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The Zimbabwe Law Review is no longer a thing of the past!

You may have been starting to think that the Zimbabwe Law Review had become redundant. One unkind person went as far as to suggest that we should rename our journal "The Historical Law Review" !

Unfortunately we had fallen a few years behind in the production of the Review. The last issue to appear previously was Volume 7 / 8 covering the years 1989 and 1990. The Editorial Board of the Review sincerely apologises to all of valued subscribers and buyers of the Review for the inconvenience caused to them. In order to speed up the process of getting up to date we decided to combine Volumes 9 / 10 (1991 and 1992) of the Review into a single number. Those who have subscribed in advance will be receiving their ordered issues within the near future. The next volume, Number 11 (1993), will be ready for distribution within the next few months. The Editorial Board would like to assure you that in the future the Law Review will be produced on a more regular basis.

We hope that you will renew your interest in this publication by renewing your subscriptions if you have allowed them to lapse. Details of current subscription rates are to be found on the cover of the Review. There is a reduced price for those ordering a set of the Zimbabwe Law Review.

We would like to call for the submission of articles, book reviews and casenotes for consideration for inclusion in this publication. These are momentous times for Southern Africa. Democratic rule has finally come to South Africa after so many years of struggle, suffering and oppression. We would like to take this opportunity to extend our heartfelt congratulations to the people of South Africa on the attainment of their liberation from apartheid rule.

In Southern Africa there is an urgent need to analyse and debate topical matters such as issues relating to development and reconstruction, equitable land redistribution, the impact of economic structural adjustment programmes, the protection of human rights, democracy and constitutionalism and the protection of the environment. We call for the submission of articles on these and other important issues.

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Professor G Feltoe, Mr B Hlatshwayo and Professor W Ncube

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The Editorial Board would like to extend its sincere gratitude to the Raul Wallenberg Institute of the University of Lund in Sweden for its generous donation of desktop publishing equipment to the Faculty of Law of the University of Zimbabwe. This equipment was donated for use in the production of the Zimbabwe Law Review and other Faculty publications. This current number of the Zimbabwe Law Review was produced using this equipment.

HISTORICAL DEVELOPMENT OF CO-OPERATIVES GENERALLY AND IN ZIMBABWE

by

Timothy Nyapadi*

The Origin Of Informal Co-Operatives

The nature of co-operatives cannot be fully understood without first looking at some historical aspects. This will help us understand the modern development and direction of co-operatives. Social co-operation has existed since time immemorial. In fact it is as old as human history. We know that this is so because primitive societies all over the world had co-operative forms of organisation of labour to carry out, in common, certain economic activities like fishing, building huts, making paths or bridges, felling trees, breaking up new land. In Zimbabwe particularly prior to colonial rule, the country's various communal societies deemed it expedient to group together for such tasks as crop watching, animal hunting, cattle grazing and collecting firewood, fruit and honey. This was over and above mutual aid given between different families in daily life. Mandel,¹ observes that the work was planned by the community in accordance with the custom and ancient rites based on a deep knowledge of the natural environmental factors like climate, soil composition and the habits of game. This was one way that customs developed and varied from one region or country to another and became binding upon all the members of the particular community. What is significant is that there were no laws imposed by a superior being upon another. The chiefs, kings or emperors were non-existent at that time. Everything was done through communal institution — the community — which Herskovits² described as *dokpwe*. He wrote:

The *dokpwe* is an ancient institution. It existed before there were kings. In the olden times there were no chiefs and the *dokpwe* [directing the communal work] was in command of the village. The male members of the village formed the *dokpwe* as today, and the cultivation of the ground was done communally.³

As a result every able member of the community was involved in the organisation and decision-making of the communal work. No one was more equal than others. All individuals were treated alike; no one was superior and no one was inferior. Mandel⁴ notes that a person who was praised or who praised himself was "automatically subject to resentment and to criticism". The accent was on the equality of social solidarity.

Today's social evils such as unemployment, landlessness or having insufficient land were unheard of in early times. This was because, perhaps, the communities operated on the understanding that the earth was God's and therefore no man owned

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¹ Ernest Mandel, *Marxist Economic Theory*. (Merlin Press-London) 4th impression.

² MJ Berskovits, Dahomey, *An Ancient West African Kingdom*, Vol. 1, p 64.

³ *Ibid* p 65.

⁴ Ernest Mandel, *Marxist Economic Theory supra* p 31-32

land in the modern sense of the word. In a very organised way each community was free to move from one region to another in search of greener pastures. Everyone was free to join any other community, provided that he promised to abide by its customs. Crimes like stealing, that is, the appropriation of property belonging to another with the intention to permanently deprive that other of it, were rare. The explanation for this may be that there was nothing to steal. Any property was owned not by individuals but by the community as a whole. Also the moral standards were very high at that time.

