
Co-operatives as Supplements to Companisation of the Nigerian Manufacturing Industry

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Abstract

Cooperatives have always been supportive of socio-economic development in Nigeria. These contributions have been more pronounced in the agricultural sector. In contrast to what obtains in the agricultural sector, incursion of co-operatives into the manufacturing industry has not been effective. Cooperatives participation in manufacturing has been constrained to the credit and thrift, and workers' co-operatives. Although in recent times, these variants of co-operatives have delved into housing and transportation, they have not at any rate ventured into full or part-ownership of manufacturing companies. Reviews of relevant literature and interview of major stakeholder identifies the gap as products of the Nigerian jurisprudence. Co-operatives are registered as cooperative societies under the Nigerian Co-operative Societies Act, while manufacturing units are registered as companies under the Companies and Allied Matters Act. Registration under different legal regimes result into marked disparities in operations. More pronounced is the capability of co-operatives to support the development of agricultural industry, which is not replicated in the manufacturing sector. The foregoing brings to fore the capacity or otherwise of Nigerian laws to support cooperatives engagement in manufacturing. Therefore, reviews of some Nigerian legislation as mechanism to identifying these deficiencies becomes an imperative. This study identifies such deficiencies to reside in the aforementioned statutes. Thus, reviews and amendment of relevant Nigeria laws to support co-operatives as supplements to companisation were proffered.

Keywords: Co-operative laws, Companisation, Law reviews, manufacturing co-operatives, Nigerian co-operatives.

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INTRODUCTION

The people of Nigeria have employed the cooperative model from time immemorial. During these periods the cooperative model was adopted for diverse purposes under different categorizations. Models of each era were structured in response to time, place and purposes (1). Each model was regulated by the culture and customs of the people, these norms were mostly in unwritten forms. Modern cooperatives, which basically formalized customary cooperatives was introduced into Nigeria around 1934 (2). The

customary models were gradually relegated to the background with the introduction of Nigeria's the first legislation on cooperatives, the Nigerian Cooperative Ordinance of 1935(3). From that point, cooperatives in Nigeria were subject to government regulations, and the whims and caprices of the state and its officials (4). In 1954, the colonial administration granted self-rule to the three regions; hence the Eastern, Northern, and Western regions became operational in Nigeria (5). This propelled each of the three regions to chart paths toward

economic development as each deem most appropriate. The Western Region became a shining light in this regards, among other admirable initiatives of the region was the integration of its cooperative movement into its developmental agenda. The Western Region House of Assembly adopted the *Western Nigeria Cooperative Development Policy* which was thereafter signed into Law by the executive arm government of the Region (6). The government of the Western region supported the policy with a grant of One Million British Pounds. The idea behind the grant was to promote the capacity of cooperatives within the region through modernization and expansion of their activities. The idea was largely instrumental to the socio-economic development of the region, particularly in agriculture and allied sectors. This classic was on many parameters adjourned the best of three regions, with corresponding attempts to replicate same across the federation (7). The Nigerian cooperative movement has grown in numbers and substance from the time of its modernization in 1935 till date (8). However, the movement has been unable to support the development of the country as much as the outlooks of the 1950s through to the 1980s suggests (9). More intriguing is the incapacity of the Nigerian cooperative movement at supporting manufacturing and companised entities (10). This study identifies that asides the low level of participation of Nigerian cooperatives in manufacturing by companised entities, there seems to be no literature on the involvement of Nigerian cooperatives in companised manufacturing entities. The foregoing does not defeat the fact that the Nigerian cooperative movement has impacted significantly on the socio-economic development of the country. These significant contributions are more pronounced in the agro-allied industry (11).

Currently, Nigeria is divided into thirty-six states under a single federal government. Under this arrangement, cooperative societies are established and regulated by two layers of laws. The apex and first tier of legislation is the Nigerian Cooperative Societies Act, an Act of the National Assembly. At the second tier are cooperative legislation enacted by the House of Assembly in each state, for example Cooperative Societies Law of Oyo State. Aside these laws, there is a hierarchical structure for the administration and management of cooperative societies that has the Cooperative Federation of Nigeria (CFN) at the apex. On the other hand, manufacturers are primarily registered and operate as companised entities under the Companies and Allied Matters Act (CAMA) (12), at their apex is the Manufacturer Association of Nigerian (MAN). Established in 1971 as a company limited by guarantee, MAN provides a platform for synergies between manufacturers and government in policy formulation and execution. It also serves as the focal point for communication and consultation between manufacturers, government, and the general public. Currently, the Nigerian manufacturing industry is at a low web in comparison to population and resources of the country. However, the Nigerian cooperative movement which has over the years provided a system of support to agro-allied industry, and small medium scale enterprises proves ill-equipped at providing the needed support to the manufacturing sector of the economy. This identified gap brings to fore the urgent needs for supplementary approaches. In the instance case, supplementary to the legal frameworks on manufacturing with the integration of cooperatives.

