THE BUSINESS ADVOCACY FUND
Supporting Private Public Dialogue

Impact assessment

KUSCCO: Co-op policy & legislation

Contents

This impact assessment report has been researched and written by John Kabaa

Business Advocacy Fund, Prosperity House, Nairobi

020-4453789 | www.businessadvocacy.org | info@businessadvocacy.org

Impact assessment
KUSCCO: Co-op policy & legislation

1. Background

The co-operative movement cuts across all sectors of the Kenyan economy both formal and informal creating employment across the traditional areas of agricultural production, processing and marketing and, recently, in finance, real estate, manufacturing and mining.

Co-operatives in finance are mainly referred to as Savings and Credit Co-operative Societies (SACCOs). Their key activity is mobilizing savings and providing credit to their members. The SACCO sector in Kenya is hailed as the largest in Africa and among the top 10 globally with mobilised domestic savings of KES 800 billion, accounting for 33 per cent of national savings. Kenya has more than 22,000 registered co-operatives and SACCOs with approximately 14 million members employing over 2 million people directly and indirectly.

The SACCO movement in Kenya is a major driver of the economy and has thus become a vital component of Kenya's economic and social development. Vision 2030 foresees an agricultural, mining and manufacturing sector with "laws that foster competitiveness and regulate the sector for the benefit of both domestic and foreign investors". The vision also foresees "improved access and deepening of financial services and products for a much larger number of Kenyan households and small businesses".

The Kenya Union of Savings and Credit Co-operatives (KUSCCO) is the voice and advocate for savings and credit cooperatives; it has been at the forefront of efforts to form and develop strong and viable SACCOs. KUSCCO offers its 3,600 SACCO members and other cooperatives financial and technical assistance, tailored to benefit middle and low-income earners both in rural and urban areas.

Products and services include:

- Central Finance Fund: the inter-lending arm of the Union;
- KUSCCO Housing Fund: offers affordable mortgages to SACCO members;
- Education and training: trains SACCO officials, staff and members;
- Research and consultancy: provides consultancy and advisory services; and
- SACCO Star magazine: quarterly publication for SACCO news[1].

KUSCCO subsidiaries are:

- IRNET Kenya supports the government to transform the country into a knowledge-based economy; by offering a shared ICT platform on a pay as you transact basis, saving SACCOs the cost of installing expensive software; and

---

[1] Available on http://kuscco.com/SACCO%20STAR-issue-47/#p=1. Accessed from http://www.kuscco.com/

- KUSCCO Mutual Assurance stems from the Risk Management Services department and is licensed by the Insurance Regulatory Authority (IRA) to offer life assurance services.

Being aware of the many challenges facing SACCOs in Kenya, which includes competition from commercial banks, insufficient capital base, slow rate of information technology (IT) adoption and inefficient loan pricing strategies, KUSCCO continues to address these problems and to strengthen the cooperative movement.

2. Issues

What follows is an outline of four advocacy issues BAF financed KUSCCO to advocate.

2.1 Adoption of a National Co-operative Development Policy

Regulation of co-operatives, legislated under the Co-operative Societies Act, CAP 490 of 1997, was devolved under the Fourth Schedule, Part 2, Section 7(e) of the Constitution. The International Co-operative Alliance (ICA) defines a co-operative as "an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise"[2].

In 2017, BAF supported the Agricultural Industry Network to collaborate with the Kenya Rural Savings and Credit Co-operative Societies Union (KERUSSU) to mobilise stakeholders in the co-operative sector to review the draft Co-operative Development Policy, 2017. The intention was to promote Co-operative Enterprises for Industrialisation to replace Sessional Paper no. 6 of 1997. Despite the Policy being drafted successfully with industry input, it was not approved by Cabinet. KUSCCO advocated the approval of this Policy by both the Ministry and Cabinet and for ultimate adoption by the National Assembly as a Sessional Paper.

2.2 Introduction of the "Social Impact Member" class

The Statute Law (Miscellaneous Amendments) Bill, 2018 proposed amending the Co-operative Societies Act, CAP 490 by introducing a new class of members – "social impact member" (SIM) – to be created in an Annual General Meeting of a co-operative society subject to approval by the Cabinet Secretary in-charge of co-operatives. This new class would be exempted from payments made by other members of the co-operative society which violates the third co-operative principle on 'economic member participation' requiring that members contribute equitably to the capital of their co-operative. Further, SIMs would conduct business, vote and share proceeds amongst themselves. Other members of the co-operative will not vote on these matters reserved for the social impact class.