At some stage, and its not quite clear when, this communal solidarity started to disintegrate. What can safely be said, however, is that communal solidarity broke down when some members of the community started to practise intensive agricultural methods which improved their production. It is also thought that more hard-working and productive members were not happy about the communal ownership, particularly where it involved people who had hardly contributed to the hard earned wealth of the community because of laziness, gambling, drunkenness, lack of serious and meaningful commitment to the well-being of the community and through constant violation of the customs and habits of the community. In this light it is interesting to note that in the constitutions of early formal co-operatives there was a clause to the effect that any one who violated the obvious and binding regulations of the Association and did not reform after having been reprimanded twice would lose his membership rights. Obvious drunkards, adulterers, vulgar fellows, gamblers, those opposing authorities and raging against them out of bad temper were severely punished by immediately being thrown out of the Association when their offence was proved.⁵

The first known members of the communal solidarity to branch off from the community were tribes organised on the basis of kinship. Mandel⁶ describes the oldest of such tribes as the *horde* which he says still exists among the aborigines of Australia. Such tribes, as a body of persons, jointly possessed, occupied and exploited a certain defined area of country. They had exclusive enjoyment of the land they occupied, and, thus, no person who was not a member of the tribe could have a right to any animal, vegetable or mineral product from the territory except by invitation or consent of members of the tribe. In later years such tribes also disintegrated and instead people grouped according to families. This occurred as they began to apply more and more of their skills to agricultural use. Richards⁷ gives the Bemba large families still found in Zambia as an example. He says they still "live in small communities, the average village consisting of 30 to 50 huts". However, the breaking off into large families did not necessarily affect tribal solidarity which one might describe as primitive communism. In Zimbabwe this took the form of joint action such as planting, cultivation or weeding and harvesting. It is generally known that in India, for example, if a family produced plentiful supply of food at that time, in whatever form, it customarily invited a series of neighbours to come and consume it with the family. In other words if an Indian family gathered sufficient stocks of food,

⁵ See By-Laws of the First Financial Institution, founded in the town of Sobotiste on Feb. 9th, 1845 cited by Professor Frano Ruttkay in *The First Credit Co-operative Society in Europe*, Central Co-op. Council Prague 1970, p 39.

⁶ Ernest Mandel, *Marxist Economic Theory* supra p 33.

⁷ Audrey I Richards: *Land, Labour and Diet in Northern Rhodesia* p 18 cited by Mandel *ibid*.

it had to give a feast which went on until the stock was exhausted. At this time Mandel notes that it was regarded as immoral to adopt an attitude of economic competition and ambition for individuals' enrichment.

As the method of agriculture become more intensive with techniques such as manuring and irrigation, individuals within the family become more productive and these individuals began to go it alone. The effect of these departures from communal solidarity was the actual ownership of land in the sense that we know it today and the creation of feudalism. As a result of such ownership some families, and even some individuals, became very prosperous and this wealth and prosperity was inherited by the children when their rich parents died. There were then kings, emperors and dynasties arising out of the wealthy families or individuals. Some poor members of the community or tribe were employed by these wealthy families to work on their huge farms at no wages at all in majority of cases. It was slavery one might say. But, as Nyerere⁸ pointed out, the moment such a family or man extended his farm to the point where it is necessary for it or him to employ labourers in order to plant or harvest the full acreage, the traditional system of communal solidarity was destroyed. He stated:

For he is not sharing with other people according to the work they do, but simply paying them in accordance with laid-down minimum wage. The final output of the farm on which both employer and employees have worked is not shared. The money obtained from all the crops goes to the owner; from that money he pays his workers. And the result is that the spirit of equality between all people working on the farm is gone — for the employees are the servants of the man who employs them. Thus we have the beginnings of a class system in the rural areas. Also, the employees may well be paid for working during harvest or during weeding but get no money for the rest of the year.

However, such people were given food and in some cases accommodation was provided as well.

The next stage of development was industrialisation. In Britain about the middle of the eighteenth century dawned what might be called the machine age. This was an age of revolutionary social and economic change. Such great inventions as those of Hargreaves, the Blackburn cotton weaver who invented the spinning wheel in 1764, and James Watt who, in 1767, developed the first real steam engine and of Cartwright, a clergyman who in 1767 invented the power loom, ushered in an era of industrialisation. These inventors and others like them changed the face of Britain, leading as they did to the creation of new towns to absorb the influx of labour from the rural areas into the urban factories. This created what may be called new industrial Lords. The rich got richer as the years went by, while the poor sank lower into the mire of poverty. It was the industrial revolution which was making few entrepreneurs very wealthy through the factory system and the vast majority of workers very poor through miserable pay and a sky-rocketing cost of living.⁹

⁸ President K. Nyerere "Socialism and Rural Development" an article in *Rural Co-operation in Tanzania*, published by Tanzania Publishing House 1975 p 6.

⁹ Generally See also Charles, G. Ennquez, *Structure and Functions of Co-operatives* (Published by Condy International Institute Antigonish, 1986).

The industrial revolution brought with it, inevitably, urbanisation and capitalism where an economic system existed under which the means of production (e.g. land) and distribution (e.g. of the surpluses) were owned by a relatively small section of the community or society which ran them at their own discretion for profit. Then came, on the other hand, a propertyless class of those who existed by the selling of their labour power. This occurred towards the end of eighteenth century in England where the earlier factory owners working with small-scale units naturally approved of free enterprise and free trade. Capitalism overthrew feudalism. This had its far-reaching effects. In the late eighteenth century and early nineteenth century there was a turning point in the history of co-operation. The fruits produced by the capitalist system demanded stronger more systematic and well defined co-operation. For the first time in history there emerged a class of people who were categorised as the unemployed. For many urbanisation simply led to misery. People could not cope with the high cost of living and starvation often resulted. In the rural areas people fell prey of money lenders and middleman who exploited them to the full.

