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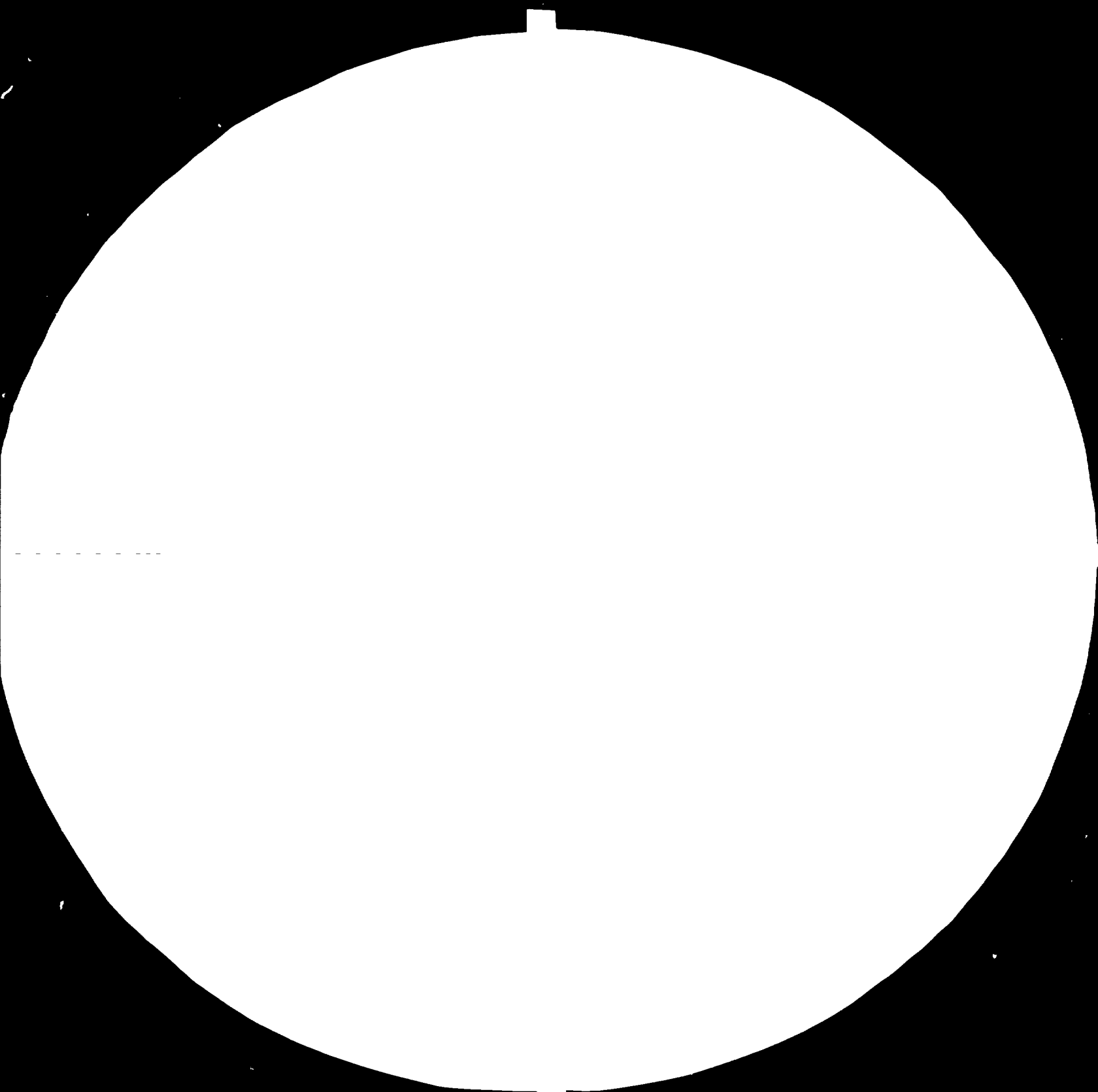
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DEVELOPMENT OF INDUSTRIAL CO-OPERATIVES IN  
TANZANIA .

US/URT/81/200

R E P O R T

by

Hans-H. Münkner

Consultant on Industrial Co-operative Legislation.

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Development of Industrial Co-operatives in Tanzania

Report of the Consultant on Industrial Co-operative Legislation

ABSTRACT

Title of Project: Development of Industrial Co-operatives Phase II

Number of Project: US/URT/81/200

Purpose of Project: To provide the basis for the continuous development of industrial co-operatives so that they may contribute to the development of Tanzania towards self-reliance.

The immediate objectives are:

- A. to assist in the formation of an Industrial Co-operative Development Department within the Small Industries Development Organization to form the focal point for industrial co-operative development in Tanzania;
- B. to assist the industrial co-operatives to set up and initially operate a Union of Industrial Co-operatives to promote the successful development of co-operative industries.

Start of the Project: 1 July, 1981

Duration of the Project: 2 years

Duration of mission of Consultant on Industrial Co-operative Legislation: 14 weeks spread over 11 months

Date of Report: First Draft: November 1982, Final Report: April 1983

This report gives a review of the newly promulgated legislation affecting the development of industrial co-operatives in Tanzania, including the Co-operative Societies Act and Rules, 1982, the Co-operative Audit and Supervision Act, Local Government Acts and relevant Amendment Acts. It also covers proposed model by-laws for primary co-operative societies and matters related to their internal organization as well as the constitution and by-laws of a proposed representative body of industrial co-operatives at the national level.

The report is based on four technical reports on the development of industrial co-operatives and their legal framework elaborated by the project manager, Mr. D.M. Scott during 1980 and 1982, on relevant legal texts, field visits during two missions to Tanzania in 1982 and 1983 and on discussions with government officials, officers of parastatal organizations, experts on co-operative development and the UNIDO/SIDO project team.

The report is subdivided in 5 parts, following the terms of reference which were summarized by the project manager to cover the following four items:

1. Review the new laws governing the operation of, or affecting co-operative societies in general and industrial co-operatives in particular to determine any constraints to industrial co-operative development and to recommend any changes or improvements required either in principle or in detail in any future legislation. (Part I of the Report)
2. Review the new Model By-laws for industrial co-operatives and recommend any possible variations for different types of society including a simplified version for very small societies, basic rules for para-co-operatives or probationary co-operatives before full registration and non-workers' industrial co-operatives. (Parts II, III and V of the Report)
3. Review the new By-laws for the Union of Industrial Co-operatives and recommend useful changes or additions. (Part IV of the Report)
4. Contribute the necessary legal section or sections of a comprehensive guide for prospective industrial co-operatives, including partnerships and private concerns wishing to convert themselves into industrial co-operatives, in liaison with the Expert in Industrial Co-operative Management (Covered by separate document being prepared by the UNIDO/SIDO project team).

A memorandum on "Arguments for Setting up a Secondary Society of Industrial Co-operatives" prepared at the request of the Minister for Industries to help in the discussions on forming a National Union of Industrial Co-operatives, which was later disallowed by the Minister of State responsible for co-operative development, is reproduced in Appendix II.

The main findings of the report are the following:

The new co-operative legislation can only be considered as one step in the long term process to develop an appropriate legal framework for co-operative societies and their unions and federations in Tanzania.

The Co-operative Societies Act, the Rules and the model by-laws prepared essentially by the Ministry responsible for co-operative development were obviously drafted under time pressure. All these texts still have certain weaknesses which are analyzed in some detail in the report.

Apart from recommendations and suggestions on how to overcome these weaknesses in concept, in technical matters and in drafting techniques, it is recommended to establish a small technical committee to monitor



the effects of the new legislation on co-operative development, to evaluate the performance of the government machinery for promotion and control of co-operative societies established under the new law, to study areas where the law can be improved and to come forward with recommendations for a less comprehensive, more consistent and less restrictive legislation governing co-operative societies in Tanzania.

## Introduction

The UNIDO Project No. US/URT/81/200, Development of Industrial Co-operatives in Tanzania included a short-term mission of a consultant on Industrial Co-operative Legislation. The terms of reference of the consultant on industrial co-operative legislation included to -

1. Review the laws affecting co-operatives in general and industrial co-operatives in particular to determine any constraints to industrial co-operative development and to recommend any future changes or improvements required either in principle or in detail.
2. Review the new Model By-laws for industrial co-operatives and recommend any possible variations for different types of society including a simplified version for very small societies and basic rules for para-cooperatives or probationary co-operatives before full registration.
3. Review the new Draft By-laws for the proposed Union of Industrial Co-operatives, recommend any useful changes or additions and advise on the legal basis for the formation of the Union.
4. Contribute the necessary legal sections of a comprehensive guide for prospective industrial co-operatives, including partnerships and private concerns wishing to convert themselves into industrial co-operatives, in liaison with the expert in Industrial Co-operative Management.
5. Prepare, in liaison with the Expert in Industrial Co-operative Management, a check-list of areas which would or could require the formulation of internal rules within an industrial co-operative society, e.g. the signing of cheques on behalf of the society.
6. Advise, time permitting and opportunity arising, the committee or committees responsible for drafting the Rules of the new Co-operative Societies Act, Model By-laws for the new multi-purpose rural co-operative societies and any further co-operative legislation likely to affect industrial development to ensure the effectiveness of industrial co-operative development as far as possible.
7. Assist the project in any other way on legal matters affecting its work.

The assignment was planned according to the following formula:

- six weeks in the field to study existing legislation and industrial co-operatives (July/August 1982),
- two weeks desk work at Marburg/Germany to prepare a draft report,
- in February 1983 second visit to Tanzania of about 2 to 3 weeks to discuss the suggestions contained in the draft report with the government,
- three weeks desk work at Marburg/Germany to prepare the final report.

This report is the final, partly revised and supplemented version of the first draft report sent to Tanzania in November 1982 and discussed with the UNIDO/SIDO project team in February 1983.

The first visit to Tanzania was undertaken between 11 July and 17 August, 1982. Although the new co-operative legislation to be reviewed was known in its draft form (Co-operative Societies Bill) and the new Co-operative Societies Act, 1982 had been passed in the National Assembly in April 1982, the official printed text of the Act was only available on 27 July 1982 (by receiving the copy directly from the Government Printer). Another problem was to arrange meetings with high ranking government officers who worked partly in Dodoma and partly in Dar es Salaam and who were frequently tied up attending meetings of the National Assembly and of committees.

On the whole it was possible to follow the planned work schedule with the necessary modifications (cf. Appendix I, infra pp. 87-90). Apart from studying the relevant legal documents and background materials, 17 industrial co-operatives were visited in the Dar es Salaam area, in Morogoro, Moshi and Tanga, which permitted to gain a more direct insight into the practical and legal problems which industrial co-operative societies have to face in Tanzania.

During the first visit of Tanzania there was neither opportunity nor time to advise the committee responsible for drafting the Rules under the new Co-operative Societies Act, 1982.

The draft of the Report was completed in November 1982 and sent to Tanzania for study and comments which were received in writing.

On 10th December, 1982 the Co-operative Societies Rules were published as Government Notice No. 145 of 1982 and a copy was sent to Marburg. On 29th December, 1982 SIDO received copies of the draft model by-laws for rural and industrial co-operative societies prepared by the Prime Minister's Office (PMO) on the basis of the new co-operative legislation.

The second visit to Tanzania was undertaken between 10th and 25th February, 1983, including a two days briefing at UNIDO/Vienna. The timing of the second visit proved to be very favourable. The draft model by-laws prepared by the PMO were due for final discussion with the Advisory Committee to the Cabinet and the Co-operative Secretariat when the rapporteur arrived in Dar-es-Salaam. At the request of the UNIDO/SIDO team the Minister for Industries arranged for a meeting with the Co-operative Secretariat to discuss the PMO draft model by-laws for industrial co-operatives before they were finally adopted.

In this way it was possible to agree with the Co-operative Secretariat on some important amendments of the proposed model by-laws for industrial co-operatives.

After the Government had disapproved of the formation of a secondary co-operative society of industrial co-operatives at the national level, attempts had been made by representatives of industrial co-operatives to form a pressure group along the lines proposed by the Minister of State responsible for co-operative development.

A first National Conference was held in Dar-es-Salaam on 4th February, 1983. A national formation committee was elected and a task force was set up to prepare a second National Conference of Industrial Co-operatives in April 1983, to draft a constitution and by-laws for the proposed association to be registered under the Societies Act. The rapporteur was invited together with the UNIDO/SIDO team to attend a meeting of the task force, held on 22nd February, 1983.

In February 1983 the educational material "Starting an Industrial Co-operative - Basic Economics" prepared by MATCOM (Mr. Jos Jonckers) and a first draft of the "Comprehensive Guide for Co-operative Entrepreneurs" were available. This made it possible to agree on the format of the "Guide for Co-operative Entrepreneurs" and to draft a text com-

binning the elements of the Guide prepared by Mr. B. Shepherd and the parts on legal aspects prepared by the rapporteur.

Since the "Guide for Co-operative Entrepreneurs" is the result of a joint effort of the UNIDO/SIDO team and will have to be discussed further with the Tanzanian counterparts in SIDO and will eventually have to be tested in the field, the draft of the "Guide for Co-operative Entrepreneurs" is not included in this Report.

In retrospect it proved to be appropriate to split the mission of the rapporteur into 4 stages, because in this way it was possible to adopt a flexible time frame so that the Co-operative Societies Rules, 1982 and the model by-laws for primary co-operatives prepared by the PMO, which were not available during the first mission could be dealt with during the second mission to Tanzania after having been studied without time pressure in Marburg.

The Report covers all points of the terms of reference except item 4 concerning the legal aspects of the "Comprehensive Guide for Co-operative Entrepreneurs" which has been incorporated into a separate document.

The rapporteur takes this opportunity to express his sincere gratitude to all institutions and persons in Tanzania who have helped him in undertaking this mission and in particular to thank the Minister for Industries, the Hon. B.P. Mramba, M.P., the Director General of SIDO, Mr. E.B. Toroka, the UNIDO/SIDO project team, the Dar-es-Salaam Office of the UNDP and the officers of UNIDO/Vienna involved in the project for their support and assistance in carrying out this mission.

Hans-H. Münkner  
Marburg, April 1983

UNIDO Project No. US/URT/81/200

Development of Industrial Co-operatives in Tanzania

Final Report of the UNIDO Consultant on Industrial Co-operative  
Legislation

Part I Comments on the laws affecting co-operative societies  
in general and industrial co-operatives in particular

The following laws were reviewed:

- The Co-operative Societies Act, 1982 (No. 14 of 1982);
- The Local Government (District Authorities) Act, 1982  
(No. 7 of 1982);
- The Local Government (Urban Authorities) Act, 1982  
(No. 8 of 1982);
- The Local Government Finances Act, 1982 (No. 9 of 1982);
- The Tanzania Rural Development Bank (Amendment) Act, 1982  
(No. 16 of 1982);
- The Co-operative Audit and Supervision Act, 1982  
(No. 15 of 1982) and
- The National Industries (Licensing and Registration)  
(Amendment) Act, 1982 (No. 13 of 1982).

1. The Co-operative Societies Act, 1982

1.1. General remarks

The new Co-operative Societies Act, 1982 replaces the repealed Co-operative Societies Act, 1968, which in turn is an enactment based on the "Classical British-Indian Pattern of Co-operation", i.e. a law for state-sponsored co-operative societies developed by the British Colonial Government in India in 1904 and introduced into many countries of Asia and Africa around 1930<sup>1)</sup>.

The new Co-operative Societies Act also replaces the Villages and Ujamaa Villages (Registration, Designation and Administra-

tion) Act, 1975, repealed by section 195(c) of the Local Government (District Authorities) Act, 1982 in so far as it referred to matters related to co-operative societies. In fact, some provisions and ideas contained in the new Co-operative Societies Act were taken from the Villages and Ujamaa Villages (Registration, Designation and Administration) Act, 1975 (e.g. sections 22 to 30).

One of the characteristic features of the new Co-operative Societies Act, 1982 is that it constitutes a combination of sections taken from different sources. For instance, several sections were taken unchanged or in a modified form from the Co-operative Societies Act of Zambia (No 67 of 1970), e.g. sections 7 to 11 and 31 to 60.

Some provisions were framed in line with recommendations made during an International Seminar on Comparative Co-operative Law in Eastern, Central and Southern African Countries<sup>2)</sup> (e.g. sections 13(2), 20, 115, 116) while still others were based on recommendations made by the Ministry of Industries to accommodate industrial co-operatives (e.g. sections 2 "industrial society", 29(2)(e), 63, 64(2) and 103). The main body of the provisions dealing with the internal organization and working of co-operatives, legal technical matters like registration of charges etc. and the powers of inspection, supervision and control of government over registered co-operative societies were taken almost unchanged from the Co-operative Societies Act, 1968.

The new law is a compromise between advocates of the re-establishment of co-operative societies as they existed before 1975, which were dissolved in 1976 and the assets of which were taken over by different governmental, parastatal and Party agencies on the one hand<sup>3)</sup> and advocates of establishing new societies on the other.

The clear option of the Party, which according to the Constitution of 1977 (Article 3), has supremacy over all institutions and all political and governmental activities in Tanzania, is in favour of the establishment of new types of co-operatives and of new co-operative structures which are not private business

organizations but instruments for socialist construction, which have as their main purpose the building of socialism in the country.

According to official statements made by the President and by Minister Kimiti the newly formed societies will be based in villages ... and will be expected to play a crucial role to ensure increased agricultural production (cf. Daily News, July 9, 1982), the new co-operatives will not act as marketing organs as it was the case with the previous societies, but rather be the organs of fostering the development of co-operative farming and improving the conditions of their members (cf. Daily News, May 5, 1982).

They will conduct their affairs under the guidance and supervision of the Party (cf. Daily News, July 9, 1982).

The issue is confused by the fact that it is the officially stated policy to re-establish the regional co-operative unions but not to re-establish their base at the village level, i.e. the primary co-operatives as they existed earlier. This may not be possible, because the re-established regional or district unions will be different from the ones that were dissolved in 1976.

The political discussion about re-establishing the old co-operatives or establishing new ones has been decided in favour of establishing new co-operative societies which are not private enterprises but special types of organizations for the implementation of the policy of socialism and self-reliance (cf. long title of the Co-operative Societies Act, 1982). This option is underlined in several sections of the Co-operative Societies Act, 1982, e.g.

- Section 4

"... The society shall be operated democratically on the basis of the principles, methods and procedures of co-operation. It shall thus strive in accordance with its democratic, socialist and co-operative outlook -

- (a) to accelerate the building of socialism by bringing about socialist development both in rural and urban areas;



(b) to foster the development of co-operative farming in rural areas ...". (See also sections 18(2)(e) and 29(1)(i) Co-op. Soc. Act, 1982).

- Section 7

"The Minister shall take such measures as he deems necessary for the encouragement ... of the organization of co-operative societies as a means of - ...,

(b) contributing to the economy on increased measure of socialist ownership and democratic control of economic activities ...".

On the other hand, a large number of provisions of the Co-operative Societies Act, 1982 are clearly based on the model of a co-operative society as a private self-help organization, i.e. a non-exploitative group activity under the leadership and control of its members to take over such activities in the economy which earlier were misused to exploit small producers, i.e.

- supply with inputs (sections 18(2)(b), 29(2)(b) Co-op. Soc. Act, 1982);
- credit (section 7(c) Co-op. Soc. Act, 1982);
- marketing (section 7(d), 29(1)(f), 29(3) Co-op. Soc. Act, 1982);
- transport (sections 18(2)(h)(i), 29(2)(a) Co-op. Soc. Act, 1982);
- wholesaling (section 18(2)(a), (3) Co-op. Soc. Act, 1982).

The definition of the term "co-operative society" in section 2 of the Co-op. Soc. Act, 1982, which corresponds to the definition given in para. 12(1)(a) of Recommendation No. 127 of the International Labour Conference<sup>4)</sup> describes a co-operative society as

"an association of persons who have voluntarily joined together for the purpose of achieving a common end through the formation of a democratically controlled organization and who make equitable contributions to the capital, if any, required for the formation of such an organization and who accept the risks and the benefits of the undertaking in which they actively participate."

According to section 8(a) Co-op.Soc. Act, 1982 the Minister shall take, authorise or approve such measures as he deems necessary to -

"assist the organization of Co-operative societies among persons or groups of persons who desire to provide themselves with, or to market commodities or services, or both, on a co-operative self-help basis."

Furthermore, the Minister shall disseminate information related to co-operative development, so as to

"... promote interest in and understanding of co-operative principles and practices with a view to the encouragement of the organization of co-operative societies based on self-help" (section 9 Co-op. Soc. Act, 1982).

In Section 61(1) societies which may be registered under the Co-op.Soc. Act, 1982 are defined as

"... a society which has as its objects the promotion of the economic and social interests of its members by means of a common undertaking based upon mutual aid and which conforms to the co-operative principles ...".

This mix of legal provisions reflecting two different concepts of co-operative societies in one and the same law makes it difficult to come to a clear and consistent piece of legislation.

There is still another conflict of ideas contained in the new Co-operative Societies Act, 1982. The new law is meant to cover all types of co-operatives both in rural and urban areas including agricultural multipurpose co-operatives (societies for rural development, section 22-30), industrial co-operatives (sections 31-40), credit societies (sections 41-54) and consumer societies (sections 55-60).

