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LEGAL & POLICY ANALYSIS,
& THE PROSPECT OF PLATFORM
CO-OPERATIVES

THE UNREALISED POTENTIAL OF CO-OPERATIVES IN SOUTH AFRICA

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ABSTRACT

This report critically examines the legal and policy framework governing co-operatives in South Africa, and the potential for co-operatives to provide alternative forms of economic organisation. The report draws on available statistical data, interviews and case studies, and critically assesses the development and implementation of co-operative legislation and policy since 1994.

Despite the proliferation of registered co-operatives, their contribution to livelihoods and economic development remains limited. However, examples of functioning co-operatives demonstrate their potential. The report also considers the prospects for platform co-operatives, particularly as an alternative to commercial intermediaries in sectors characterised by vulnerable and precarious employment, including domestic work.

KEY WORDS

Co-operatives in South Africa; co-operative legislation and policy; platform co-operatives; democratic ownership; informal sector; informal economy

ACKNOWLEDGEMENTS

The Centre for Transformative Regulation of Work (CENTROW), Faculty of Law, University of the Western Cape, acknowledges the financial support of DGB Bildungswerk, and funding for the Digital Platform Co-operative Project (DPCP). This support has contributed to the development of alternative, worker-centred models of economic organisation aimed at advancing decent work, democratic participation and sustainable livelihoods for domestic and care workers in South Africa. We also extend our appreciation to the researchers, and the co-operative members, representatives of support agencies, and others who shared their experiences and insights during the research.

RECOMMENDED CITATION

Theron J and Godfrey S *The Unrealised Potential of Co-operatives in South Africa: Legal and Policy Analysis, and the Prospect of Platform Co-operatives* (2026) Cape Town: Centre for Transformative Regulation of Work (CENTROW), Faculty of Law, University of the Western Cape.

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1. INTRODUCTION

This research project has been prompted by an initiative to establish a new form of organisation for domestic workers in South Africa. Domestic workers have long been recognised as a highly vulnerable and exploited section of the workforce. They remain so despite being recognised as employees in terms of the suite of labour legislation adopted post 1994 by South Africa's first democratically elected government.

One reason for this is the fact that the workplace is in most instances a private home, where the employee works in isolation from other workers, and the employer is an individual. This inevitably accentuates the imbalance of power inherent in an employment relationship. Labour legislation seeks to address this imbalance of power by providing that workers have certain organisational rights, and can form trade unions. However, trade unions for domestic workers have not proved effective.

This is perhaps why it is domestic workers who were once members of a trade union, in Cape Town and Johannesburg, that are behind this new initiative. Their trade union was once registered in terms of South Africa's labour legislation, but lost its registration several years ago. The precise reasons it did so are not relevant here. In essence, a trade union is a voluntary association whose primary object is collective bargaining, but collective bargaining is only feasible where there is a collective, and there is no impetus for the employers of domestic workers to organise themselves collectively.

Arguably, then, forming a trade union for domestic workers is the wrong strategy, and the wrong legal model to utilise. The needs of domestic workers may be better addressed by establishing advice offices or centres, to deal with a range of issues affecting them including issues relating to payment of wages and non-compliance with labour legislation.[1] Indeed, trade unions elsewhere have supported the establishment of such centres, for domestic and

[1] For a comprehensive account of advice offices in South Africa see Wilderman J, Grawitzky R, Luka L, Morris C, Munakamwe J & Riabchuck A *Worker advice offices in South Africa* (2015) (Report commissioned by the Vulnerable Workers Task Team, Congress of South African Trade Unions).

other vulnerable workers. There is also a history of the emergent trade unions doing so, in the pre-1994 period.

For various reasons it would make sense for such a centre to be constituted as a separate legal entity: either a trust or a voluntary association, having either its own trust deed or its own constitution. But since the workers we are concerned with here have not opted to pursue this strategy, we need not consider it. The difference between a trust and voluntary association is nevertheless important, in order to understand the make-up of 'civil society' – by which we refer to the spectrum of non-state entities and organisations - and how it is regulated.

In this instance, the domestic workers and their advisors opted for an alternative strategy. This was to address the needs of domestic workers by forming an enterprise, with the object, amongst others, of placing workers in employment. Placing workers in employment is an economic objective. It is also what intermediaries such as labour brokers do. The widespread utilisation of labour brokers in all sectors of the economy has been associated with the undermining of labour rights, and is highly controversial. So much so that labour legislation was amended in 2014 to restrict the practice.

It nevertheless continues to flourish. In the case of domestic work, this is because there is a fine line dividing a labour broker and an employment agency (another form of intermediary). Also, because digital technology can be used to create a platform which both workers seeking employment and potential employers can use. This would be for a fee, naturally, because an enterprise such as an employment agency operates for profit. Herein lies the difference with, and the advantage of, the organisational model favoured by the domestic workers and their advisors.

They were inspired to do so in part by the recent emergence of co-operatives using digital technology in countries in the global North, known as 'platform co-operatives.' For the co-operative is the only kind of voluntary association that is globally recognised as being an enterprise. At the same time, the co-operative is the only form of enterprise in which it is required that a portion of any surplus is generated in a reserve fund, which is not divisible amongst its members.