The conditions created by the new capitalist productive forces were extremely harsh for the rural people who were particularly affected by the new system. There was great poverty and shortages multiplied by years of crop failures and epidemics; there were soaring prices of essential foodstuffs and large number of people died prematurely, their health having been undermined by hunger and disease. These were the typical features of the profound crisis caused by the contradictions between the new capitalist productive forces and the out-of-date semi-feudal productive relations. In some countries in Europe large tracks of big private owned and state-owned land lay fallow, although large sections of the farm labourers and landless peasants languished in abject poverty, and many starved to death during the years of crop failure. As Ruttkay¹⁰ observed in Czechoslovakia the Slovakia, badly stored grain decayed on big landowners' estates,¹¹ because of lack of interest on the part of the buyers, bad transport facilities, unsatisfactory communications and an out-of-date tariff system. In general, the small farmers continued to rely upon the medieval three-field system using wooden ploughs. Large number of peasants were also deprived of land. This led to increased numbers of people who could neither get land to use nor find employment in industry.

The industries were unable to provide jobs for the rural superfluous population. According to Ruttkay¹² this was because these people had predominantly only handicraft skills and they had little weight in the national economy. Ruttkay also points to the most terrible effects of the disintegrating feudal system, namely the recurring "hungry years" between 1840 and 1848 which decimated the population to a far greater extent than wars could have done. The great indebtedness of the peasantry, crop failure and lack of earning opportunities are said to have aggravated the situation still further. Ruttkay¹³ reports that in some areas "the famine reduced

¹⁰ Professor Frano Ruttkay, *The First Credit Co-operative Society in Europe supra* p 1.

¹¹ The landowners were prepared to let it decay rather than give it free to people dying of starvation. A very insensitive attitude indeed. In other words "the investor had no soul, no sympathy, no wishful dreaming to be benefactor of mankind" by Mr Ulrich Rolashev reported in Supplement to the *Financial Gazette*, July 31, 1987 p 6.

¹² Professor Frano Ruttkay *supra* p 12.

¹³ *Ibid.*

the population to one third of the original number." Arising out of these circumstances came the idea of co-operatives, that is formal co-operatives. In them, some saw an alternative and a way of coping with the terrible problems they were facing.

The Origin Of Formal Co-Operatives

Talking of the origin of formal co-operatives Culvert says that the co-operative movement

... owes its origin to poverty and the desire for some way out of all the distress and hardships that poverty entails. The common bond that hold members together or that induced them to combine was poverty or economic distress ...¹⁴

The creation of a new social order by the industrial revolution, accompanied by its appalling conditions, compelled people from different walks of life to seek solutions in the establishment of formal co-operatives. Among these people were prominent British figures like Robert Owen (1786-1858), William King (1786-1865) and Charles Howarts. Others outside Britain included Samuel Jurkovic and Charles Fourier (1772-1837). Robert Owen in particular was inspired by his socialist ideology. He believed in a form of society in which man and women were not divided into opposing economic classes but lived together under conditions of approximate social and economic equality using in common the means that lie in their hands of promoting social welfare. "Socialism" first came into general use in England in about 1834 in connection with Robert Owen's village of co-operation. However, the first formal co-operative society was formed in Britain on 21st December, 1844 by Charles Howarts, a wool-cutter. It was called the Rochadel Society of Equitable Pioneers. This was a Consumer Co-operative Society whose main aim was to provide members with low priced consumer goods and with the necessary agricultural and industrial inputs required in the productive process of the farming and industrial activities. Its important feature was that it suited the needs of wide sections of the poor farmers, craftsmen and landless people. Another co-operative was Spolekl Gazdovski ("Farmers' Association") of Sabotists in Czechoslovakia which was founded on 9th February, 1845 by Samuel Jurkovic, a poor village schoolmaster. This was the first self-help credit co-operative society in Europe. The founders of both of these co-operatives pursued not only economic aims, but also paid attention to education and ethical principles of the co-operative movement.¹⁵ Rules were formulated to regulate the first co-operative's activities, These rules became known as the "Rochdale Rules". Among other things the rules stated that:

1. Membership shall be voluntary;
(In other words the society was opened to everyone irrespective of their colour, and/or race, class or creed (i.e. religion). People could, however, be excluded from joining the society if they were known to be unco-operative.
2. There shall be equality of shares and votes among all members of the society irrespective of their financial situation and poverty;
(This, of course was to ensure that each person had an equal say in the affairs of the Society.)

¹⁴ H Culvert, *The Law and Principles of Co-operation* (1926) 3rd. Calcutta p 12 — 13 cited by J Katende , *Law of Business Associations in Eastern and Central Africa* (1976) p 978.

¹⁵ See also Professor Frano Ruttkay, *The First Credit Co-operatives Society in Europe* *supra* p 8.

3. There shall be conscientious administration of the entrusted funds.
(The idea here was to eliminate unnecessary losses through fraud and embezzlement and to ensure that the account books were in honest hands.)