While there are some special provisions for each category of societies (following the example of the Co-operative Societies Act of Zambia, 1970), the main body of the law (Parts I to IV and Parts VI to XVIII) is applicable to all these societies with a few exceptions. Part V contains provisions of a general

nature and special provisions related to the different types of societies. Sections 14 to 21 under the heading "Formation and Organization of Societies" purport to be general provisions. Yet, in two essential provisions regulating the vertical structure of the co-operative movement in Tanzania (section 15 and 18(2)) the attention of the law-makers was focussed mainly on rural development societies or agricultural multipurpose co-operatives, which certainly will constitute the bulk of the societies, while two general provisions on the vertical structure of the co-operative movement (sections 14 and 16) stand side by side with these provisions having an agricultural bias which causes problems of interpretation. Had sections 15 and 18(2) been placed under the special provisions for rural development societies, this confusion could have been avoided.

With regard to co-operative activities in villages, the new law follows to a large extent the model of the repealed Villages and Ujamaa Villages (Registration, Designation and Administration) Act, 1975, e.g. sections 22, 23 and 24 Co-op. Soc. Act, 1982.

Especially section 24(1) of the Co-op.Soc. Act, 1982 stipulating automatic membership of all adult persons residing or working in a village is a contradiction to the definition of the term "co-operative society" in section 2 of the Act, where voluntary membership is quoted as a characteristic feature of co-operative societies.

When studying the Co-operative Societies Act, 1982, the law gives the impression that some new basic provisions were added (in Parts II, III and V) to an existing text without adjusting the entire text to the newly added parts.

The uncoordinated parallelism of general and special provisions and of provisions related to state-controlled and Party-guided co-operatives of the socialist type on the one hand and of provisions made for the private enterprise type of co-operatives, based on their members' initiative, self-help and expectation of tangible benefits for the members on the other

hand, shows that the law is a compromise between two different schools of thought, however, a compromise which was laid down in writing before the bargaining process was completed and before a final agreement was reached between the two camps.

The law was obviously made under time pressure which explains the numerous printing errors in the text.

Finally, the new law gives Government very stringent powers of supervision, direct intervention and control over co-operative societies, for instance by empowering the Registrar/Commissioner to require primary societies to form or join co-operative unions (section 19), to amend by-laws of registered societies (section 86), to dissolve the committee of co-operative societies (section 106) and to appoint a caretaker committee (section 107), to direct societies how to invest their funds (section 114(2)), to conduct inquiries and inspections (sections 133, 134), to order compulsory amalgamation or division (sections 138, 140) and to punish societies which do not comply with his orders (section 169). Such powers can easily lead to over-intervention by the Registrar/Commissioner and his staff which may bring about some degree of passive participation, but normally do not encourage active participation and voluntary involvement of the members.

#### 1.2. Constraints to industrial co-operative development

At the request of the Ministry of Industries and based on the work of the UNIDO/SIDO project for the development of industrial co-operatives in Tanzania a number of provisions were included into the new law which eliminate certain constraints to industrial co-operative development which existed under the Co-operative Societies Act, 1968.

The term "industrial society" is defined in the interpretation section (section 2). However, the exact meaning of the term remains ambiguous. In section 2 of the Co-op.Soc. Act, 1982 industrial societies are defined as "registered societies whose principal objectives are manufacturing or making or

servicing or assembling of industrial goods and whose members are respectively manufacturers, craftsmen, artisans, industrial workers and apprentices", which means that industrial societies are by definition workers' productive co-operative societies where all "workers" (i.e. persons working in the joint business ) are members and all members are workers.

This is in line with the findings and recommendations of the UNIDO/SIDO project reports<sup>5</sup>). However, in the special provisions on industrial co-operative societies (sections 31-40 Co-op.Soc. Act, 1982) taken over from the Co-operative Societies Act of Zambia (cf.sections 46-52, 80. 81 Zambian Co-op. Soc. Act, 1970), the law does not limit industrial societies to the type of workers' productive societies but expressly mentions other types, i.e.

- labour contracting societies undertaking contracts or sub-contracts by provision of labour and technical services, materials and equipment ... where members organise their work for a contractor and thus are not self-employed (section 32(b), Co-op. Soc. Act, 1982),
- supply and marketing societies of craftsmen or skilled workers operating their own individual workshops (sections 32(c) and (d), 34(a),(b) and (c), 35(b) Co-op.Soc. Act, 1982), and expressly does not give a conclusive enumeration of types of industrial societies which may be formed under the Act (section 31(2) Co-op.Soc. Act, 1982).

The new law is more flexible regarding the minimum number of persons who can establish a co-operative society (section 63(1)) and regarding the minimum age of members (section 64(2)).

It also allows urban co-operatives with a small membership to elect a small committee of 4 (section 103(1)) and to pay them for their work (section 105(1)).

On the other hand, the new law contains a number of provisions which constitute new constraints to industrial co-operative development.

1.2.1. No industrial co-operatives in villages

The most important provision in this category is section 23(1) Co-op.Soc. Act, 1982 which expressly prohibits the operation of registered industrial co-operative societies in a village. (For more details on the distinction between co-operatives in villages, rural areas and urban areas see "Arguments for Setting up a Secondary Society of Industrial Co-operatives, Appendix II, infra, pp. 100-105). The only manner in which small industries or joint workshops of craftsmen can be operated in a co-operative way in a village is to form co-operative groups within the framework of a village multipurpose co-operative society (section 23(2) Co-op.Soc. Act, 1982).

The functions of a rural co-operative society may include according to section 29(2)(e) Co-op.Soc. Act, 1982 "producing, preparing, adapting, processing and manufacturing goods, wares, merchandise from materials of every description for sale or under contract".

According to the underlying concept of this part of the Act, the village multipurpose co-operative society shall act as the central co-operative organization in the village under which a number of specialized sub-groups may operate their joint business, however, this has to be done under the direction and planning of the village co-operative development committee and under conditions set by this committee (section 30 Co-op.Soc. Act, 1982). Furthermore, according to section 109(3) Co-op.Soc. Act, 1982 "all revenue of a registered society shall be paid into the general fund of the registered society: provided that any receipt derived from any trade, industry, works, service or undertaking carried on by or belonging to a registered society may, with the approval of the Registrar, be paid either in whole or in part into a separate fund".

During the UNIDO/ICA Conference on the Economic and Social potential of Industrial Co-operatives in Developing Countries,

held in Arusha in February 1982, it was emphasized that a major criterion for success of industrial co-operatives is that members work essentially for themselves and that the main motivation to work in industrial co-operatives and to make sacrifices (low pay, long working hours, re-investment of surplus and personal risks) is the feeling to be self-employed and not to depend on any employer<sup>6)</sup>.

This statement is confirmed by the research work carried out by the UNIDO/SIDO project team<sup>7)</sup> when it was found that fourteen active and successful industrial co-operatives in villages were acting autonomously, taking their own decisions and controlling their own finances, whereas five societies which were attempting to operate within the village legislation (i.e. the Villages and Ujamaa Villages (Registration, Designation and Administration) Act, 1975) had become virtually defunct and were discontinued.

Hence, it can be predicted that the new law prohibiting autonomous industrial co-operatives in villages and allowing only the operation of co-operative groups which will depend on the village multipurpose society, will have the effect that the more dynamic and business-minded craftsmen will leave the villages and form their own businesses in urban areas and thereby reinforce the trend of rural urban migration of skilled workers, a result which is in contradiction to the policy of government to promote small scale industries in villages.

This effect could only be avoided by a deliberate policy of strengthening the independence of co-operative groups within a village multipurpose society including the group members' autonomy in planning, decision making and in the use of their own funds. Under the new law this could be done for instance by applying the proviso of section 109(3) Co-op.Soc. Act, 1982 according to which it is possible to maintain separate funds into which revenue derived from activities of specialized groups may be paid. Such decisions would require the approval of the Registrar.

However, it remains to be seen whether such a policy will really be pursued by the village multipurpose societies, in which craftsmen and skilled workers will always be in a minority position and where there will be always a shortage of funds for financing the general activities of the society or of such activities as the majority of its members will find necessary.

1.2.2. Problems related to the formation of a Secondary Society of Industrial Co-operatives at a national level

As already mentioned earlier (supra, pp.2-7 ) the new law has certain weaknesses with regard to conceptual consistency and the use of unequivocal terminology.

This creates problems of interpretation especially in respect of the provisions determining the vertical structure of the co-operative movement in Tanzania.

The terms in question are "secondary society" and "co-operative union".

In the legal system of Common Law Countries there is a general rule that a written law has to be interpreted by interpreting its text, while the intentions, objects and reasons of the lawmakers are not taken into account, once the law is enacted. This rule is also valid for the interpretation of the laws of Tanzania.

Sections 14 and 16 of the Co-operative Societies Act, 1982 are clear and state without doubt that primary societies may form secondary societies and that secondary societies may form an apex organization.

Also the interpretation section (section 2 Co-op.Soc. Act, 1982) is very clear in defining a secondary society as a "registered society whose membership is open to primary societies ...".

According to these general provisions it is possible for



industrial co-operatives (primary societies) to form a secondary society and it is nowhere stipulated that this cannot be done at the national level.

Parallel to the term "secondary society" the Act uses the word "co-operative union" which is defined in the interpretation section (section 2 Co-op.Soc. Act, 1982) as "a registered society of which the membership is restricted to primary societies and includes a joint enterprise where all its members are co-operative unions".

Hence, "co-operative union" and "secondary society" have the same meaning with regard to the vertical structure of the co-operative movement.

In section 15(1) of the Co-operative Societies Act, 1982 reference is made to villages in which primary co-operatives may be formed and it is prescribed that a co-operative union may be formed for a region and, where it is economically viable, it may with the approval of the Minister, be formed for a district or districts (section 15(3)).

In contrast to the general provisions of sections 14 and 16, section 15 refers specifically to villages and areas for which societies may be formed. It is at least open to doubt whether this provision also applies to industrial co-operatives and other urban co-operatives which are expressly excluded from operating in villages.

The general idea expressed in section 15(1) and (3) is that the area of operation of a co-operative society shall be determined by considerations of economic viability. The surveys conducted by the UNIDO/SIDO project bring out very clearly that the only reasonable and economically viable area of operation for a secondary society of the existing industrial co-operatives is a nation-wide organization<sup>8)</sup>.

Even if all these arguments would be considered insufficient to support the case for a secondary society of industrial

co-operatives at the national level, the Minister in charge of administering the Co-operative Societies Act, 1982 has the power to allow the formation of such a secondary society under section 173 by exempting the secondary society from any restrictions as to the area of operation laid down in section 15(3).

Having shown that the wording of the general provisions of sections 14 and 16 of the Co-operative Societies Act, 1982 does not rule out the formation of a secondary society of industrial co-operatives and that eventual doubts are due to an unclear terminology and a rural bias of provisions meant to be applicable to all types of co-operatives, it becomes obvious that the problem of obtaining approval for the establishment of a secondary society of industrial co-operatives at the national level, as proposed by the UNIDO/SIDO project and supported by the Ministry of Industries is not a legal but rather a political one.

As expressed in section 5 of the Co-operative Societies Act, 1982 "the state shall protect the co-operative societies by support, guidance and supervision". This guidance will have to be done in line with government's policy regarding co-operative development.

However, where special types of co-operatives are concerned, also the governmental policies regarding the particular economic activities of the respective type of co-operative society will have to be taken into account.

The argument put forward by the Registrar/Commissioner for Co-operative Development against forming a secondary society on a nation-wide basis in his letter to the Ministry of Industries on October 20, 1981 that all co-operative societies in the country must conform to a uniform organizational pattern is not convincing. It is generally recognized in Western industrialized countries as well as in socialist countries that the choice of organizational patterns for economic entities has to be determined by considerations of economic viability if such organizations are to operate

effectively and without depending permanently on external subsidies. Therefore, different types of co-operatives may have to adopt different patterns of vertical integration.

While it is understood that the government wants to avoid an uncontrolled proliferation of secondary co-operatives in the country and, therefore, sets some guidelines, these guidelines should not become impediments in the way of useful and necessary development of industrial co-operatives as promoted by the Ministry of Industries.

A review of alternative solutions to the proposed secondary society of industrial co-operatives at the national level within the co-operative legislation shows that the problems of economic viability and fair representation would remain unsolved.

#### Regional unions of industrial co-operatives

In view of the limited number of active industrial co-operatives in the different regions<sup>9)</sup>, their different fields of activity and their limited economic potential, economically viable secondary societies cannot be established at regional level during the next several years.

#### Industrial co-operative divisions in regional unions

It has been suggested by the task force established at the Prime Minister's Office to use the proposed regional co-operative unions as a substitute for a special secondary society of industrial co-operatives, by building up special divisions for industrial co-operatives in each of the regional unions.

However, this is not an effective way of meeting the immediate and future needs of the primary industrial societies for the following reasons:

- It will take some time until the foundation on which to build the regional unions, i.e. the multipurpose village

societies, will be established and start operations. Only then will the regional unions be able to resume their own activities - if they are not supposed to work as co-operatives without membership. Yet, the industrial co-operatives need their secondary society to become effective as soon as possible.

- Once the regional co-operative unions are established, they will be primarily concerned with problems related to agricultural production and marketing, which will be the main preoccupation of the majority of their member-organizations. The specific problems of the limited number of industrial co-operatives will necessarily have a very low priority.
- Within the democratic structure of the decision-making bodies of the regional unions the delegates of industrial co-operatives will always be in a minority position. These societies will, therefore, not be adequately represented.

To sum up this point, the wording of the text of the law does not prohibit the formation of a secondary society of industrial co-operatives at a national level.

However, such a society will only be registered under the Co-operative Societies Act, 1982 if its formation is approved by the Registrar. According to section 70(4) and (1) of the Co-operative Societies Act, 1982 the discretion of the Registrar to register a new society is restricted. He may only refuse registration if he is not satisfied "that a society has complied with the provisions of this Act and of the Rules, and that its proposed by-laws are not contrary to this Act, the Rules and the co-operative principles, and that the proposed undertaking is likely to be viable."

However, an appeal against the Registrar's decision refusing to register lies to the Minister whose decision is final and is not subject to review by any court (section 70(5) Co-op.Soc. Act, 1982). Hence, the problem of obtaining government's clearance for establishing a secondary society of industrial co-operatives at national level is a political problem.

### 1.3. Recommendation of changes for future legislation

As already explained earlier in this report (see supra, pp. 2 to 7) the Co-operative Societies Act, 1982 is basically a combination of parts of two laws, i.e. the Villages and Ujamaa Villages (Registration, Designation and Administration) Act, 1975 and the Co-operative Societies Act, 1968, which are based on totally different concepts and which cannot simply be added so as to make a new law without leaving problems of discrepancies and inconsistencies in concept and terminology unsolved.

The Act is unusually long and comprehensive. It contains a number of details which could be left to be dealt with in the by-laws (e.g. section 18 - objects and functions of secondary societies, section 29 - functions of a rural co-operative society; sections 46, 48 and 49 are internal matters of credit societies; many of the items mentioned in section 85(2) and (3) as matters to be regulated in the by-laws of societies are already covered by the Act).

By strictly adhering to a clear logical structure of the text, a strict distinction between general provisions applicable to all types of co-operatives and special provisions applicable only to special types of co-operatives and a clear terminology, some repetitions and ambiguities could have been avoided, e.g.:

- sections 15(2) and 62 (1), minimum number of members;
- sections 24(1)(a) and 64(1)(a), minimum age of members;
- sections 25(2) and 103(2), election of the committee by the general meeting of members;
- sections 25(3) and 103(1), referring to the number of members of the co-operative development committee in a village society.

The Part on registration of charges (Part XII) has been dropped from the Co-operative Societies Act in many countries in order to simplify the co-operative law. In such countries registration of charges of co-operatives follow the provisions of general law.

The Co-operative Societies Act, 1982 contains a great number of provisions concerning the powers of the Registrar, penalties for not complying with orders by the Registrar and offences which, apart from being difficult to implement, give the impression that persons who form or join a co-operative society enter into a system of stringent supervision, controls and fines.

Many of the sections of the Co-operative Societies Act, 1982 (e.g. section 3(2)) but especially provisions dealing with surcharge (section 136) and certain aspects of liquidation (sections 149-162)) are written in a heavy technical legal language which will certainly not be understood by the common man.

It is recommended to elaborate an official statement of government's policy on future co-operative development in Tanzania at the highest political level, to serve as a clear directive and guideline for the Registrar/Commissioner for Co-operative Development and his staff, for the practising co-operators and for the lawmakers.

Furthermore, it is recommended to appoint a small technical committee of experienced co-operators and legal draftsmen.

This technical committee should review the entire Co-operative Societies Act, 1982 without time pressure. It should evaluate practical experience, weed out provisions which contain unnecessary details, ambiguities and repetitions, elaborate a clear terminology, simplify the language and bring all sections of the law in line with the underlying concept. In its work the committee should attempt to avoid over-intervention by the Registrar/Commissioner for Co-operative Development and other government agencies which may discourage active participation and initiative of the members of registered co-operative societies.

With regard to industrial co-operatives it is recommended to abandon artificial dogmatic limitations as expressed in section 23 of the Co-operative Societies Act, 1982, to allow the

formation of industrial co-operatives where the need arises and to encourage skilled workers and craftsmen in villages to work together in their own industrial co-operatives as self-employed co-operators rather than to compel them to become practically employees of the village multipurpose co-operative or the village council, or to migrate to the urban areas, where they are free to build up their own organizations.

As to the formation of a secondary society of industrial co-operatives at national level there are no limits to form such a society in the law. In fact, the Prime Minister's Commission of Inquiry into the Possibility of Re-establishing the Co-operative Union recommended the establishment of specialized national organizations in its report (p. 98a).

Hence, the question of forming a secondary society of industrial co-operatives at national level is not a legal problem but one of political acceptability.

#### 1.4. Alternative Solutions to solve the problem of a nationwide organization of industrial co-operatives outside the co-operative legislation

##### 1.4.1. Formation of an association under the Societies Ordinance

If government clearance for forming the proposed secondary society of industrial co-operatives cannot be obtained, the alternative solutions to form a National Association of Industrial Co-operatives<sup>10)</sup> or a company for supporting industrial co-operatives with supply of raw materials, tools, machinery and spare parts and with the opening of new markets will be equally difficult, because also the formation of such alternative organizations would depend on political acceptance.

This becomes obvious if one studies the relevant enactments (Co-operative Societies Act, 1982, Societies Ordinance, Cap. 337 Supp. 63 of 1964, Companies Ordinance, Cap. 212 and Written Laws (Miscellaneous Amendments) Act 1969, No. 41 of 1969).

In order to form a National Association of Industrial Co-operatives and to have it registered under the Societies Ordinance, the founder members (i.e. the industrial co-operatives) would need the authorization of the Minister in charge of co-operative development before they can invest funds in the new association (section 114(1)(d) Co-op.Soc. Act, 1982). Such an Association could not be formed or maintained for the sole purpose of carrying on any lawful business (section 2(e) Societies Ordinance). Hence, the National Association of Industrial Co-operatives would have to be an organization mainly for the representation of the legitimate interests of its affiliates but could not become a central economic institution for its affiliates.

Furthermore, it could not use the term "co-operative" in its firm name without the sanction of the Registrar of Co-operative Societies (section 171(1) Co-op.Soc. Act, 1982).

The Registrar of Societies could refuse to register a National Association of Industrial Co-operatives if it appears to him that such an association would be used to circumvent government's intention not to allow the formation of an association of industrial co-operatives at national level (section 9 Societies Ordinance). Furthermore, the President could, in his absolute discretion, when he considers it to be essential in the public interest, by order declare to be unlawful any society which, in his opinion is ... prejudicial to or incompatible with the maintenance of ... good government ... or is being used for any purpose at variance with its declared objects (section 6 Societies Ordinance and with regard to the winding up of unlawful societies: Section 24(5) as amended by the Societies Ordinance (Amendment) Act, 1969 (No. 16 of 1969)).

#### 1.4.2. Formation of a company under the Companies Ordinance

If it were intended to establish a company to supply industrial co-operatives with raw materials, tools, machinery and spare parts and to market their products, again the authorization of the



Minister in charge of co-operative development would be required for the primary industrial co-operatives to take over shares of such a company (section 114(1)(d) and (2) Co-op.Soc. Act, 1982).

If such a company could be formed and registered at all, the Minister in charge of administering the Companies Ordinance could, when in his opinion it is in the public interest so to do, by order published in the Gazette require any company registered under the Companies Ordinance to be wound up (section 331 D Companies Ordinance contained in the Written Laws (Miscellaneous Amendments) Act, 1969).

These quotations show that without government clearance it will not be possible to establish and maintain the desired national organization of industrial co-operatives, neither in the legal form of a registered secondary society under the Co-operative Societies Act nor in form of a national Association under the Societies Ordinance or as a company under the Companies Ordinance.

#### 1.4.3. Creation of a special unit within SIDO

The only realistic alternative to establishing a secondary co-operative society of industrial co-operatives at national level appears to build up the Directorate for Extension Services of SIDO as a unit for the promotion of industrial co-operatives in all fields for which the proposed secondary society of industrial co-operatives was intended to render services to its affiliates.

The advantage of this alternative would be that such an arrangement would have the full backing of the Ministry of Industries and that there would be no political obstacles to overcome.

Furthermore, SIDO with its decentralized organization could implement a programme for the promotion of industrial co-operatives almost immediately by using SIDO staff and SIDO facilities.

On the other hand, the long term objective of helping industrial co-operatives to build up their own institutional framework and to become self-reliant would not be achieved. The dependence of industrial co-operatives on SIDO as a parastatal organization would be increased and would be accepted as a permanent feature.

