



**International Co-operative
Alliance – Africa**
A Region of the International
Co-operative Alliance

LEGAL FRAMEWORK ANALYSIS

NIGERIA NATIONAL REPORT



International
Co-operative
Alliance



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ABBREVIATIONS

AGM	Annual General Meeting
Cap	Chapter
LFA	Legal Framework Analysis
ICA	International Cooperative Alliance
NCSA	Nigerian Cooperative Societies Act Cap N98 2004

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1. INTRODUCTION

1.1. Objectives of the Legal Framework Analysis

The Legal Framework Analysis (LFA) is undertaken under the auspices of the Framework Partnership Agreement “Cooperatives in Development – People Centred Businesses in Action” between the International Cooperative Alliance (ICA) and the European Commission to which the Alliance Africa is a co-signatory.

Cooperatives benefit from regulations acknowledging their specificities and ensuring a level playing field with other types of business organizations. The absence of a specific legal framework for cooperatives or a weak legal framework may damage cooperatives, while in contrast a supportive regulation may allow their development. This is the reason why knowledge and evaluation of cooperative legislation is a necessary tool for ICA offices and members to support their advocacy and recommendations on the creation or improvement of legal frameworks, to document the implementation of cooperative legislation and policies, and to monitor their evolution. Against this background, the objectives of the LFA are: (i) to acquire general knowledge of the national legislation on cooperatives, including but not limited to the legislation in force in the 107 countries represented by ICA members, as well as of supranational cooperative legislation if existent; (ii) to evaluate the national jurisdictions covered by the LFA according to their enabling environment for cooperatives, in order to compare national cooperative laws with pre-determined indicators, based on a scale of “cooperative friendliness” of the national legislation; and (iii) to provide recommendations for eventual renewal of the legal frameworks in place.

1.2. About the Author

The study was carried out by ODUNAYO KOLADE (of Messrs. Odunayo S. Kolade & Company) with input from OLUFEMI SAMUEL of the Cooperative Federation of Nigeria.

1.3. Methodology

This report contains the review of the legal framework on the practice of co-operative societies in Nigeria with recommendations for the growth and development of the sector. Special focus is on the Nigerian Co-operative Societies Act Cap N98 2004 (NCSA/Federal Act), which is the supreme legislation on co-operative societies in Nigeria, and the Co-operative Societies Law Cap C14 2015 of Lagos State (Lagos State Act). In line with the Legal Framework Analysis objectives, this report aims to discuss the said laws with a view to

identifying the provisions hampering the growth and development of the co-operative sector; establishing the degree of co-operative friendliness of the legal framework; and making recommendations for the improvement of the national legal framework.

The objective of the Federal Act is to regulate the activities of co-operative societies and their operating practices from registration to liquidation. The Act is however froth with provisions that clearly undermine the co-operative principles and thus fail to provide the required enabling environment for the growth and development of the co-operative movement it regulates. The Director of Cooperatives (Director), who is a civil servant drawn from the civil service, is the fulcrum of co-operative activities in Nigeria. He can register or refuse registration of a society, impose model bye-laws under the guise of amendment to suit the law, direct investments of funds of societies, grant exemptions from statutory requirements, resolve disputes as he sees fit, dissolve a society and appoint a liquidator to wind up its affairs. His powers are absolute and appeals against his decisions lie only to the Minister or Commissioner responsible for cooperatives, as the case may be, whose decision on any issue is final.

The main distinguishing characteristics of co-operatives from for-profit shareholder organisations are as follows:

	Corporation	Co-operative
1	A legal entity formed by a group of people who contribute share capital and is established for the purpose of generating maximum profit.	A legal entity owned by a group of people who come together voluntarily to meet their common social and economic needs.
2	The liability of shareholders may be limited or unlimited to their shareholding.	Liability is limited to members' share contributions.
3	Shares are transferrable.	Shares are not transferable.
4	Regulated by the Companies and Allied Matters Act which is an Act of the National Assembly.	Registered by the Department of Co-operatives either at the Federal or State level and regulated by the Department of Co-operatives.
5	Operated as a business to the general public.	There is a restriction on doing business with the general public.
6	Profits are distributed by way of dividend according to shareholding.	The surplus earned by a co-operative is given to members on the basis of both share capital and patronage
7	Subject to pay the following taxes; Income Tax, Value Added Tax, Capital Gains Tax and Stamp Duties tax.	Exempted from certain taxes payable under laws such as Stamp Duties Act and Companies Income Tax Act. Also exempted from fees relating to registration of instruments.

The major legal obstacle to the development of co-operatives in Nigeria is overregulation. Notwithstanding specific legislation empowering co-operatives to make their own laws guiding their operations, there is still unfettered involvement by the regulatory authority both at the Federal and State levels in the operations of co-operatives. The legal provisions hampering the development of co-operatives are numerous and vary between the Federal Act and Lagos State Act. The Director's unilateral power to amend bye-laws before registering a society, direct audit and investment of society's funds, settle disputes and control liquidation has largely stifled the Movement. There is no legislative provision for the delegation of any of the Director's functions to apex co-operative organizations to accommodate deferred opinions.