The rules of some of the very earlier societies included a special clause entitled, "Moral Mission" which contained, for example, the following demands:¹⁶

- i. Each member shall conscientiously abstain from drinking gin and all distilled alcoholic drinks in general, and shall drink other beverages only for refreshment. Drunkards will be expelled from the co-operative society.
- ii. Every member must seek to educate himself by reading useful books and by associating with wise and learned men and talking to them. In due course of time, he should join the Sunday school.
- iii. Each member shall be watchful of himself and the membership of his household to see that no one commits misconduct. No one is permitted to wander about at night or stay away late in the taprooms, in order not to meet with temptation.
- iv. Abiding by the laws and obedience to the authorities is a noble obligation of members of the Society which has no intention of caring for the disobedient.
- v. These laws will be annually read at the membership meeting so that no one can make the excuse that he did not know about them.

Thus the founders of co-operatives not only had in mind the education of the people and promotional work; they also laid emphasis on morality.

The Rochdale principles upon which these rules were based were actually approved by the International Co-operative Alliance which stated in its final Report¹⁷ that:

1. Membership of co-operative should be voluntary and available without artificial restriction or any social, political, racial or religious discrimination to all persons who can make use of its services and are willing to accept the responsibilities of membership.
2. Co-operative societies are a democratic organisations. Their affairs should be administered by persons elected or appointed in a manner agreed by the members and accountable to them. Members of primary societies should enjoy equal rights of voting (one member, one vote) and participation in decisions affecting their societies. In other than primary societies the administration should be conducted on a democratic basis in a suitable form.
3. Share capital should only receive a strictly limited rate of interest, if any ...
4. All co-operative societies should make provisions for the education of their members, officers and employees and of the general public, in the principle and techniques of co-operation, both economic and democratic.
5. All co-operative organisations, in order to best serve the interests of their members and their communities should actively co-operate in every political way with other co-operatives at local, national and international levels.

¹⁶ See also Professor Frano Ruttkay, *The First Credit Co-operative Society in Europe* *supra* pp 43-44.

¹⁷ See Report of the I.C.A. Commission on Co-operative Principles, London, 1967 pp 35-36.

These in fact have become the internationally recognised co-operative principles and thus have found their way into co-operative legislation in various countries, including in Zimbabwe. The early co-operatives were set up without outside help by poor and uneducated members. Such co-operatives came into being in the small houses of poor people like Charles Howarts and Samuel Jurkovic.

Initially co-operatives did not get the recognition of institutions of law. They existed instead as social institutions and had little impact. As pointed out by Hans-H Munkner,¹⁸ the "very first co-operatives were established before co-operative legislation existed." Later the first co-operative laws were formulated. The very first enactments were the Industrial and Provident Societies Act, 1852 in Britain and the Co-operative Societies Act, 1886 in Russia. This legislation was passed because it was felt that it was necessary to control and regulate the activities of co-operatives. The co-operative principles were in this way translated into legal norms and became part of the civil law.

The co-operative movement grew rapidly and spread throughout the world at the same time as colonialism was expanding worldwide. Under colonialism the co-operative movement was disseminated to the colonies, for example to Zimbabwe, then Southern Rhodesia. But this is not to say that there were no co-operatives in Zimbabwe before the colonialists, came to this country. Co-operatives did exist among the inhabitants of this country but on an informal basis. They existed in the form of social co-operation and not in the form of commercial co-operatives as they are now known.

During the pre-colonial period the Zimbabwean peasantry had been co-operating in various social and economic activities. These took various forms. One was in respect of cattle grazing whereby two or more homesteads entrusted their herds of cattle to one homestead and the latter took care of the cattle the whole day for some days. The responsibility for looking after the cattle would rotate. There was also co-operation in the building of homesteads. The buildings at Great Zimbabwe were built through such co-operations by our ancestors. People also worked on another's land, cultivating and harvesting without payment of wages. This was very common and still is in most communal societies in Zimbabwe. These sort of co-operations which, for example, were to do with helping in one's land or plots were generally known as *nhimbe* or *ilima* in Shona or Ndebele respectively and still are known by such names. It is not surprising that the Government's policy on co-operatives is based on the functions of our traditional social societies which have always worked together in the form of *nhimbe* or *ilima*. People also co-operated in social activities such as mourning and burying the dead. Modern Zimbabwean co-operatives, however, could not replicate traditional village society and its values because conditions and style of living have changed tremendously due to industrialisation and urbanisation.

The general but not very well articulated principles which guided the pre-colonial co-operators in Zimbabwe were inter alia;

¹⁸ Hans-H Munkner. *Co-operative Law as an Instrument of State Sponsorship of Co-operative Societies* (published by the International Labour Office, Geneva, Switzerland 1974 p 2 .

- (i) Respect for other people; co-operators respected each other, they treated each other as equals and no one member undermined his fellow co-operator or co-operators both socially and economically.¹⁹
- (ii) Communal ownership of means of productions — which was land and for the manufacture type, the working tools.
- (iii) Obligation to work; each member has an obligation to work otherwise he was regarded as “idle”. If any member of one’s family died of starvation the whole family was despised to such an extent that some male members of that family would commit suicide. Thus the idea of work was strongly inculcated.