Arguably, therefore, the co-operative should be regarded as not 'for profit.' It also represents an alternative model of accumulation to the 'for profit' enterprise prevalent in a capitalist economy, typified by the company. For this reason, it has historically been favoured in countries advocating socialist policies, and in Africa. The co-operative has also proven its viability in a country as hostile to socialist policies as the United States, in sectors where it arguably has an advantage over for-profit enterprises.

To be specific about this advantage – or potential advantage - in the case of domestic workers, a co-operative should at the very least be able to place workers on terms no less favourable than a for-profit employment agency. First and foremost, that is because it would be eliminating the slice of the revenue taken by the intermediary (whether an employment agency or labour broker). This relates to what is referred to in the literature as the 'co-operative advantage': the competitive advantage a co-operative has over a 'for profit' enterprise in given circumstances, other things being equal.[2]

A co-operative would also be able to do a lot more than a 'for profit enterprise' in other ways. These include ensuring that employers utilising the service subscribed to fair labour standards, which a 'for profit' enterprise is unlikely to do despite protestations to the contrary, and by providing social security. That is because the domestic workers would be its members, and these are the kind of benefits they would expect their organisation to provide. For in the final analysis, no less clearly than in a trade union – the co-operative is supposed to be democratically controlled by its members.

The fact that a co-operative is supposed to be democratically controlled by its members is in accord with internationally recognised principles of cooperation. But this does not of course mean that it is democratically controlled in practice. A lot depends on the regulatory framework, and how resources are allocated. This must in turn be understood in the context of the regulatory framework in which civil society operates. This is dealt with in section 2

[2] The concept of the 'co-operative advantage' is borrowed from Spear R, 'The co-operative advantage' (2000) 71(4) *Annals of Public and Co-operative Economics* 507.

below, as well as the fallacious notion that different forms organisation should be operating on a level playing field. Especial attention is paid to the relevance of the Nonprofit Organisations Act.

In section 3 of the report we consider the significance of the proliferation of co-operatives over the past few decades, and the inadequacies of the data relating to co-operatives. We argue that this in turn relates to the lack of a coherent policy regarding co-operative development, and proceed to consider the provisions of the 2005 Act and the 2013 amendments. In section 4 we consider to what extent government has failed to implement its own policies and legislation, and provide two concrete examples of this failure. In section 5 we go on to consider case studies of sectors in which co-operatives have relevance today. In section 6 we consider the feasibility and potential of platform co-operatives.

2. THE REGULATION OF CIVIL SOCIETY POST 1994, AND DISPENSING WITH THE NOTION OF A LEVEL PLAYING FIELD

Although there is a prevailing sentiment that South African has a vibrant civil society, this, of course, is matter of opinion, depending both on what you think 'vibrant' looks like and what you understand 'civil society' to mean. It is an imprecise term, that carries with it a considerable amount of baggage and is open to different interpretations.

For an older generation, a 'vibrant civil society' arguably evokes memories of the transition to democracy that began in about 1990, precipitated as much by an internal movement representing masses of ordinary people as by the low-intensity war on the borders and external events. This internal movement was spearheaded by trade unions and civic and faith-based organisations that emerged in the 1970s and 1980s, notwithstanding the legislative framework then in place.

It is useful to consider this legislative framework as a whole, because anyone wishing to promote a vibrant civil society, or form an organisation -as in the case of the domestic workers we are talking of- needs to know the options. This is particularly so in the case of organisations intending to operate in the formal economy, where some form of registration is generally required to open a bank account and the like. To understand the organisational options in turn requires some grasp of the interplay between the different laws as well how the state, through various agencies, privileges certain forms of organisation over others, whether through the allocation of resources and programmatic promotion or through repression. Organisational culture must also be considered.

An authoritarian state relies heavily on repression in regulating civil society, and more especially where organisations have a mass base, or have the potential to develop one. This was the case with some trade unions in apartheid South Africa. However, to ban trade unions outright in an industrialised economy was not seen as feasible, for various reasons. Instead, the state sought to foster trade unions representing a privileged layer of the workforce –

initially defined in terms of race and skills. In this regard, the role of labour legislation in conjunction with other laws was critical.

However, in the process of redefining the privileged layer it wanted to foster- so-called permanent African workers were to be included whereas migrants were to be excluded- labour legislation inadvertently allowed a very different kind of trade union to emerge. This developed into a movement with a mass base, and the capacity to derail the economy. It was this capacity that gave the civil society movement of the 1980s its edge, and led to the first form of negotiated settlement, in 1990: an 'accord' between the state, organised labour and business. This accord put organised labour into pole position to shape the legislative framework for civil society adopted post 1994.

But before considering the post-1994 situation, it is necessary to consider the other forms of organisation constituting civil society at the time. These can be regarded as comprising a spectrum, from organisations having an economic objective and those that do not, on the one hand, and on the other hand organisations that are membership-based and democratically constituted, and those that are not. The pre-eminent form of organization was (and still is) the company, an association with limited liability that is regarded as one of the foundation stones of a capitalist economy.

