

The Nigerian Co-operative Law: Taking the Baton from P.A. Oluyede

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Abstract

Some of the challenges hindering the development of co-operatives and their governing laws in Nigeria are the inadequacy of literature, and the lack of standardized classification on the subject of co-operative law. With the aim to identify and espouse relevant literature on the subject matter, this paper seeks to collect, collate and review the relevant literature. A classic was identified in the work of P.A. Oluyede (1988) Nigeria Administrative Law, in chapter four, entitled "Public Corporations, and Public Enterprises." Among other findings, the learned author dedicated the chapter to the historical development of Nigerian co-operative societies and their governing laws, situated cooperatives as public enterprises, and made recommendations. Furthermore, it was observed that there have been few contributions within the annals of the Nigerian academic and research community on co-operative law. Thus, Oluyede's classics retains its position as a primary reference material for the modernization of the Nigerian cooperative law and sets the path for its standardization. However, supposedly consequential development has remained elusive, hence the imperatives to build on some of the positions espoused in Oluyede's chapter in view of current realities. Although P.A. Oluyede's contribution retains its position as a top-notch reference material, some of the positions canvassed are no longer applicable to Nigerian co-operatives, hence the need to review Nigerian cooperative law as recommended.

Keywords: Co-operative development, Co-operative law, Development of law, Nigerian Co-operatives, P.A. Oluyede.

1. Introduction

P.A. Oluyede, herein referred to as the author, in his work² listed public enterprises and public corporations to include commercial corporations, social services or welfare corporations, industrial corporations, and co-operatives (enterprises) movements. The author brought to the fore the significance of these organisations to the development of Nigeria even before the amalgamation of 1914.³ The author traced the utilization of statutory bodies in the administration of Nigeria to the post-world war I reorganization of British colonies, which he posits to have taken the forms of public corporations and boards. According to the author, the first noticeable characteristic of a public corporation in Nigeria is their hybrid organism. Nigerian public corporations possess the features of a government department and some of the

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² Peter Oluyede, *Nigerian Administrative Law* (Universal Press Plc, first published 1988, reprinted 1991, 1995, 2001, 2002) 160.

³ The co-operative movement have been an integral part of precolonial African societies. Variants of customary co-operatives were practiced among the various ethnic nationalities before the advent of the British colonialist. These customary variants exist till date.

features of a business organization. The author identified the orthodox classification of public corporations as follows:⁴

- (a) Industrial and commercial corporation
- (b) The social service corporations; and
- (c) The regulatory corporations.

However, the author adopts a slightly different classification, with the aim to, among others, treat co-operatives as part of public enterprises. This in his opinion is due to the fact that co-operatives affect the life of about three-quarters of the population of the country. He was quick to identify that co-operatives differ from companies because of their peculiarities, as a group of person who are members and shareholders are at the same time co-owners and sometimes customers of the co-operative. The author quoted Hans-H Mucker⁵ to support his claim as follows:

The result is that in co-operative societies, the persons in charge of the management face the difficult task of administrating the co-operative group and managing the affairs of the co-operative enterprise in such a way that the interests of the members are met and yet the co-operative enterprise binds up and maintain solid financial basis.

The author identified the existence of several ministries and departments of Co-operatives in the tiers of governments in Nigeria. However, the author reckons that given the above description, it is clear that a co-operative society is a hybrid organism which can neither be called a government department in the strict sense nor a private business company.⁶ The above formed the basis of the author's explication of Nigerian co-operatives. Thereafter, he continued his explication along the following sub-heading: (a) Co-operative societies as public enterprises; and

(b) Government policy on the promotion of co-operatives;

2. Co-operative Societies as Public Enterprises

The author argued that co-operatives affect the life of almost every citizen of Nigeria in one way or the other, such that they can easily be used as an engine of rapid development⁷. He further argued that "whatever may be your status in the big city or in the smallest village, be you a university professor, civil servant, clerk or a poor farmer, you can always find a co-

⁴ P Oluyede, *Nigerian Administrative Law* (Universal Press Plc, 1988) 138.

⁵ H Munker, *Ten Lectures on Co-operative Law* (1982) 79

⁶ The author must have built his assertion on the fact that the word "co-operative" or its vernacular equivalents can only be used in accordance with the relevant statutory provisions. For example, the Nigerian Co-operatives Societies Act, Cap N98, LFN 2004 s 3(4) provides "the word "co-operative" or its equivalent shall form part of the name of every society registered under this Act". Also, s 54(1) of the same Act provides "no person, other than a registered society shall trade or carry on business under any name or title of which the word "co-operative" is a part without the sanction of the Director".