Contextualization of Manufacturing and its Legal Frameworks in Nigeria: Modern manufacturing did not exist in Nigeria until

1955, prior to that time, Nigerian styled cottage industries held sway. These cottage industries emerged around the 1920s from the up-scaling of customary cooperatives. These cottage industries ventured into areas such as:

- (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) *Programmes to combating usuries of established money lenders (13)*

According to the standard of the 1920s, the emergence of the cottage cooperatives symbolized the peak of modernization. It prompted C.F. Strickland to capture the exploits and potentials in the following words:

“Cooperation in Nigeria, therefore is not only a matter of increased or improved crops, nor even of credits to cultivators who wish to change their farming methods, valuable and necessary though associations for these purposes. It is also a question of urban and rural thrift, of cooperative building, of labour contracts, afforestation and the prevention of erosion, of the preservation and expansion of handicrafts, of the supply of electric light and power, the organization of individuals for a better diet, for precautions against disease, and for sanitary measures in town and country, of the extension of education, and of group agreements for the removal of social evils and the spreading of better customs. Institutions of all these kinds will not leap suddenly into existence, some of them may never come into being in Nigeria at all; they are mentioned in order to show that co-operation may be invoked in the entire field of human life, and the task of the co-operative organizer is to discover what improvements of any description of the more reflective of the people theoretically desire, and then to

organize them in a joint effort to secure the improvement (14)

Thus, it is safe to assert that indigenous Nigerian peoples had their models of manufacturing anchored around cooperatives. It is also safe to further assert that Nigeria's attempts towards industrialization should have been built with the indigenous cooperative models as cornerstones. However, these cottage industries were gradually threatened and defeated by the massive importation of goods, which in many cases were cheaper (15). The imported goods were produced with superior technology in Britain and other part of Western Europe, and the cost of importation was favourable. From the middle of the 1950s, some foreign manufacturers started moving into Nigeria to establish their factories. Prior to this, many of these entities, aside being foreign manufacturer had operated as produce buyers and merchants in Nigeria. It marked a swift departure from the business of importation. The trend continued with political independence in 1960, and continued till the 1980s. Unilever, SCOA, and CFAO were the entities that dominated the industry. Other entities were John Holt, Chellerams, Chanrai, Phillips, Bhojsons, Inlaks, Leventis, Mandillas and Karibaris, S.Racchah, Nestle etc. These entities were either owned by Asian or European interests. They were registered to operate in Nigeria as companies under the applicable legislation (16). The above narrative reveals the following:

- (a) *Industrialization and expansion in manufacturing in Nigeria as witness during the tail and of colonial rule and the early post-independence years were at the instance of Nigerians;*
- (b) *They were force on foreign interest who were initially produce buyers and merchants;*
- (c) *It was a product of the consensus ad idem of the state and its critical actors and*

capitalist interest as represented by the manufacturers; another revelation was the emerging participation and consensus of the Nigerian elite/capitalists who could not exist in vacuum nor in isolation see. Furthermore, manufacturing developed with the entry in 1959 of the Commonwealth Development Finance Company was invited by the colonial administration to support the industrialization process in Nigeria. This lead to the establishment of the investment company of Nigeria Limited which provided financial and technical support to the industrialization. The investment company of Nigeria Limited attracted subscribers from Nigeria, France, Switzerland, Netherlands, Britain, Canada, and the United States of America (17).

The template provided by the federal government was adopted by regional

governments and the succeeding states. However, the oil boom which Nigeria experienced from 1970 to 1978, and military rule from 1984 to 1999 impacted negatively on the development of the Nigerian manufacturing sector. Thereafter, the country began to lose some of the gains that accrued during the middle of 1950s to the 1970s. The oil boom gradually shifted the focus of government from agriculture to crude oil due to quick return from the former. Revenue generation requires minimal inputs from government, in contrast to agriculture which required medium and long term investment from government. An authority presented the dwindling fortune of the Nigerian Manufacturing industry from 1961 to 2009 with the attached tabular (18).

1961	1970	1981	1990	2003	2007	2009
4.73	7.66	5.60	5.12	4.32	4.03	3.72

At the heart of the aforementioned diminishing Nigerian manufacturing industry were diverse interests, namely the manufacturers, the consumers, and the state.