Early recognition Of Formal Co-Operative In Zimbabwe

Co-operatives in Zimbabwe were first formally recognised by the legislature in 1909. Such recognition was in the field of agriculture when the colonial administration of Southern Rhodesia promulgated the Co-operative Agricultural Societies Act of 1909 whose provisions were not substantially different from the first co-operative law which was introduced in England in 1852. The enactment had as its sole purpose to serve the commercial agricultural interests of the white farming community. The British Colonial Administration at that time took the initiative to introduce this legislation in the agricultural sector because it wanted to encourage farming and to promote increased production by individual farmers as farming was regarded as the backbone of the colonial economy. Agricultural co-operatives were seen as forms of enterprises suitable to white settlers in the farming community who did not have sufficient capital for the full satisfaction of their needs on a joint stock basis. Such co-operatives were essentially marketing co-operatives which provided members, amongst other things, with an efficient and reliable marketing system. They did this by offering accurate and detailed information on developments on domestic and world markets, on trends in demand relating to the quality and varieties of produce and on the prices of agricultural produce at wholesale and retail levels. They also provided members with proper and reliable supply of machinery for their inputs.

The fact that the Co-operative Agricultural Societies Act of 1909 was passed to serve only the farming community is confirmed by section 3 of that Act which provided:

Any number of persons (not being less than seven) carrying on farming operations in this Territory, may form a co-operative agricultural society on complying with the provisions hereinafter contained, and subject to the right of veto hereinafter conferred upon the Administrator.

The co-operative legislation at this stage precluded the participation of “natives” in co-operative societies; thus only white farmers could organise themselves, buy their produce together and market them as a society. They could also buy seeds, sacks and machinery at cheap retail prices through the societies. The fact that the “natives” were excluded from joining such co-operatives negated one of the essential co-operative principle of open membership. Obviously the British Colonial Administration at that time was not bothered about this.

¹⁹ See also JK Nyerere, *Socialism and Rural Development: Rural Co-operation in Tanzania supra* pp 1 — 2.

The 1909 Act had its other problems. One was that it did not provide for limited liability of the members as confirmed by section 10 of the said Act which stated that:

It shall be a condition of membership of every society that all its members shall be jointly or severally liable for payment of the obligations of the society ...

This absence of limited liability of the members meant that the entire property of every member was available to meet the liabilities of the society it could not meet; thus personal assets were at risk. Many members and prospective members found this aspect of the Act unappealing, especially in the unsettled socio-economic conditions prevailing in the colony at that time. Other provisions of the 1909 Act, for example section 27, required that where the membership of a society fell below the statutory minimum (i.e. seven) and the society continued business for more than a month without increasing its membership to the statutory minimum, that a fine of £1 per day should be levied on each of the remaining members who had notice of that fact. This provision, no doubt, was particularly harsh as £1 was a substantial sum in those days. As a result very few farmers registered under the provisions of the 1909 Act and only ten societies were registered under the Act before it was finally removed from the Statute Books in 1958.

The lack of limited liability under the 1909 Act led many of the white farming communities to register as companies under the ordinary Companies Act (the Companies Ordinance of 1895) instead of registering their societies under the 1909 Act. Such companies drew up a Memorandum of Association and Articles of Association to suit their own particular needs. But with the coming of the Co-operatives Companies Act of 1925 this was no longer necessary because this Act provided in section 4 for limited liability. Also under section 43 any company which had been formed to carry on operating as a co-operative agricultural company and had been registered under the Companies Ordinance, 1895, was permitted to be registered instead under the 1925 Act subject to the approval of the Minister. Such companies could register with and operate under the Memorandum and Articles of Association in terms of the Company Ordinance, notwithstanding the fact that their regulations or Memorandum and Articles of Association were in conflict with any of the provisions of the Act.

Thus the main purpose of the 1925 Act was to provide legislation governing the formation, registration and management of co-operative agricultural companies trading with limited liability. Under the 1925 Act every member was bound to sell the whole of his produce through the co-operative company with the exception of what he required for his own consumption. Societies registered under this Act imported agricultural implements and machinery and other necessary items and sold them to their members.

Many large scale commercial farmers' agricultural co-operative companies were then registered under the 1925 Act until it was repealed in 1977 when its provisions were subsequently incorporated into the Companies Act [Chapter 190] by an amendment of section 31 thereof.

Apart from the limited liability concept introduced in the 1925 Act, other benefits worth noting were that all co-operative societies registered under this Act had the benefit of attracting "soft" loans from a bank specially created by enactment by the British Colonial Administration. This bank was set up in terms of the Land Bank Act of 1924 whose main purpose was to assist particularly small societies which were

in need of money and to encourage the registration of more societies by offering assistance with financing. However this worried a lot of whites in the commercial community. They thought that the Administration, by creating a Bank that gave loans to co-operative societies or farmers at lower interest than the official one, was encouraging or assisting agricultural co-operative societies or companies to compete with them. As a result they feared they were going to make loses in their businesses. They, therefore, asked their parliamentary representative, Mr Elcomber, to say to the House of Assembly that if loans were made to these societies, they should be entirely used in connection with the marketing of produce grown by *bona fide* farmers or co-operative societies or for the purchase of grain bags only.²⁰ The Minister of Agriculture and Land refused to give that undertaking.

Meanwhile, the Colonial Administration while doing everything possible to promote co-operatives in the white farming community but did nothing at all to encourage co-operative development among the African peasantry. Africans in the Purchase Areas and Communal Land who by far formed the majority of the population in this country were as Mukora²¹ put it,

... neglected and suffered exploitation under the hands of private rural traders who acted as the middle-men between the peasant producers and the statutory marketing and supply bodies.