Curiously, however, the legislation in terms of which companies (including non-profit companies) were required to register also seeks to apply to enterprises that are not companies. This is in terms of a provision prohibiting an association with more than twenty members having as its objective the 'acquisition of gain' unless it is registered as a company or in terms of any other law.[3] In effect this left an association having an economic objective and more than twenty members with three options. The one was to register a trust, which is not membership based and hence is not democratically constituted. Control vests with trustees, who are not accountable to anyone other than the Master of the High Court by whom they are appointed. The other two options were to register a close-corporation – essentially a simpler form of company intended to cater for small enterprises - or to register a co-operative.

[3] s 30(1) of the Companies Act 61 of 1973.

Co-operatives had been recognised as a distinct form of enterprise in South Africa – and able to register as such- since 1922.[4] Like trade unions, co-operatives have the capacity to develop a mass base. Examples in an African context are countries like Kenya and Tanzania, where the co-operative movement has had (and still does) a substantial presence. There are also instances in Africa where the co-operative movement has been subject to repression. In Eswatini, a long-established co-operative movement operates in the shadow of an authoritarian state, and there is reason to question its autonomy. However, it was never perceived necessary to repress co-operatives in South Africa, because there was no co-operative movement of any consequence outside of agriculture, and apartheid legislation ensured that agricultural land remained by and large in white hands.

Agriculture is the sector in which co-operatives have the strongest track record globally, and the state devoted considerable resources to the development of agricultural co-operatives in South Africa, including the provision of extension services, and assisting in the establishment of secondary co-operatives in agri-processing and food manufacture. So much so that companies began to complain that they could not compete. It appears that the notion that there should be a level playing field between organisations in civil society traces back to complaints such these, as well as complaints concerning what was perceived to be more favourable tax treatment for co-operatives – although arguably co-operatives should not be taxed in the same way as companies given that a portion of any surplus generated is held in reserve.

The reason agriculture is the sector in which co-operatives have the strongest track record globally is because the benefits of co-operation - the co-operative advantage – are in most instances manifest. They include lowering the cost of agricultural inputs through bulk-buying, for example, or gaining access to markets – problems that all farmers confront individually, but which they are better able to deal with collectively. This is particularly true of small growers, although it is also necessary to take account of the particularities of different sub-sectors: dairy, for example, or sugar.

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[4] Ndumo JN, 'An analysis of the legislative and policy trajectory in South Africa' in Satgar V (ed) *Co-operatives in South Africa – Advancing solidarity economy pathways from below* (2019) 26.

As the case of agriculture illustrates, there is no rational basis for suggesting there is or could be a level playing field between different forms of organisation with an economic objective. Rather, different forms of organisation are appropriate in different circumstances. In a context in which economic power has been concentrated to an unprecedented extent, in ever fewer hands, the need for an alternative to the for-profit company is arguably all the more pressing.

The irony about South Africa's transition to democracy, then, is that it happened just as this process of economic concentration was accelerating, globally. Not coincidentally, it is also when 'neo-liberal' ideas became increasingly dominant, including ideas about the primacy of 'the market', and the need to diminish the role of the state in the economy (if it could not be eliminated altogether). In the spirit of the times, the members of South Africa's most successful (white) co-operatives saw the opportunity of enrichment by cannibalising their under-valued reserve funds, and began converting to companies. At the same time trade unions began establishing investment companies to compensate, as it were, for the loss of their members through wide-scale retrenchments. It is public knowledge that some trade unions have ended up becoming shareholders in companies that employ their own members.

The most notable of these retrenchments and plant-closures were in manufacturing and mining – the productive sectors of the economy which had formerly been the base of the trade union movement - and job-shedding showed no let-up in the 1990s. As a consequence, the trade union movement was probably already in decline by 1994, when the 1990 'accord' morphed into NEDLAC, a tripartite body with a mandate to consider legislation relating to labour, economic and development. [5]The adoption of the Labour Relations Act (LRA) a year later certainly did not arrest this decline. Instead, it coincided with a dramatic increase in the use of labour brokers and external service providers leading to a process of informalisation in the formal workplace. This process has been characterised as 'informalisation from above'

[5] The decline of trade union membership in the productive sectors of the economy has been masked by organised labour's rapid expansion into the hitherto largely unorganised public sector.

as distinct from the 'informalisation from below' that is generally associated with notion of the 'informal sector' (or 'economy').[6]

The NEDLAC Act and LRA marked the beginnings of a new legislative framework for civil society, even before the final Constitution was adopted. However, the Bill of Rights in the Constitution has little to say on how civil society should be organised. It says 'everyone has a right to freedom of association' but nothing about the forms of organisation to which this freedom gives rise, such as the co-operative. It also does not limit this freedom in respect of organisations with an economic objective, despite the afore-mentioned prohibition in the Companies Act – which is presumably intended to safeguard the public against entities that are not properly regulated.

Critically, it does not provide for a 'right to work'. This is an internationally recognised right which if properly interpreted- in contradistinction to how it is understood in the United States – could serve to underpin measures to address informalisation from above and below, and to counter South Africa's emerging 'jobs crisis' which was already evident at this juncture. Instead, it has a practically worthless provision on labour relations, that does little more than buttress the provisions of the recently adopted LRA.