⁷ This position aligns with the International Labour Organization and United Nations Development Programme's position that co-operatives are viable mechanism for the implementation of sustainable development agenda.

operative society to suit your needs.”⁸ The author identified the customary roots of Nigerian co-operatives and went further to identify the Strickland report of 1934 as the basis of modern co-operatives in Nigeria⁹. The author identified the following as the dictates of modern co-operative practice when it was introduced into Nigeria in the 1930s:¹⁰

- (a) Proper processing of food crops;
- (b) Marketing of crops both local and export crops, especially cocoa;
- (c) Attempts to arrest price fluctuation; designs for combating literacy and ignorance of peasants, craftsmen and artisans;
- (d) Plans to arrest middlemen’s activities; and
- (e) Program to combating usuries of established money lenders.

The author further identified the following as essential characteristics of the early modern Nigerian co-operatives:¹¹

- (a) The basis of union must be voluntary. This element of voluntarism implies freedom, liberty, and democracy.
- (b) The union is of human beings. As such, a member’s voice and influence in the affairs of a society should be proportionate to his character and intelligence, not to his share-holding or other pecuniary interest or even his status in the society. Here a co-operative society differs from a joint stock company or other similar enterprise.
- (c) Democratic control – all members are equal and the rule of ‘one man one vote’ must be strictly observed.
- (d) There must be a definite and common objective in view for every society, towards which every member works.
- (e) Open membership – all people who can benefit from the services of a co-operative union are admitted to membership.
- (f) Limited interest is paid on capital-money invested in a co-operative society is allowed only a nominal and modest rate of return.

⁸ Oluyede (Note 4) 161. Co-operatives draw members across the tiers of the Nigerian populace. However, they draw more members from the lower and middle socioeconomic rung, and less from the higher spectrum of the Nigerian society.

⁹ The then colonial government in Nigeria had consulted C.F Strickland, a co-operative expert to embark on the feasibility study of the introduction of modern co-operative practice into Nigeria. The report of the feasibility study is commonly referred to as the Strickland report of 1934. The report had a proposed legal framework as an addendum. This addendum was adopted into a law in 1935, and was thereafter known and referred to as Nigerian Co-operative Ordinance 1935.

¹⁰ Oluyede (Note 4) 162. The dictates were in reality the truest motives of the indigenous people of Nigeria for their adoption of modern co-operative practices. The earliest Nigerian co-operative practitioners wanted a mechanism to check the excesses of colonial interest on their agricultural business. They adopted the ideology of modern co-operatives to address the challenge.

¹¹ Oluyede (Note 4) 163. The essential characteristics are a departure from the dictates. While the former had inputs from both practitioners and researchers to arrive at British influenced rules of engagement for co-operatives, the former is a reflection of the survival instinct of the practitioners and their peculiarities.

- (g) Surplus earnings are distributed in proportion to the use made of the services of the co-operative organisation. What is usually paid out as profit to share-holders in business is returned in a co-operative set up to those who created the surplus as patronage bonus.

The author identified the following as common, but non-essential characteristics of the early modern co-operatives:¹²

- (a) Political and religious neutrality in the conduct of the affairs of the society: Co-operatives insist on strict neutrality on all religious and political matters. In other words, political and religious opinions of a member should have no influence whatsoever on the affairs and policies of the society;
- (b) Business should be in cash or kind in preference to a credit basis;
- (c) Goods and products handled are sold at current market prices;
- (d) Every genuine co-operative society exists to satisfy the felt needs of its members, thus making it possible for every identifiable economic human endeavour to be effectively covered by the co-operative system. The result is that the co-operative movement as we have it in this country is a multi-dimensional organisation, providing people from all walks of life with an opportunity to participate, be they producers, suppliers, consumers, employees, farmers or traders; for co-operatives engage in trade, commerce, farming, marketing, distribution, financing, insurance, and allied enterprises, to mention a few; and
- (e) As an association of human beings with the objective of solving the economic problem of its members, immediately a co-operative society is formed, there arises some questions of rights and duties, responsibilities and liabilities, all of which require to be guided and directed through a code of laws and perhaps, of conventions.

According to the author, a cooperative society is a hybrid organism that can neither be called a government department in the strict sense nor a business company pure and simple.¹³ The author's qualification of cooperatives as public enterprises was premised on their character as a hybrid of private initiatives, and government investment and regulations. Cooperatives did enjoy enormous government patronages in the form of subsidies, direct investments, and technical assistance.¹⁴

Thereafter, the government of the now defunct Western region of Nigeria under the leadership of Chief Obafemi Awolowo made a grant of One Million British pounds to the cooperative societies operating within the region.¹⁵ In addition to the above, the Co-operative Societies Law Cap. 26 of the Laws of Western Nigeria, 1959¹⁶ evolved from the Co-operative Societies

¹² Oluyede (Note 4) 164.