Thus such Africans were subject to exploitation in marketing their agricultural products by the white traders who stepped in a middle-men. This in fact is not a surprising pattern of behaviour by the colonialist who in other colonies like Sierra Leone could buy produce from the "local population at low prices or in return for just alcohol or cigarettes."²²

However, Colonial Administration eventually took note of these problems as they were beginning to hinder production by the African peasants. The Colonial Administration was also concerned about the fact that Native Councils in various parts of the country were carrying out functions that could more properly have been undertaken by private enterprise in the form of co-operative societies. One example of such a Council was the Wedza Native Council which ran mills to grind grain of various kinds of people in its area.

As a result the African Production and Trade Commission was set up in 1944 to investigate these problems and suggest solutions to them. As a response to the recommendations of the Commission of Inquiry suitable legislation intended at facilitating registration of agricultural trading and other co-operatives which served African interests was promulgated on June 1, 1956, namely the Co-operative Societies Act [Chapter 193]. This Act remained in force until it was repealed in 1987 and replaced by the new Co-operative Societies Act of 1989.

²⁰ See also, Land Bank Bill of 1924. Southern Rhodesia Legislative Assembly, Debates, Vol. 1 of 10th May to 24th August 1924 Col 79.

²¹ Dr CM Mukora, Chief Co-op Officer in a paper entitled "The Historical Development, Organisational Structure and Functions of the Zimbabwean Co-operative Movement" presented at a Joint Zimbabwe Italy Conference on Socialist Co-op Development on Oct. 26 1984.

²² V Maslennckov, *The Co-operative Movement in Asia and Africa* (Progress Publishers 1983) p 18.

About the 1956 Act the Minister of Native Affairs said in Parliament during the second reading of the Co-operative Societies Bill 1980 that:

... this Bill is designed to provide for formation, the registration and management of all types of co-operatives societies with limited liability. Any society which has as its object the promotion of the economic interests of its members in accordance with co-operative principles can obtain registration under this Bill.

Thus although the Act had been primarily designed for the registration and control of native co-operative societies, the Minister claimed that there was "no racial discrimination" in the Act at all.²³ He went further to say that there was nothing to prevent a European joining the native societies "the only difference that arise in designing legislation to apply primarily to an emerging race such as our native population, which is a backward race, is that additional provisions are made to enable the Registrar to use his discretion in a number of ways." The Act therefore in theory was non-racial and it allowed the registration of all kinds of societies such as the African Burial Societies or the Welfare Societies which took care of children of men who died in employment, provided these co-operatives had the object of promoting the economic interests of their members in accordance with co-operative principles. As Mukora²⁴ points out in practice, however, "for all intents and purposes, the Co-operative Societies Act was considered better suited to serve the needs and interests of the African farming community." Thus such societies have in the main been rural African oriented.

Other reasons given for introducing the 1956 Act were:

- (i) To enable African farmers to obtain supplies, in bulk, of their agricultural requirements of seeds, fertilizers, chemicals, animal foodstuffs, tools and empty grain bags at reduced price;
- (ii) To provide adequate and reliable marketing channels for the disposal of the producers' surplus; and
- iii) To arrange for the transport, in bulk and at contract rates of the agricultural produce of the members.²⁵

However, it can not be doubted that the Colonial Administration had also other reasons for establishing African oriented co-operatives under the Co-operative Societies Act of 1956. The administration was anxious to facilitate the collection and improvement in quality of export crops produced by the African peasantry which had a ready market in European countries. This is why most of the co-operatives formed under the Co-operative Companies Act of 1926 were agricultural marketing co-operatives which bought produce cheaply from peasants to export to Europe.

²³ See Co-operative Societies Bill No. 13 of 1959 Southern Rhodesia Legislative Assembly Debate 21st March 1956 2nd Reading of that Bill; Vol. 38

²⁴ Dr CM Mukora, Chief Co-op Officer *supra*.

²⁵ See Dr Chitsike L T. *A Report on the Review, Study and Effective Co-ordination of Co-operatives Act*, 1985 p 72.

For the first time in the history of our country's co-operative societies a Registrar was appointed to oversee the development of the co-operative movement. As Africans were regarded as a backward race the Registrar was given wide discretionary powers that allowed him to interfere with the way in which African Co-operatives were run. For example, the best illustration of this was the Registrar's powers to audit and examine the accounts of the societies. Furthermore he had discretionary powers to decide on the question whether or not particular society should be registered. As a result Africans were excluded from participating in a wholesome manner under the Act; only about ten societies were registered by the end of 1959. By the end of 1961 had gone up to 38 with a total membership of 3460 farmers. The slow growth in the number of registered societies may also be attributable to the fact that those which had been registered had not proved very successful due to problems of securing funds or loans and markets for their produce. Most of these co-operatives were formed in so called African Purchase Areas. African co-operation in urban areas was actively discouraged for political reasons as the colonial rulers feared that such co-operatives would be used to facilitate and finance "terrorist activities" (i.e. the liberation movement.)