Apart from the suite of labour laws that were introduced after the adoption of the final Constitution, the most important legislation affecting civil society, in the sequence in which it was adopted, was the Communal Property Associations Act in 1996,[7] which is concerned with the ownership of land restored to communities following a process of restitution, the Nonprofit Organisations (NPO) Act in 1997,[8] discussed in more detail below, and the National Development Agency Act (NDA) in 1998.[9] The NDA Act establishes an agency with a mandate to implement programmes to alleviate poverty, and formulate development policy – in potential conflict with NEDLAC. It also seeks to co-ordinate the activities of 'civil society

[6] Theron J, 'Informalization from above, informalization from below: Options for organization' (2010) *African Studies Quarterly*.
[7] Communal Property Associations Act 28 of 1996.
[8] Nonprofit Organisations Act Act 71 of 1997 (NPO Act).
[9] National Development Agency Act 108 of 1998 (NDA Act).

organisations', which are defined as a 'trust, company or voluntary association established for a public purpose …..'[10].

This definition inadvertently reinforces a conception of civil society as excluding organised labour. While obviously not correct, this conception has nevertheless a gained traction in civil society due to the perception that the trade union organisations in NEDLAC represent a privileged layer of the workforce. Other questions about the representativeness of NEDLAC have been only slightly ameliorated by the creation of a fourth chamber in NEDLAC to represent 'the community'. For this is a no less amorphous concept than 'civil society'; there is also no organisation that can credibly claim to represent 'the community'. Consequently, representation is ad hoc and in effect by invitation.

Attention turned to co-operatives only after a political decision was taken to transfer co-operatives from the Department of Agriculture to Trade and Industry (DTI) in about 2000. A new Co-operative Act was adopted in 2005.[11] We consider its provisions in Section 3. Not long afterwards, in 2008, a new Companies Act was adopted.[12] For the purposes of this analysis it is not necessary to consider the provisions of the new Companies Act in any detail. However, there are two changes worth noting.

First, in the context of a deepening jobs crisis, exacerbated by the global financial crisis of that year, government decided on adoption of the new Act to discontinue the registration of 'close corporations'. This decision was bound to impact small enterprises in particular. The intention was presumably to streamline their registration as private, for-profit companies – since registration as public companies would not be feasible for them. The second change was to scrap the office of the Registrar, and allocate responsibility for the registration of companies to the Companies and Intellectual Property Commission (CIPC). Section 8 of the new Act reasserts its pre-eminent position by prohibiting associations with an economic objective in a similar fashion to section 30(1) of the old Act.

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[10] s 1 of the NDA Act.
[11] The Co-operatives Act 14 of 2005 (Co-operatives Act).
[12] The Companies Act 71 of 2008.

The Nonprofit Organisations Act

The reason it is necessary to consider the provisions of the NPO Act in some detail is because it provides an alternative to the non-profit company, that is, for a membership- based organisation that wishes to be democratically constituted. It is also the organisation that the domestic workers in our case study have provisionally opted for, notwithstanding their initial intention to form a co-operative - for reasons we will consider in the next section. However, there are a number of problems with a voluntary association operating as an enterprise that registers as an NPO. Before considering these problems, it is appropriate to consider to what extent the NPO Act is 'enabling'.

The notion that legislation should be enabling, arguably, derives from neo-liberal ideas about the role of the state referred to above. In this instance, what the legislation in question was meant to enable was contingent on NGOs having diverse objectives, ranging from advocacy to charitable activities that could supplement or complement the activities of a diminished state. These NGOs would not be accountable to the state, but to their funders, many of whom would in all probability have been individuals or foundations in the global North awash with money, and looking for ways to diminish their tax liability. There is no need for NGOs having these objectives to be membership-based. They could as easily be constituted as a trust. If, on the other hand, they are membership-based, the funders would be more concerned with the identity of the director and his or her board.

Unquestionably the NPO Act has had a measure of success in enabling the emergence of a contingent of NGOs such as described. Equally, it has led to a proliferation of 'organisations' registered as NPOs with vague or conflicting objectives in the expectation of securing funding, but which will never function as such. Anecdotal evidence suggests the attrition rate of such NPOs is high. It is also rare for an organisation established with external funding to become financially self-sufficient and able to dispense with that funding. We need to consider its provisions more closely, with the above in mind.

The NPO Act is broader in scope than predecessor legislation (regulating so-called 'friendly societies'), and defines a NPO as a trust, company or other association established 'for a public purpose' and whose income or property is not distributable amongst its members or

office-bearers. [13] To ensure that an organisation's constitution meets muster, it provides a checklist.[14] The NPO directorate also has a model constitution that organisations can utilise. No doubt this approach is sufficient for an organisation with a clearly definable objective, such as a charity or sports club or cultural society. However, it will be more challenging to apply a checklist or model constitution in the case of an enterprise providing a service to domestic workers, for example. It will also be necessary to establish the 'public purpose' such organisation will fulfil.

It is in respect of its provisions regarding membership that the inadequacies of the NPO Act are most evident - possibly because it also caters for trusts (which have no members). It is necessary in this regard to distinguish between organisations which submit a list of the founding members upon registration, but which have no intention of expanding their membership (i.e. whose membership is to all intents and purposes static) and organisations whose membership is intended to be dynamic. In the case of the domestic workers, it would certainly be the latter. They would want to expand their membership as far as possible, to provide better benefits, and to ensure the organisation's sustainability.