¹³ Oluyede (Note 4) 161.

¹⁴ The very essence of these investments were captured in the Western region government issued policy paper of June 1952. The paper, which will be treated in subsequent parts of this paper was titled "Government Department policy for Western region, Nigeria.

¹⁵ S Awojuyigbe, *Co-operative Administration and Fieldwork in Nigeria* (Ibadan: Anu-olu Publisher, 2007) 16.

¹⁶ Co-operatives Societies Law Cap. 26 of Western Nigeria, 1959 was an amendment to the first co-operative legislation of the defunct Western Region of Nigeria; Co-operative Societies Western Region Law No 6 of 1953.

Ordinance No. 39 of 1935.¹⁷ It provided the required legislation on co-operative societies as public enterprises within the then Western region of Nigeria. Thereafter, the author raised the question of whether or not there are similarities between the customary practice of co-operatives in Nigeria, and the modern version which the Strickland Report of 1934 ushered into the country. Thus, the author identified to include enormous similarities in the basic applicable principles, but marked differences in the organizational chart, which includes the supervisory roles by government department and its officials.¹⁸ The marked differences are to an extent, products of the imported modern cooperatives and its applicable laws. For example, the author contends that the “Co-operative Thrift and Credit Society” as practiced under the modern version of cooperatives bears huge similarities with the indigenous “Esusu,” save for the fact that the former is registered with the government department of cooperatives and operated on the basis of its written Bye-laws.

Analysis

The specificities of modern co-operatives which the author identified above are still very much relevant to Nigerian co-operatives. However, the listed non-essential characteristics are only applicable to the extent of their conformity with co-operative ethics which are approved by the International Co-operative Alliance (ICA). One of the core reasons the author classified cooperatives as public enterprise is because they were hybrids of private interests, and public investments and regulations. There is a shift to this peculiarity. Whereas, cooperatives remain largely private initiatives, and are regulated by public legal and administrative policies, their place as receipt of government investment has since shrunk in comparison to what was obtained in the past. The downturn in fortune is attributed to the following factors: (a) changes in international political scene which meant less charitable donations towards countries of the global-south; (b) the growth of scrutiny on government finances which shows that to some extent, investments into cooperatives were circuit-pipes for corrupt practices¹⁹. The specificities of cooperatives remain largely the same with Oluyede’s position. However, the categorisation of Nigerian cooperatives as public enterprises will at best be one of the strands of categorization. This is against the backdrop of the growing debate about cooperatives categorization as part of the larger social solidarity economy²⁰, or another contrasting categorisation of cooperative as companies (companisation).²¹

¹⁷ The Co-operative Ordinance of 1935, emanated from the Strickland report of 1934. It is the first co-operative legislation in Nigeria.

¹⁸ Oluyede (Note 4) 147. The major differences between the customary and modern models of Nigerian co-operatives are formal documentations, and statutorily imposed regulatory roles conferred on the government.

¹⁹ A Akanji, “The Poverty Challenge in Africa: Innovative Cooperativism through Political Incentives. A Case Study of Nigeria” (2020) 28 *Cooperativismo & Desarrollo*, 116.

²⁰ OECD, *Legal Frameworks for the Social and Solidarity Economy: Global Action* (Promoting Social and Solidarity Economy Ecosystem, 2022) 12.

²¹ A Lupulescu, “Particularities Concerning the Cooperative Companies” (2014) *Perspectives of Business Law Journal* 232 – 238.

Furthermore, it is pertinent to note that “Co-operatives” or its vernacular equivalent can only be used upon the authorization of the government. Therefore, only registered societies are legally empowered to use the word “co-operatives.”²²

3. Government Policy on the Promotion of Co-operatives

The author traced the development of modern co-operatives in Nigeria to the cocoa industry, which was mainly manned by illiterate peasant farmers. Citing Carton-Idowu²³, the author identified the idea of growing cocoa as a cash crop to its introduction into the country in the first decade of the twentieth century. A group known as the Agege planters Union was first organized by the peasant cocoa farmers on the 5th of July, 1907 in the present day Agege area of Lagos State, this was followed by the establishment of two other unions, namely: the Egba Farmer’s Union in 1911 and the Ibadan Agricultural Society in 1916. According to the author, the establishment of these associations encouraged the then colonial government in Nigeria to carry out a “tour of inspection on the country by Mr. C.F Strickland a British co-operative expert, which culminated in the Strickland Report of 1934.”²⁴