KUSCCO argued that allowing SIM would have adverse effects on the co-operative movement. The source of their funds was not known and would not be known to the SACCOs. They also argued that the introduction of SIMs essentially opened the door for non-co-operative members who are not bound by the co-

[2] Draft Co-operative Development Policy 2017 – Ministry of Industry, Trade and Co-operatives. Accessed from http://www.kuscco.com/

operative movement principles and values to be registered. The consequence of this proposal would be exposing the SACCO's mutual business to investments over which they have no control, but for which the SACCO will bear the risk from SIMs investments.

Notably, the creation of this category of social impact investors had also been rejected by the Ministry of Industry, Trade and Co-operatives (MITC)[3]. KUSCCO argued that these amendments should not be passed by the National Assembly.

2.3 Introduction of a Special Fund

In addition to the introduction of SIM category of members discussed above, the Statute Law (Miscellaneous Amendments) Bill, 2018 also proposed amending the SACCO Societies Act, CAP 490B to introduce a Special Fund with its own Advisory Board, investment committee (who shall not be members of the SACCO Society), Special Fund Investment Policy, and Special Fund Trustee (SFT); a corporate body with its own Memorandum and Articles of Association (M&A) and not a member of the SACCO Society).

The introduction of this special fund would have adverse effects on the industry. Firstly the special fund would receive money from SIMs as determined by the investment committee. The investment committee would be selected by SIM and not be members of the SACCO society. KUSCCO argued that the SFT distorts the co-operative governance structure. Furthermore, this would create a second centre of power beyond reproach.

Secondly, any benefits accruing from investments made by the committee would only be shared among the social impact members, rather than the entire co-operative society. Hence, the general members would receive no benefit, and it seemed that they may well bear the risk of investment of this fund e.g. the implications of money laundering as provided for by the Proceeds of Crimes and Anti-money Laundering Act, 2009[4]. KUSCCO stated that the proposed amendments had a danger of exposing the co-operative movement to players who did not subscribe to the ICA principles, vision, mission and values.

Thirdly, KUSCCO argued that the exclusivity of the proposed class of members and their operations within the co-operatives and the SACCOs would introduce bias, conflict of interest and breed mistrust within the memberships. This would pose the risk of lowering the credibility of the co-operative societies and the SACCOs and may result in reduced confidence by their members and the general public and possible disinvestment and/or failure to invest.

KUSCCO also argued that these amendments should not be passed by the National Assembly.

---

[3] Ministry against special co-op membership plan, 31 May 2018. Ngunjiri J. Business Daily Article.

[4] Proceeds of Crime and Anti-Money Laundering Act, 2009 (No 9 of 2009). Assented 31 December 2009, Revised 2012. Accessed from http://frc.go.ke/downloads/category/2-acts-and-regulations.html

2.4 The proposed increase of the SASRA Levy

The SACCO Societies Act, CAP 490B created the SACCO Societies Regulatory Authority (SASRA), a national body that regulates all SACCOs. According to the proposed Co-operative Development Policy, SASRA was expected to remain as a national regulator that would not be devolved, a position that KUSCCO supported. Alongside the Statute Law (Miscellaneous Amendments) Bill, 2018 which proposed amendments to the Co-operative Societies Act, CAP 490 and the SACCO Societies Act, CAP 490B; a proposal to increase the SASRA's levy on SACCOs had also been submitted to the National Assembly for approval, through the Committee of Delegated Legislation.

The proposed legal amendments, KUSCCO argued, would have adverse effects. Section 15 of the SACCO Societies Act imposes an annual levy of 0.1 per cent on total deposits held by deposit-taking SACCOs, for which the levy payment was capped at KES 5 million per SACCO. SASRA does not disclose what income these levy payments yield. The SACCO Deposit Levy (Amendment) Order, 2018, sought to increase SACCO Societies Deposit levy rate from the current 0.1 per cent to 0.125 per cent in 2018, 0.15 per cent in 2019 and 0.175 per cent in 2022 and beyond[5]. There is a maximum limit in the amount that can be levied on any SACCO but this would be doubled in the proposed levy. These payments would start in 2020 and would be based on 2018 financial statements. These rates and base increases would result in the levy payments increasing from KES 84 million to KES 159 million by 2022 for the top 18 SACCOs, an increase of 94 per cent[6].