2. NATIONAL COOPERATIVE LAW

2.1. General Context

The legal sources for the rules and regulations for the formation, operation and dissolution of co-operative societies in Nigeria are:

- (i) The Constitution of the Federal Republic of Nigeria 1999 (as amended).
- (ii) The Nigerian Co-operative Societies Act CAPN98 2004. (Formerly Decree No. 90 of 1993).
- (iii) States Co-operative Societies Law and Regulations made pursuant to State laws.
- (iv) Bye-laws of individual co-operative societies.

The history of co-operatives in Nigeria stems from Mr. C.F. Strickland's Commission which conducted a study on the possibility of introducing co-operatives into Nigeria. His report of 1934 culminated in the enactment of the Cooperative Societies' Ordinance of 1935 which law was adapted by the three regions (North, South and West) in Nigeria at the time and subsequently by the States as they were created.

The State cooperative laws are substantially a replica of the 1935 Ordinance but with modifications to suit their environment. A review of the 1935 Ordinance by the Federal Government culminated in the promulgation of the Nigerian Cooperative Societies' Decree No. 90 of 1993 which was re-enacted as the Nigerian Cooperative Societies' Act N98 of 2004 and adopted by all the States. It is safe to say that reference to one of them is as good as reference to all.

Though the Constitution of the Federal Republic of Nigeria in item 32 of the Exclusive Legislative list appeared to vest power to make cooperative laws on the State Houses of Assembly, the Federal Act in its preamble makes the State laws subject to it. It states thus; “An act to provide for the registration and operation of co-operative societies throughout the Federation and for related matters”. Furthermore, section 1(2) on registration of co-operative societies gives State Governors the power to appoint State Directors of Cooperatives and their Assistants and confer on such appointees all or any of the powers of the Director under the Federal Act.

It is trite that the Constitution is the supreme law of any land and Nigeria is no exception. Section 4(5) of the Constitution of the Federal Republic of Nigeria states that, “[i]f any law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other law shall to the extent of the inconsistency be void”. The Federal Act for all intents and purposes supersedes the State co-operative laws.

For the purpose of this report, special focus is on the Federal Act and the Lagos State Act. The Lagos State Act behooves consideration because it is the most recently updated State co-operative law in Nigeria with a few innovations that can safely be said to contain the best co-operative practices amongst the State laws. In addition, the Lagos State Co-operative Movement is a pacesetter in the practice of co-operatives in Nigeria with more functional and visible societies.

2.2. Specific Elements of the Co-operative Law

2.2.1. Definition and Objectives of Co-operatives

The Federal Act in its interpretation section defines a co-operative as “a voluntary association of individuals, united by common bond, who have come together to pursue their economic goals for their own benefits”. According to the Act, the main objective of co-operatives is to promote the socio-economic interests of its members in accordance with the co-operative principles. To ensure the actualization of the three contemporary co-operative principles of User-Owned, User-controlled and User-benefits, the Federal Act under Sections 30, 31 and 32 places a restriction on transacting business with non-members whether through the grant of loans, borrowing or carrying on any business. The Lagos State Act by sections 14, 15 and 17 makes similar provisions to ensure member promotion. While member promotion is paramount, co-operatives may also have objectives that allow non-members and the

community at large to benefit from their activities so as to fulfil the seventh co-operative principle of concern for community. Such objective may be in tandem with a society's social objective towards its members, for instance, health awareness programs and donations to care homes. Furthermore, section 33 (c) of the Federal Act permits a co-operative to invest its funds in any other manner approved by the members of the society save for co-operative thrift and credit societies whose investments cannot go beyond savings and loans.

2.2.2. Establishment, Co-operative Membership and Governance

Section 3 of the Federal Act prescribes the minimum number of members to establish a co-operative. At least: ten persons for primary societies; six for industrial societies; five for secondary societies; and five for Federal Apex society. The admission of new members into a society is regulated by the bye-laws of each society. The requirements for admission are by and large similar with very little variation. The new member must: (a) be introduced to the society by a member of the co-operative; (b) submit an application letter of intent to join the co-operative; (c) pay entrance fee; (d) fit in with the common bond of the society; (e) provide two passport photographs for record purposes at the co-operative secretariat; (f) complete a nominee form indicating beneficiaries; (g) be eighteen years of age; and (h) subscribe to the prescribed minimum shares in the co-operative. However, the age requirement under Section 22 (1) (a) of the Federal Act is sixteen years.

In Sections 25 and 34 of the Federal Act and Lagos State Act respectively, each member has one vote in the conduct of the affairs of the society, regardless of the capital invested. However, where there is equality of votes, the presiding Chairperson shall have a casting vote.