The author is of the position that the Strickland report made the colonial government to recognise the significance of co-operatives to the economic and social alleviation of the Nigerian masses, hence its adoption for national development. According to the author, C.F. Strickland drafted the first co-operative legislation in Nigeria; Co-operative Societies Ordinance 1935, based on his feasibility study. The legislation, which was attached to his report was entitled “An Ordinance to Make Provision with Respect to Co-operative Societies, Colony and Protectorate of Nigeria.” Thereafter, the first Registrar of Co-operative Societies, E.F.G Haig²⁵ was appointed to supervise and advice the societies. Subsequent governments in Nigeria have since come to appreciate and utilize the cooperatives for the implementation of their development agenda. Worthy of note in this regard is the adoption of a policy paper by the Western Region Government in June 1952. The paper, which was earlier debated on the floor of the legislature of the Western Region Government, was titled “Co-operative Department Policy for the Western Region, Nigeria”²⁶ had the following highlights:

- (1) Expansion of the co-operative movement.
- (2) Inclusion of co-operatives in economic plans.
- (3) Stimulation towards independence
- (4) Facilities and services to be provided by the government included:

²² S 3(4) and 54 (1) of the Nigerian Co-operatives Societies Act (supra).

²³ Caxton-Idowu, Report of the Review Panel on Co-operative Principles, Laws and Regulations in Nigeria (1978) 5.

²⁴ C.F. Strickland Report, (The Introduction of Co-operatives in Nigeria 1934) 1 – 2.

²⁵ E.F.G Haig was in 1935 appointed by the colonial government as the first registrar of the federal co-operative department. The office of the registrar is currently known as the office of the Director of co-operatives.

²⁶ This established the fact that there was robust discourse between the legislative and executive on the adoption and utilization of co-operatives as a public policy mechanism. The Co-operative Department Policy for the Western region of Nigeria was not only an executive policy, but also a law of the Western region government, hence a valid public policy framework in the face of the law.

- (i) Legislation providing for easy registration and operation;
- (ii) Education and training of cooperative department staff;
- (iii) Direct and indirect financial grants and loans to co-operative societies;
- (iv) Exemption from taxation of any surpluses accruing to societies; and
- (v) Full assistance in any other way that would facilitate the operations of co-operative societies.

The author went further to elaborate on the historical development of co-operatives and co-operative law in Nigeria with the citing of pages 42 and 43 of the “Report of the Review Panel on Co-operative Principles, Laws and Regulation in Nigeria (1978) which is here reproduced verbatim:

The first co-operative law in Nigeria was passed in 1935 as the Co-operative Societies Ordinance No. 6 of 1935. This law was largely modeled on the India Act of 1912. This Ordinance was amended in 1938, also in 1945 and completely revised in 1948 to conform to the (British) Secretary of State’s Circular Dispatch of 1946 which laid down the Co-operative Law of all the British Territories. This model Co-operative Law is included in the manual for Co-operative Law and practice by Surridge and Digby. Nigerian Administration was broken into three (3) Regional Governments during 1951-1954 and from that time Co-operative Matters became the “exclusive” concern of each Region. Therefore, each Region proceeded to enact its own Co-operative laws based largely on the former Co-operative Ordinance of 1935. Western region of Nigeria came with its Co-operative Ordinance Law in 1953. Eastern Region and Northern region enacted their Laws in 1956 and Lagos which became a Federal territory in 1958 has its own separate Law for the promotion and supervision of co-operative societies within the Federal Territory of Lagos.

Following the creation of 12 states in 1967, the laws in the former regions were adopted by the states created out of the 3 former regions. Lagos State took over responsibility for Co-operative Matters for the territory of Lagos in 1968. By so doing, it adopted the 1958 law previously applicable to the federal territory of Lagos as their co-operative law. Consequently, co-operative matters were completely taken over by the 12 states that were created in 1967, hence creating a vacuum at the federal level.

Subsequent conferences of Registrars of co-operative societies and meetings of members of the movement in the whole federation of Nigeria, indicated the need for the federal government to take more effective role in co-operative development. Conferences of commissioners responsible for co-operative matters throughout the federation were headed by the federal commissioner for labour. The conferences considered the views of the Registrars of cooperatives and the movement made recommendations. Part of these recommendations was for the establishment of a co-operative division at the federal level. This was argued to be a desideratum if the pace of the co-operative development in the country was to be accelerated to meet the aspirations of the federal government and the yearnings of the Nigerian co-operative movement.

