¹² See: Section 132 (2) (b) of the Act

¹¹³ *Ibid*

¹¹⁴ See: Public Service Act [Cap 298 RE 2002], which defines a Public Servant, under section 3, as a person holding or acting in a public service office.

¹¹⁵ See: Section 132 (2) (a) of the Act

2.4.6 *Specific Regulations on Savings and Credit Co-operative Societies (SACCOS)*

This is the notable and promising development of the Co-operative law of Tanzania. The Act has provided room for the enactment of the specific regulations for the Savings and Credit Co-operative Societies (SACCOS).¹¹⁶ Under the Act, the Minister is empowered to make Regulations.

The power is one to make general Regulations for the application of the Act and specific others.¹¹⁷ Amongst the specific Regulations there are Regulations for SACCOS and banks registered as Co-operative financial institutions. These Regulations are required to be similar to the Regulations pertaining to the Microfinance Institutions and Financial Co-operatives.¹¹⁸

2.4.7 *Inspection by Co-operative Officers*

In this area, the Act vests the task of inspection to Co-operative officers. However, it is not a task to be performed by all Co-operative officers. The list of Co-operative officers who shall undertake the task of inspecting the affairs of Co-operative societies has to be published by the Commission.¹¹⁹

3. **Observed Challenges**

There are several challenges on the face of and in the implementation of the Act. Some provisions have remained challenging. They infringe the Co-operative principles and Values. There are, as well, controversies tied with the practical application of the Act.

3.1 *Provision-Based Challenges*

In the provisions, the first and foremost is the role conflict. From the provisions of the Act, the Commission is tasked with, *inter-alia*, the registration, promotion, settlement of disputes, inspection of societies as well as supervision of the societies. Concentrating all these powers to the Commission violates the Co-operative autonomy and independence.¹²⁰

¹¹⁶ See: Section 141 (3) of the Act

¹¹⁷ See: Section 141 (1) and (2) of the Act, the Minister exercise such powers after consultations with the Commission

¹¹⁸ *Opcit*

¹¹⁹ See: Section 92 of the Act. The Co-operative Officers are responsible to the Registrar and they are required to prepare and submit a report of every society inspected

¹²⁰ See: the then Moshi University College of Co-operative and Business Studies (MUCCoBS) Report on *Observations and Recommendations on the Bill for the Cooperative Societies Act, 2013*

Promotion of co-operatives and Co-operative development is the task of the co-operatives themselves and the Co-operative movement.¹²¹ Settlement of disputes, in all cases, is the task of an independent and impartial body.¹²²

Next to role conflict is the position of the Co-operative officers. The Act provides that the Co-operative Officers may sometimes perform both regulatory and promotional duties.¹²³ This implies that the officers will be accountable and answerable to both the Commission and the Local Government authority in which they fall. This may bring about conflict of interest and confusion in terms of job description.¹²⁴

Another challenge to the Act is on the powers vested to the Registrar. The powers on amalgamation on public interest;¹²⁵ summoning a special general meeting;¹²⁶ and removing the Board¹²⁷ are critical to the autonomy and independence of the Co-operative societies.¹²⁸

3.2 Challenges in the Implementation

The implementation of the Act has also been challenging. The absence of the Regulations by Minister, on one hand, and the Registrar Circulars on the other have created hardships in the implementation of the Act. New Regulations were vital for the new legal and institutional set up.¹²⁹

The Registrar issued two circulars. The first circular, dated 14th February 2014, barred all Co-operative societies to conduct elections until further notice.¹³⁰ The second circular, dated 6th June 2014, called for the special general meetings of 'all' the Co-operative societies. The calling of the meetings was with a view of conducting election for the Board members of such societies. The questions that have remained un-answered are whether there is a provision in the Act empowering the Registrar to do so; whether the Circulars are in conformity with the provisions of section 144 (2) (b); and whether the Co-operative Society Rules 2004 were suitable for the elections under section 132.

¹²¹ *Ibid*

¹²² *Ibid*

¹²³ See: Section 93 of the Act

¹²⁴ *Opcit*

¹²⁵ Section 97(5)

¹²⁶ Third schedule, item 6

¹²⁷ Third schedule, item 7

¹²⁸ Refer to the then MUCCoBS Report entitled *Observations and Recommendations on the Bill for the Cooperative Societies Act, 2013*

¹²⁹ Until now reference is to the Co-operative Society Rules, 2004 which does not address some pertinent provisions of the Act

¹³⁰ The bar was set with a view of awaiting a uniform implementation of the provisions of section 132 and item 9 of the second schedule of the Act

4. Conclusion and a Way Forward

From the foregoing discussion, it is factual that the major change brought by the Act is the establishment of the Commission. However, such change is accompanied by some other new aspects. The requirement for the creation of Co-operative offices and Co-operative development plans by, *inter alia*, the sectoral ministry and the local government authority is a development which cannot be ignored.

Side by side, a *no politicians and public officers' leaders rule*; the awareness and sensitization programmes; and provisions for specific Regulations on SACCOS, reveal the progress of the Co-operative law. The latter is vital at the particular time where there is a tremendous growth of such societies.

However, and as discussed above, there are issues which are still requiring a specific attention. There are some provisions which infringe the Co-operative principles in favour of the works of the Commission. The autonomy and independence of the Co-operative Societies, and the movement to its entirety, is questionable in situations where the Commission does the functions which originally are supposed to be left to the movement itself. Issues pertaining to dispute settlement and the status of the Co-operative officers with regard to the promotional and regulatory roles are still critical. The similar situation is with the powers conferred to the Registrar over amalgamation, summoning of the general meetings and the removal of the Board of the Co-operative Society.

And here is where the question as to whether the Act is Commission or Co-operative movement oriented is rooted. The answer to the authors' question requires a critical analysis and in all cases it is not expected to be uniform. What is important is the test which is on the adherence to the Co-operative principles and values.

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