The link between the industrial co-operatives and the new SIDO unit could be strengthened by forming an advisory council or a consultative committee within SIDO or within the Directorate for Extension Services (which is possible under section 13(1) of the Small Industries Development Organization Act, 1973) in which elected representatives of the industrial co-operatives could express their views and participate in designing the policy and the action programmes of SIDO so as to meet the needs of the industrial co-operatives.

#### 1.5. Recent Development

After completion of the first mission to Tanzania the issue of forming a national body representing the interests of industrial co-operatives has been carried further in two ways.

- Formation of a pressure group of industrial co-operative societies seeking registration under the Societies Ordinance, and
- Formation of a new Directorate of Extension Services within SIDO.

##### 1.5.1. Tanzania Association of Industrial Co-operatives

After it had been pointed out by various advisers that there were no legal obstacles in the way of forming a secondary co-operative society of industrial co-operatives at national level under the new Co-operative Societies Act, 1982, the Hon. P.P. Kimiti, M.P., Minister of State responsible for co-operative development stated in a letter to the Minister for Industries dated 28th October, 1982 that he would not allow the formation of the proposed union or federation of industrial co-operatives, because this would be against the Government and Party guidelines on the establishment of co-operatives.

In a letter dated 3rd November, 1982 the Permanent Secretary, Ministry

of Industries, informed SIDO that the Minister of State responsible for co-operative development had advised to established "a club or pressure group of industrial co-operatives which should not be a co-operative itself but it should have a name, rules and constitution".

As a result of this decision by the Tanzanian Government the UNIDO/SIDO project's second immediate object had to be amended to read:

"...to complete the groundwork for the eventual establishment of a Union of Industrial Co-operatives, to assist in the establishment of an officially recognized body to represent industrial co-operatives during the interim period and to assist in determining the extent to which SIDO activities may be extended to include activities envisaged as being carried out by the proposed Union".

On 4th February, 1983 a National Conference of Industrial Co-operatives was held in Dar-es-Salaam, attended by some 80 persons (64 delegates of co-operatives representing 13 Regions) to take the first steps towards forming a Tanzania Association of Industrial Co-operatives and seeking registration or exemption from registration under the Societies Ordinance (Cap.337). During the conference a democratically elected committee of 12 members was set up as a national formation committee and a task force was formed to facilitate the duties of the formation committee and to liaise with various institutions when the need arises.

This task force under the chairmanship of Mr. Maembe met on 22nd February, 1983 to discuss the problems related to the formation of the proposed association and the requirements for registration or exemption from registration under the Societies Ordinance. After detailed deliberations on the proposed by-laws, assistance was given to prepare the constitution and by-laws of the association. A second National Conference of Industrial Co-operatives was planned to be held in April 1983.

#### 1.5.2. New Developments in SIDO

On 1st August, 1982 a new Directorate of Extension Services was established in SIDO. The creation of this new directorate supersedes the need for a special Department of Industrial Co-operatives within SIDO. It was agreed that an industrial co-operative "desk" within the new Directorate should serve both

- to monitor SIDO services to industrial co-operatives and

- to serve as the primary link between the proposed new Association of Industrial Co-operatives and SIDO.

The officer in charge of the industrial co-operative "desk" would also be in charge of assessing the potential changes or extensions of SIDO's activities to carry out as far as possible the role of the disallowed Union.

A new project for Small Scale Industries Consultancy and Training Assistance (SICATA) starting in January 1983 and undertaken jointly by the governments of the Netherlands and Tanzania with SIDO as an agent will partly follow up the work so far accomplished by the UNIDO/SIDO project.

2. The Local Government (District Authorities) Act, 1982  
(No. 7 of 1982)

2.1. General Remarks

The Local Government (District Authorities) Act, 1982 repeals the Villages and Ujamaa Villages (Registration, Designation and Administration) Act 1975 (section 195 (c) of the Local Government (District Authorities) Act, 1982) which governed the co-operative activities in villages between 1975 and 1982 and which had repealed the Co-operative Societies Act, 1968 as far as it applied to registered co-operatives in villages.

The Local Government (District Authorities) Act, 1982 is a consolidation Act which brings together in one enactment different laws relating to local government and provides for matters connected with or incidental to the organization of local government in Mainland Tanzania.

The Act regulates the powers and duties of local government authorities (District Councils, Township Authorities and Village Councils) in the administrative, economic and political sphere, including the duty to encourage meaningful involvement of and participation by the people in the making of decisions on matters affecting or connected with their livelihood and well-being at all levels but also the responsibility to secure the effective execution of the national policy at local government level (section 4 (1) (b) and (c)).

This Act can only be put into practice when the necessary staff has been provided to carry out the functions and duties entrusted to local government authorities under the new law. Accordingly, section 4 (3) stipulates that "the Minister shall endeavour to ensure that there is available an adequate supply of personnel trained, skilled or qualified for work in the various sectors or aspects of local government...". (For this matter see also the Local Government Service Act, 1982 (no. 10 of 1982)). In anticipation of the problems related to the provision of adequately trained staff in sufficient numbers and the time needed for solving these problems, the Minister has been empowered to appoint the date when the Act

shall come into operation (section 1 (2) Local Government (District Authorities) Act, 1982).

## 2.2. Constraints to Industrial Co-operative Development

There are no provisions in the Local Government (District Authorities) Act, 1982 which constitute direct constraints for the development of industrial co-operatives.

The main impediment in the way of development of industrial co-operatives in rural areas is contained in section 23 (1) of the Co-operative Societies Act, 1982, prohibiting the operation of primary industrial co-operative societies in villages (see supra p. 9). Apart from this limitation imposed by the Co-operative Societies Act, 1982, the local government authorities (Ward Development Committees) are responsible for promoting the establishment and development of co-operative enterprises and activities within their area of jurisdiction (section 32 (1) (a) Local Government (District Authorities) Act, 1982) and the village councils have to do all such things as are necessary or expedient for the economic and social development of the village, which includes the task to facilitate ventures of a co-operative nature to be undertaken by the residents of the village (sections 142 (2) (a) and 143 Local Government (District Authorities) Act, 1982).

In general, the local government authorities shall take such measures as in their opinion are necessary, desirable, conducive or expedient for the control and improvement of agriculture, trade, commerce and industry and for the development, mobilization and application of productive forces to the war on poverty, disease and ignorance (section 111 (2) (b) and (e) Local Government (District Authorities) Act, 1982).

Indirectly, the local government authorities are given certain powers under the Local Government (District Authorities) Act, 1982, which affect the activities of co-operative groups of skilled workers and craftsmen within village multi-purpose societies and village co-operatives and which could become possible areas of conflict.

These powers are:

At district council level:

- to formulate, coordinate and supervise the implementation of all plans for the economic, commercial, industrial and social development in its area of jurisdiction (section 118 (1) (a) Local Government (District Authorities) Act, 1982,
- to provide for or facilitate the licensing or regulation of the activities of persons engaged in, or the premises used for, the manufacture, preparation, handling, sale of articles for use or consumption by man (section 118 (2) (m) Local Government (District Authorities) Act, 1982) and to prescribe fees for licenses or permits (section 152 Local Government (District Authorities) Act, 1982),
- to provide for the control, regulation, inspection, supervision and licensing of any premises in which any trade or business is carried on (section 118 (2) (w) (iii) Local Government (District Authorities) Act, 1982),
- to regulate construction of buildings ( First Schedule, section 118 (4) No. 8 Local Government (District Authorities) Act 1982),
- to undertake economic ventures which may enter into competition with small scale industry activities of co-operative societies at all local government levels (First Schedule, section 118 (4) No. 87, 89 Local Government (District Authorities) Act, 1982),
- to decide on the award of tenders (First Schedule, section 118 (4), e.g. No. 88, 96, 102 Local Government (District Authorities) Act, 1982),
- to engage paid labour for essential public work (First Schedule section 118 (4), No. 102 Local Government (District Authorities) Act, 1982).

At township authority level:

- to award tenders for execution of public work (Second Schedule, section 132 (1), and o.1, 2, 3, 4, 23, 42 Local Government (District Authorities) Act, 1982),
- to sell all products and by-products resulting from carrying on of

any of the undertakings or services of the authority (No. 35), this implies that the township authority, like the district council and the village council, may undertake economic ventures eventually in competition with co-operative societies.

At village council level:

- to initiate and undertake any task, venture or enterprise designed to ensure the welfare and well-being of the residents of the village (section 142 (2) (b) Local Government (District Authorities) Act, 1982),
- to plan and coordinate the activities of and render assistance and advice to the residents of a village engaged in agriculture... or other activity or industry of any kind (section 142 (2) (c) Local Government (District Authorities) Act, 1982),
- to encourage the residents of the village in undertaking and participating in communal enterprises (section 142 (2) (d) Local Government (District Authorities) Act, 1982),
- to participate, by way of partnership or any other way in economic enterprises with other village councils (section 142 (2) (e) Local Government (District Authorities) Act, 1982).

Furthermore, the village council has a certain influence on co-operative activities in the village in so far, as the economic plans of the multi-purpose village co-operatives have to be prepared in consultation with the village council (section 29 (1) (a) Co-op. Soc. Act, 1982).

From these provisions it can be seen that the main task of the local government authorities is to promote and to encourage economic development and co-operative activities in their respective areas of jurisdiction, however, without excluding the possibility that local government authorities establish their own economic enterprises to help to finance their general administrative activities.

When studying the relevant sections of the Local Government Finances Act 1982 (No. 9 of 1982) it becomes obvious that local government authorities which carry on economic undertakings for gain are not seen as the exceptional case but rather as a rule



and that profits made from such undertakings are considered to be one of several lawful sources of revenue for financing the activities of local government authorities (sections 7 (1) (b), 8 (1) (g), 9 (a) Local Government Finances Act, 1982).

Conflicts between local government authorities and industrial co-operatives may arise in situations where the economic undertakings of local government authorities enter into direct competition with co-operative enterprises, where the neutrality of the local government bodies in charge of granting licenses and awarding tenders may be called into question and where the local government authorities use their political and economic power to the advantage of their own enterprises instead of promoting and encouraging industrial co-operatives.

At village level, conflicts may arise when coordinating the economic plans of the village council with those of the co-operative development committee, given the fact, that there is some overlapping in the definition of powers and duties of the village council (sections 142, 143 Local Government (District Authorities) Act, 1982), of the co-operative development committee (section 28 Co-op. Soc. Act, 1982) and of the functions of rural co-operative societies (section 29 Co-op. Soc. Act, 1982).

### 2.3. Recommendations

There are no direct constraints for the development of industrial co-operatives in the Local Government (District Authorities) Act, 1982. Accordingly, there are no recommendations with regard to revising this law. The main recommendation refers to the policy concerning the implementation of this Act.

Under the Local Government ( District Authorities) Act, 1982 the local government authorities and especially the village councils are facing problems of reconciliation of two conflicting objectives:

They are responsible for promoting co-operative activities in their areas of jurisdiction in accordance with the national development policy and plans. But they are also empowered and - in view of the shortage of public funds practically requested - to finance part

of their operations by means of revenue derived from their own enterprises.

In view of the general experience that the solution of financial problems of local authorities will usually be given priority over the responsibility to encourage the development of industrial co-operatives, it will require an explicit policy on the part of the government to ensure that industrial co-operatives are given at least equal chances in acquiring licenses, permits, tenders and allotment of raw materials, tools, machinery, spare parts and access to land for suitable work places and to loans.

3. The Local Government (Urban Authorities) Act, 1982  
( No. 7 of 1982)

3.1. General Remarks

The Local Government (Urban Authorities) Act, 1982 repeals among other things the Urban Wards (Administration) Act, 1976, which had never been put into practice (section 110 (b) Local Government (Urban Authorities) Act, 1982). The Act gives the urban authorities a certain degree of autonomy and the citizens are to be encouraged to participate in a meaningful way in making and implementing decisions on matters affecting their livelihood and well-being (section 4 (1) (b) Local Government (Urban Authorities) Act, 1982). However, the limits of this autonomy are also expressed in very clear terms. The Minister has the duty to work towards "... securing the effective execution by urban authorities, subject to his guidance, control and direction, of the national policy on local government" (section 4 (1) (c) Local Government (Urban Authorities) Act, 1982; see also sections 53, 54 (1) (c) of this Act).

As in the case of the Local Government (District Authorities) Act 1982, this Act can only be implemented when the necessary staff has been provided to carry out the various functions allotted to urban authorities under this new law ( section 4 (3) Local Government (Urban Authorities) Act, 1982). Accordingly the law does only come into force at the date of commencement to be fixed by the Minister (section 1 (2) Local Government (Urban Authorities) Act, 1982).

3.2. Constraints to Industrial Co-operative Development

Similar to the Local Government (District Authorities) Act, 1982, the Local Government (Urban Authorities) Act, 1982 does not contain provisions that constitute direct constraints to the development of industrial co-operatives. On the contrary, under the Act it is the responsibility of the urban authorities ( town councils, municipal councils and city councils cf. section 3 (1) Local Government (Urban Authorities) Act, 1982) to further the social and economic development of its area subject to the national policy

and plans for urban and rural development (section 54 (c) Local Government (Urban Authorities) Act, 1982).

According to the third five year plan this includes the duty to promote and encourage the development of co-operatives of any kind including industrial co-operatives. This responsibility is not expressly stated in the Act with regard to urban authorities. However, according to section 16 (1) (b) Local Government (Urban Authorities) Act, 1982 promotion and encouragement of the development of co-operatives of any kind are among the functions of the Ward Committees to be established in every urban authority.

Unlike in the case of villages, there is no legal restriction for forming industrial co-operatives in areas outside villages (section 31 (1) Co-op. Soc. Act, 1982). On the other hand, the urban authorities are given similar functions and powers as the district councils and the village councils, which may lead to competition and conflict of interest between the enterprises and industries owned by urban authorities, the city councils, municipal councils and township councils in charge of licensing and regulations, award of tenders etc. on the one hand and the industrial co-operatives on the other hand.

The functions and powers of a local government authority under the Local Government (Urban Authorities) Act, 1982 include:

- to establish a standing committee responsible for trade and economic affairs (section 42 (1) (f) Local Government (Urban Authorities) Act, 1982);
- in the case of Ward Committees: to plan and coordinate the activities of, and render assistance and advice to the residents of the Ward engaged in any activity or industry of any kind (section 16 (1) (d) Local Government (Urban Authorities) Act, 1982);
- to take all measures necessary for the regulation and improvement of agriculture, trade, commerce and industry (section 54 (2) (b) Local Government (Urban Authorities) Act, 1982);
- to regulate any trade or business which ... it is in the public interest expedient to regulate, and to provide for the issue of licenses or permits to facilitate the regulation of any such trade

or business, and for the imposition of fees in respect of such licenses or permits (section 55 (1) (m) Local Government (Urban Authorities) Act, 1982);

and

- with the approval of the Minister to engage in any form of municipal trading or industry (section 59 (g) Local Government (Urban Authorities) Act, 1982).

Furthermore, other functions which urban authorities may perform include according to the Schedule (section 55 (2) :

- to engage in local trading and industry (No. 87) and
- to engage paid labour for essential public works (No. 102).

As in the case of the local government authorities under the Local Government (District Authorities) Act, 1982, the Local Government Finances Act, 1982 anticipates that the urban authorities will earn part of their income from trade, industry, works, services or other undertaking carried on or owned by the urban authority (section 6 (1) (b) Local Government Finances Act, 1982).

### 3.3. Recommendations

The policy of government concerning the promotion of industrial co-operatives in urban areas is clearly expressed in official statements, Party guidelines and enactments like the Co-operative Societies Act, 1982 and the Small Industries Development Organization Act, 1973. The aim of this policy is to encourage the establishment of industrial co-operatives throughout the country and to give industrial co-operatives preference over other forms of business organizations like partnerships and companies. However, the Local Government (Urban Authorities) Act, 1982 places the urban authorities into a difficult position. On the one hand they are supposed to promote industrial co-operatives in their area of jurisdiction by helping them to obtain funds for investments, sites for their workplaces, tenders from public or parastatal institutions etc. On the other hand, the urban authorities are empowered and may even be required to establish their own competing enterprises so as to earn income for financing their activities.

In this respect, the city councils, municipal councils and town councils are likely to favour their own economic activities in their area of jurisdiction rather than promoting competing industrial co-operatives.

The Local Government (Urban Authorities) Act, 1982 spells out that urban authorities need the approval of the Minister if they want to engage in local trading and industry (section 59 (g) Local Government (Urban Authorities) Act, 1982). Hence, it depends on clear policy guidelines laid down by the Minister, whether conflicts of interest between industries established and owned by urban authorities and industrial co-operatives can be avoided and whether the development of industrial co-operatives is systematically promoted by granting of the necessary licenses and by awarding tenders or whether authorities give undue preference to their own undertakings.

4. Local Government Finances Act, 1982 (No. 9 of 1982)

4.1. General Remarks

The Local Government Finances Act, 1982 makes provision for sources of revenue and the management of funds and resources of local government authorities and for securing the proper collection and sound management of finances in the local government system.

The Local Government Finances Act repeals the Village (Revenue) Act, 1979 which provided for the raising of revenue by villages consisting of fees, charges and tariffs for licenses or permits issued by a village council of receipts derived from any trade, industry, works, service or undertaking carried on by or belonging to the village under the Villages and Ujamaa Villages (Registration, Designation and Administration) Act, 1975.

4.2. Constraints to Industrial Co-operative Development

As already mentioned in the comments on the new Local Government (District Authorities) Act, 1982 and the Local Government (Urban Authorities Act), 1982 the Local Government Finances Act expressly mentions revenue derived from any trade, industry, works, services and other undertakings carried out or owned by the local government authorities as one of the sources of which the revenues, funds and resources of local government authorities shall consist (section 6 (1) (b) for urban authorities, section 7 (1) (b) for district councils, section 8 (1) (g) for township authorities and section 9 (1) (a) for village councils.

These provisions could constitute constraints to industrial co-operative development in so far as the local government authorities are called upon under the law to establish and maintain their own trade, industries, works, services and other undertakings and to use them for making profits to be paid into the general fund of that local government authority (sections 6 (4), 7 (3), 8 (2) and 9 (5) Local Government Finances Act, 1982) to finance the general expenditure of administration or to be paid into a separate fund for the purposes of the trade, industry, works, service or undertaking from which the receipt is derived (in the case of district councils

section 7 (4), in the case of township authorities section 8 (2) and in the case of village councils section 9 (6) Local Government Finances Act 1982).

This legal directive to local government authorities to earn income through establishment of their own industries could develop into an impediment in the way of promotion of competing industrial co-operatives by the same local government authorities.

#### 4.3. Recommendations

Experience gained with the Villages and Ujamaa Villages (Registration, Designation and Administration) Act, 1975 has shown largely negative effects of combining responsibility for administrative, political and economic affairs in one and the same organization. One of the consequences of this experience was to rewrite the Co-operative Societies Act and to repeal the Villages and Ujamaa Villages (Registration, Designation and Administration) Act, 1975. However, while in the Co-operative Societies Act there is a certain separation of the administrative and political responsibilities on the one hand (village council) and the responsibility for economic affairs (co-operative development committee) on the other (which still is not clear enough in the sense of avoiding any overlapping) the Local Government Finances Act still reflects the concept that local government authorities in urban and rural areas should establish and maintain their economic undertakings and earn income from trade, industries etc. owned by them to finance some of their general administrative activities, a concept which proved to be difficult to implement under the Villages and Ujamaa Villages (Registration, Designation and Administration Act), 1975.

It is recommended to study this matter further, to evaluate experience gained in the past with enterprises owned by the village councils, to establish a clear government policy on this important and sensitive matter and to bring the relevant provisions of the Local Government Finances Act in line with the concept underlying the Co-operative Societies Act of 1982.



5. Tanzania Rural Development Bank (Amendment) Act, 1982  
(No. 16 of 1982)

5.1. General Remarks

The Tanzania Rural Development Bank (Amendment) Act, 1982 modifies the Tanzania Rural Development Bank Act, 1971 ( No. 7 of 1971) in order to allow the co-operative apex organization, provided for under the new Co-operative Societies Act, 1982 to subscribe for shares in the Tanzania Rural Development Bank (TRDB).

This Amendment Act constitutes one of several attempts to find a solution for the problem of re-establishment of the former National Co-operative Bank or for establishing a new Co-operative Bank.

The National Co-operative Bank was dissolved together with other co-operative organizations in 1976 and the liquidation of the assets of this bank is not yet completed. Now that the co-operative movement is to be relaunched, two ways were discussed to deal with the issue of a central banking institution to cater for the needs of co-operatives:

- to re-establish the old Co-operative Bank and to transfer its assets back to this re-established bank (this solution was proposed by the Prime Minister's Commission of Enquiry into the Possibility of re-establishing co-operative unions<sup>11)</sup> or
- to turn one of the existing central banking institutions (the National Bank of Commerce or the Tanzania Rural Development Bank) into a bank for co-operatives<sup>12)</sup>.

By promulgating the Tanzania Rural Development Bank (Amendment) Act, 1982 it is implied that the lawmakers have opted against the re-establishment of the old National Co-operative Bank.

5.2. Constraints to Industrial Co-operative Development

Under the Tanzania Rural Development Bank Act, 1971 the term "Rural Development" is defined as covering "the development of any other productive activity situated in a rural area or primarily serving the rural population including agro-industry, commerce, manufacturing, mining, building construction ..." (section 2 "Rural

Development" (b) Tanzania Rural Development Bank Act, 1971). Hence, under the law industrial co-operatives in rural areas would qualify for loans, however, in practice they do not receive the necessary assistance from the Tanzania Rural Development Bank<sup>13)</sup>, among other things because the Tanzania Rural Development Bank like other lending banks finds it uneconomical to give small amounts up to 10 000 Shs. to small enterprises, which need such amounts for buying raw materials to meet small orders.