Analysis

This work disagrees with the position of the author on the rationale for the commissioning of C.F Strickland to embark on the three-month feasibility study on the suitability of Nigeria for the introduction of modern co-operatives. The early part of the twentieth century had seen the rise of socialist agitations on British soil, which was at a degree the British elite class had considered inimical to British interest and tradition. Some of the most organized socialist agitations were built around the offshoots of the Rochdale Pioneers of 1844.²⁷ Thus, the British government employed diverse instruments to check the expansion of the practice of co-operatives on British soil. Some of the known instruments adopted by the British government were law and public policies. If the British government had to check the expansion of co-operatives on British soil due to perceived links with unacceptable variant of socialism, then it would ordinarily have been a challenge to willingly create an atmosphere for the expansion of co-operatives in any of her colonies.

To expatiate on the above, the early parts of the twentieth century saw the emergence of Nigerian nationalism. It was the era Sir Herbert Macaulay, Akinwande Savage etc. started their nationalist struggles against the British rule.²⁸ Coincidentally, it was around the same period that the first set of modern Nigerian cooperatives, such as the Agege Planter's Union emerged. More striking is the fact that most of Nigeria's nationalists around the early part of the twentieth century emerged from the Lagos, Ibadan, Abeokuta axes.²⁹ The above fact could well support an assertion that the nationalists were influential to the emergence of modern cooperatives in Nigeria, this assertion could gain more credence if viewed along the fact that one of the core reasons for the establishment of early modern co-operatives in Nigeria was in resistance to the overbearing influence of British interests. Therefore, this work adopts the position that Co-operative Societies Ordinance No 6 of 1935, and its subsequent amendments in 1938, 1945 and 1948 were primarily to protect the British interest through the regulation of modern co-operatives. The above narrative is against the backdrop of the earlier position put up by the author on the foundation of the legal framework of registered co-operative societies in Nigeria.

This work agrees with the author that aside the fact that co-operative law is wholly derived from British colonialism, it was not directly from the source. To support this assertion, the author contends that the earliest co-operative laws were formulated in Britain and Germany. From these two countries, others imported and developed their versions. An example is India, also a former British colony (British India) which is on record as one of the earliest dependent countries to adopt the modern co-operative system and co-operative law as derived from British and German philosophies. Further, the author posits that classical British-Indian pattern of co-operatives was formed around 1904, from where it made its way to other colonial territories.

²⁷ The Rochdale pioneers of 1844 is on record as the first known modern co-operative society in the world. It was established in 1844 at Manchester, England.

²⁸ K Ubaku, C Emeh, & C Anyinka, "Impact of Nationalist Movement on the Actualisation of Nigerian Independence 1914 – 1960," (2014)2(1) *International Journal of History and Philosophical Research*, 54 -67.

²⁹ R Effiom, "Impact of Cooperative Societies in National Development and the Nigerian Economy" (2014) 13 *Global Journal of Social Sciences*, 19 - 29.

For example, the Nigerian Co-operative Ordinance of 1935 was fashioned after the Indian Co-operative Societies Act of 1912.

However, before drawing to a close on this section of analysis, this work would prefer to point out that customary and Islamic laws had been in operation in Nigeria before the introduction of the British variants of modern laws. Customary and Islamic laws, in the absence of modern British laws, were particularly effective in subjects like family matters, administration of wills and land matters. They were effective to the extent that some of their most important elements survived the “onslaught” of colonial modernization. Till date, these core elements of customary and Islamic law form parts of the Nigerian statutes. More striking in this regard is the recent integration of some elements of customary and Islamic laws into the Nigeria Insurance Act, 2004³⁰. Although, the author was of the view that co-operative law, as derived from the Co-operative Ordinance of 1935, was the first cooperative law in Nigeria, this work prefers to bring to the fore the question of whether the customary co-operative practices and societies such as *Esusu*, *Ajo*, *Adashe*, *August meeting* etc. were governed by any form of customary or Islamic laws?