Simply put, the NPO Act does not adequately cater for an organisation with a dynamic membership. In fact, unlike its predecessor, it does not even require an organisation to provide for matters as essential as the requirements for admission to membership, or the conditions under which membership ceases.[15] Further, the NPO directorate is clearly under-resourced. It has no inspectorate to check whether an NPO is democratically constituted. It also does not ask NPOs to report on changes to their membership. Probably this is because in most cases there is none. In an organisation such as the domestic workers envisage, this failing could have devastating consequences, because in any organisation that is expanding, and particularly where assets are concerned, there is always potential for conflict.

Perhaps this is best illustrated by a case study concerning the employment of community health workers (CHWs). A long established NPO that was registered as a voluntary

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[13] s 1 of the NPO Act. In contrast, s 2(1) of the Friendly Societies Act 25 of 1956 (Friendly Societies Act) contains a list of specific objects in terms of which a "friendly society" may be registered.
[14] s 12(2) of the NPO Act.
[15] s 13(d) of the Friendly Societies Act.

organisation made vague provision for a membership in terms of its constitution, and initially had a membership. It also made vague reference to providing employment to community health workers (CHWs) as one of its objectives, amongst others. But over a period of years this in effect became its primary objective, in that grants received to 'employ' CHWs became its primary source of income, and its *raison d'etre.*

Whether it was (or is) a good thing for a NPO to play this role – and whether co-operatives provide an alternative - is a matter we consider in section 5 below in respect of co-operatives providing a public service in a different sector. Of relevance in the present context, is that over the years the NPO forgot it was supposed to have a membership. 'AGMs' were held without a list of members to whom AGM notices had to be sent. Audited reports were submitted to the NPO directorate without any comment about this state of affairs. This is perhaps not surprising, given a general lack of awareness in the auditing profession as to how membership-based organisations operate. It came to light only because of a dispute. No doubt this is also how any inadequacies in the constitution of any organisation formed by the domestic workers would come to light.

3. THE NEW CO-OPERATIVES ACT ON PAPER AND IN PRACTICE

The fact that NPOs have been registered in the hope of securing funding should not be surprising, in the context of what has now become a fully-fledged jobs crisis. In this regard it is appropriate to remind ourselves of targets set by the National Development Plan: 11 million new jobs and a reduction in unemployment to 6% by 2030.[16] However, instead of unemployment rate diminishing it has steadily been growing. At the time of writing it has reached record levels: 32,9 %, while the expanded unemployment rate is 43,1%.[17]

That said, co-operatives have also been registered in the hope of securing funding in much the same way as NPOs. In fact, the DTI at one point encouraged co-operatives to do so, by providing an unconditional grant to newly registered co-operatives in terms of a so-called Co-operative Incentive Scheme (CIS): a policy so short-sighted and obviously wrong that one wonders what the intentions were of the officials that devised it. Loans and grants by provincial governments have compounded the problem. The quantum of loans and grants granted in Kwazulu-Natal alone, through Ithala Bank, is staggering.[18]

According to DTI's Companies and Intellectual Property Commission (CIPC), where the office of the Registrar of Co-operatives is now located, the number of co-operatives registered has increased dramatically over the last thirty years. In the period from 1922 to 1994 a total of 1 444 co-operatives were registered, but in 1995 the number had jumped to 3 911 and thereafter it increased exponentially to over 86 000 ten years later. By June 2025 the total stood at a staggering 197 796 primary co-operatives (and 1 458 secondary co-operatives and

[16] National Development Plan 2030: Our future. Make it work. Chapter 3.
[17] Statistics South Africa 'Quarterly Labour Force Survey – "Statistics SA on Quarterly Labour Force Survey"' (13 May 2025) at https://www.statssa.gov.za/?p=18391.
[18] An August 2010 presentation by the Deputy Minister of the DTI to the Select Committee on Trade and International Relations revealed that a total of R454 million had been disbursed over a five-year period by Ithala Bank in the form of loans and grants for co-operative development in KwaZulu-Natal. This was a lot more than the total disbursed by all the other provinces. Department of Trade and Industry, 'Presentation by the Deputy Minister to the Select Committee on Trade and International Relations' (August 2010).

100 tertiary co-operatives) – see Graph 1 and Table 1.[19] This growth is extraordinary, although it seems to pale into insignificance when compared to the number of registered private companies - 5 820 227. However, the latter arguably reflects the pre-eminence of the company as a form of enterprise (especially since the ending of the close corporation option in 2008), and has in any event taken place over a longer time-frame.

At the very least, therefore, the number of registered co-operatives represents a significant level of interest in an alternative. It also represents - or is supposed to represent - enterprises that are economically sustainable. With this in mind 197 796 registered primary co-ops is a remarkable number. Countries with comparatively strong co-operative movements such as Germany, Spain and Kenya – and which measure their membership in millions - do not have anything like this number of co-operatives. So, what does this number signify? A proliferation, to be sure, but of what?