This increase is likely to be higher as SACCO deposits grow. SASRA argued that these increases are required to fund the shortfall in financing from Treasury. KUSCCO, on the other hand, argued that SASRA had not consulted on, nor justified the increased levy by preparing and sharing annual budgets. KUSCCO was concerned that the increased levies would act as a significant disincentive to the growth of the SACCO financial services sector. This would mean that the SACCOs would have a reduced asset base which would hamper their ability to offer affordable loans.

In addition to the proposed amendments – KUSCCO advocated the implementation of Section 55 of CAP 490B - Deposit Guarantee Fund (DGF)[7]. Since the enactment of the Act in 2008, the Fund was yet to be set up. The Deposit Guarantee Fund was intended to protect SACCO depositors up to a limit KES 100,000 per member in the event of a SACCO failing or becoming insolvent. The SACCOs would contribute to this Fund based on their withdrawable deposits. KUSCCO intended to see the DGF implemented.

In summary: KUSCCO sought BAF support to advocate for adoption of the Co-operative Development Policy 2017 and the withdrawal of the proposed amendments as discussed above. BAF supported KUSCCO with KES 2.2 million to achieve the following:

---

[5] A policy position report by KUSCCO, 31 August 2018; Policy positions as contained in three Policy Papers - A Fresh start for the Co-operative Movement; Increase in SASRA Levy will hamper Provision of Affordable Loans; And Government Imposition on Co-operative Governance.

[6] This figure is based on the current top 18 SACCOs only while KUSCCO's members alone total 3,629.

[7] Sacco Societies Act, No 14 of 2008. Assented 24 December 2008. Accessed from http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2014%20of%202008

- Obtain an approved Sessional Paper on the Co-operative Development Policy, 2017;
- Avert amendments on the:
    1. Co-operative Societies Act CAP 490;
    2. SACCO Societies Act CAP 490B from the Statute Law (Miscellaneous Amendment) Bill 2018; and
    3. Current rate of SASRA levies sustained and the implementation of a functional DGF created as per the existing policy provision.

3. Outcome

KUSCCO prepared policy positions in August 2018 on the adoption of the Co-operative Development Policy, Statute Law (Miscellaneous Amendment) Bill, 2018 responding to CAP 490 and 490B amendments, SASRA Levy and the Deposit Guarantee Fund[8]. What follows is how KUSCCO engaged the MITC and the Legislature to advocate the adoption of the policy and bills.

From October to December 2018, KUSCCO had meetings to present policy documents, attended stakeholder meetings to review the National Co-operative Policy, attended media interviews with the CEO to discuss the Miscellaneous Amendment Bill which was the only dialogue held with the government during that given period. During the same period, the government extended an invitation for public participation on the Sacco Amendment Bill 2018. KUSCCO decided to prioritise lobbying on the National Co-operative Policy and the Statute law (Miscellaneous Amendment) Bill, 2018. Two press releases were issued in November and December 2018 with media coverage in the Star[9] and the Daily Nation[10] newspapers.

From January to March 2019, KUSCCO engaged the Cabinet Secretary, MITC, to discuss these issues and had two dialogues sessions. During the entire period from October 2018 to March 2019, KUSCCO engaged Parliamentary Committees in the National Assembly and the Senate to advocate amendments to the Miscellaneous Amendment Bill. Thereafter they created awareness on the issues at the 4th annual SACCO Leaders' Convention in February 2019 with coverage in the Daily Nation[11].

KUSCCO regularly updated their members via sending bulk SMSs, social media as well through their "SACCO Star" quarterly publication. The outcomes of these engagements are discussed below:

---

[8] A policy position report by KUSCCO, 31 August 2018; Policy positions as contained in three Policy Papers - A Fresh start for the Co-operative Movement; Increase in SASRA Levy will hamper Provision of Affordable Loans; And Government Imposition on Co-operative Governance.

[9] KUSCCO want proposed Sacco Bill scrapped, term bill as hostile takeover on SACCOS, 28 November 2018. Amadala. The Star. Provided by KUSCCO.

[10] Sacco's opposed to new law on special group, 5 December 2018. Bayan. S The Daily Nation. Provided by KUSCCO.

[11] Sacco's meet for annual leaders' convention in Mombasa, 28 February 2019. Msangi. B The People Daily. Provided by KUSCCO.