Prior to the British colonial administration, there were variants of social solidarity economy (SSE) among the various people of Nigeria. Such practices were customary to the people, these included *Aaro*, *Ajo*, *Adashe*, *August meeting*, *Ebese*, *Esusu*, *Owe*. According to the author, the *Esusu* and *Ajo* are very similar as they are primarily medium through which persons with similar interests contribute money or other resources regularly and take the pool rotationally³¹. According to the author, *Aro* or *Ebese* is a system employed by villagers to clear their farms or harvest their crops rotationally, while the *Owe* is a mutual aid process through which people assist themselves to build houses or other similar tasks.³² These initiatives were basically for mutual economic and social aids. The British colonial administration commenced in 1861, prior to this, the only known variant of law in the geographical area now known as Nigeria were customary laws which includes Islamic law. Thus, it will be safe to conclude that customary laws governed the affairs of the Nigerian SSE. Furthermore, modern cooperative was introduced into Nigeria in 1935 by virtue of the Strickland report of 1934. The Strickland report of 1935 derived legal and administrative validity from the Nigerian cooperative ordinance of 1935. The ordinance of 1935 contained provisions which compulsorily registered the SSE as cooperatives. Thus, it will be safe to conclude that before 1934/1935 the words “cooperatives” and cooperative law were alien to Nigeria. In the absence of cooperatives, and cooperative law, *Esusu*, *Ajo*, *Adashe*, *August meeting* and similar variants of the SSE could only have been governed by customary law. This brings to fore the capacity of customary laws to sustain the SSE. This is against the backdrop that pre 1934/35 SSE was adopted by the

³⁰ S 56(3) of the Insurance Act, LFN 2004, in this section “legal relationship” includes the relationship which exists between persons under customary law and Islamic law whereby one person assumes responsibility for the maintenance and care of the other.

³¹ Oluyede (Note 4) 161.

³² Ibid.

nationalist movement into political struggles against the British interests, on the premise of their success.

4. Evolution of the Co-operative Societies Law in Nigeria

The author listed the Co-operative Societies Law Cap. 26 of the Laws of Western Region of Nigeria, 1959 as perhaps the most significant legislation on co-operatives as at the time of the publication. The author traced the origin of the law to the Co-operative Ordinance of 1935. Thereafter, he identified the fact that from 1935, co-operative legislation in Nigeria passed through many stages. The first was in 1948 when the Ordinance of 1935 was revised (Co-operative Societies Ordinance Cap 39 of the 1948 – Revised Edition). Subsequently, there was the division of Nigeria into three Regions and later the current thirty-six states structure. The author, same as Yebisi E.T³³ posits that the evolving regions and states fashioned their co-operative legislation on the Ordinance of 1935. According to the author, the Western Region of Nigeria enacted co-operative legislation in 1953 and 1959 (Western Region Law No. 6 of 1953 and Co-operative Societies Law Cap 26 of the Laws of Western region of Nigeria, 1959) with the latter being a revision of the former. The author further posits that sections 3-12 of the 1959 legislation were amended in 1965, thereafter the same amendments were revoked by Edict No 23/66 of 1966 (Revocation of Amendments 8/65 – sections 3-12).

The author went further to posit that the series of amendments as highlighted above did not change the substance of the law since 1935. Rather, they were changes in nomenclature which were in conformity with the political development in Nigeria, formalization of some functions of the Registrar and the transfer of some sensitive powers of the Registrar of co-operatives to the Minister or Commissioner. The only radical attempt to remodel co-operative law in Nigeria was the report of the Review Panel on Co-operative Principles, Laws and Regulations in Nigeria, by the federal ministry of Information, Lagos 1978. The government's position on the report was captured in the words of the then Federal Commissioner for Co-operatives and Supply in his address to the inaugural meeting of the panel on the 2nd of August, 1977:

In this connection, it is pertinent to note that although Legislation has to be resorted to as a way of matching our needs to modern day demands, it is a stark fact that since 1936 when the first Co-operative Ordinance was promulgated under the Colonial Administration, no significant and realistic steps had been taken in the country such as the National level to harmonise the Laws along the lines of a fast-developing economy such as ours. I believe you all agrees that after well over 40 years of introduction of co-operatives into this country a review of the Co-operative Laws and evolutions of an articulated and goal-oriented policy on co-operatives is long overdue.

³³ E Yebisi "The Nigerian Co-operative Societies Act, 2004: A Bridge Still Far" (2014) 3(2) *Asian Journal of Humanities and Social Sciences*, 29.

The panel's recommendations which were accepted by the government as policy objectives are:

- (i) bringing about increased participation and involvement of the majority in decision-making which affects the lives of over 75 percent of the population;
- (ii) that the Federal Government should promulgate an all-embracing Co-operative Societies Legislation applicable throughout the Federation with provisions setting out the roles of the Federal and State governments, the extent of the independence of the co-operative movement, types and functions of co-operative organizations and structure of the co-operative movement (if this had been implemented it would have ensured some measure of uniformity through the country);
- (iii) that in order to speed up recovery of debt, the Director/Chief Registrar should be made a civil Court for that purpose with power to adjudicate on matters concerning the repayment of loans and attach property. (This recommendation has a far reaching effect on the right of the individual to be heard in an open Court. If adopted, the decision of the Registrar should be subject to appeal to the High Court);
- (iv) the adoption by Government of International Labour Organisation Recommendation 127 of June 1976 urging governments of developing countries to formulate and carry out a policy under which co-operatives would receive aid and encouragement of an economic, financial, technical, legislative or other character without effect on their independence. (If the Nigerian government had accepted this recommendation hook, line and sinker without ensuring accountability for the public funds invested, it would not have been in the best interest of tax-payers). Nigeria cannot be compared with Germany or Sweden where the governments have limited input in Cooperative movement matters; and
- (v) that the appointment of middlemen as licensed buying agents should be discouraged, because of its exploitative tendencies and to ensure that producers get maximum benefit from what they produce (It is in the interest of all that the middlemen should be discouraged for the simple reason that they make more money than the farmers/producers themselves for doing little or nothing).

Other recommendations contained in the Panel's Report which were accepted by the government are as follows:

- (i) That Co-operative Banks should be compelled to do most of their businesses with the co-operative organizations they were established to serve, whether or not they are owned, controlled and managed by cooperators;
- (ii) that financial involvement of governments in co-operative must be in the form of share capital only so that the governments can participate in the cooperative organisations just like any other shareholder. Since a government represents public interest, the dividends etc. paid to the government do not constitute exploitation;

- (iii) that provision should be made to ensure that state regulations do not contradict federal co-operative law and that where they do, the State regulations should be regarded as void;
- (iv) that the decision of the Director/Chief Registrar should not be final in any respect other than mere procedure. The decision of the Director/Chief Registrar on any issue of materials importance to the other party except while acting in a judicial capacity must be subject to appeal to the commissioner;
- (v) that the provision of the law against misapplication of the property of a co-operative society should enable any member of the public to complain. The right to complain should not be limited since public confidence and public funds are involved so as to avoid situations when both co-operative officers and government officials are unable to do anything about abuses or even refuse to do anything about them and members of the public can only spread rumors which damage the image of the co-operatives movement;
- (vi) that the penalty in the law should not be based on just converting pounds to naira. A penalty should take into account the change in the value of money and also the nature of the offence and the amount involved;
- (vii) that the Auditors' report should specifically cover profit and loss account, balance sheet, general state of the financial affairs of the society, management of the affairs of the society, overdue debts, valuation of assets and liabilities, disposal of profit, remuneration of any kind earned by Chief Executives of the Society, including a valuation of benefits in kind, verification of cash balances and securities, and a statement as to whether the Directors have made available to the Auditors all the documents, records and information necessary for the audit;
- (viii) that every society must have an accounting period, and the period should be stated in the bye-laws of the society. The period must be of a twelve-month duration;
- (ix) that the Federal Co-operative Law should regulate the meetings of all registered societies on lines similar to the regulations of the meetings of companies under the Companies Act;
- (x) that State Governments should be given power under the Federal Co-operative Law to make all such regulations as may be necessary for the purpose of guaranteeing it or giving effect to the principles and provisions of the Federal Co-operative Law;
- (xi) that the law should specify what returns should be made to the Registrar and the frequency of the returns. The returns and frequency should be considered by the Panel which should consider accounting requirements;
- (xii) that the law providing for the appointments of a Secretary should specify his duties on lines similar to the provisions of the Companies Act;
- (xiii) that there should be a register of shareholders, debentures, directors, chief executive, secretary and their shareholding;
- (xiv) that sales by school co-operatives must be as close to cost price as the school authorities may decide in order to prevent students and pupils being taught exploitative tendencies so early in life;
- (xv) that notwithstanding any provision in the latter to the contrary, a government or wholly-owned government agency may hold shares in any registered co-operative society and

any financial involvement of a government or government agency must be in the form of share capital only;

- (xvi) that no member other than a government or wholly-owned government agency may hold more than one fifth of the shares of a co-operative society;
- (xvii) that a member of the board of directors (or any governing body of a registered society) may not participate in the negotiation of matters involving business contracts between him and the society or between the society and a third party, lest the said member has some vital interest which is in conflict with the society.

Lastly, the author identified the reluctance of Nigeria co-operative legislation to make provisions for pre-cooperative matters, to which he posits is often covered by various informal or non-statutory consensus of cooperators.