It is known that a certain proportion of the associations registered as 'co-operatives' were formed purely for opportunistic reasons, in order to access the CIS grant. The DTI has acknowledged as much in its Integrated Strategy of 2011.[20] What it has not as freely acknowledged is how completely at odds with co-operative values it was to allow this to happen– co-operatives are after all supposed to subscribe to values of self-sufficiency. Also, how the CIS grant was likely to corrupt the co-operative registration process, by creating opportunities for personal enrichment or patronage. This it undoubtedly did do, even if its full extent is not known.[21]

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[19] Figures obtained from the CIPC annual reports. These reports provide the number of new registrations each year, without recording a total number in a base year. In the table, we start with a base number of 86 343 co-operatives provided to us by DTI officials in March 2014. The total for June 2025 and the totals for secondary and tertiary co-operatives were provided by CIPC officials on 11 June 2025. We were able to provide a provincial breakdown of total registered cooperatives for 2025 with the data provided by the CIPC, which can be compared to the breakdown for 2014 (data provided by officials of the DTI officials in March 2014). This reveals little change in the proportions across provinces – see Charts 1 and 2 in Annexure B. The CIPC was unable to provide data on registrations by sector and type, which the DTI was able to give us in 2014 – see Chart 3 in Annexure B.

[20] Integrated Strategy on the Development and Promotion of Co-operatives: Promoting an Integrated Co-operative Sector in South Africa 2010-20, Government Gazette Nr 33943, 21 January 2011: 35.

[21] Theron J, 'Co-operatives and the limits of legal reform' in Satgar V (ed) *Co-operatives in South Africa – Advancing Solidarity Economy Pathways from Below* (2019) at 126.

In short, although there is no longer an unconditional grant, the register of co-operatives has been corrupted. It has been corrupted in that it includes associations formed for ulterior motives, such as to access a grant, and which are therefore not genuine co-operatives. Also, it includes entities that were formed with the intent to be genuine co-operatives but that have failed. Or even if they have not failed in their own estimation, in that they exist on paper and still have members, are unable to function as such, for whatever reason.[22] In section 5 we will consider a case study of such a co-operative.

It should go without saying that the Registrar of Co-operatives (the Registrar) should know how many 'co-operatives' on the register have never or no longer function as such. Evidently the Registrar does not.[23] This is due in part to the fact that so few co-operatives submit annual returns to his office, and the Registrar is not willing or able to compel them to do so.[24] The best answers to questions such as these are found in academic studies, including studies commissioned by DTI itself.[25]

According to one such study, 88% of co-operatives registered between 2005 and 2009 did not survive. This is referred to as its mortality rate.[26] This figure has continued to be cited because no such extensive research has been done since 2009, and perhaps because there is no reason to suppose that the attrition rate has changed in any significant way.[27] But studies such as this are

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[22] Graph 1 in Annexure B shows that for a period of three years de-registrations of co-operatives took place: from 2008/9 to 2010/11 a total of 2 194 co-operatives were de-registered. It is not known what the reasons were for the de-registrations. No data is available on de-registrations after 2010/11, but data recently provided to us by the CIPC indicates that of the total of 197 796 registered co-operatives in June 2025, 1 435 primary co-operatives were 'inactive', along with 16 secondary co-operatives, and three tertiary co-operatives. It is not clear exactly what the CIPC means by classifying them as 'inactive', but it does suggest that a limited process is in place through which the Registrar is communicating with co-operatives to establish whether they are functioning or not.

[23] The CIPC were unable to provide us with data on de-registrations and referred us to the Department of Small Business Development, the implication being that de-registrations are latter's responsibility.

[24] The annual returns comprise completed Forms CO-OP 7 and CO-OP 8 together with financial statements (the requirements in respect of the latter vary according to whether the co-operative is a Category A1, Category A2, Category B or Category C co-operative.

[25] According to DTI's Integrated Strategy on the Development and Promotion of Co-operatives, the number of co-operatives submitting returns was 1 percent. More recently, we were informed that from February 2021, 716 financial statements had been submitted to the CIPC. The online system for submitting annual returns had started only in February 2025 but it seems not to have facilitated in increase in submissions: the response to the introduction of the online system was described as 'still low'.

[26] DTI Baseline Study, cited in DTI Integrated Strategy on the Development and Promotion of Co-operatives.

[27] It seems to be corroborated by research done by V Satgar and M Williams (cited by Wessels and Nel at 192), which found in 2010 that 88% of the 31 898 registered co-operatives had failed. However, Wessels and

necessarily partial and incomplete, because there is certain basic information which only a government can authoritatively require and provide. It is also up to government to determine how this information is captured.

For example, data provided to us by the DTI in 2014 gives a breakdown of the provinces in which registered co-operatives are located, and the sectors in which they are located. In the case of the provinces, there is no ambiguity. As indicated in a graph annexed to this report (Graph 2), Kwazulu-Natal is the province which accounts for the highest proportion of registered co-operatives, at 38%. In the case of sectors, however, it depends on government policy whether a co-operative providing employment to its members on a farm is to be captured as an agricultural co-operative or as a workers' (producer) co-operative.

The reason this matters is that in the case of agriculture there is no obvious advantage in forming a worker co-operative, although there may be reason to do so in certain circumstances. There is also at least one documented case study where small-growers cultivating sugar in KZN were prevailed upon by government officials to form a worker co-operative, thereby in effect forfeiting the advantage they could have enjoyed as owners of the plots of land in question.[28] Political or ideological considerations, in other words, appear to have trumped the considerations of establishing a sustainable entity.