3.1 National Co-operative Development Policy

The policy was approved by the Cabinet and forwarded to Parliament for adoption into a Sessional Paper before gazetting[12]. According to KUSCCO, the approved policy largely meets the needs of the sector with clearly outlined roles of both the National and County Governments with regard to Co-operatives. KUSCCO is eagerly following to see the final published Policy.

3.2 The "Social Impact Member" class and the Special Fund

KUSCCO presented their memorandum to Parliament and defended their objections on the Bill. The Statute Law (Miscellaneous Amendments (No.2) Bill, 2018, which proposed the introduction of SIMs, as well as the introduction of the SFT, was withdrawn in April 2019[13]. Thereafter this withdrawal was mentioned in the Standard newspaper in September 2019[14].

3.3 Outstanding advocacy issues: the proposed increase to the SASRA Levy and the implementation of the Deposit Guarantee Fund

SASRA's argument that it needed to replace Government funding with levy funding was unfounded with no legal backing. They acknowledged that the increase in regulated SACCOs would have led to an increase in costs for SASRA but believed that the resultant increase in deposits, and thus in the levy charges, should cover those costs. However, KUSCCO argued that there are different ways of charging the levy. A maximum amount, for example, meant that the smaller SACCOs carry a greater proportion of the cost, which seemed rather unjust. Linking the levy to deposits discouraged SACCOs from building deposits, raising capital adequacy risks; an alternative would be to impose the levy on turnover and structure it in a Tier System. The proposed increase of SASRA Levy is an ongoing advocacy issue.

In 2013, SASRA had retained Mr Carlos Alba Prado as the consultant to assist in the establishment of the Deposit Guarantee Fund, but the findings were never made public. They argued that the planned scheme should be housed at the Kenya Deposit Insurance Corporation (KDIC) because a new agency may cause turf wars and increase costs[15]. The implementation of the DFG is an ongoing advocacy issue.

KUSCCO proposed to accredit SACCOs to meet certain standards to ensure that SACCOs have in place financial control systems that are fit for purpose and that would minimise the risk of losing depositors' money. As this would help SASRA, they hoped that SASRA might offer a reduction in the levy charge, with the greatest reduction for those achieving the highest standard. They also noted that Kenya has two parallel regulatory systems in that there is the regulation of

---

[12] President's press service, 11/11/19 (https://www.president.go.ke/2019/11/21/cabinet-approves-policies-to-stimulate-economic-growth-empower-the-youth/)

[13] Third Session of 12th Parliament Orders of the day, 23 April 2019. Order G. The Sacco Societies Act (No 14 of 2008). Provided by KUSCCO.

[14] Articles are provided by KUSCCO. Accessed from https://www.kuscco.com/index.php/component/content/article/92-ticker/205-how-social-impact-members-could-put-sacco-finances-at-risk?Itemid=437

[15] SASRA seeks adviser to guide SACCO deposit insurance fund set up. Accessed from https://www.kuscco.com/index.php/component/content/article/92-ticker/123-sasra-seeks-adviser-to-guide-sacco-deposit-insurance-fund-set-up

SACCOs and the regulation of Micro Finance Institutions (MFIs), despite both offering similar services to similar customers. They acknowledged that the ownership structure of SACCOs and MFIs was different but the regulatory requirements were similar and parallel regulators simply duplicated costs.

KUSCCO stated that the advocacy process on these issues will be a 'marathon-like' process requiring patience. The goodwill of SASRA and MITC will be necessary to ensure that there is consensus on the policy objectives to ensure suitable results for all.

4. Impact

4.1 Withdrawal of the "Social Impact Member" class and the Special Fund

The withdrawal of the Social Impact Member and the Special Fund will not expose the SACCOs to the unnecessary risk of implications of money laundering and pyramid schemes. This will also reduce their human resource and technical capacities to monitor these activities which would save them time and money.

4.2 National Co-operative Development Policy

If the Co-operative Development Policy is gazetted and implemented, it would guide stakeholder-inclusive reforms in the sector including the review of the SACCO Societies Act and the Co-operatives Act. Successful review of these legal frameworks will minimise the exposure of SACCOs to multiple regulations, therefore, safeguarding the savings of millions of Kenyans.

When it is published as a sessional paper it will provide directives addressing emerging Co-operative enterprises and opportunities. This will benefit the movement by ensuring a structured approach, creation of harmony and realisation of economic growth through synergies between the two levels of government and other agencies.

Strong and sustainable SACCOs have the potential to improve further the savings culture in the country thereby creating resources for investment and economic development as detailed below.