Whether the amendment of the Tanzania Rural Development Bank Act will bring about an important change of this situation can only be assessed, once the Co-operative Apex Organization is established, has subscribed shares and has a say in the affairs of the Tanzania Rural Development Bank as far as loans to co-operatives are concerned. Even then, the problem of industrial co-operatives related to access to loans from the Tanzania Rural Development Bank will be a problem of loan policies and lending techniques rather than of legislation.

6. Co-operative Audit and Supervision Act 1982 (No. 15 of 1982)

6.1. General Remarks

Under the previous co-operative legislation in Tanzania audit and supervision of co-operative societies has always been a function to be carried under the responsibility of the Registrar and by auditors authorized by him (section 21 (1) Co-op. Soc. Act, 1968). The cost of the audit was covered by the contributions of registered co-operative societies to the audit and supervision fund, constituted under section 20 of the Co-operative Societies Rules, 1968, which was also administered by the Registrar of Co-operative Societies (section 20 (3) Co-op. Soc. Rules, 1968). However, it is expressly provided in section 20 of the Co-operative Societies Rules, 1968 that the audit and supervision function should be transferred to a society established for the purpose of supervision or of audit or of supervision and audit of registered co-operatives, once such a society has been formed and that portions of the contributions paid by registered co-operative societies to the audit and supervision fund should be credited to such society.

The use of the word "society" implies that the intention expressed in section 20 of the Co-operative Societies Rules, 1968 was to transfer the audit and supervision function to a co-operative society established and registered for the purpose of supervision and/or audit by affiliated co-operatives and not to a co-operative audit and supervision Corporation established by Act of Parliament. This intention still remains valid after promulgation of the Co-operative Audit and Supervision Act, 1982, because in section 23 of this Act any rules made under the Co-operative Societies Act, 1968 in respect of the audit and supervision fund shall remain in force as if they have been made by the Board under this Act, until they are amended or revoked.

Under the Co-operative Audit and Supervision Act, 1982 the co-operative audit and supervision corporation shall work with a certain degree of autonomy, but subject to special direction by the Minister (section 4 (2), (4), (7) Co-operative Audit and Supervision Act, 1982) and in some matters subject to the directions and inspection by the Registrar of Co-operative Societies (sections 4 (2), 7, 8 Co-operative Audit and Supervision Act, 1982).

The Corporation shall take over all assets and liabilities of the audit and supervision fund (Second Schedule, section 22 Co-operative Audit and Supervision Act, 1982).

The composition of the governing body of the Co-operative Audit and Supervision Corporation is laid down in the First Schedule (section 5), according to which co-operative organizations will be represented in the Board of Directors by members nominated by the Minister after consultation with the Apex Organization, from secondary societies or any other co-operative organization (No. 1 (c) ) while the chairman of the Corporation shall be appointed by the President.

The purpose of the Co-operative Audit and Supervision Act which is to create a special agency with qualified professional staff to carry out audit, supervision and inspection of co-operative societies at regular intervals and with the necessary expertise is very laudable. Lack of effective and regular audit and supervision services are among the most serious causes of failure of co-operative enterprises in Tanzania and elsewhere.

It remains to be seen whether the Co-operative Audit and Supervision Corporation will be able to cope with the handicaps experienced earlier by the Registrar of Co-operative Societies and the audit and supervision fund, i.e. to recruit a sufficient number of qualified auditors and supervisors, to offer a scheme of service that is attractive enough to maintain qualified and experienced staff in the Corporation and to provide enough funds to carry out the audit and supervision work throughout the country.

#### 6.2. Constraints to Industrial Co-operative Development

In its survey on the development of industrial co-operatives in Tanzania<sup>14)</sup> the SIDO/UNIDO project team has found that the absence or lateness of audit constitutes one of the major financial problems and that the staff of the audit and supervision division of the Ujamaa and Co-operative Development Department is unable to cope with the existing work load. Given the fact that the nature of business and accordingly the books of accounts of industrial co-operatives differ in some respect from those of agricultural multi-purpose societies, it might be necessary to establish a special section

for the audit and supervision of industrial co-operatives in the new Co-operative Audit and Supervision Corporation with specially trained auditors for audit of industrial co-operatives and to work in close consultation with the relevant branches of SIDO, so as to avoid overlapping of functions and duplication of work. Another way to deal with the problem of audit of industrial co-operatives would be to provide that the industrial co-operatives may have their accounts audited by private auditors if the new Co-operative Audit and Supervision Corporation is unable to complete its audits within a reasonable time and, in such cases, to exempt the societies concerned from the obligation to make annual contributions to cover audit costs, as suggested in the UNIDO/SIDO Report on the Development of Industrial Co-operatives in Tanzania <sup>15)</sup>.

Until new Rules are made under the Co-operative Audit and Supervision Act, 1982, the way in which the issue of audit fees is currently regulated may confuse the layman.

Section 88 of the Co-operative Societies Act, 1982 makes annual audit compulsory for every registered co-operative society but is silent on audit fees. Under the Co-operative Societies Rules, 1968 there used to be annual contributions of registered co-operatives to the Audit and Supervision Fund (sec. 20 Co-op. Soc. Rules, 1968). Under the new Co-operative Audit and Supervision Act, 1982 audit is again regulated with regard to two aspects: scope of audit and powers of auditors, without mentioning the costs of audit and how they are covered. In the case of inspection, this matter is regulated in detail in section 10 Co-operative Audit and Supervision Act, 1982. In the same Act the former Audit and Supervision Fund, established under the Co-operative Societies Rules, 1968, is dissolved, while the Co-operative Societies Rules, 1968 as a whole are revoked under section 121 of the new Co-operative Societies Rules, 1982. Yet, section 23 of the Co-operative Audit and Supervision Act, 1982 states that any regulations made under the Co-operative Societies Act, 1968 in respect of Audit and Supervision Fund and in force immediately prior to the date upon which this Act comes into operation shall remain in force as if they have been made by the Board under this Act until such time as they are amended or revoked by rules or regulations made by the Board under this Act.

Hence, the registered co-operative societies still have to make con-

tributions to the dissolved Audit and Supervision Fund, the property of which is transferred to the Co-operative Audit and Supervision Corporation (Co-operative Audit and Supervision Act, 1982, Second Schedule).

If in future the proposed secondary society of industrial co-operatives would be established, care should be taken to ensure appropriate representation of industrial co-operatives on the Board of the Co-operative Audit and Supervision Corporation.

7. National Industries (Licensing and Registration) (Amendment) Act 1982 (No. 13 of 1982)

7.1. General Remarks

With regard to the subject matter of this report, the important parts of the National Industries (Licensing and Registration) (Amendment) Act, 1982 are the sections referring to the definition of the word "industry" (section 3 (a) National Industry (Licensing and Registration) (Amendment) Act, 1982) and to the establishment of the Regional Industrial Licensing Advisory Committees for each region of the United Republic of Tanzania and their functions (sections 6 and 10 National Industries (Licensing and Registration) (Amendment) Act, 1982).

According to the amended interpretation section of the National Industries (Licensing and Registration) (Amendment) Act, 1982 the term "industry" is no longer defined by the capital cost involved in a factory, but only by the number of workers - more than 10 employed on any day. This amendment has the practical effect of lowering the registration ceiling in a number of cases, whereas C.J. Martin in his "Review of Policies Affecting Small Scale Industries in Tanzania"<sup>16)</sup> had recommended to raise the registration ceiling under the Industrial Licensing Act.

Concerning the creation of Regional Industrial Licensing Advisory Committees, this amendment follows to some extent the recommendations made by C.J. Martin in his report<sup>17)</sup>.

7.2. Constraints to Industrial Co-operative Development

According to the new section 10 A (2) (c) of the principal Act an officer in charge of small industries in the region shall be a member of the Regional Industrial Licensing Advisory Committee. By making this provision the need to consider special problems of small industries in the Regional Industries Licensing Advisory Committees was recognized. With the new definition of the term "industry" (section 3 (a) National Industries (Licensing and Registration) (Amendment) Act, 1982) in the amended Act, some smaller industrial co-operatives which were not required under the original

Act to apply for an industrial license may now have to do so. Otherwise there appear to be no additional constraints to industrial co-operatives development caused by the National Industries (Licensing and Registration) (Amendment) Act, 1982.



8. The Co-operative Societies Rules, 1982

8.1 General Remarks

The new Co-operative Societies Rules, 1982, which replace the Co-operative Societies Rules of 1968 are very comprehensive and lengthy (120 provisions as compared to 50 of the 1968 Rules).

The Co-operative Societies Rules, 1982, contain a number of new provisions which may turn out to be helpful for the future development of co-operative societies in Tanzania. This refers for instance to the rules concerning co-operative groups (rules 2, 58 to 62) through which small self-help groups at the grassroots level are officially recognized and incorporated into the co-operative structure.

The formation procedures, especially the functions of formation committees, which were already dealt with in a very good way under the Co-operative Societies Rules, 1968, were developed further by including a list of additional information which the Registrar may require as a precondition before registration (rule 6 following the model of the Zambian co-operative legislation).

The new Co-operative Societies Rules, 1982 contain special provisions for the different types of co-operative societies, again following the Zambian model. While it is good to have some special provisions dealing with the specific requirements of one type of society in addition to the general provisions applicable to all types of societies, some special parts of the rules (e.g. rules 79 to 105 on credit societies) have virtually become a new law within the Rules and may be too comprehensive to be implemented in practice.

The Rules enable co-operative societies to use the skills and services of non-members under certain conditions, however, as in the case of the Co-operative Societies Act, 1982 some of the relevant provisions of the Rules which should be

applicable to all societies are limited only to one type of societies: co-option of persons from institutions likely to give support to a proposed society to participate in the formation committee (rule 3(4)) applies only to rural co-operatives while assistance from persons with relevant technical skills can be asked for to assist in preparing the feasibility study with no such restriction (rule 4 (c)) and the Registrar of Co-operative Societies is given the general power to appoint advisory members to the committees of all types of societies (rule 118).

Many issues dealt with in the Rules could have been covered under the Co-operative Societies Act by making relatively small additions to the relevant sections (e.g. rules 11 and 17 and section 98 Co-op. Soc. Act - register of members; rule 16 and section 97 Co-op. Soc. Act - nomination; rule 33 and section 104 Co-op. Soc. Act - duties of the committee; rule 38 and section 109 Co-op. Soc. Act - funds; rules 106 to 109 and sections 137 to 140 Co-op. Soc. Act - amalgamation and division of co-operatives).

Some rules regulate important matters which should be regulated in the Co-operative Societies Act as is done in many other countries having co-operative laws which follow the "British-Indian Pattern of Co-operation" (e.g. rule 21 on the settlement of disputes in connection with section 163 (m) Co-op. Soc. Act should be included in the Act and worded in more precise terms; rules 22 to 24 should be spelled out in the Act so as to make the very essential section 102 Co-op. Soc. Act more precise by including the different types of general meetings and the main powers of the members in general meeting.

Other matters should have been left for self-regulation by the registered co-operative societies in their by-laws (e.g. rules 24 (1) (e), 41, 42 and most of the matters contained in rules 79 to 104). As they stand, the Co-operative Societies Act and Rules leave very little room for autonomy of co-operatives to make their own by-laws.

There is a tendency towards increased bureaucracy and there are a number of provisions which will encourage a paternalistic attitude of the government officers in charge of co-operative

promotion in dealings with co-operative societies under their guidance and control (e.g. rule 5 where 4 copies of documents are required where there used to be 2 or 3 copies under the old Rules, provisions on all kinds of forms and fees).

There are some unnecessary definitions and details (e.g. rules 47, 84, 91 (2) (b), 107, 109) and repetitions (e.g. rule 15 partly repeats section 78 Co-op. Soc. Act; rule 29 partly repeats section 103 Co-op. Soc. Act; rule 52 partly repeats rule 4; rule 57 partly repeats sections 30 and 23 (2) Co-op. Soc. Act; rule 60 (1) repeats section 23 (2) Co-op. Soc. Act and rule 60 (2) follows from section 23 (2) and is, therefore, unnessecary, rule 75 repeats section 39 Co-op. Soc. Act., rule 53 repeats section 37 Co-op. Soc. Act in case of building construction and housing co-operatives, rule 85 (2) partly repeats sections 87, 45 Co-op. Soc. Act), while some other important matters are not very clear (e.g. what is a dispute concerning the business of a co-operative society? , rule 21 (1)).

## 8.2 Matters relevant for Industrial Co-operatives

As in the case of the Co-operative Societies Act, 1982 some of the recommendations of the UNIDO/SIDO team with regard to requirements of industrial co-operatives were accepted and incorporated into the new Rules, while other recommendations were accepted but not incorporated and still others were not accepted.

Among the new rules included on recommendation of the UNIDO/SIDO team are the following:

- The possibility to reduce the minimum number of members of a formation committee below 10, if the local co-operative officer approves (rule 3 (3) following section 63 (1) Co-op. Soc. Act);
- Special provisions for industrial co-operatives (rules 71 to 75), especially rule 74 (2) where the UNIDO/SIDO team recommended that not more than 20 per cent of the labour force of an industrial co-operative should be

non-members, while in rule 74 (2) this percentage is fixed at 25 per cent.

- Rule 72 on the objects of the society is already covered by the general provision of section 85 (2) and the special provision of section 33 Co-op. Soc. Act.
- Rule 73 repeats for industrial co-operatives what section 38 of the Co-op. Soc. Act stipulates for building construction and housing co-operatives.

The recommendation of the UNIDO/SIDO team to leave it to the by-laws of each society to fix the sum in excess of which a special general meeting is required in order to transact business (rule 24 (1) (e)) and to exclude secondary societies from rule 24 (2) stipulating that at least two general meetings have to be held in a year, were not taken.

With regard to the position of the committee of a co-operative society, the recommendation to replace the term "duties" by "responsibilities" of the committee, was accepted by the advisory committee but not included in the final text of the Rules.

The UNIDO/SIDO team recommended that industrial co-operatives should be excluded from the provisions of rule 42 requiring the approval in writing of the Registrar before entering into a contract where the value of the subject matter of such contract exceeds 50,000 TSh in the case of a primary society. However, this recommendation was not taken and only the sum was raised from 10,000 to 50,000 TSh.

### 8.3. Recommendations

The main argument for having a comprehensive set of Rules made under an Act is that the Act should be general, short and basically enabling and that details and matters subject to changes should be dealt with in the Rules or Regulations.

A second argument is that Rules can be modified more easily than an Act of Parliament and that Rules are necessary for reasons of flexibility.

In the case of the Co-operative Societies Act and Rules, 1982 of Tanzania, the Act is very comprehensive and detailed. Yet, the Rules made under the law are also comprehensive and even more detailed. Compared to co-operative legislation in other countries both the Co-operative Societies Act and the Rules of Tanzania are unusually voluminous. To have two parallel texts (Act and Rules) on the same subject matter makes it difficult for the lawmakers to avoid repetitions and inconsistencies but also for the citizen to work with such texts.

It is therefore recommended, to include a revision of the Co-operative Societies Rules, 1982 in the terms of reference of the small technical committee proposed earlier in this report ( p. 17) for the review of the entire co-operative legislation. It is furthermore recommended as a guideline for the work of the committee, to try to reduce the length of the Rules by incorporating all important issues into the Act and by leaving out unnecessary details to be covered by the by-laws of the individual societies.

Ideally, all matters concerning the constitution and internal structure of co-operative societies should be contained in the Act and only matters of temporary nature such as temporary emergency powers of the Registrar should be regulated in the Rules with a tendency to make the Rules as short as possible.

Part II Comments on the model by-laws for primary industrial co-operative societies<sup>18)</sup>

1. General remarks

1.1. Types of industrial co-operatives

One of the results of the survey conducted by the UNIDO/SIDO project team on industrial co-operatives in Tanzania is the recommendation that all industrial co-operatives in Tanzania should be of the workers' productive co-operative society type and that industrial activities operated and controlled by anybody with employed workers should not be classified as or termed an industrial co-operative<sup>19)</sup>.

However, the new Co-operative Societies Act, 1982 also recognizes other types of co-operatives, e.g. supply and marketing co-operatives of craftsmen or skilled workers operating their own individual workshops eventually with employed workers, as industrial co-operative societies (see supra, pp. 7,8. infra , pp. 100, 104-107).

Given the fact that most of the existing industrial co-operatives are of the workers' productive co-operative society type it appears to be justified to concentrate efforts first of all on framing suitable model by-laws for this type of industrial society, but one should not overlook the potential of supply and marketing co-operatives for individual craftsmen and small industrialists operating their own business alone or in small groups (e.g. partnerships).

A lot of research work has been undertaken in many countries to analyze the special problems of workers' productive co-operative societies. In the context of this report, only some characteristic features and key problems are mentioned, which have a direct bearing on the contents of model by-laws for co-operative societies of this type:

- In industrial co-operatives of the workers' productive co-operative society type members are at the same time share-

holders, employers and workers of the co-operative enterprise. This triple capacity of each member is the origin of difficult conflicts of interest which usually arise and have to be solved partly by making special provisions in the by-laws.

- Persons working in workers' productive co-operative societies are self-employed. They depend on the economic results of the co-operative enterprise for their livelihood. The co-operative enterprise is not only an auxiliary unit for supply, marketing and advisory services as in the case of an ordinary co-operative society, where the members are customers of the co-operative enterprise but operate their individual workshop, farm or shops from which their income is derived. In a workers' productive co-operative society the co-operative enterprise is the place where all members work and the members have no individual means of earning income, except from economic results of the co-operative enterprise.
- In workers' productive co-operative societies there is usually a tendency to employ workers for certain jobs in the co-operative enterprise which the members themselves are not capable to do or do not want to do. In exceptional cases this may be unavoidable, however, it should not become a rule and should not exceed a certain limit. Otherwise the members become employers of other persons working for them - the workers' productive co-operative society turns into ordinary commercial business.

Against this theoretical background the main practical problems of workers' productive co-operative societies are:

- Careful selection of members who must be persons able and willing to play the triple role as shareholder, employer and worker. Therefore, the co-operative principle of open membership has to be applied with certain restrictions, e.g. screening of candidates for membership during a probation period (cf. by-law 7(5)(b)).
- Limited capacity to accept new members depending on the number of work-places available in the co-operative enterprise.
- Capital requirements to establish and develop the co-operative

enterprise. Members must be prepared to make contributions when acquiring membership (entrance fee, share) and to refrain from withdrawing too much capital from the co-operative enterprise in terms of high salaries and bonus payments but rather agree to receive a limited return both on capital and labour so as to make provision for investment and contingencies (cf. by-laws 22 and 23).

- Incentives for members to work hard and to participate in the economic results of the co-operative enterprise without withdrawing too much capital from the co-operative enterprise. "The more effectively the members work and the more sacrifices they make in terms of foregoing possible earnings, the greater will be the growth in the net worth of the society"<sup>21</sup>).
- Organization of work within the co-operative enterprise, where members as workers have to fit into a certain hierarchy of positions with the directors and manager in charge of planning, allotment of tasks and distribution of jobs, while members in general meeting enjoy equal rights independent of their position in the co-operative enterprise.
- Salary and bonus payments have to be determined by the members in general meeting - balancing the need of the individual members' families for a reasonable income and the need of their joint enterprise which would suffer from under-capitalization.

Members as workers in the cooperative enterprise have different skills and perform tasks of different nature. Salary and bonus payment have to be determined in a way that is acceptable for every member and gives incentives to those members who take over the more difficult, dangerous or dirty jobs.

#### 1.2. General remarks concerning the model by-laws prepared by the UNIDO/SIDO project team

The model by-laws for primary industrial co-operatives of the workers' productive co-operative society type are written in clear and simple language. They are comprehensive, especially where the by-laws can be useful to serve as guidelines for the members and office-bearers of the society (e.g. objects,



by-law 3; distribution of tasks between elected board members and appointed management, by-law 31 to 38) and flexible (e.g. qualification for membership, by-law 6(d)).

In the model by-laws emphasis is placed on the basic principles of workers' productive co-operative societies which, according to experience have to be respected, if an organization of this type wants to succeed in the long run, however, without being too dogmatic; e.g. relatively high entry fees and share contributions (by-laws 8 and 9(3),(4) and (5)) which will only attract such persons who are firmly committed to co-operative work to become a member; strict but realistic limitations on employment of non-members (by-law 18).

## 2. Comments on provisions contained in the model by-laws and proposed amendments

### 2.1. Share valuation system

The most important innovation and radical change from previous model by-laws is the proposed introduction of a share valuation system modeled along the line of the Mondragon Group of workers' productive societies (by-law 10). Such system of share valuation in which the value of each members' share would depend on the society's performance<sup>22)</sup> would correspond in an optimal way to the need to give members an incentive to reinvest capital earned by the co-operative enterprise and yet, to receive an equitable portion of the surplus in case of withdrawal from membership.

However, under the Co-operative Societies Act, 1982 this system of share valuation cannot be implemented, unless the industrial co-operatives would be exempted from section 118(2) of the Co-operative Societies Act, 1982 (stipulating that shares from withdrawing members have to be purchased by the society when money is available in a share transfer fund and that the amount paid to a member shall not exceed the par value of the share), which the Minister responsible for matters relating to co-operative societies could do under section 174 of the Co-operative Societies Act, 1982.