There was a noticeable increase of societies registered between 1962 and 1970. This is perhaps because some earlier co-operative societies had become more experienced, and efficient in their operations which in turn enhanced their attractiveness to potential members and gave them economic credibility to both existing and potential creditors and suppliers of inputs. But between 1970 and 1980 there was a marked decline in the annual registration of new societies. For example, Mukora²⁶ wrote,

the average annual formation rate of new societies during this period is only four, which is eight times less than the average of the preceding decade.

One of the explanations he gives for this is that many members resented the credit policies which demanded that the peasants pledge their livestock, especially cattle, as collateral security. Another reason was that there was a growing resentment among increasing numbers of Africans against any projects initiated, sponsored and run by the minority government as the war of liberation intensified. In addition to all that there was the Government desire not to encourage the formation of African co-operative societies any more because of the possibility of diverting the profits, funds or loans to liberation movements fighting the minority Government. This was evidenced by the confiscation of the assets of the Cold Comfort Farm Society led by Comrade D Mutusa and Mr Guy Clutton-Brock by the Smith regime.

Soon after independence in 1980 a new type of co-operative emerged as an expression of socio-economic changes, and there has been an unprecedented growth in the Zimbabwean Co-operative Movement. The main reasons for this was that the Government had a more sympathetic policy towards co-operatives as a result by December 1984 over 1 000 societies had registered, which is about 3.5 times more than what had been achieved by to 1980.

To sum up the Co-operative Agricultural Act, 1909 provided for the registration of agricultural co-operative societies with unlimited liability: the Co-operative Compa-

²⁶ Dr CM Mukora, *supra* 4.

nies Act, 1925 provided for registration and regulation of agricultural societies but with limited liability and under this Act that many agricultural co-operative companies were registered, the Co-operative Societies Act, 1956 mainly to served the interests of Africans. The 1909 Act proved very ineffective and was removed from Statute Books in 1958; the 1956 Act was seen to be no longer in keeping with the new political order and was repealed and replaced by the 1989 Act.; the 1925 Act was repealed in 1977 and its provisions were subsequently incorporated in our Companies Act [Chapter 190] by an amendment of section 31 thereof.

The 1977 Companies Act Amendment And Co-Operative Companies

The 1977 amendment to the Companies Act came about because the minority Government at that time thought that the 1925 Act was out of date. Because co-operative companies involving mainly white agricultural economy had become much more sophisticated entities, it was decided that the 1925 Act should be completely overhauled. It was felt that the needs of the co-operative companies would be served by subjecting them to the detailed supervision and control in terms of the Companies Act. Also it was felt that there were many provisions to the Companies Act which automatically applied to the Co-operative Companies Act and hence it was appropriate to consolidate these two Acts into a single Act. However, it was also felt necessary to preserve their special co-operative characteristic in the 1977 amendment.

On the other hand, it was thought that Co-operative Societies Act should not be incorporated into the Companies Act because these societies were of a less sophisticated nature, operating as they did mainly in tribal sector. Consequently it was felt that their social needs could be more appropriately and properly be dealt with under separate legislation, as it the case now. Many would have been persuaded by the idea that co-operative law should be kept separate from the ordinary company law but for a very different reason. Co-operatives are enterprises of a special kind with often very clearly defined principles and objectives than can be found in commercial companies whose main reason for existence is to carry on "any business that has for its object the acquisition of gain."²⁷ law into one piece legislation could mislead some people into thinking that the two are the same, when they are not. For example, co-operatives in many countries are created within a framework of law which not only regulates their operations but also encourages their growth and development; and the same can not be said about companies.

However, faced with the reality that co-operative companies exist apart from co-operative societies in Zimbabwe, it is important to know what the character of these co-operative companies and the provisions affecting them. Section 31A of our Companies Act [Chapter 190] defines a co-operative company as a company, other than a private company which in its memorandum has as its main object either;

- (1) the provisions for its members of a service facilitating the production and marketing of agricultural produce; or
- (2) the sale of goods to its members.

This, of course, does not mean that co-operative companies cannot have any other object. The important thing is that it must have as its main objects either one or both

²⁷ See Section 7 of the Companies Act [Chapter 190].

of these two objects.

In addition, in order to fall within the stated definition a co-operative company must, in its articles, make certain provisions relating to its shares and regulating the voting rights of its members. It must also set a limit on the dividends payable. It is laid down that a "public company" as defined by section 2 of the Companies Act includes "co-operative company". This means that all provisions relating to public companies as found in the Companies Act will also apply to co-operative companies.

In general, following good co-operative principles section 31A provides that all members of a co-operative company must have at least one vote and no member may exercise more than one per cent of the total votes in respect of the conduct of the affairs of the co-operative company which are accorded to all members thereof, except where there are less than one hundred (100) members or the membership of the co-operative company is restricted solely to other co-operative companies. To explain this further, generally speaking the articles of an association of the co-operative company must provide that every member shall have one vote for the shares he holds. Thus it is possible, and it often happens, that one person may acquire a majority of the shares and thus be in a position to dictate how the affairs of the co-operative company will be managed. This, of course, offends against the general spirit and concept of a co-operative which, in general, is that each and every member should have equal say in the running and management of that co-operative. It is this spirit which the amended section 31 of the Companies Act maintains. The one man one vote principle is however modified slightly by section 31D to allow an increased number of votes to those members with a greater share holding or who have increased number of patronage or transaction with the co-operative company. However, in both cases under section 31D a member is entitled to no more than six votes for each factor, but allows a member with a large share holding plus extensive dealings with the co-operative company to have a maximum of twelve votes.²⁸

Another provision in the amended section 31 of the Companies Act which departs from the co-operative spirit is the one which allows a co-operative company to own a subsidiary co-operative company. Section 31F provides:

31F A co-operative company may, with the permission of the Minister, and subject to such conditions as he may from time to time impose, form one or more co-operative companies or acquire one or more co-operative companies as its subsidiary co-operative companies.