The general internal structure of administration of co-operatives consists of an elected Management Committee (Board) which is responsible for the day-to-day running of the co-operative. The Management Committee is supported by other committees depending on the business of the co-operative. The ultimate authority under the law in all the affairs of the co-operative is the General Meeting of members who can meet from time to time to review and direct the work of the society. The General Meeting is the main avenue for taking decisions and conducting elections.

2.2.3. Cooperative Financial Structure and Taxation

A society may determine a minimum share to be held by any member and contribution may be linked to the volume of transactions, provided no member shall own more than 1/5 (20%) of the share capital of the society as required by section 27 of the Federal Act. A similar provision on restriction is contained in section 32 of the Lagos State Act.

Every co-operative society must prepare an annual income and expenditure account and the net surplus for the year is appropriated in the following manner:

- (i) Reserve Fund: Not less than 25%.
- (ii) Education fund: 2.5%.
- (iii) Members' dividends: 50%.
- (iv) Honoraria: 5%.
- (v) Meeting expenses (AGM) and General reserve: 17.5%.

By the provisions of section 23(1)(b) of the Companies Income Tax Act Cap C21, Laws of the Federation of Nigeria, 2004 (last updated 2007), and section 19(1) paragraph 22 of the third schedule of the Personal Income Tax Amendment Act 2011, co-operatives are required to pay tax on profits realized from businesses outside co-operative activities. Save for these provisions, co-operatives enjoy exemptions from virtually all other tax laws in Nigeria. In sections 20 and 21 of the Federal Act, co-operatives are exempted from stamp duties tax and registration fees on all instruments executed by or on behalf of a registered society and relating to the business of the society. Similar exemptions are also contained in sections 28 and 29 of the Lagos State Act.

2.2.4. Other Specific Features

The Federal Act provides for cooperation among co-operatives. Section 14 endorses compulsory cooperation among co-operatives in particular trades. In promoting the sixth co-operative principle, section 30 of the Federal Act provides that a co-operative society may grant a loan to another registered society with the consent of a majority of its members.

3. DEGREE OF “COOPERATIVE FRIENDLINESS” OF THE NATIONAL LEGISLATION

The degree of “cooperative friendliness” of the national legislation is very limited so much that there are very few legislative provisions promoting growth and development of co-operatives.

Notable “co-operative friendly” provisions in the Federal Act are sections 11, 12, 33 and 36. They are especially commendable as they give the co-operative the autonomy to make its own laws (bye-laws), control the investment of its funds and exercise its discretion in the choice of an auditor to audit its accounts without any interference whatsoever from the Director.

Exemption from certain taxes by both the State and Federal law is another good practice. The exemptions are geared towards the conservation of co-operative funds to encourage co-operative activities.

4. RECOMMENDATIONS FOR THE IMPROVEMENT OF THE NATIONAL LEGAL FRAMEWORK

The main recommendations for the improvement of the legal framework in place are summarized below:

- (i) The co-operative principles should be adhered to and enshrined in both the Federal and State co-operative laws. This can be achieved by the decentralization of the powers of the Director of Co-operatives and delegation to State and Federal Apex organisations.
- (ii) The law should allow flexibility in the provisions of the bye-laws of co-operative societies rather than the imposition of template bye-laws by the Ministry responsible for co-operative societies.
- (iii) There should be less interference of the regulatory body in the management and affairs of co-operatives.
- (iv) There is a need for collaboration between the Ministry responsible for co-operatives and the state apex bodies on such functions as promotion, registration, audit and formulation of policies.

- (v) Co-operatives should be placed under the appropriate ministry to improve co-ordination and formulation of the right policies. In some States, co-operatives are under the Ministry of women affairs, Federal Ministry of Agriculture and Rural Development, in some other States, ministry of poverty alleviation and co-operatives or ministry of commerce, industry and rural development.
- (vi) There is a need to establish a financial aid scheme at single digit interest rate by the government to promote co-operative business.
- (vii) Cooperative members should be protected against financial loss caused by unscrupulous management committee members to boost public confidence.
- (viii) There is a need to adopt and pass into law the draft bill of 2008 proposed at the National Assembly for the establishment of a National Co-operatives Societies Development Agency. This bill is tailored after the Malaysia Co-operative Societies Commissions Act 2007. It is an improvement on the model law and its implementation will promote the development and growth of the co-operative movement in Nigeria.

5. CONCLUSIONS

We have identified the limitations of the co-operative legislation in Nigeria and made recommendations on its amendments to promote full cooperation in accordance with the cooperative principles. In achieving the desired change, the legislation whether at the Federal or State level should not be overly prescriptive as it is presently, but create an atmosphere conducive to cooperative autonomy and development. The legal framework should curb excessive involvement by the Director of Co-operatives in virtually every sphere of cooperative endeavor and give freedom to the societies to define the parameters for their management and business activities. The role of the Director should mostly be supervisory and delegation of some of its duties to apex cooperative organisations whether at the State or Federal level be given consideration to instill confidence in the system and give the much desired sense of participation by the cooperatives in the conduct of their affairs.