Contextualization of Cooperatives and their Legal Frameworks in Nigeria:

Prior to the Strickland Report of 1934(supra), Nigeria had within its diverse societies variants of cooperatives. One of the commonest modes were the mutual aid associations, a system which enabled people to bond together to lend their collective labour to members in turn others, such as the Esusu, Ajo, Aaro, Ebese were employed for regular monetary contributions, rotational Farming manufacturing, rotational building of houses etc. Production units were alien to

the Nigerians of that era. However, these customary cooperatives became more adventurous from around the 1920s as the Nigerian communities practiced improved forms of cooperations that were in response to the demands of their level of socio-economic development. The basis for the development of modern cooperation in Nigeria was Agriculture, particularly the once buoyant cocoa industry which was then manned mainly by illiterate peasant farmers (19). Nigerian farmers had built on their expertise of customary cooperatives to establish the Planters Union on the 5th of July, 1907 at Agege in present day Lagos. This union later developed two other Unions (i) Egba Farmers’ Union; and (ii) Ibadan Agricultural Society which emerged in 1911

and 1916 respectively (20). These developments encouraged the then British Colonial Administration in Nigeria to embark on the *modernization* of Nigerian cooperatives. One of the measures taken in this regard was the arrangement for a tour of inspection/feasibility study by C.F. Strickland from December 1933 to March 1934 on the possibilities of introducing a modern cooperative system into Nigeria. The 1934 Report included a draft of the Cooperative Societies Ordinance entitled "An Ordinance to make Provision with Respect to Cooperative Societies, Colony and Protectorate of Nigeria, No 39 of 1935. Successive administrations embraced the cooperatives as important components of state building. The regionalization of the country meant regions had different dispositions to cooperatives.

For example, the defunct Western Region Government which placed the cooperative movement within the region at the front burner of economic and social development as evident in its policy paper "Government Department Policy for Cooperatives in the Western Region, Nigeria" issued in June 1952 highlighted policy statements of the Government as follows:-

- (a) *Expansion of Cooperative Movement*
- (b) *Inclusion of Cooperatives in economic plans*
- (c) *Stimulation towards independence*
- (d) *Facilities and services to be provided by the Government included:*
 - 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 co-operative societies; and*

- v. *Full assistance in any other way that would facilitate the operations of cooperative societies.*

At the foundation of these administrative policies were legal regimes aimed to support cooperative development. The 1978 Caxton Idowu Report (supra) captures the historical report as follows on pages 42 and 43:

"The Cooperative Societies Ordinance No. 6 of 1935 was modeled on the India Act of 1912. The ordinance was amended in 1938 and 1945, and "completely" revised in 1948 to conform to the (British) Secretary of State's Circular Dispatch of 1946 which laid down the cooperative law of all British Territories. Nigerian Administration was broken into three Regional Governments during 1951-1954 and from that time co-operative matters became the "exclusive" concern of each region. Each region proceeded to enact its own co-operative laws based largely on the provisions of the Cooperative Ordinance of 1935. The Western Region enacted the Cooperative Ordinance Law of 1953, Eastern Region and Northern Region enacted their separate laws in 1956. Lagos became a Federal Territory in 1958 put in place a separate law for the promotion and supervision of cooperatives at inception. Following the creation of 12 states in 1967, the cooperative laws in the former Regions were adopted by the states that were created out of them.

The 12 states have now grown into 36 states by virtue of successive creation of new states in 1975, 1991 and 1996. In all the cases studied, a succeeding state adopted virtually all provisions of the "parent" state into its legislation on cooperatives. Invariably, substance of the Cooperative Ordinance of 1935 survives till date. Despite noticeable deficiencies in the provisions of Nigerian cooperative legislation, it continues to

provide basic support to the cooperative movement, this has in-turn proven palliative in the face of current realities. In particular, the imperative of companisation as a requirement for venturing into the manufacturing industry. There are enormous legal barriers on the path of manufacturing units that do not subscribe to registration under CAMA. These encumbrances include, restricted access to loans from commercial banks, restricted financial supports from government, supports from MAN etc. The gravamen of this study is the inability of Nigerian cooperatives and their governing laws to support manufacturing companies.