Analysis

Nigeria has evolved from the nineteen states structure at the time that the author published the work under review, into the current thirty-six state structure. However, the peculiarities identified with the evolution of co-operative laws remained constant. The consistence was recognized by Ebenezer Yebisi³⁴ in the following words *“following the sub-division of the country into semi-autonomous regions and later fragmented into states, each region or state adapted the co-operative laws and regulation to suit its peculiar environment, which upon close scrutiny, were duplication of the Co-operative Ordinance of 1935.”*

Although number four on the list of recommendations which evaluated the defective International Labour Organization (ILO) Recommendation 127 of June 1976 is an exception, the other recommendations align to a substantial extent with the tenets of modern co-operative laws. It suffices to state that the tenets of modern co-operative laws in reference are either those developed by the ICA, ILO, or United Nations, or those that conform substantially to the aforementioned. Furthermore, apart from recommendation number four, the others are reasonably in tandem with ILO Recommendation 193 of 2002 which is currently identified as the standard international framework for co-operative legislation. Worthy of note are recommendations twelve and fourteen which were among other bold attempts to introduce the needed elements of companisation into Nigerian co-operative law.

5. Special Legal Provisions for Co-operatives in Relevant Nigerian Enactments

Under this sub-topic, the author posits that the promotion of co-operatives has for long been a part of government’s development policy. Therefore, special legal provisions are made not only for the administration and management of co-operatives, but also in recognition of their peculiarities. Some of the provisions identified by the author are as follows:

- (a) Co-operative societies (Exemption from Stamp Duties and Registration Fee) titled Government Notice 690 (Law of Nigeria 1948, Cap. 39) section 33 provides:

³⁴ Yebisi (note 33) 35.

All instruments executed by or on behalf of a registered society or by any officer or member of a registered society relating to the business of such society, are exempted from payment of stamp duties chargeable under the Stamp Duties Law and from registration fees payable under any law relating to the registration of instruments for the time being in force.

- (b) Co-operative Societies (Reserve Fund-Reduction of Contribution) Order. Public Notice 121 of 1944 Legal Notice 1948, Cap 39. Section 39 provides:

The sum annually payable to the reserve fund by any co-operative thrift and loan society of Limited liability who's registered bye-laws prohibit the granting of loans in excess of the total amount standing to the borrower's Credit in the books of the Society shall be reduced from one-quarter to one-eighth of the net surplus disclosed in the duly certified profit and loss accounts of such society.

- (c) Companies Income Tax Cap 39 No 22 of 1961 which provides at section 26 (1)(b):

26(1) The following shall be exempted from this tax

(b) the profit of any company being a co-operative society registered under the Co-operative Societies Ordinance.

The constitution of the Federal Republic of Nigeria 1979 was silent in its reference to co-operatives. The constitution made no provision for the development, supervision and control of co-operatives. The only mention of co-operative is in section 4, Second Schedule, Legislative Powers Part I, Exclusive Legislative List, Item 30, which provides:

Incorporation, regulation and winding up of bodies corporate, other than co-operative societies, local government councils and bodies corporate established directly by any Law enacted by a House of Assembly of a State.

Despite this shortcoming, the author posits that the *interest* of Nigerian co-operatives was adequately protected by the ordinary laws of the land. As such, when there is the need for more protection of co-operatives, the legislature could go further.

Analysis

The promotion of co-operatives could still be regarded as part of the framework of government development policy. The train has moved from where the author evaluated it; there are special provision in the successive legislation to the one identified by the author. The following Nigerian legislation have special provision on co-operatives:

- (a) 1999 Constitution of the Federal Republic of Nigerian (as amended)
- (b) Co-operative Development Act
- (c) Stamp Duties Act
- (d) Companies Income Tact Act

- (e) The provisions of the Co-operative Societies (Exemption from Stamp Duties and Registration Fee)
- (f) Co-operative Societies (Reserve Fund-Reduction of contribution) Order which appears to have been integrated into the Nigerian Co-operative Societies Act.

It is very important to bring to the fore that the first three legislations identified by the author were statutes exempting Nigeria co-operatives from taxation. Such provisions have, over the years, stood as stumbling blocks to the companisation of Nigeria and supposed profitability of the Nigerian co-operative movement.

6. Conclusion and recommendations

The author's work was published over thirty years ago within the scope of administrative law with profound acknowledgement of the characteristics of co-operatives as primarily private entities, thereafter extension of the framework of public administration. The work remains a classic in the annals of co-operative law in Nigeria. However, times have changed, and some of the positions are no longer applicable to Nigerian co-operatives. Paramount of the contemporary development is the fact that Nigerian co-operatives are wholly privately owned, yet government's degree of statutory and administrative regulations remain intact, hence co-operative development is encumbered. These current circumstances do not defeat the relevance of the author's contribution as a top-notch reference material upon which further works on co-operative law may be built. Furthermore, time is ripe to treat Nigerian co-operative law as another distinct field of the study of law, much obliged with international cooperative law.