If such exemption is not granted, an alternative solution will have to be found by which the following three effects can be secured:

- to avoid under-capitalization of the co-operative enterprise by excessive distribution of surplus among the members (who decide in general meeting on the distribution of economic results);
- to increase the commitment of members by increasing their stake in the co-operative enterprise (their risk capital) which will be reduced with losses and
- to reward the efforts of the members when the society is successful.

The dilemma of reinvestment of surplus in the co-operative enterprise or distribution of surplus among the members could be solved by issuing bonus shares to members where surplus has accrued at the end of a financial year, instead of making cash payment.

This possibility is referred to in section 56 (b) of the Co-operative Societies Act, 1982 for consumers' societies:

"... a consumers society may provide in its by-laws -

...

- (b) that in lieu of the payment in cash of patronage bonus due to a member the committee of the society may allot to him shares in the society in the manner and to the number mentioned in the by-laws ...".

However, the use of this alternative solution is complicated by the concept of co-operative shares as reflected in the Co-operative Societies Act, 1982. In section 118 of the Co-operative Societies Act, 1982 co-operative shares and share capital are looked at in a way similar to company shares.

- share capital shall not be reduced without the consent of the Registrar;
- a society has to establish a share transfer fund, which shall not exceed 10 per cent of the subscribed share capital;
- members cannot withdraw their shares freely upon withdrawal, but can only sell them at par value or below par value to the share transfer fund, when monies are available in this fund;

- shares of members shall be reissued before any new allocation of shares is made.

These quotations show that co-operative shares are seen in the Co-op.Soc. Act, 1982, as something that can be sold and purchased and co-operative share capital as a stable and fixed sum, whereas according to international practice co-operative societies have a variable share capital and shares of members of co-operative societies are seen as temporary money contributions for financing the co-operative enterprise which members can withdraw upon withdrawal from the society subject to certain limitations laid down in the by-laws while new shares can be issued to new members or to members desirous to acquire additional shares so that there is no need for a share transfer fund. Because of the limitation imposed by the Co-operative Societies Act, 1982 on the withdrawal of shares and on the amount to be credited to the share transfer fund to allow purchase of shares from withdrawing members, the use of bonus shares as a means to solve the problems discussed earlier with regard to the proposed share valuation system may not be fully suitable.

Another possibility would be the use of bonus certificates or loan stock (cf. by-law 19(2)). The Co-operative Societies Act, 1982 expressly provides for the distribution of the net balance to be distributed as bonus or a staff incentive bonus scheme (section 121 Co-op. Soc. Act, 1982).

The idea of issuing bonus certificates instead of paying out bonus in cash is contained in section 56(c) of the Co-operative Societies Act, 1982 with regard to Consumers Co-operatives:

"... a consumers society may provide in its by-laws ...

- (c) that in lieu of payment of patronage bonus in cash, the society may require its members without the completion of individual contracts to undertake to make a loan to the society, from such patronage bonus for such purposes and under such conditions as are provided in the by-laws..."

Such conditions could include for instance the payment of interest on bonus certificates, the right of the member to withdraw his bonus certificate after a certain period of time (e.g. 5 years) or to withdraw it for certain purposes defined in the by-laws, e.g. medical bills, education of children, housing or funerals. Bonus certificates could be issued with or without interest.

In order to be prepared for the refund of bonus certificates in the cases provided for under the by-laws, the society should establish a special fund similar to the sinking fund under section 40 Co-operative Societies Act, 1982 with reference to housing societies.

If the idea of issuing bonus certificates would be accepted as a practicable alternative to the share valuation system, the following sections of the model by-laws would have to be adjusted accordingly: by-laws 9(11), 10, 12(1), 16, 23(3), 38(f)(g). In by-law 22(3)(a) the words "or bonus certificates" would have to be added immediately after the words "cash bonus". By-law 9(13) could be modified in such a way that a member leaving the society for no reason considered valid by the Board of Directors, or members expelled from the society may forfeit up to fifty per cent of the value of their bonus certificates at the discretion of the Board.

However, it appears to be more appropriate, to replace this by-law by a modification of by-law 16 (liability of members). According to its present form, the liability of members to contribute to the debts of the society in case of liquidation is limited to the current value of his or her share. If the share valuation system would have been applicable, this would mean that the increased value of the shares would also increase the liability of the members. Without the share valuation system, members' liability would be limited to the fixed amount of the share as it was paid when the share was acquired. The only way to raise the members' liability, to increase their stake in the co-operative and their commitment but also to make the co-operative more creditworthy would be to introduce members' liability by guarantee, a common feature of co-operative

law in many countries. This would mean to modify by-law 16 in such a way that the liability of a member to contribute to the debts of the society in case of liquidation shall be limited to the value of his or her share and in addition to a sum not exceeding the amount of two or more times the value of his or her share, when the total assets are insufficient to cover the total liabilities of the society at the time of liquidation. In this case members would have to make equal contributions to cover the liabilities of the society up to the limit set in the by-laws. In case of liquidation members' liability could be set off against the amount of bonus certificates held by the society for each member.

### 2.2. Loans from non-members

Under section 109(1)(c) Co-operative Societies Act, 1982, a society may receive deposits and loans from persons who are not members. This power of a society to raise capital through the issue of loan stock or debentures to any person is taken up in by-law 19(2). The problem to make such investments attractive by offering a return to investors comparable to that of other forms of investment has been solved by fixing the maximum rate of interest on such stock or debentures to not more than two per cent above the prevailing Bank Rate. In order to solve the other problems of avoiding undue influence by non-member stock-holders on the affairs of the societies, it is stipulated that such stock or holding shall not carry any voting rights. However, this may not be sufficient. Where non-members hold substantial amounts of loan stock or debentures they exercise factual power over the society (e.g. threat to withdraw the money). There should be an additional provision limiting the percentage of loan stock or debentures that non-members may hold in relation to the total assets of the society.

### 2.3. Reserve fund

According to section 120 of the Co-operative Societies Act, 1982 every society shall maintain a reserve fund.

"Unless the Registrar otherwise approves, not less than one-fifth of the gain or surplus resulting from the operations of a registered society ... shall be carried to a reserve fund" (section 43 Co-op.Soc. Rules, 1982).

For workers' productive co-operative societies which usually suffer from under-capitalization, it is essential to build up a solid reserve fund and to generate capital for investment and to meet contingencies. Accordingly, the model by-laws provide for at least fifty per cent of any disposable surplus remaining in the society after all current liabilities have been met or set aside, to be allocated to a reserve fund (by-law 22(1)).

The purpose of the reserve fund is defined in by-law 23, however, it leaves to the discretion of the society to make provisions for contingencies or to invest. It might be useful to differentiate more clearly between a reserve fund (to be kept in form of liquid assets) to cover eventual losses and investment funds to secure future viability, and to require a minimum percentage to be set aside as a true reserve fund which cannot be invested in fixed assets for the society (e.g. twenty per cent). This is necessary to avoid a situation where the reserve fund only exists on paper, but is not available to cover a loss, because it is tied up in fixed assets. Furthermore, when bonus certificates are issued, the society would have to build up a special contingency fund for repayment of the value of bonus certificates to withdrawing members. This idea is contained in section 40 of the Co-operative Societies Act, 1982 with regard to housing societies (sinking fund).

#### 2.4. Special meetings

Workers' productive co-operative societies are a special type of society where the relationship between members is very close (members meet daily at the work place) and where the fate of the individual member depends heavily on the performance of the co-operative enterprise. In such societies annual general meetings are usually insufficient to deal with

all matters of interest to the members and as a rule more frequent meetings are held. Under the model by-laws such meetings are termed "special meetings" but they may be routine meetings (e.g. every three months). The true need for special meetings arises in emergencies, where the board of directors wants to have difficult matters to be decided by the members. In such cases it is essential that all members have a chance to attend and receive their invitation and agenda in time. In by-law 28 it is stated that special meetings can be called with due notice or by common consent.

A minimum time limit (say two clear days) could be useful to avoid surprise meetings and ad hoc decisions without proper information and preparation. Under the Co-operative Societies Rules, 1982 this limit is fixed at seven days in case of a special general meeting (section 25 (1) Co-op. Soc. Rules, 1982).

#### 2.5. Quorum

Under the Co-operative Societies Rules, 1982 (section 26) co-operative societies are given autonomy to prescribe in their by-laws which number of members is required to be present at a general meeting to form a quorum, i. e. to take valid decisions in general meeting. Only for rural co-operatives this matter is regulated to be not less than one hundred members or fifty per centum of all the members whichever is less. Section 26 (2) of the Co-operative Societies Rules, 1982 only prescribes fifty per cent of all members and/or delegates entitled to attend and to vote at general meetings (i.e. of all the members and/or delegates) for such societies which have not fixed the quorum in their by-laws.

By-law 30 (1) takes account of the special requirements of workers' productive co-operative societies, where members can be called together easily and where it is even more essential than in other types of co-operatives for the successful running of the co-operative enterprise that all decisions affecting the life of the co-operative society should be taken by as many members as possible. In by-law 30 (1) it is proposed to raise the quorum to at least fifty per cent of all registered members and in by-law 39 (1) for amendments of by-laws the quorum is even fixed at at least three quarters of the total number of members of the society.

For relatively small societies these provisions may be useful and practicable. However, for societies having a large number of members these model by-laws may create the problem of meetings without a quorum. It is therefore suggested to use the more flexible formula prescribed for rural co-operatives and also proposed in the draft by-laws for the proposed secondary society of industrial co-operatives at national level (draft by-law 30 (1)) and to prescribe a split quorum with a fixed minimum number of members for larger societies, e.g. "the quorum at general meetings shall be one half of the total number of members or forty whichever is less" or in the case of amendment of by-laws: "... three quarters of the total number of members or sixty, whichever is less".

#### 2.6. Expulsion of members

In section 14 of the Co-operative Societies Rules, 1982 and by-law 12 the reasons are stated for which a member may be expelled from a society. However, according to the principles of natural justice no person shall be expelled from a society without having been given a chance to show cause why he should not be expelled. For the avoidance of doubt it is recommended to include provisions in the model by-laws which guarantee this right of every member of being heard before being expelled. This could be done along the lines of section 110(1) of the Co-operative Societies Act of Zambia, 1970. ... the secretary shall provide the member against whom complaints have been raised with written notice of the particulars of the complaint and of the date, time and place of the meeting at which the complaint and the question of expulsion of the member will be considered. The member against whom the complaint has been raised shall be given the opportunity to make representations or submissions orally or in writing or both. This right to be heard is granted to suspended or expelled member societies under the draft by-laws of the proposed secondary society for industrial co-operatives at national level, draft by-law 12(4).



2.7. Small adjustments of the text

In some by-laws the wording of the text could be improved:

- by-law 15: "...in this, their own, Society, which is a workers' co-operative" could be replaced by "...in their society".
- by-law 26 (3) and 27 (1): the word "normally" should be deleted to avoid doubt.

In order to cope with a situation where an urgent special general meeting needs to be called, the following proviso should be added to by-law 26 (3): "Provided that where a special meeting is urgently required in a society where all members can be contacted by the Secretary at the work place, such special meeting may be called in such form and with such notice as the Board of Directors may approve".

3. Comments on the Model By-Laws for Industrial Co-operatives prepared by the Prime Minister's Office (PMO)

3.1 General Remarks

The draft of the model by-laws for industrial co-operatives prepared by the PMO was received in SIDO on 29th December 1982 and was discussed in detail when the rapporteur arrived for the second visit of Tanzania in February 1983.

The draft is mainly based on the model by-laws of the UNIDO/SIDO team (cf. suprap. 49-60) but contains a number of changes. As a result of some omissions from the UNIDO/SIDO draft, the logical sequence of sections is not always maintained. (e.g. no by-laws regulating the admission to membership after registration and withdrawal from membership).

The PMO draft is not made exclusively for industrial co-operatives of the type of workers' productive co-operative society, as in the UNIDO/SIDO draft, but also covers other types of industrial co-operatives (e.g. supply and marketing co-operatives for independent craftsmen, by-laws 16 (2), 28, 43).

One of the major concerns of the UNIDO/SIDO team was to draft their model by-laws in such a way that the co-operative enterprise could be managed in a business-like manner and could work with maximum efficiency. This modern management concept contained in the UNIDO/SIDO draft, which is essential for successful operation of industrial co-operatives (and other forms of co-operatives as well) was substituted in the PMO draft by the traditional concept of management committee/secretary.

Another shortcoming of the PMO draft model by-laws are the cross references to provisions contained in the new Co-operative Societies Act and Rules, 1982 although it is very difficult for co-operatives to acquire copies of these texts. Cross references are among other things the result of making

both the Act and the Rules are very comprehensive (examples for such cross references are by-laws 31 (2)(d), 37, 38 (6) (c)).

By-laws should be understood by reading the text without need to refer to other documents, especially where these other documents are not readily available.

Finally there are some problems with the terminology, e.g. in by-law 40 (j) it is said that the committee shall take decisions on the validity of withdrawals, which should read "validity of reasons for withdrawal"; according to by-law 40 (j) the committee shall furnish progressive economic reports which should read "reports on economic progress".

The text of the by-laws was obviously drafted in a hurry which would explain a number of inconsistencies and errors, e.g. there is continuous reference to the Co-operative Development Committee - which is only relevant for rural co-operatives but not for industrial co-operatives (e.g. by-laws 31(2)(a)(f), 32 (2)(d), 40 (2)(c), 42 (b)(d)); it is stipulated in by-law 12 (1) that each member shall hold at least 5 shares but in the text reference is made to only 1 share (e.g. by-laws 12(3)(4), 14(3), 15).

### 3.2 Comments on Individual Sections of the PMO Draft Model By-Laws for Industrial Co-operatives

By-Law 6: The area from which membership is drawn as a criterion for defining the membership group is more relevant for agricultural co-operatives whereas for industrial co-operatives membership has to live or work in the area of operation of the society.

By-Law 10 only deals with original members (10(1)) and qualifications for membership (10(2)), without spelling out that apart from original members there are persons admitted

to membership after registration on application (UNIDO/SIDO draft model by-law 7) although later reference is made to admission (12(6), 13, 18). Admission of trainees and part-timers to membership (UNIDO/SIDO draft model by-law 6 (b) and (d)) has been omitted but was later taken up in by-law 22.

By-Law 12: The share valuation system suggested in the UNIDO/SIDO draft model by-laws (cf. supra, pp. 52, 53) has been substituted by a multiple share holding of at least 5 shares, which would make it possible to introduce bonus shares. Where there is multiple shareholding there has to be also a register of members and shares and not only a membership register (12(5)).

By-Law 13 (1) repeats by-law 12(6).

By-Law 15 implies that members may withdraw from the society, however, there is no provision for withdrawal, similar to by-law 17 of the UNIDO/SIDO draft.

By-Law 16 (2) is mainly relevant in case of industrial co-operatives where craftsmen work in individual workshops and use the co-operative society for supply, credit and marketing services.

By-Law 16 omits breach of by-laws as a reason for expulsion.

By-Law 18: The reference to by-law 10 (1) is not correct.

By-law 10 (1) does not refer to persons admitted after registration.

By-Law 20: The by-law should be restructured into two paragraphs, i.e. (1)(a)(b)(c) and (2).

By-Law 26 regulates the formation of a statutory reserve fund but does not specify that such contingency fund should be kept in form of liquid assets and should not be invested in fixed assets.

By-Law 31 (2) (e) is a restrictive provision which follows the new Rules but unnecessarily delimits the autonomy of the management. Adherence to this provision will involve delays and extra costs. The sum should be TSh 50,000/- (rule 42).

By-Laws 34 (2) and 35 follow the recommendations made in the UNIDO/SIDO draft.

By-Law 38: The term "Management Committee" should be replaced by "Board of Directors".

By-Law 40(1) refers to administration and not to management.

By-Law 40 (2): The definition of duties and powers of the management committee includes purely secretarial duties (e.g. by-law 40 (2) (e)). The duty to respect government directions was included (40(2) (g)). Rather than appointing a managing secretary (40 (2) (o)) in an industrial co-operative there is need for a general manager.

By-Law 41 is a new section and refers mainly to collective management although the option to appoint one general manager is left open.

By-Law 43: In case of a workers' productive co-operative society where the manager has to be appointed from among the members/workers it may not be necessary to insist on consultation with the Registrar before such appointment is made.

By-Law 44: The manager/secretary has mainly the duties of a secretary (44(b), (d), (e), (f)).

All points raised as comments to the PMO draft model by-laws for industrial co-operatives were discussed in detail at a meeting with the Co-operative Secretariat attended also by the the co-ordinator, Ministry of Industries, Mr. Nyamugali, held on 18th February. It was agreed to redraft the model by-laws for industrial co-operatives in the SIDO office and to present the new draft for final discussion to the PMO. This work was completed on the 24th February, 1983.

4. Comments on the Model By-Laws for Rural Co-operative Societies prepared by the PMO

In the model by-laws for rural co-operative societies prepared by the PMO, it is expressly stated that the village co-operatives to be established under the new co-operative law will not be the re-established societies of the time before 1975 but will be basically the same type of organization which was regulated by the Villages and Ujamaa Villages (Registration, Designation and Administration) Act, 1975, operating democratically on the basis of the principles, methods and procedures of cooperation and in accordance with its democratic socialist and co-operative outlook, to implement the Ujamaa policy (by-law 7).

According to by-law 11, membership shall be open to every person who lives or works within the area of operation of the society, however, under section 24 of the Co-op. Soc. Act, 1982 every such person shall be a member of the rural co-operative society in which he is a resident, hence, membership is automatic and compulsory.

According to by-law 16 a member may be expelled among other things for repeatedly neglecting his or her co-operative obligations in respect of safeguarding co-operative work discipline and regulations as determined by the general meeting. It is difficult to see how automatic membership and expulsion can be reconciled. Accordingly, in section 14 (2) Co-operative Societies Rules, 1982 it is stated that the provisions relating to suspension and expulsion of members shall not apply to rural co-operatives and that instead the rights and privileges of defaulting members shall be restricted.

In by-laws 42 to 51 the long term objectives of rural co-operative societies are outlined in some detail and give a more clear idea of what is meant by "democratic socialist and co-operative outlook and Ujamaa policy". Emphasis shall be placed on the development of large scale farms as co-operative enterprises, block farms as a subsidiary undertaking and individual farming ranking last (by-law 42). The members shall declare the land they wish to retain for their individual use and how they shall

use it, while the remaining land shall be under the control of the society (by-law 43). However, the main aim is to establish large scale co-operative farms managed like a state owned farm (by-law 44).

Individual farming and husbandry are intended only to allow additional means of satisfying the needs of members and their families through personal efforts, following the conditions prescribed by the society (by-law 50). Individual farming and husbandry is expressly considered to be subordinate to the interest of the society and shall not be allowed to develop to an extent where it can impair the development of the society's objectives (by-law 50(3)).

All members are bound to be ready for further work (in addition to the number of work units decided by the general meeting to be performed by each member) on the co-operative farm, if the fulfilment of production plans or the property of the society are endangered by weather or other circumstances (by-law 46). Finally, by-law 51 stipulates that all marketable surplus of the individual farming and husbandry shall be marketed through the society or otherwise with the permission of the society in accordance with written laws.

5. Check-list of areas which would require the formulation of internal rules of industrial co-operatives

Internal rules are provisions made by the members in general meeting or by the board of directors and approved by the general meeting, which lay down in some detail how the office-bearers and the management have to fulfil their tasks, how they distribute the functions and duties among themselves and how the working process of the co-operative enterprise shall be organized.

Some of the matters usually contained in internal rules are already covered by the model by-laws. This refers especially to the distribution of tasks and description of duties and responsibilities of office-bearers and of the management. Such matters could be described in further detail in the internal rules, where necessary.

The following check-list is meant to serve as a guide for persons (board members or members of special sub-committees of industrial co-operatives) in charge of drafting such internal rules.

Check-list

1. Distribution of tasks and responsibilities among the members of the board of directors (model by-laws 34 (2) and 36 (b)).
2. Distribution of tasks and responsibilities among the board of directors and the management ( model by-laws 36 (g) and 37) including
  - (a) rules for the manager (model by-laws 36 (g) and 37);
  - (b) authority of the manager with regard to types of transactions and amount of money up to which the manager may decide without referring the matter to the board of directors for prior approval (model by-law 36 (j)).
3. Procedures of convening and conducting board meetings (model by-law 35 (2)) including standing orders on how to conduct meetings.<sup>23</sup>
4. Constitution and tasks of sub-committees, advisory committees etc. (model by-law 36 (d)).
5. Working rules regarding financial, technical, commercial and administrative matters (model by-law 36 (f)) including
  - (a) signing of cheques, handling of cash;
  - (b) work plans, work distribution, job rotation, working hours, salary schedules, annual leave, security at the work place.



6. Rules regarding the control of implementation of working rules (model by-laws 36 (f) and 37 (c)).
7. Reporting system (model by-laws 36 (h), (m), 37 (e), (g), (h) and 38 (a)).
8. Planning system (model by-law 37 (a)).
9. Keeping of books and records (model by-law 37 (d)).
10. If not covered in the by-laws: Definition of the management functions (model by-law 37).
11. How to use the reserve fund (model by-law 23).
12. Rules regarding the position of apprentices and probationers.

Note: This check-list was drawn up on the basis of the model by-laws for industrial co-operatives drafted by the UNIDO/SIDO project team and reproduced in the UNIDO/SIDO technical report "The legal Framework for Industrial Co-operatives in Tanzania", Dar-es-Salaam, May 1982, Appendix A.

Part III Simplified version of model by-laws for small societies

1. Introduction

The purpose of making by-laws is to give an organization a stable basis by laying down in writing such rules and conditions which every present and future member has to accept. By-laws regulate the objects of the organization, its internal organizational structure, the rights and duties of members and the way in which the organization deals with third parties.