It is envisaged that a Minister will allow under this section a co-operative company to own a subsidiary co-operative company where, for example, a co-operative company is able to show that it will benefit the local community. However, the Minister has the power to impose any conditions which he may consider to be desirable or necessary. As Hawksley²⁹ rightly points out in principle there is no objection to a co-operative company owning a subsidiary co-operative company. However, in practice to allow it to own a subsidiary co-operative is in conflict with

²⁸ See also Hawksley N L. "Co-operative Companies" 1978 Vol 2 R L J 1978 pp 176 - 181.

²⁹ *Ibid* p 179.

the co-operative idea. This is because the holding co-operative company, in the nature of things, will have a controlling interest "and thus deny an equal say by all members in controlling the affairs of the subsidiary company."³⁰

No doubt the legislature was concerned about this and as a result made some provisions to regulate the voting rights of members sufficiently to ensure that the principle was substantially satisfied. Section 31D states that if a co-operative company has been permitted by the Minister to form a subsidiary co-operative company the first mentioned co-operative company shall be entitled to exercise in respect of the conduct of the affairs of the subsidiary such number or percentage of the total votes accorded to all members of the subsidiary which does not exceed such number or percentage as may be specified by the Minister from time to time.

These provisions clearly indicate that the legislature did not want to see any greater departure from the strict principles of co-operatives and also did not want to see the creation of bodies which would masquerade as co-operatives.

Another peculiar feature of co-operative companies is that, for all intents and purposes, they are public companies but under section 31A they are allowed to restrict the right to transfer their shares as is the case with private companies.³¹ This means that co-operative companies are allowed to compel a member who wishes to cease to be a member virtually to sell back his shares to the co-operative company. The effect of such a purchase will be reduction of the capital of the co-operative company since the money would have had to come from its capital funds. In the ordinary companies this will be reduction of capital which must be confirmed by the court in order to protect creditors who may have advanced loans to the company on the strength of the issued share capital.³² However the amended section 31 of the Companies Act effects a compromise between these two concepts and as a result section 31G allows a co-operative company to buy back from the member who ceases to be such, but in that event the co-operative company must add an amount to its capital reserve equal to that amount refunded to the former member in respect of his cancelled share. The amount added to the capital reserve must be equal to the nominal value of the cancelled share. Apart from what has been said so far about the peculiar features of co-operative company, once it is formed and registered in terms of the Companies Act it operates subject to all the provisions of that Act which apply to public companies and those which apply specifically to co-operative companies.

Regrettably, however, with the introduction of the new Co-operative Societies Act of 1989, the legislature did not seize the opportunity to consolidate into a single Act the co-operative companies and the co-operatives societies, the division of which, for all intents and purposes, was based on racial grounds. Instead the *status quo* is maintained supposedly on the grounds of the the size and the special nature of co-operative companies. This means as co-operatives they will continue to have the

³⁰ *Ibid* p 180. Section 120 of the Companies Act defines a holding Company and a subsidiary company.

³¹ See Section 29 of the Companies Act [Chapter 190].

³² See Section 69 — 72 of the Companies Act and also NL Hawsley, "Co-operative Companies" *supra* p 180.

benefits of both worlds; on one hand they will enjoy the benefits of the Companies Act provisions and, on the other, they will enjoy the benefits of the co-operative principles.

Conclusion

Co-operatives companies were formed and used by the white minority primarily for the purposes of:

- (i) Arbitrarily removing the indigenous communities from their ancient lands where the soil was fertile and resettling them in the so-called tribal trust lands where the land allocated was of poor quality.
- (ii) Pulling together the financial resources of white farmers in order to buy farms and then to employ the very landless unemployed indigenous people they had evicted from those farms to work on them at a very low wages and under terrible conditions. These low wages were paid despite the huge profits the co-operators were making from the farming ventures. In this way the white co-operators ensured that the most favourable conditions for the exploitation of the working people was maintained.
- (iii) Servicing the big capitalist institutions in Zimbabwe and elsewhere by providing them with industrial raw materials or growing produce directed to meet the needs of foreign markets.
- (iv) Acting as middle-men, and buying produce from peasants at a very low price and selling them elsewhere at a very high price;

These co-operative companies should no longer continue to be recognised. Given their more favourable economic position in terms of capitalisation and technology of production, these co-operative companies will continue to subordinate the co-operative movement to their own interests.

They will do so by such devices as continuing to act as middlemen in marketing the farm produce thereby drastically diminishing the profits reaped by the producers or growers. Consequently the grower co-operative societies will not be able to improve their bargaining position. Because of the enormous economic power of co-operative companies they may end up destroying the co-operative movements. It would be better either to treat these co-operative companies as ordinary companies under the Companies Act which would require an amendment to that Act, or as co-operative societies under the Co-operative Societies Act. They no longer have place in the new political order given their historical reasons for their existence.



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