How co-operatives are categorised is therefore a question of policy. It relates to how the co-operative advantage is understood, and what kind of co-operatives are to be promoted. Whereas policy should ideally inform legislation, including its implementation, in the case of South Africa it did not. The first co-operative development policy and the new Act were formulated in isolation from one another, at about the same time.[29] The policy categorises co-operatives one way and the legislation another. This was an avoidable blunder, which renders any categorisation of co-operatives unreliable. Put differently, it makes little sense to categorise co-operatives according to the conventional sectoral categories when there is

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Nel's own research on a sample of 220 co-operatives in the Free State found a lower failure rate of 63% (although this is obviously still extremely high). They also found that of the surviving 37% of co-operatives, the number of members had declined. So, besides the co-operative attrition rate there is also membership attrition to consider. (Wessels & Nel, 2016: 195 - 199)

[28] Theron (2019) at 124-125.

[29] Theron (2019) at 122-23.

strong anecdotal evidence that the proliferation of co-operatives is made up, in large part, of co-operatives seeking to provide employment to their members i.e., worker co-operatives.

So, the more fundamental question is why, twenty years after the new Co-operatives Act was adopted, the DSBD still does not have a coherent policy, that addresses issues fundamental to co-operative development? It is important in this regard to note that the proliferation of co-operatives began before the 2005 Act was adopted. It is therefore not plausible to suggest that this proliferation was in any way due to the legislation that was in the offing, particularly since this was not generally known. In fact, one study records a 400% increase in the registration of trading co-operatives – the term used for non-agricultural co-operatives in terms of old Act - the year before the latter was replaced.[30]

The more plausible explanation for the proliferation of co-operatives is as a response to the jobs crisis, in an economy in which high numbers were chronically unemployed and in which the co-operative held out the hope of employment – not employment in the sense of having what is now regarded as a standard job, regulated by labour legislation, but in the sense of being able to generate an income through a collective enterprise. It is also important not to lose sight of the fact that even if the mortality rate was high, it is nevertheless true that some co-operatives have survived. These include a co-operative of small growers that is still operating successfully today, more than 20 years later (see section 5 below). Why some succeed and others do not is precisely what policy-makers need to understand. But they cannot do so in the absence of credible data.

The lack of a coherent policy

The explanation for the lack of a coherent policy does not concern the provisions of the 2005 Act, but relates first and foremost to a series of political decisions taken prior to and subsequent to its adoption. The first of these decisions was to separate the office of the Registrar from those entrusted with co-operative development, and to locate this office in the

[30] Theron J, 'Co-operatives in South Africa – a movement (re)-emerging' in Develtere P, Pollet I & Wanyama F (eds) *Co-operating out of Poverty – The Renaissance of the African Co-operative Movement* (2008) Geneva: International Labour Organisation at 308.

CIPC, whose primary function is the registration of companies. This represented a complete break with the approach taken to co-operative development under the old Act.

Arguably, it also signalled government's intention to remove itself from the economic sphere in accordance with neo-liberal precepts. It would after all be naïve to suppose that the political decisions relating to co-operative development, and particularly decisions concerning the allocation of resources, have not been influenced by the *zeitgeist* of the last three decades, which has been distinctly hostile toward all organisations based on values of co-operation and solidarity and in which there has been a pervasive disbelief in any alternative model of accumulation.

A co-operative does represent an alternative model of accumulating capital. Given the pervasive disbelief in such models, particular care needs to be taken in the process of registering a co-operative, and especially in formulating its constitution. This cannot be compared to the process of registering a company, with its well-established protocols, supported by a phalanx of lawyers and accountants on call. There is no such expertise on call for co-operatives. This is not only because would-be co-operatives often cannot afford the professional fees, but because in contrast to the company, the co-operative does not feature on the curriculum of most universities. This means few lawyers would be of much assistance to a prospective co-operative.

It is also not desirable for applications to be done entirely on-line, as currently happens, based on an examination of the documentation submitted, with a turnaround time for registering a co-operative falling from two to one day (against the service standard of three working days).[31] Apart from the obvious fact that not everyone has access to the internet, the only way in which it is possible to truncate the process to this extent is by reliance on model constitutions. While permissible to use a model constitution, the model constitutions DTI provided are far from ideal, and regurgitate provisions of the Act in indigestible chunks.

Critically, truncating the process eliminates any engagement with the leadership of a co-operative regarding its objectives, and how they should be framed. The proper framing is

[31] CIPC annual reports (see Table 1).

necessary not only to determine in what sector it operates, but also the nature of the co-operative advantage it may or may not have and which will determine its prospects of success. Such engagement is not of course possible for most would-be co-operatives, when the only office fulfilling this function is in Pretoria.[32] By the same token, it is evident that the Registrar does not attempt to engage with applicant co-operatives on this issue.

As already noted, the fact that the 2004 policy and the 2005 Act did not speak to each other has complicated the process. The new Act provided a mechanism to rectify this blunder. This was the establishment of a Co-operatives Advisory Board (CAB), whose primary function was to make recommendations regarding co-operative development policy, and on 'the application of any of the provisions of this Act ….on matters affecting co-operatives.'[33] Yet this Board was never established: an early indication that the DTI (or government as a whole) had no intention to put resources into co-operative development, an approach which the DSBD has not rectified.