An Explication of Cooperative Law and Company law in Nigerian: Current realities support assertions that modern Nigerian cooperative law has antecedents and background that are at variance to native economic and social peculiarities. Modern cooperatives and their enabling laws were made abroad and imported into Nigeria as instruments of regulations and not mechanism for support. That these identified characteristics are maintained in the spirits and letters of our current laws is a different topic from the current issues being distilled. The emphasis of this study is on how deficiencies that are herein identified, hinders the cooperative movement from maximally optimizing its potentials, in the instant case, provision of support mechanism for the manufacturing industry. The above requires an explication of company law in Nigeria, with a view to identify some of its provisions which does not enable cooperatives. The Companies and Allied Matters Act Cap. 20 (CAMA) establishes the Corporate Affairs Commission (CAC) which is headed by a Registrar-General. CAC as a body corporate with perpetual succession, and a common seal. CAC is statutorily empowered to sue

and capable of being sued in its corporate name, and may by virtue of its statutory powers acquire, hold, or dispose moveable or immovable properties for the purpose of carrying out its functions. According to CAMA, the functions of the CAC shall be to administer this Act including the regulation and supervision of the formation, incorporation, registration, management and winding-up of companies under and pursuant to this Act (21). The CAC is also statutorily required to establish and maintain company registries and offices in all the states of the federation suitably and adequately equipped to discharge its functions under this Act or any other law in respect of which it is charged with responsibility (22). Furthermore, the CAC is required by CAMA to arrange and conduct investigation into the affairs of any company where the interest of a shareholder, shareholders and the public so demand. CAC is also statutorily enabled to perform such other functions as may be specified by any Act or enactment, and undertake such other activities as are necessary or expedient for giving full effect to the provisions of CAMA. Also, CAMA imposes a duty of disclosure on members of the CAC in relevant circumstances. Section 6 of CAMA provides inter alia:

“A member of the commission who is directly interested in any company or enterprise, the affairs of which are being deliberated upon by the commission, or is interested in any contract made or proposed to be made by the commission shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the commission”

This provision goes a long way at promoting objectivity in the management of the CAC, it relegates subjectivity in the decision making process to the barest minimum. Furthermore, CAMA at section 19 (1) provides inter alia:

“no company, association, or partnership consisting of more than 20 persons shall be formed for the purpose of carrying out any business for profit or gain by the company, association, or partnership, or by the individual member as thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other enactment in force in Nigeria”.

Furthermore, CAMA makes provisions for the tenure, remuneration and allowance, qualifications, and appointment of the Registrar-General and his staff **(23)**. Membership of the board of CAC is spread across the private and public sectors CAMA also makes provision for the procedures to be adopted in the discharge of the proceedings of the affairs of CAC **(24)**. Furthermore, CAMA is deliberate in its provisions for the formation of Nigerian companies. For example, the Act on the make expression provisions for the following as prerequisite conditions for the registration of a company:

- (a) Memorandum of association **(25)**; and
- (b) Articles of association **(26)**; both of which specifically contains among others the following:
 - i. Address of the registered office of the company;
 - ii. A statement in the prescribed form containing the list and particulars together with the consent of the persons who are to be the first directors of the company;
 - iii. Particulars of the first directors of the company;
 - iv. A statement of the authorized share capital signed by directors of the company.

In similar vein, CAMA is also deliberate in its provisions for the management of Nigerian companies. For example, the Act make provisions for the following as in the management of a company:

- (a) Powers and exercise of company’s powers, which addresses the divisions

of powers between general meeting and board of directors, and delegation to committees and managing directors **(27)**;

- (b) Liabilities for acts of the company, which addresses acts of the general meetings, acts of board of directors, and acts of the managing director **(28)**;
- (c) Disclosure of beneficial interest in shares, and general management of shares and debentures **(29)**;
- (d) Meaning, appointment, removal, proceedings remuneration, disclosure of interest, duties of director, property transactions by directors directors and secretaries of the company **(30)**;
- (e) Protection of minority against illegal and oppressive conducts **(31)**;
- (f) Financial statements and audit, particularly the requirement for the publication of financial statement **(32)**;
- (g) Dividends and profits **(33)** etc.

The above provisions among others as contained in the CAMA have served as the template upon which Nigerian companies are established, administered, and managed. Manufacturing units under the auspices of MAN are companies that are bond by these provisions which continues to bind the Nigerian manufacturing industry. These provisions are detailed and supportive of medium and large scale investment from the private sector of the economy. However, of particular importance is section of 19 (2) (a) of CAMA which provides inter alia: *“nothing in this section shall apply to any cooperative society registered under the provisions of any enactment in force in Nigeria”*. The provision of section 19 (2) (a) exempts or ousters any cooperative society registered under the provisions of any enactment in force in Nigeria from provisions of CAMA. As a result, hence is not applicable to Nigerian cooperatives.