Before a co-operative society can be registered, it has to prepare a set of by-laws in conformity with the Co-operative Societies Act, the Co-operative Societies Rules and the Co-operative Principles. Matters to be dealt with in the by-laws are usually prescribed in the Co-operative Societies Act or in Schedules attached to the Act (e.g. Second Schedule, section 20 Co-op. Soc. Act of Zambia, 1970).

In section 85 (2) Co-operative Societies Act, 1982 it is said that a co-operative society may make by-laws for the matters listed in that section of the law. Even though the wording implies that co-operative societies may follow this list or make different by-laws, the Registrar usually insists that all relevant matters enumerated in section 85 (2) are covered. There is even a tendency to insist that model by-laws are adopted without major changes and that deviations from the model by-laws are discouraged.

Small groups of craftsmen or skilled workers who come together to form a simple pre-cooperative organization are well advised to make efforts to obtain registration as a co-operative society as soon as possible, if they want to be officially recognized by the government as a body corporate which is for instance a precondition to open a bank account in the name of the organization and to limit the liability of the members for the debts of the organization.

Under the new Co-operative Societies Act, 1982 (section 63) it is possible to register small societies with less than 10 members with the approval of the Registrar. Therefore, the privilege of obtaining official recognition by registration can be enjoyed even by small groups.

Larger groups of 10 or more persons will have to seek registration either under the Co-operative Societies Act, under the Societies Act or (if more than 20) under the Companies Ordinance if they do not want to run the risk of being considered an unlawful organization.

Where small groups are not yet prepared to operate as co-operative societies but intend to acquire the status of a registered co-operative society at a later time, it is advisable for the group to start from the beginning with a simplified version of by-laws which, however, are drafted in such a way that they constitute a first step towards fully-fledged co-operative by-laws required for registration, even if not all by-laws are implemented at the initial stage.

Therefore, the simplified version should already contain all the necessary elements that are later needed to meet the requirements set out in the law for registration. This refers to small pre-cooperative groups as well as to probationary co-operative societies which will have to present to the Registrar by-laws in accordance with the Co-operative Societies Act, the Rules made under the Act and the Co-operative Principles within a period of not more than two years.

Accordingly, the following simplified version of model by-laws was drafted along the lines of the model by-laws for industrial co-operatives prepared by the UNIDO/SIDO project team.

2. Text

Simplified Model By-laws for Small Societies

1. Name and Address

(1) The name of the society shall be ...

(2) The address of the society shall be ...

Any change of address shall be notified to the Registrar within seven days of such change.

2. Objects

The objects of the society shall be to promote the economic and social welfare of its members in accordance with co-operative principles primarily through the business of ... and all other activities incidental or conducive to the attainment of the objects of the society.

3. Powers

The society shall have power to do all things necessary or expedient for the accomplishment of its objects.

4. Qualification for Membership

Membership in the society shall be open to all persons of more than 18 years of age qualified in any craft, trade or profession relevant to the society's present or future activities.

5. Acquisition of Membership

(1) Membership can be acquired

a) by signing the application for registration of the society and acquisition of at least one share of ... Shs.

(b) By admission by the Board of Directors upon application and payment of entrance fee of ... Shs. and at least one share of ... Shs. The application shall be made in writing and contain a statement signed by the applicant that he or she has read the by-laws and agrees to abide by them.

(2) Applicants may be required to serve a period of probation before their application is considered by the Board of Directors.

(3) Where an application is rejected the society shall return the payments of entrance fee and share to the applicant.

#### 6. Loss of membership

(1) Membership can be lost

(a) by withdrawal on giving three months notice to the secretary of the society and settling any debt due from the withdrawing member to the society;

(b) by termination through insanity or death of the member;

(c) by expulsion from the society by decision taken by members in general meeting for any of the following reasons:

(i) deliberate violation of these by-laws or any working rules made thereunder;

(ii) failure to pay any sum of money due from the member to the society;

(iii) action held to be dishonest or prejudicial to the interests of the society;

(iv) conviction of a criminal or civil offence involving dishonesty, resulting in imprisonment for six months or more.

(2) No member shall be expelled without being given a chance to show cause why he or she should not be removed from membership.

7. Rights and Obligations of Members

(1) Every member shall have the right

- (a) to attend all general meetings and to vote;
- (b) to use the facilities of the society and to work subject to any working rules made under these by-laws;
- (c) to participate in any surplus accrued from the operations of the society and not required for allocation to reserve funds, investments or other expenditure authorized under these by-laws or by the members in general meeting;
- (d) to be informed on all matters concerning the economic and financial situation of the society.

(2) Every member shall have the duty

- (a) to abide by these by-laws and by decisions of the general meeting of members and the Board of Directors;
- (b) to work in the society's enterprise if work is available;
- (c) to make all payments due to the society under these by-laws;
- (d) to be liable for the debts of the society upon liquidation where the assets of the society are insufficient to cover the society's obligations up to a sum of ... Shs. and
- (e) in general to do all things necessary for the successful development of the society.

8. Employment of Non-members

- (1) A society shall not employ any non-member on a permanent basis within the society's enterprise, other than probationers and apprentices.
- (2) In exceptional cases and subject to the approval of the general meeting non-members may be employed for a specified

period not exceeding ... months.

9. General Meetings

- (1) The general meeting of members shall be the supreme authority of the society.
- (2) The annual general meeting shall attend to all or any of the following matters:
  - (a) election, suspension or removal of members of the Board of Directors;
  - (b) decisions on membership applications and expulsion of members;
  - (c) consideration of the annual report and statement of accounts for the past financial year prepared by the Board of Directors;
  - (d) consideration of the report of auditors;
  - (e) approval of the work programme and budget of the society presented by the Board of Directors for the ensuing year;
  - (f) establishment of the maximum liability up to which the society may become indebted;
  - (g) amendment of these by-laws;
  - (h) decisions on all other matters included in the agenda.
- (3) Special general meetings may be called at any time by the Board of Directors or on demand of not less than one quarter of all members.

10. Convocation of General Meetings

- (1) Annual general meetings shall be called by the Secretary by giving written notice to all members of the society not less than two weeks before the meeting, specifying the date, hour, place and agenda.
- (2) Special general meetings shall be called by the Secretary with at least .... days written notice, specifying the date, hour, place and the business to be transacted.

11. Procedure and General Meetings

- (1) The presence of at least one half of the total number of members of the society shall be necessary for the disposal of any business at any general meeting.
- (2) The Chairman of the Board of Directors, or, in his absence, any other member of the general meeting chosen by common consent, shall preside over a general meeting.
- (3) Every member present shall have one vote and there shall be no voting by proxy.
- (4) All decisions shall be taken by a majority of votes.
- (5) The decisions taken shall be recorded in a minute book, kept by the Secretary and signed at the end of the meeting by the Chairman and the Secretary.

12. Board of Directors

- (1) The Board of Directors of a society shall consist of not less than five persons elected by the annual general meeting from among the members of the society.
- (2) Voting shall be by show of hand or if one Director so requires, by secret ballot.
- (3) Directors shall serve for a term of three years and may stand for re-election.
- (4) A director shall cease to hold office if he or she
  - (a) ceases to be a member of the society;
  - (b) resigns;
  - (c) is disqualified under the law;
  - (d) is removed from office by vote of no confidence passed in a general meeting by secret ballot after having been given opportunity of being heard;
  - (e) is absent from three consecutive board meetings without good reason.



- (5) Where any vacancy occurs in the Board of Directors, the remaining board members may co-opt any member of the society to fill the vacancy until the next annual general meeting.

13. Chairman

- (1) The Chairman of the society shall be elected by the Board of Directors from among themselves for a period of ... year(s).
- (2) The Chairman shall preside at all meetings of the Board of Directors and all general meetings.
- (3) The Chairman shall represent the society in transactions with third parties and in dealings with authorities.

14. Secretary

The Secretary of the society shall be elected by the Board of Directors from among themselves for a period of ... year(s).

15. Meetings of the Board of Directors

- (1) The Board of Directors shall meet as often as the business of the society requires but not less than four times a year.
- (2) Three directors shall form a quorum.
- (3) Each director shall have one vote. Where the votes are equally divided, the Chairman shall have a casting vote.
- (4) All business discussed or decided at every board meeting shall be recorded in a minute book, signed by all directors present at the end of the meeting.

16. Functions of the Board of Directors

- (1) In general the Board of Directors shall be responsible for the policy formulation, planning and monitoring of the society's performance.
- (2) In particular, the Board of Directors shall
  - (a) appoint such sub-committees or advisory committees as it may consider necessary to assist the Board in decision making;
  - (b) appoint a general manager, accountant or other management positions to manage the day-to-day operations of the society within the policies and rules laid down by the Board of Directors;
  - (c) ensure control of the implementation of the policies and working rules regarding financial, technical, commercial and administrative matters;
  - (d) approve proposals made by the management for expenditure and authorize the management to enter into contracts on behalf of the society;
  - (e) institute, conduct, defend, compromise or abandon legal proceedings through any director or other member of the society;
  - (f) summon general meetings;
  - (g) submit to the annual general meeting an annual report and the balance sheet and accounts for the past financial year and plans and budgets for the ensuing year;
  - (h) appoint anyone of its members to represent the society as a delegate to a secondary society of which the society is a member;
  - (i) do all that is necessary, incidental or conducive to the attainment of the objects of the society.

17. Functions of management

- (1) In general the functions of management shall be to manage the day-to-day operations of the society in accordance with the policies and rules laid down by the Board of Directors.

- (2) In particular, the management shall be responsible for:
- (a) preparing plans for each financial year to be submitted to the Board of Directors for approval;
  - (b) implementing agreed plans with agreed operating and capital budgets;
  - (c) maintaining proper books and records of the society's business activities;
  - (d) preparing regular progress reports and submitting them to the Board of Directors;
  - (e) preparing the annual accounts and balance sheet for submission to the Board of Directors and the auditors before the end of the financial year;
  - (f) doing all other things to ensure the success of the society.

18. Duties of the Secretary

The duties of the Secretary shall include:

- (a) convening and preparation of all meetings;
- (b) recording of the minutes of all meetings;
- (c) maintaining a register of directors, of members and of shares;
- (d) dealing with applications for membership, payments connected with acquisition of membership, withdrawals and expulsion of members;
- (e) conducting such correspondence as may be required in the corporate name of the society and dealing with all the other matters affecting the corporate life of the society as may be required.

19. Funds of the Society

The funds of the society may consist of:

- (a) capital contributions by the members in form of entrance fees and shares;
- (b) loans;
- (c) gifts;
- (d) retained surplus;

(e) money received or realized otherwise.

20. Application of Funds

The funds of the society shall be applied only to the furtherance of its stated objectives in accordance with these by-laws.

21. Disposal of Surplus

- (1) At least 50 % of any disposable surplus remaining in the society after all current liabilities have been met or set aside shall be allocated to a reserve fund.
- (2) The surplus remaining after the allocation of the reserve fund may be allocated as decided by the general meeting of members, including:
  - (a) a cash bonus to all members;
  - (b) bonus certificates to all members which shall not be withdrawable before expiration of .... year(s);
  - (c) a cash bonus to probationers and apprentices;
  - (d) any other purpose for the benefit of the members.

22. Reserve Fund

- (1) The reserve fund shall assure the future viability of the society.
- (2) At least 20 % of the reserve fund shall be kept in liquid assets.
- (3) The remainder may be used for investments approved by the general meeting.

23. Financial Year

The financial year of the society shall be from ... to ... .

24. Audit

The books of accounts of the society shall be audited once in every year by an officer of the co-operative audit and supervision corporation.

25. Amendment of By-Laws

- (1) The society may amend its by-laws subject to the provisions of the Co-operative Societies Act, 1982.
- (2) Every such amendment shall be made by a resolution adopted at a general meeting attended by at least three quarters of the total number of members of the society by a majority of three quarters of the members present and voting.
- (3) No amendment of by-laws can be implemented without the prior consent in writing of the Registrar of Co-operative Societies obtained upon application to him.

26. Liquidation

The society shall be liquidated only in accordance with provisions of the Co-operative Societies Act, 1982.

Part IV Comments on the draft by-laws for the proposed secondary society of industrial co-operatives at national level<sup>23)</sup>

1. General remarks

As part of the second UNIDO/SIDO project, Development of Industrial Co-operatives - Phase II, efforts are made to assist the industrial co-operatives to set up and initially operate a secondary society of industrial co-operatives at national level to promote the development of co-operative industries. These efforts had to be stopped following advice from the highest level until the new Co-operative Societies Act, 1982 was passed in Parliament in April 1982 and the text of the law was published in July 1982. After publication of the Co-operative Societies Act, 1982 it was still debated whether a secondary society of industrial co-operatives at national level could be formed (for details see supra, pp. 11-15 and 18-21, infra, Appendix II, pp. 91-109).

The draft by-laws for the proposed secondary society of industrial co-operatives were prepared by the UNIDO/SIDO project team as a basis for discussion at a first national conference of industrial co-operative societies to be adopted with eventual modifications by the future member societies of the proposed secondary society, after clearance to proceed has been obtained from the Government.

As in the case of the model by-laws for primary industrial co-operatives, the draft by-laws for the proposed secondary society of industrial co-operatives at national level are written in clear and simple language and constitute a complete and comprehensive legal framework for the operations of the proposed secondary society. The draft by-laws are flexible so as to allow development without artificial limitations (e.g. by-law 8: qualification for membership: any registered co-operative society engaged in industrial activity which would include village multipurpose co-operatives). There is not much to add to the explanations given to salient points of the draft by-laws in the fourth Technical Report<sup>24)</sup>.

## 2. Comments on provisions contained in the draft by-laws and proposed amendments

### 2.1. Name

Under the new Co-operative Societies Act, 1982 the term "Co-operative Union" is already reserved for regional and district unions of multipurpose co-operatives (section 15(3) Co-op.Soc. Act, 1982). Therefore, the secondary society of industrial co-operatives at national level to be formed under section 16 of the Co-operative Societies Act, 1982 or after exemption from section 15(3) under section 174 of the Co-operative Societies Act, 1982, will have to adopt a name which does not include the term "Union". It is recommended to use the name "Tanzania Industrial Co-operatives' Federation" (TICOF) limited.

### 2.2. Objects

In by-law 4 it is mentioned as one of the objects of the proposed secondary society to represent the interests of its affiliates at the international level. This may come into conflict with the objects of the apex organization provided for in section 20(2)(h) of the Co-operative Societies Act, 1982.

### 2.3. Industrial Co-operative Development Fund

The Industrial Co-operative Development Fund mentioned in by-law 4(h) under the objects clause and in by-law 21 as one manner of investing funds of the secondary society not required for current use and referred to as an "Approved Fund" under the model by-laws for industrial co-operatives (by-law 19(3)) is not very clearly defined. It is suggested to add a special by-law on this Industrial Co-operative Development Fund immediately after by-law 21, in which the nature of the Fund is described as being a rotating fund and the sources of the Fund are identified, i.e. repayment of gifts by primary co-operatives, interest bearing deposits of surplus funds of primary societies, grants or loans by national and international development agencies and surplus funds of the secondary society 25).

3. Comments on the Draft Constitution and By-laws of the Proposed  
Tanzania Association of Industrial Co-operatives

The constitution and by-laws of the proposed Tanzania Association of Industrial Co-operatives were drafted closely along the lines of the by-laws for the proposed but later disallowed National Union of Industrial Co-operatives elaborated by the manager of the UNIDO/SIDO project, Mr. D.M. Scott. The main deviation from that model was to exclude all provisions referring to economic activities undertaken by the Association itself as a primary objective.

According to the new draft by-laws the Association is conceived mainly as a pressure group and representative body which does not envisage in the near future to establish its own wholesale, supply and marketing facilities, which would require investment of funds far beyond reach of the affiliated societies, but rather to act as a spokesman and agent for the affiliated co-operatives in dealings with the Government, parastatal organizations and other business partners.



Part V Comments on existing registration procedures of industrial co-operatives

One of the findings of the survey on industrial co-operatives in Tanzania conducted by the UNIDO/SIDO project team was the fact that "not one of the 125 societies visited was able to produce evidence of any feasibility study carried out before registration"<sup>27)</sup> and that there were some bogus societies which should not have been registered at all<sup>28)</sup>.

Accordingly, it was recommended in the Report on the Development of Industrial Co-operatives in Tanzania (p. 21) that measures should be adopted

- to establish potential viability and
- to assure co-operative authenticity.

Under the Co-operative Societies Act, 1982 and the Co-operative Societies Rules, 1982 both matters are taken care of, even though it appears that the existing provisions of the law have not always been implemented.

Sections 3 and 4 of the Co-operative Societies Rules, 1982 which are identical to sections 3 and 4 of the 1968 Rules contain good and comprehensive provisions for the formation of co-operative societies of all types with a detailed description of the steps to be taken by a formation committee, which - according to the new Co-operative Societies Act, 1982 may consist of less than 10 members if the Registrar approves (section 63 (1) proviso, Co-op. Soc. Act, 1982).

In section 4 (c) and (d) of the Co-operative Societies Rules, 1982 the formation committee is requested to "undertake, in consultation with the co-operative officer, a feasibility study into the economic and practical aspects of the activities to be carried out by the proposed society" and "to prepare, on the feasibility study and in such form as the Registrar may approve, a viability statement for submission to the Registrar". Also a record of the probable share contributions has to be compiled (section 4 (e) Co-op. Soc. Rules, 1982).

Under section 69 (3) of the new Co-operative Societies Act, 1982 every application for registration as a co-operative society has to be accompanied by "a report.... of a feasibility study indicating the viability of the society..." and registration should be refused

if the Registrar is not satisfied that the new society is likely to be viable (section 70 (1) Co-op. Soc. Act, 1982).

Hence, the Registrar has the statutory duty to establish the potential viability before registering a co-operative society.

The same applies with regard to co-operative authenticity. According to section 70 (1) of the Co-operative Societies Act, 1982 the Registrar may only register a new co-operative society if he is satisfied "that the proposed by-laws are not contrary to...the co-operative principles".

If these requirements are not met but the Registrar is satisfied that the applicants will undertake the necessary steps to meet all requirements, the Registrar may defer registration until the new society has complied with all provisions of the law and directions given by the Registrar (section 72 (1) Co-op. Soc. Act, 1982). By such notice of deferment the new society becomes a probationary society which is subject to special legal provisions but entitled to operate as a registered society for a period not exceeding two years (section 72 (3) to (11) Co-op. Soc. Act, 1982).

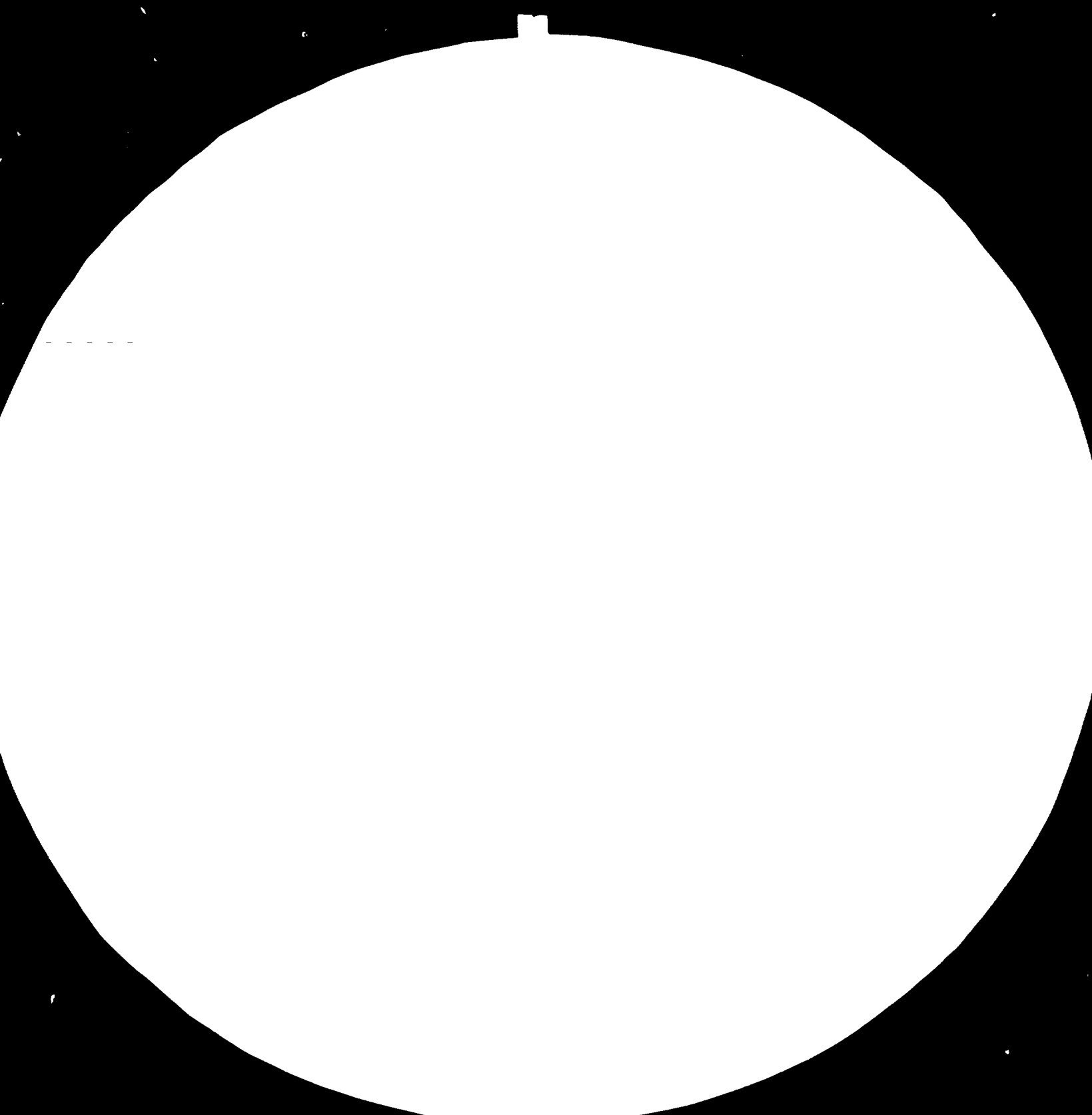
In order to avoid undue delays of registration the new Co-operative Societies Act, 1982 stipulates in section 73 (1) that the Registrar shall consider and decide on an application for registration within ninety days from the date of application.