4.2.1 Impact on the manufacturing sector

Co-operatives are instrumental in facilitating the participation of less privileged members of the society in trade, agriculture and financial access. The policy is expected to facilitate access to finance for businesses to increase their incomes. It would also be beneficial to over 22,000 active registered SACCOs in the country with a total of an estimated 3.6 million members that would gain access to affordable credit.

These increased investments in housing, med-care, clean and renewable energy, infrastructure and manufacturing will promote economic growth. Furthermore, this would be key to driving the Big Four government agenda. For example, with the government seeking to establish 100,000 affordable housing loans each year, the SACCOs would play a key role in providing construction finance to all the developers as well as home finance to all the potential new home buyers. With additional credit, the goal of affordable mortgages would now become a reality with only about 10 per cent of Kenyans using home finance according to a June 2018 Kenya Property Developers' Association report[16].

A detailed assessment of the actual increase in mortgages provided, home finance profits and taxes paid to the government would be possible but would require the implementation of the approved Co-operative Policy by the industry.

4.2.2 Increased access to credit: Impact on women and youth

With SACCOs offering lower interest rates due to their increased asset base, agribusiness financing would promote the growth and competitiveness of the agricultural sector and increase incomes of micro, small and medium-sized enterprises (MSMEs) in agriculture, many of which are run by smallholder farmers. SACCOs are a source of credit for MSMEs especially in the rural and informal segments of the economy which create employment for youth and women.

Increased credit access is a direct benefit for all social classes especially those disadvantaged from accessing commercial loans. This will have a significant impact on social inclusiveness. Majority of farmers in Kenya are women; some estimates indicate that up to 80 per cent of farmers in Kenya are women[17] . As such, women are expected to be the primary beneficiaries of SACCOs. One of KUSCCOs members is Bingwa SACCO that is comprised of Kirinyaga's Shujaa Women. In 2017, it was awarded the best dividend-paying SACCO in Kenya[18]. The access to affordable credit due to increasing assets would catalyse lending to (women) farmer. It will also help to stimulate increased production as they will be able to invest in better inputs and increase acreage, which should, in turn, create economies of scale; and consequently, development of the agricultural sector. This would lift millions of women farmers out of poverty.

A more detailed study would be required to determine accurately whether the improved asset base and credit available in the country could result in increased productivity. It is difficult to ascertain whether access to more loans with increased SACCOs asset base will result in an increase in economic activity in the country. There are other factors such as inflation, business policy changes, access and use of better quality incubation hubs for entrepreneurs which must be considered. All these factors could contribute to increased positive changes in MSMEs which are key sources of employment.

Affordable Housing Investment in Kenya, by KPDA (18 June 2018); Building affordable homes and making financial returns.

[17] Accessed from http://www.dw.com/en/women-take-over-kenyas-farming-sector/a-16716322

[18] Case study of Women SACCO in KUSCCO. Accessed from http://www.kuscco.com/index.php/component/content/article/92-ticker/151-kirinyaga-s-shujaa-woman?Itemid=437

5. Lessons

KUSCCO stated that 80 per cent of their policy wins can be attributed to BAF support. The key lessons they learned include:

- It is essential to understand how to navigate through the political interests of both parliamentarians and civil servants when engaging them. Since KUSCCO has good relationships with the Ministry, they were able to obtain meetings with key Government officials at senior levels who made decisions on their issues i.e. the Commissioner for Co-operative Development, the Principal Secretary, the Cabinet Secretary and the Parliamentary Committees.
- Through research and analysis, KUSCCO was able to present fair, clear and vivid arguments to the Ministry of Trade and Co-operatives. This improved the effectiveness of their advocacy leading to the removal of the proposed amendments.
- Coalition building is beneficial. KUSCCO saw the importance of involving all the co-operative sector players as they researched and developed their policy position papers. They kept them updated as they progressed hence got their support all along the way.
- KUSCCO lobbied from the grassroots. They involved SACCOs by sending bulk SMSs to officials who also forwarded the same to their members. They also sent the same texts to their local legislators informing them that the co-operative movement was against the Amendment Bill.
- KUSCCO made good use of various forms of media. They used mainstream media (TV and newspapers) and believe that it may have been a factor in their success. They also used social media (WhatsApp, Facebook and Twitter) to send requests for meetings and to keep their members updated. They informed their members of their advocacy efforts through KUSCCO's "SACCO Star" quarterly magazine.