The provisions of the NCSA are of different letters and spirit in comparison to CAMA. NCSA provides for the appointment of a Federal Director of cooperatives who is to administer the NCSA, and persons to assist him in his discharge of duties (34). The Director is appointed by the President, Federal Republic of Nigeria from the civil service of the federation of Nigeria. In the same vein, the NCSA empowers the governor of a state, being the Chief Executive Officer of the state to appoint a person to be Director of cooperatives for such state. The governor may also appoint persons to assist the Director, and shall by notice in the state gazette, confer on such person all or any powers of a director under the NCSA. Thereafter, the Director assumes authority on all critical areas of cooperatives (35). At both the federal and state (subnational) levels, the Director of cooperatives is a career civil servant. This is contrary to what obtains with CAMA wherein the Registrar-General of companies need not be a career civil servant. In many instances, the office of the Registrar-General of CAC is occupied by person with reasonable experience in the private sector. The Director of cooperatives exercises administrative, managerial, judicial and quasi-judicial powers. Some of these powers include:

- (a) The registration of cooperative societies, which captures areas such as; Stipulating the conditions for registration of a society, and Application for registration of a society (36);
- (b) Duties and privileges of registered societies, which captures areas such as; powers of a society to make and amend its bye-laws, Evaluation of the books of a society, evaluation of contracts of the with members or none members, reviews of shares and other interests of the society etc (37)

- (c) Rights and liabilities of members, which entails bringing his discretion to play on among others; the supervision of membership of a society, supervision of the electoral process of a society, transfer of shares etc (38);
- (d) Property and funds of registered societies, which entails the exercise of discretion on the following; acquisition and utilization of properties, funds, and loan of a society, investment of the society's funds, disposal of profit etc (39);
- (e) Audit, inquiries, inspection, liquidation, surcharges and attachments of a society(40);
- (f) Settlement of disputes, division of a society, and amalgamation of societies (41).

These powers are overwhelming and epitomize the relationship between director of cooperatives and the cooperative societies, as a master and servant relationship which to a large extent cannot support manufacturers, particularly medium and large scale manufacturers that have to be registered as companies. The regulation of cooperative societies is placed at the hands of career civil servants who are enabled to exercise *unfettered discretion*. Invariably, cooperative societies are constrained from operating as proper business entities, hence they are unable to draw benefits from stock oriented (companisation) activities.

CONCLUSION

The Companies and Allied Matters Act, does not support cooperative societies, its provision expressly excludes the Nigerian cooperative movement. On its part, the Nigerian Cooperative Societies Act, does not envisage the realities of the manufacturing industry which lies in companisation. The NCSA maintains its attachment to its roots in agriculture and the cottage industries. Thus, its provisions supports only the agricultural

sector of the Nigerian economy and the small medium scale enterprises which are representative of cottage industry or small scaled manufacturing. The foregoing bore reflections of conflicts between the history of cooperatives and their governing law and contemporary demands of the Nigerian cooperative movement. In the instant case, cooperatives involvement in manufacturing. Importantly, this study has brought to the fore deficiencies the administrative and legal frameworks that should ordinarily support the involvement of cooperatives in manufacturing. The identified gaps requires frontal addresses.

RECOMMENDATIONS

The following are hereby recommended:

- (a) Section 19 (2) of CAMA which excludes cooperatives societies from companisation should be expunged;
- (b) A review and amendment of CAMA to expressly accommodate cooperative societies;
- (c) A review of the NCSA to accommodate the realities of manufacturing, particularly the imperatives of companisation. This recommendation gains more relevance in view of the enormous powers of the Director of cooperatives, which exercise stands as barrier to the inflow of substantial private investments into the cooperative movement, and prevents companisation;
- (d) The reviews and upscaling of both CAMA and NCSA to exist as subsidiary legislations; and
- (e) The facilitation of further studies to bridge gaps between cooperative and company laws.

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See sections 5 of CAMA (supra).

See section 27 to 32 of CAMA (supra).

See section 33 to 37 of CAMA (supra).

See sections 38 to 39, and 63 to 64 of CAMA (supra).

See sections 65 to 67 of CAMA (supra).

See sections 114 to 149 of CAMA (supra).

See section 4 to 262 of CAMA (supra).

See sections 299 to 314 of CAMA (supra).

See sections 331 to 341 of CAMA (supra).

See sections 379 to 386 of CAMA (supra).

See section 1 of NCSA.

See section 1 (2) NCSA (supra).

See section 8 NCSA (supra).

See section 11 to 22 NCSA (supra).

See section 23 to 29 NCSA (supra).

See section 30 to 35 NCSA (supra).

See section 36 to 37 NCSA (supra).

See section 49 to 52 NCSA (supra).