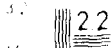
From the legal point of view the formation and registration procedures laid down in the Co-operative Societies Act, 1982 and the Co-operative Societies Rules, 1982 are adequate<sup>29)</sup>. Problems may arise in practical application of these provisions mainly due to limitations regarding trained staff to implement them.

For the registration of industrial co-operatives two recommendations can be made as to preparation of feasibility studies and commencement of operations.

Officers of the Co-operative Development Department will not always be familiar with the special problems with regard to the feasibility of industrial ventures of industrial co-operatives, especially as far as technical feasibility is concerned. It is therefore recommended to include a provision in future Rules to the effect that in case of an industrial co-operative the feasibility study and the via-

**83.10.14**  
**AD.85.0**





Micro Resolution Test Chart, No. 1010, 1963

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bility statement which have to accompany an application for registration, should be made by a specialized technical agency such as SIDO.

The Co-operative Societies Act, 1982 provides in section 38 that no building construction or housing society shall commence operations until it has furnished satisfactory evidence to the Registrar that some of its members have received the necessary training for the satisfactory completion of the project the society expects to undertake and that the capital furnished by the members is equal to the amount initially prescribed in the by-laws (and used as a basis for calculation in the feasibility study). This special provision for building construction and housing societies is important for other types of industrial co-operatives as well.

To some extent this idea was taken up in rule 73, where it is stated that the members of an industrial co-operative society have to prove to the Registrar that they have the necessary skills to carry out a contract.

Under the new Rules, 1982 the Registrar is also empowered to prescribe certain requirements with regard to training, capital etc. before registration, following the example of the Zambian legislation (rule 6).

Appendix I

Prof. Dr. Hans-H. Münkner  
UNIDO Consultant on Industrial  
Co-operative Legislation

Project No. US/URT/81/200, Development of Industrial Co-operatives

Workplan for mission in Tanzania, 11 July to 17 August, 1982

11 July (Su)	Departure from Marburg, Flight Frankfurt-Dar-es-Salaam
12 July (Mo) 12.00	Arrival in Dar-es-Salaam Meeting with Project Manager Mr.D.M. Scott
13 July (Tue)	Visit of UNDP-Office, collection of Documents, Introduction to Officers, visit of SIDO Office, discussion with Messrs. Scott, Shepherd and Kuringe on project, study of files
14 July (Wed)	Administrative formalities at UNDP Office, Meeting with Director General of SIDO, Mr. E.B. Toroka, continuation of discussion on project
15 July (Thu)	Discussion with Mr. Scott, study of files
16 July (Fri)	Attempt to purchase texts of new laws at Government Bookshop, texts not yet available Meeting with Director of Research and Planning of SIDO, Mr. J. S. Mlagala Meeting with the Minister for Industries, The Hon. B.P. Mramba, M.P.
17 July (Sat)	Meeting with Director of Training of SIDO, Mr. D. Rulagora, Director of Marketing, Mr. F. Mançoni and Chief Accountant, Mr. F. Kessi
19 July (Mo)	Visit of two industrial cooperatives in Dar-es-Salaam, TAMECO (Metal workers) and Ukombozi Tailors, Study of files
20 July (Tue)	Visit of 3 industrial cooperatives in Dar-es-Salaam, Jitegemee Tailors' multipurpose society (of women), Kyawatama Brushmakers' society and Washona Viatu Shoemakers' society evening: meeting with ag. Secretary General of UCS, Mr. Temu
21 July (Wed)	Attempt to obtain the texts of the new laws directly from the Government Printer, texts not yet ready, meeting with Mr. A.Q.A.R. Mukri, Advocate, together with Mr. Mukri visit of the Dean of the Faculty of Law, University of Dar-es-Salaam attempt to obtain texts of the law of Societies Partnerships and Companies (these texts were later provided by Mr. Mukri).

- 22 July (Thu) Public Holiday, study of files and documents, Meeting with Mr. Lindgren at the Swedish Embassy
- 23 July (Fri) Public Holiday, Meeting with Mrs. Koch-Ruhlman First Secretary of Embassy of the Federal Republic of Germany, discussion on technical assistance to industrial cooperatives and SIDO, study of background material
- 24 July (Sat) Study of files at SIDO Office
- 26 July (Mo) Study of legal texts (Partnerships, Companies) provided by Mr. Mukri, SIDO Office, meeting with UNDP staff at UNDP Office, visit of ILO Office, discussion with Mr. Grey, EEC delegation
- 27 July (Tue) Visit of two industrial cooperatives in Dar-es-Salaam, Coast Region Carpenters' cooperative society and Habari Printers. Copy of the new Acts obtained directly from Government Printer
- 28 July (Wed) Visit of one industrial cooperative in Dar-es-Salaam, African Construction (multipurpose) society, study of background material at SIDO Office
- 29 July (Thu) Meeting with Prof. Maeda, State House, study of legal texts, SIDO Office
- 30 July (Fri) Travel to Morogoro, meeting with SIPO at SIDO Regional Office, visit of 3 industrial cooperatives, MOREBUCO (woodworkers) society, SEKULU (tailors) society and a small shoemakers' society.
- 31 July (Sat) Continuation of travel on Ifakara Road to Kidodi, return to Dar-es-Salaam
- 1 August (Su) Meeting with Mr. Kahewanga and Mr. Mwashu of the Cooperative Secretariat, discussion on cooperative development policy and new legislation (10.00 to 14.30)
- 2 August (Mo) SIDO Office, drafting of discussion paper for the Minister for Industries
- 3 August (Tue) Meeting with Mr. Henein, SIDFA, at UNDP Office. Flight to Kilimanjaro Airport, meeting with SIPO and staff of the SIDO Regional Office at Moshi
- 4 August (Wed) Visit of ICA Regional Office, Moshi, visit of the Moshi Industrial Estate (4 units), visit of two industrial cooperatives, Kivumi (Uru) Shoemakers' cooperative (dormant) and Kivuki Metal Work and Engineering Society. Visit of the Co-operative College, discussion with the Principal, Mr. Mahuwi and the Head of the Legal Department, Mrs. E. Minde, discussion on cooperative development and cooperative law with Mrs. Minde and Mr. A.M. Kimario, ICA Regional Office (15.00 to 21.00)



- 5 August (Thu) Flight from Kilimanjaro Airport to Dar-es-Salaam, study of background material at SIDO Office
- 6 August (Fri) Finalizing the discussion paper for the Minister for Industries, visit of UNDP Office
- 7 August (Sat) Meeting with the Commissioner for Cooperative Development, Mr. Bulegi, discussion with Mr. Max, PMO, meeting with Mr. G. Lemke, Project Coordinator, Nordic Project, discussion with Prof. Maeda, State House, evening: meeting with Mr. F. Spengler, consultant on credit union development at UCS
- 9 August (Mo) Meeting with Mr. Henein, SIDFA, at UNDP Office, briefing on discussion paper for the Minister for Industries, meeting with Mr. F. Naeff, Third Secretary of the Embassy of the Netherlands, discussion on technical assistance to SIDO
- 10 August (Tue) Study of legal documents at SIDO Office, visit of the Embassy of the Federal Republic of Germany, discussion on promotion of small scale industries in the Tanga Region (TIRDEP) with Mrs. Koch-Ruhlmann
- 11 August (Wed) Travel to Tanga by road, arrival 14.00 hours, meeting with the Economist of the SIDO Regional Office, Mr. Mmari, meeting with the Regional Planning Officer, Mr. Mshoto and the Project Manager of TIRDEP, Mr. Esche
- 12 August (Thu) Meeting with SIPO, Mr. Gongo, visit of 3 industrial cooperatives, Ushirika wa Mafundi Bomba Rangi na Ujenzi (pipe fitters and construction workers society), Ushirika wa Kiwanda cha Walemavu (tailors) and Ushirika wa Waoka Mikate (bakery) and visit of a workshop for the handicapped (wood works), visit of Industrial Estate Meeting with TIRDEP staff
- 13 August (Fri) Travel from Tanga by road to Korogwe, visit of the Industrial Settlement, discussion with Mr. Weissenstein (TIRDEP) and visit of a carpenter cooperative and a metal workers' cooperative, return to Dar-es-Salaam by road
- 14 August (Sat) Debriefing at UNDP Office, attempt to meet the Minister for Industries - who is still on travel in Eastern Europe; final discussion with the Director General of SIDO, Fare-well dinner
- 15 August (Su) Meeting with Mr. Brown-Gwililupi in his home, who is too sick to discuss problems of cooperative development in Tanzania
- 16 August (Mo) Preparation for Departure Meeting with Mrs. Koch-Ruhlmann, German Embassy discussion on possibilities to promote industrial cooperatives
- 17 August (Tue) Departure to Frankfurt via Zurich

Workplan for second visit of Tanzania, 10 to 25 February, 1983

- 10 February (Thu) Departure from Marburg, Flight Frankfurt - Vienna  
Briefing at UNIDO
- 11 February (Fri) Briefing at UNIDO continued
- 12 February (Sa) Flight Vienna - Dar-es-Salaam
- 13 February (Su) 9.45 a.m. Arrival in Dar-es-Salaam
- 14 February (Mo) SIDO Office, discussion of model by-laws with Project Manager, Mr. D.M. Scott, visit of UNDP Office  
afternoon: discussion with Messrs. Kahewanga, Mwasha, Kazwala, Ngotolainyo of Co-operative Secretariat
- 15 February (Tue) SIDO Office, work on model by-laws meeting with Mr. Nyamugali, Co-ordinator, Ministry of Industries
- 16 February (Wed) SIDO Office, work on "Guide for Co-operative Entrepreneurs"  
meeting with the Hon. B.P. Mramba, Minister for Industries  
meeting with the new Chairman of UCS, Mr. David Hollela
- 17 February (Thu) SIDO Office, work on "Guide for Co-operative Entrepreneurs"  
meeting with Dr. Koch-Ruhlmann, Embassy of the Federal Republic of Germany
- 18 February (Fri) Meeting with Co-operative Secretariat on model by-laws for industrial co-operatives (Messrs. Kahewanga, Ngotolainyo, Kawambwa, Nyamugali and the UNIDO/SIDO team)
- 19 February (Sat) Meeting with Mr. F. Spengler, Credit Union adviser to UCS
- 21 February (Mo) SIDO Office, completion of work on "Guide for Co-operative Entrepreneurs", work on model by-laws
- 22 February (Tue) SIDO Office, meeting with task force to prepare the formation of an association of industrial co-operatives, Chairman Mr. Maembe  
meeting with the Director General of SIDO, Mr. E.B. Toroka  
afternoon: Drafting of the by-laws of the proposed Tanzania Association of Industrial Co-operatives
- 23 February (Wed) SIDO Office, finalization of by-laws of proposed Tanzania Association of Industrial Co-operatives
- 24 February (Thu) SIDO Office, visit of UNDP Office, debriefing
- 25 February (Fri) 8.10 a.m. Flight Dar-es-Salaam - Zurich - Frankfurt

Appendix II

Arguments for Setting up a Secondary Society of Industrial Co-operatives

prepared by Hans-H. MÜNKNER, UNIDO CONSULTANT for  
Co-operative Legislation  
Dar es Salaam, August 1982

Summary of Recommendations

1. It is declared policy of the government to promote small scale industries in all parts of the country, especially outside the major urban areas and to encourage craftsmen, artisans and skilled workers to organise themselves in industrial co-operatives.

If this policy is seriously pursued, the formation of a secondary society of industrial co-operatives as proposed by the members of these societies and supported by the Ministry of Industries should be welcomed as an important step towards strengthening the development of industrial co-operative societies in the country.

2. The only form in which an economically viable joint organisation of existing industrial co-operatives can be established is a secondary society operating at national level. To concentrate on establishing a regional union of industrial co-operatives in Dar es Salaam would not be feasible for economic reasons (only 30 active societies). Furthermore, such move would encourage the development of industrial co-operatives in an urban centre and attract more craftsmen and artisans to work in Dar es Salaam rather than to encourage the development of small scale industries on co-operatives lines in other regions and districts. Regional unions for industrial co-operatives or small scale industry branches in regional multipurpose unions would not be in a position to promote the development of industrial co-operatives effectively.

3. The new Co-operative Societies Act rules out the formation of industrial co-operatives in villages, but allows the establishment of specialised groups within multipurpose village co-operatives. The new law rightly anticipates problems of income distribution in multipurpose societies and provides for special measures to ensure just and equitable distribution of economic results to those by whose labour these results were achieved (surplus distribution into special funds, bonus schemes). These measures should be systematically applied so as to avoid to reinforce the existing trend of craftsmen leaving the villages to settle down in urban areas.
  
4. If the ultimate aim of government's policy is to promote self-reliant, self-sustained and viable industrial co-operatives throughout the country, the existing co-operatives must be given the right to choose their own form of vertical organisation and to elect their own leaders to represent their common interests. This cannot be done within the framework of a parastatal organisation like SIDO, but has to be achieved in the legal form provided for this purpose under the Co-operative Societies Act, i.e. in form of a secondary society, the objects and area of operation of which have to be determined by considerations of economic viability and democratic legitimacy and not by considerations of administrative convenience and uniformity. The proposed secondary society will work in close collaboration with SIDO and will take over certain functions of SIDO in relation to its affiliates as soon as it is capable of doing so. It will also be affiliated to the Apex Organisation.
  
5. The new legislation concerning local government authorities contains provisions which empower these authorities to establish their own industrial undertakings and to earn income from such industrial and other economic activities to finance some of their operations. If it is the policy of government that the local government authorities should mainly promote and encourage the development of small scale industries and industrial co-operatives in the areas under their jurisdiction, it would greatly enhance the implementation of such policy if industrial co-operatives would be allowed to

form a secondary society at national level to offer a recognised forum for discussion with government and to represent the interest of industrial co-operatives in all regions, districts, and towns of the country.

Arguments for setting up a Secondary Society of Industrial Co-operatives

1. Government's policy concerning co-operative development

In its report the Prime Minister's Commission of Inquiry into the Possibility of Re-establishing Co-operative Unions (February, 1980) make the following recommendations which are pertinent to the matter under consideration:

- There is need to have concrete plans which would bring about expansion and development of co-operatives (p. 66);
- Actual economic viability should be taken into consideration before a decision is made regarding the area of operation and structure of a co-operative organisation (pp. 81, 82);
- The co-operative movement should be formed voluntarily. If the structure (of a co-operative organisation) is imposed on the people without preparing them or without their support, then it would be a failure. Before the government takes steps ... people should participate by giving their views so as to perpetuate democracy (pp. 81,84,91,96);
- There should be a distinction between administrative affairs and co-operative activities. Co-operative Societies should deal with economic undertakings and should have their own leadership (p. 99);
- The proposed structure of the co-operative movement in Tanzania should include specialised National Co-operative Organisations and country-wide Co-operative Organisations affiliated to the National Apex organisation (chart on p.89a);
- Unions should be formed depending on economic viability and the needs of the co-operators (pp. 101, 110).

Most of these general ideas are reflected in the new Co-operative Societies Act (No. 14 of 1982).

2. Government's policy concerning the development of industrial Co-operatives

The National Executive Committee of TANU has given the following directives regarding the establishment and development of small scale industries in Tanzania (Resolution Nr. 18 of the TANU Biennial Conference, 1971):

- In researching into planning and implementing small scale industries, the following objectives should be born in mind:
  - a) Utilisation of our raw material resources ...
  - b) Use of available technology;
  - c) Application of more effort than capital;
  - d) Provision of more services;
  - e) The need to produce commodities to meet the requirements of the people in the villages, districts, regions and in the country generally and to eventually be able to export ... (No. 13).
- There is a place for individuals to establish and run small scale industries; however, there is no room for an individual to establish and run small industries in ujamaa villages (No. 16 and 17).
- Small scale industry activities which basically imply self-reliance will succeed only, if the responsibility to start any kind of small scale industry is left to rest with the people themselves (No. 18).

A small scale industry is defined as any unit whose control is within the capabilities of our people individually or co-operatively, in terms of capital required and know-how; it includes handicraft or any organised activity based on the division of productive labour (No. 12). This definition is purposely flexible and meant to serve as a guideline only.

In his speech to the Budget Session of the National Assembly for the 1980/81 Period the Minister for Industries states:

"... we encourage regions and industrial units to form industrial associations at national and regional levels in order to provide recognised forums for consultations among industries and between industries and the government on important national

issues such as the establishment of industries, training, research, export markets and even the acquisition of inputs" (No.87).

This same topic was taken up by the President with regard to industrial co-operatives, when he officially inaugurated TAMECO in November, 1981: "... I would like to advise you that Co-operative Societies should know each other so that they can unite and pressurise the government without reservations in order to obtain assistance ..." (translated from Uhuru, November 5, 1981).

From various official statements it is quite clear that government favours small scale industries in urban areas preferably in form of workers' productive co-operatives (groups of self-employed workers, craftsmen or technicians) but also in form of workshops run individually or in form of partnerships, whereas in villages such activities can only be carried out within the framework of the village multipurpose co-operative society to be formed under the new Co-operative Societies Act (sec. 23). Hence, independent small scale industry co-operatives in villages are ruled out.

Government's interest in promoting small scale industries was manifested by the establishment of SIDO in 1973 and by the request for technical assistance by UNIDO and other agencies.

### 3. The position of industrial co-operatives in Tanzania

In the course of the UNIDO Project to advise SIDO on the promotion of industrial co-operatives, a comprehensive survey of existing industrial co-operatives has been conducted in 1980/82 which is documented by the following 4 Reports:

- The Setting for Industrial Co-operatives in Tanzania (July 1980);
- Survey of Industrial Co-operatives (December 1980);
- The Development of Industrial Co-operatives in Tanzania (June 1981) and
- The Legal Framework for Industrial Co-operatives in Tanzania (May 1982).

The survey covered 125 of 140 active societies and was carried out by the project team, travelling more than 22000 km. The findings were that 93% of the societies visited were workers' productive co-operatives with an average of 22 members. Shortage of raw materials, insufficient funds to buy raw materials when they were available in the market, inadequate tools or machines, inadequate working places and lack of spare parts were the main problems encountered by these societies. Most of the societies had financial problems, relied heavily on loans and gifts (6% capital investment, 58% loans, 36% gifts), low skills in financial management and little assistance from the Co-operative Department (books remained unaudited for long periods of time).

The main types of co-operatives are:

- tailoring societies (37);
- carpentry societies (31) and
- metal workers' societies (18).

There was strongly expressed desire in most societies to come together to form one organisation of industrial co-operatives to represent their interests and to meet certain needs they have in common.

#### 4. Favourable economic and political conditions for growth of industrial co-operatives in Tanzania

The prevailing economic and political conditions provide a good climate for industrial co-operatives in form of workers' productive co-operatives to develop.

Government's policy to encourage the development of small-scale industries on co-operative lines in urban areas with emphasis on self-reliance and on the use of local materials and skills as well as the provision of assistance in establishing such enterprises with advice (SIDO) and financial contributions in form of loans or grants has helped many of the existing co-operatives to start their operations. Other factors favouring the development of industrial co-operatives are:

- the availability of skilled craftsmen or workers;



- the readiness of co-operative members to work for reduced salaries or even without pay in times of emergency (co-operative spirit);
- the difficulty of finding alternative employment;
- the scarcity of goods which facilitates the sale of the societies' products.

5. Problems common to all small scale industry co-operatives

Even though the industrial co-operatives in Tanzania belong to different trades and categories, there are a number of problems which these societies have in common and which could be solved more easily if they were organised in one national union:

- difficulty to purchase raw materials;
- difficulty to obtain loans from banking institutions;
- difficulty to obtain tenders against competition (societies work at an average of 45% of their capacity);
- problems of transport;
- lack of technical and managerial advice.

6. Reasons for forming a special Union of Industrial Co-operatives

As part of government's policy to re-establish co-operative Unions at regional level the establishment of a special Union of Industrial Co-operatives should be considered for the following reasons:

- Industrial Co-operatives and particularly workers' productive co-operatives are a special type of organisation (identity of workers and owners), which are different from agricultural service co-operatives; which have special problems and need a special supporting structure;
- Industrial co-operatives are a relatively small number compared to agricultural co-operatives. As members of multipurpose unions at regional level industrial co-operatives would always be in a minority position and the chances that their problems would be dealt with in the union with priority are remote. In a multipurpose regional union industrial co-operatives would, therefore, be inadequately represented.

- The present number and size of industrial co-operatives do not yet justify regional services for them. Central services could be organised effectively and more economically at national level. This would not prejudice the development of regional unions of industrial co-operatives at a later stage.
- A National Union of Industrial Co-operatives would have to be built up with the assistance of SIDO. The union would assume the role of a partner organisation to which eventually some of the functions of SIDO could be handed over so as to enable SIDO to concentrate on other fields like promotion of Industrial Estates (which already now account for some 70% of the funds spent by SIDO). Such National Union of Industrial Co-operatives would be affiliated to the Apex Organisation and concentrate its activities on promoting the economic interests of societies affiliated to it.
- A soundly based industrial co-operative structure including effective support services could attract industrial enterprises initially formed as partnerships or private companies to reorganise themselves as industrial co-operatives.

7. Possibilities of setting up the Union of Industrial Co-operatives under the new Co-operative Societies Act, 1982

7.1. Power of co-operative societies to federate

Under section 16 of the Co-operative Societies Act, 1982, co-operatives are given the power to federate in a three tier system: primary societies, secondary societies and apex organisation. Section 14(b) and 16 do not link the term "secondary society" to any geographical area and in the interpretation section (section 2) "secondary society" is defined as "a registered society whose membership is open only to primary societies ...". However, in sections 15 and 18 of the Co-operative Societies Act, it becomes obvious, that the new Act has a strong bias towards agricultural co-operatives and although it includes special sections for industrial co-operatives, credit and consumer co-operatives, it has been drafted mainly to suit the needs of village co-operatives. In section 15(3) the term "co-operative union" is substituted for the term "secondary

society" and the formation of co-operative unions is limited to a region or a district or districts. Out of the 10 objects mentioned in section 18(2) for secondary societies, 7 are specifically linked to agricultural production ((a), (b), (c), (d), (g), (h), (i) and 3 are general ((e), (f), (j)).

Experience in other countries has shown that the prescription of one uniform nation-wide structure for all types of co-operatives without regard to their special requirements may create unnecessary problems. As voluntary organisations which have to be economically viable, co-operative societies need a certain degree of autonomy and flexibility to adopt structures that meet the needs of their members.

The need to allow co-operatives to federate and to adopt the most appropriate vertical structure for solving their economic problems and representing their common interests is strongly underlined in the ILO Recommendation No. 127 Concerning the Role of Co-operatives in the Economic and Social Development of Developing Countries (paras. 13, 26(2), 27(2), 30(2)), and is emphasised as one of the Co-operative Principles of the International Co-operative Alliance. The argument that industrial co-operatives should be in line with other forms of co-operatives in the country does not take account of the fact that industrial co-operatives have a special structure as primary societies, have special needs and are scattered all over the country.

A substantial number of such societies with common needs and interests can at present only be brought together on a national level. Apart from the argument of administrative convenience that all co-operatives should conform to a uniform pattern of vertical organisation, there is no objective reason why co-operatives of a special type should not be allowed to solve their special common problems by forming a secondary society at a level which is required for economic reasons (i.e. national level) and then be affiliated to the national apex. This would be in line with the practice in many other countries of which some (e.g. France, Japan, Korea) even have special laws for Industrial Co-operatives.

The idea to limit the power of co-operative societies to federate to the region or district level may be adequate for co-operative societies which form a coherent system in one geographical area and have common problems to be solved in this area. However, where the primary societies are scattered over the whole country and their common interests are largely independent from the geographical area in which they operate, different criteria have to be applied (e.g. type of organisation, commodity produced) to determine the optimal vertical structure of co-operation among such co-operatives.

Therefore, at the present state of development, the only reasonable and economically viable form of vertical organisation of industrial co-operatives would be to establish a national union.

#### 7.2. Distinction between co-operatives in rural and urban areas

The new Co-operative Societies Act, 1982 makes a clear distinction between co-operative societies in villages (sec. 22-30) and co-operative societies in urban areas or rural areas outside villages (sec. 31(1)). This distinction is expressly made only with regard to industrial co-operatives but appears to apply also to other types of co-operatives like savings and credit societies and consumer societies. The basic idea underlying this distinction is to bring all co-operative activities in a village under one roof, to make best use of leadership and scarce resources available in a village for the benefit of the village as a whole and to disallow the formation of separate, independent co-operative groups in a village while leaving the inhabitants of areas outside village jurisdiction the autonomy to choose their forms of collaboration in the economic sphere.

For the development of industrial co-operatives and for the implementation of the policy on encouraging the expansion of small scale industries in all regions of the country and not only in urban areas but also in the villages, the distinction between village and urban societies contained in the new Co-operative Societies Act may create some problems.

7.2.1. Small Scale Industries in villages

According to the general policy of the Party there is no room in a village for small scale industry run by individual persons. Under the new Co-operative Societies Act there is also no possibility for small scale industry to be run by a group of local craftsmen or skilled workers in form of a registered co-operative society as was the case under the Co-operative Societies Act, 1968.

According to section 23(2) "... persons who are residents in a village and who possess a special skill relevant to a trade, may organise themselves into a co-operative group, but that co-operative group shall operate as a specialised line of production, and shall perform its functions as a specialised branch of the rural co-operative society and shall be under the general guidance of the co-operative development committee". Hence, there is no possibility under the new co-operative societies Act to restore the industrial co-operative societies earlier dissolved under the Villages and Ujaraa Villages (Registration, Designation and Administration) Act, 1975.

Members of co-operative groups of craftsmen and skilled workers will not be self-employed as in the case of a registered industrial co-operative society but will work under the guidance of the co-operative development committee which will be composed primarily of farmers.

The distribution of surplus earned by the co-operative group will be decided by the co-operative development committee and is likely to be used for the benefit of the village as a whole rather than for the benefit of the co-operative group by whose labour it has been earned.

There are provisions in the new Co-operative Societies Act which could be used to solve these problems of equitable profit distribution and financial incentives for hard work:

- According to the proviso to section 109(3) "... any receipt derived from any trade, industry, works, service or undertaking carried on (by) or belonging to a registered society

may, with the approval of the Registrar, be paid either in whole or in part into a separate fund". This fund could be used as an investment and contingency fund for the co-operative group by whose labour this income was earned.

- according to section 121 "... a registered society may apply the annual net balances together with any sum available for distribution from previous years to payment of bonus and to any staff incentive bonus scheme ..."

Both provisions empower the registered co-operative society represented by its co-operative development committee to adopt such policy; however, in view of the fact that there will normally be a shortage of money for distribution at the end of the financial year and that the members of industrial co-operative groups of craftsmen or skilled workers in a village will always be in a minority position when decisions on the distribution of the net balance are taken, it is likely that many co-operatives will use surplus money where the majority of their members thinks it is needed most urgently. In this case the trend of village craftsmen and skilled workers to leave the village and to form their own partnerships or industrial co-operatives in which they are their own masters and the results of their work accrue exclusively to themselves, will be reinforced. The survey of industrial co-operatives conducted under the SIDO/UNIDO project has clearly shown this tendency of rural urban migration of craftsmen and skilled workers which goes contrary to government's policy concerning the development of small scale industries and which may become even stronger under the new Co-operative Societies Act.

#### 7.2.2. Village Co-operatives and Village Council

The Prime Minister's Commission of Inquiry into the Possibility of Re-establishing Co-operative Unions recommended that co-operative leadership should be different from village leadership (p. 82) and that there should be a distinction between administrative affairs and co-operative activities (p. 99). This recommendation was taken up by the law makers by giving a different legal framework to village co-operatives and village government.

While in theory the roles of each of the two different entities appear to be quite clear, some problems may arise in practice. The village multipurpose co-operative through its co-operative development committee "shall be the managing and the executing agency ... and shall co-ordinate all the co-operative economic activities within the village (sec. 28 Co-operative Societies Act, 1982). This does, however, not necessarily cover all economic activities within the village. Yet, in section 29(1)(h) of the Co-operative Societies Act, 1982 it is stated that the basic function of a rural co-operative society shall be ... to co-ordinate all the economic activities of the village.

Under the new Local Government (District Authorities) Act, 1982 "a village council is the organ in which is vested all executive power in respect of all the affairs and business of a village" (section 142(1)). The village council shall do all such things as are necessary or expedient for the economic and social development of the village, initiate and undertake any task, venture or enterprise designed to ensure the welfare and well being of the residents of the village, plan and co-ordinate the activities of and render assistance and advice to the residents of the village engaged in ... industry of any kind, encourage the residents of the village in undertaking and participating in communal enterprises and to participate , by way of partnership or any other way in economic enterprises with other village councils (sec. 142(2)).

According to section 9 of the Local Government Finances Act, 1982 it is assumed, that village councils will eventually establish their own industries and generate income from ... trade, industry, works, service or undertaking carried on or owned by the village council (sec. 9(1)(a)).

In anticipation of such income it is provided in section 9(6) that "any receipt derived from any trade, industry, works, service or other undertaking carried on or owned by a village council in whole or in part may, with the approval of the proper office, be paid to a separate fund to be maintained by the village council for the purpose of that trade, industry, works, service or other undertakings, as the case may be, from which the revenue is derived".

These sections of the new Local Government Acts show that from the legal point of view there is the possibility of competition within a village between small scale industries operating in form of co-operative groups under the village multipurpose co-operative society and industrial undertakings owned by the village council.

### 7.2.3. Small scale industries in areas outside villages

According to section 31(1) of the Co-operative Societies Act, 1982 industrial co-operative societies and probably also savings and credit as well as consumers' societies may be formed either in rural areas, except in villages or in urban areas. "Urban area" is defined in sec. 2 as any area within the jurisdiction of a city council, a municipal council, town council or township authority with the exception of registered villages. and "rural area" is defined as any area which is not part of an urban area. Hence, it is assumed under the law that there are rural areas outside registered villages, in which industrial and other co-operatives may be formed.

As most of such rural areas not being under the jurisdiction of a village council will normally be uninhabitated or sparsely inhabited areas, it is most likely that co-operative societies formed with the object of working in such areas (e.g. mining or fishing societies) will have their registered office in urban areas or in a registered village and will therefore be either an urban society or a rural multipurpose society.

Urban co-operative societies can be formed under the new Co-operative Societies Act without any restriction other than that of economic viability (sec. 70). Certain constraints which existed under the Co-operative Societies Act, 1968 especially for industrial societies, can be avoided under the new Co-operative Societies Act. e.g.

- the number of founder-members can be reduced below the number of 10 by the Registrar (sec. 63(1));
- the minimum age of a member can be reduced below 18 years (sec. 64(2)).



Under the new law several forms of industrial co-operatives are mentioned:

- Artisans' and craftsmen's societies in the form of workers' productive societies where all members are at the same time self-employed workers and produce goods and services to be sold in the market (sec. 32(a); 34 (a) in case of group fishing; 35(a));
- labour contracting societies by provision of labour and technical services under contract or sub-contract where members organise their work among themselves but work for a contractor (sec. 32(b));
- Supply and marketing societies of craftsmen or skilled workers operating their own workshops (Sec. 32(c) and (d), 34(a), (b) and (c), 35(b)).

#### 7.2.4. Urban industrial co-operatives and local government (urban authorities)

In urban areas industrial co-operatives will work under the guidance, supervision and control of the urban authorities. Where urban authorities decide to establish their own industrial undertakings industrial co-operatives may even have to face competition by industries owned by the urban authorities. Under the new Local Government Acts the legal situation is as follows:

As incorporated legal entities doing business for gain, all forms of industrial co-operatives will have to obtain the prescribed licences from the competent authorities.

At ward level, the Ward Development Committee is responsible among other things for promoting the establishment and development of co-operative enterprises and activities within the Ward (sec. 32(1)(a) Local Government (District Authorities) Act, 1982, Act No. 7 of 1982). At the same time, the Ward Development Committee is responsible for the establishment of any industry" (sec. 32(1)(d) Local Government (District Authorities)

Act, 1982). According to section 111 the basic functions of local government authorities (district or urban authority) include the responsibility to further the social and economic development of its area of jurisdiction subject to the national policy and plans for rural and urban development (sec. 111(1)(c) Local Government (District Authorities) Act, 1982).

A local government authority shall take such measures as in its opinion are necessary, desirable, conclusive or expedient ... for the control and improvement of agriculture, trade, commerce and industry (sec. 111(2)(b) Local Government (District Authorities) Act, 1982).

The function of every District Council shall be to formulate, coordinate and supervise the implementation of all plans for the economic, commercial industrial and social development in its area of jurisdiction (sec. 118(1)(a)) and to provide for or facilitate the licensing or regulation of the activities of persons engaged in, or the premises used for, the manufacture, preparation handling or sale of articles for use or consumption by man (sec. 118(2)(m) and (w)(iii) Local Government (District Authorities) Act, 1982). According to the First Schedule to the Local Government (District Authorities) Act, 1982 (sec. 118(4)) any District Council may perform any of the functions specified in the Schedule:

- (87) to engage in local trading or industry,
- (89) to sell or buy products resulting from the carrying on, by or on behalf of the authority, of any works or undertaking, which the authority is authorised to carry on.

Under the Local Government (Urban Authorities) Act, 1982, Act No. 8 of 1982, the urban authorities have powers and functions similar to those of the District Council, i.e.:

- to promote the establishment and development of co-operative enterprises and activities within the Ward (sec.16(1)(b));
- to plan, co-ordinate the activities of and render assistance and advice to the residents of the Ward engaged in any activity or industry of any kind (sec 16(1)(d) and
- with the approval of the Minister to engage in any form of municipal trading or industry (sec. 59(g)).

According to the Schedule to the Local Government (Urban Authorities) Act, 1982 sec. 55(2), the functions which Urban Authorities may perform include:

- (87) to engage in local trading or industry;
- (89) to sell or buy products resulting from the carrying on, by or on behalf of the authority of any works or undertakings which the authority is authorised to carry on.

Under the Local Government Finances Act, 1982, Act No. 9 of 1982 (section 6) the revenue, funds and resources of an urban authority shall consist of among other things -

(1)(b) all moneys derived from any trade, industry, works, services or other undertaking carried on or owned by the urban authority.

The same applies to the revenues of a district council (sec. 7(1)(b)) and to the revenues of townships (sec. 8(1)(g)).

This summary of relevant sections of the new Local Government Acts makes obvious that although the urban authorities are mainly called upon to promote the development of industrial co-operatives, they are also empowered to establish their own industries and - when in need of revenue for financing their current affairs - they will certainly do so, thereby entering into competition with existing industrial co-operatives.

### 7.3. Possibilities of setting up a Secondary Society of Industrial Co-operatives under the new Co-operative Societies Act

To establish a secondary society of urban industrial co-operatives at national level would be in line with government's policy to encourage viable small scale industries in form of co-operatives and to promote and expand small scale industries in districts and regions throughout the country with an emphasis on decentralization from major urban areas.

The specialised groups of artisans and craftsmen within the village multipurpose co-operative societies provided for under the new Co-operative Societies Act would not qualify for member-

ship in the proposed secondary society of urban industrial co-operatives, because of lack of independent legal status. However, it could be envisaged that village multipurpose societies having a strong component of industrial co-operative groups could affiliate to the secondary society. Otherwise, the industrial co-operative groups within a village multipurpose society would have to be assisted by the regional unions of village co-operatives.

In the case of industrial co-operatives considerations of economic viability require the organisation of the existing 145 weak and scattered but active societies on a national level. Even in the Dar-es-Salaam area with the highest density of industrial co-operatives, the number of industrial co-operative societies is only 45 out of which 30 are active, a number which would not warrant and could not support the formation of a regional union.

In section 15(3) of the Co-operative Societies Act the argument of economic viability is used to justify unions of village co-operatives at district level. The same argument should hold good to justify a secondary society of industrial co-operatives at national level.

If the desire of the people concerned is considered important for the decision on which structure to choose for a co-operative organisation, the survey conducted by the UNIDO/SIDO project team has clearly brought out the desire of the members of industrial co-operatives, to form a secondary society at the national level.

The activities of the proposed secondary society of industrial co-operatives would be mainly concerned with giving industrial co-operative societies better access to:

- raw materials;
- sources of finance;
- design improvement services;
- market intelligence and
- advice in management.

Even though the existing industrial co-operatives produce different commodities and represent different target groups and stages of development these services could be rendered by the secondary society in a meaningful way to all such primary societies.

From the wording of the text of the Co-operative Societies Act, 1982, there is no reason, why a secondary society of industrial co-operatives operating at national level and affiliated to the Apex Organisation should not be registered.

Hans-H. Münkner

UNIDO Consultant on Co-operative Legislation

Dar es Salaam, August, 1982

Notes

- 1) For details see Münkner, Hans-H.,: New Trends in Co-operative Law of English-speaking Countries of Africa, Institute for Co-operation in Developing Countries, Papers and Reports No. 4, Marburg 1971, with reprint 1981.
- 2) Cf. Münkner, Hans-H. and Ullrich, G. (Ed.): Co-operative Law in East, Central and Southern African Countries - A comparative Approach, German Foundation for International Development, Berlin 1981, DOK 1070 A/a, p. 79 - 86 - 80.
- 3) Cf. Report of the Prime Minister's Commission of Inquiry into the Possibility of Re-establishing Co-operative Unions, Dodoma February 1980, (translated August 1981); see also B.P. Akida in Daily News, April 26, 1982.
- 4) International Labour Conference, Recommendation No. 127, Recommendation Concerning the Role of Co-operatives in the Economic and Social Development of Developing Countries, ILO, Geneva 1966.
- 5) Cf. UNIDO/SIDO, Survey of Industrial Co-operatives, Dar-es-Salaam 1980, p. 12; UNIDO/SIDO, The Legal Framework for Industrial Co-operatives in Tanzania, Dar-es-Salaam, May 1982, p.5.
- 6) Cf. Report on the UNIDO/ICA Conference on the Economic and Social Potential of Industrial Co-operatives in Developing Countries, held in Arusha, Tanzania, February 1982, pp. 7 and 8.
- 7) Cf. UNIDO/SIDO: The Development of Industrial Co-operatives in Tanzania, Dar-es-Salaam, June 1981, p. 13.
- 8) Cf. UNIDO/SIDO: The Development of Industrial Co-operatives in Tanzania, op.cit., pp. 38,39.
- 9) Cf. UNIDO/SIDO: The Setting for Industrial Co-operatives in Tanzania, Dar-es-Salaam 1980, p. 22.
- 10) Cf. Speech by the Hon. C.D. Msuya, M.P., Minister for Industries to the Budget Session of the National Assembly for the Period 1980/81, No. 87:  
" ... we encourage regions and industrial units to form industrial associations at national and regional levels in order to provide recognized forums for consultations among industries and between industries and the government on important national issues such as the establishment of industries, training, research, export markets, and on the acquisition of inputs."  
(Source: Martin, C.J.: Review of Policies Affecting Small Scale Industries in Tanzania, Report prepared for the Ministry of Industries, Tanzania, January 1981, Appendix III).
- 11) Cf. Report of the Prime Minister's Commission of Inquiry into the Possibility of Re-establishing Co-operative Unions, op.cit. 72 et seq., 105.

- 12) *ibid*, pp. 83,84.
- 13) Cf. Martin, C.J.: Review of Policies Affecting Small Scale Industries in Tanzania, *op.cit.*, p. 15.
- 14) Cf. UNIDO/SIDO: Survey of Industrial Co-operatives. *op.cit.*, p. 41; UNIDO/SIDO: The Development of Industrial Co-operatives in Tanzania, *op.cit.* pp. 28,29.
- 15) Cf. UNIDO/SIDO: The Development of Industrial Co-operatives in Tanzania, *op.cit.* p. 29.
- 16) Cf. Martin, C.J.: Review of Policies Affecting Small Scale Industries in Tanzania, *op.cit.* p. 44.
- 17) *ibid*, p. 3.
- 18) The text of the model by-laws is reproduced in the fourth Technical Report of the UNIDO/SIDO project team "The Legal Framework for Industrial Co-operatives in Tanzania, *op.cit.*, Appendix A.
- 19) Cf. UNIDO/SIDO, The Legal Framework for Industrial Co-operatives in Tanzania, *op.cit.*, p.5.
- 20) E.g. Thomas, Henk and Logan, Chris: Mondragon, An Economic Analysis, London, 1982; Mutual Aid Center (for the Commission of European Communities): Prospects of Workers' Co-operatives in Europe, Vol. I - III, London, 1981, Programme for Research and Actions on the Development of the European Market, DOC. V/229-1/82-EN; Jones, Derek C. and Svenjnar, Jan: Participatory and Self-management Firms, Massachusetts, Toronto, 1982.
- 21) Cf. UNIDO/SIDO, The Legal Framework for Industrial Co-operatives in Tanzania, *op.cit.*, p. 8.
- 22) for details see UNIDO/SIDO, The Legal Framework for Industrial Co-operatives in Tanzania, *op.cit.*, pp. 7 to 9.
- 23) Cf. Yeo, Peter, The Work of a Co-operative Committee, Intermediate Technology Publications Ltd., London, 1978.
- 24) The text of the Draft By-laws for the proposed secondary society of industrial co-operatives at national level is reproduced in the fourth Technical Report of the UNIDO/SIDO project team: "The Legal Framework for Industrial Co-operatives in Tanzania, *op. cit.*, Appendix B.
- 25) Cf. UNIDO/SIDO, The Legal Framework for Industrial Co-operatives in Tanzania, *op. cit.*, pp. 16 to 22.
- 26) *ibid*, p. 19.
- 27) Cf. UNIDO/SIDO, The Development of Industrial Co-operatives in Tanzania, *op. cit.*, p. 20.
- 28) *ibid.*, p. 21.
- 29) Cf. Münkner, Hans-H.: The Legal Status of Pre-cooperatives, Friedrich Ebert-Stiftung, Bonn, 1979, pp. 58 to 71.