The reason for differentiating between the DTI and 'government as a whole' is that in 2007 the Co-operative Banks Act was adopted. This law provides for the registration of deposit-taking financial service co-operatives which meet a specified threshold as co-operative banks, and the establishment of a Co-operative Banks Development Agency (CBDA).[34] The CBDA, which is accountable to National Treasury, was established not long afterwards and is fully operational. This, too, concerned a political decision. Although the objects of the CAB and CBDA are perhaps not comparable, it looks very much as if what was good for Treasury's goose was not good for the DTI's gander.[35]

Furthermore, although the DTI had established a unit to promote co-operative development, it does not seem that the Co-operative Development Unit (CDU) was accorded appropriate status within the DTI, or provided with the resources, to prioritise co-operative development.

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[32] The CIPC's annual reports reveal that there are various channels through which enterprises may register, most of which would involve interaction with an official of some sort, but none of these channels is available to a prospective co-operative.
[33] s 86(a) and (b) of the Co-operatives Act.
[34] s 2 of the Co-operative Banks Act 40 of 2007. The threshold a financial service co-operative has to meet is that it has 200 or more members and holds deposits to the value of R1 million.
[35] Chapter 12, of the Co-operatives Act.

Indeed, the DTI acknowledges as much in a 2011 document setting out an 'Integrated Strategy' for the co-operative sector. In this document, it draws unfavourable comparisons between the superior number of officials employed under the old Act compared with those employed under the new Act, and notwithstanding the fact that provinces also employed officials to promote co-operative development. It also unfavourably contrasts the numbers employed in co-operative development in a country such as Kenya (over 3,000) with South Africa (50 at a national level, 60 in the provinces).[36]

In formulating this Integrated Strategy, the DTI was presented with another opportunity to remedy past blunders and omissions. By and large, it failed to do so. Rather than attending to the nuts and bolts of co-operative development, the 'integration' it sought to achieve was with a plethora of government policies, of the kind for which South Africa has become notorious. These included policies in respect of small businesses and ASGISA, its economic policy of that moment. And instead of prioritising the need to establish the CAB to address the lack of a coherent policy, which had become all the more pressing given the problems with implementing the 2005 Act – as well as the need for more reliable data to underpin that policy - it advocated for the establishment of two additional new institutions. These were the Co-operative Development Agency (CDA) and the Co-operatives Tribunal.

Both these new institutions feature in the first significant amendments of the 2005 Act, while retaining with minor amendments the unimplemented proposal of a CAB, which is now termed an Advisory Council rather than a Board. The amendments were adopted in 2013, but for reasons that are not altogether clear, only came into force in 2019.[37] The former head of the CDU has characterised the 2013 amendments as turning the 2005 Act into a 'development law', and accords pride of place to the proposed CDA and Tribunal in supporting co-operative development in an integrated manner.[38] However, neither of the institutions has in fact been established (or for that matter the Advisory Council).

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[36] Integrated Strategy on the Development and Promotion of Co-operatives, note 20 above: 36-38.
[37] One reason provided for the delay was that a new set of regulations needed to be developed. It is difficult to understand why it required six years to draft these regulations (see Co-operatives Administrative Regulations and Principles of Good Governance, Government Notice 593 of 2019).
[38]Ndumo (2019). However, see Satgar who characterises the amendments as reflecting a 'top down' approach to co-operative development.

It is not clear if these bodies will ever be established, notwithstanding the adoption of new regulations making specific provision for these two institutions. This is due to another series of political decisions. First, it was decided to establish a separate Department of Small Business Development (DSBD), in response to criticism that government was not doing enough to promote small business development. Then it was decided to transfer the CDU to the DSBD. Support programmes for co-operatives since the transfer were initially provided by two agencies - the Small Enterprise Development Agency (SEDA), for non-financial support, and the Small Enterprise Finance Agency (SEFA), for financial support. SEDA and SEFA were recently merged to form the Small Enterprise Development and Finance Agency (SEDFA).

No one wishing to promote co-operative development could think that this was a good idea. Rather than strengthening co-operative identity, the effect of this transfer is arguably to make co-operatives a species of small enterprise. This, in a context in which there are already unrealistic expectations of the capacity of small enterprises to generate jobs – even more so because of the 11 million jobs the National Development Plan hopes against hope to create by 2030, ninety percent of which are projected to be created by small enterprises. It is almost inevitable that co-operatives will be marginalised in this context, and in the absence of a strong voice to articulate their interests.

The question that must now be addressed is whether, notwithstanding the lack of a coherent policy and government's evident unwillingness to devote resources to co-operative development, the legislative framework provides a suitable home for a group of people wanting to work together, such as the domestic workers with which we started this analysis. Ideally, of course, it should provide the most suitable home -if not the only possible home. Regrettably, however, we cannot give this assurance with any confidence. This is particularly because of the amendments to the 2005 Act adopted in 2013.

Basic provisions of the 2005 Act

All legislation is of course a product of its time. Although the 2005 Act represents a radical break with its predecessor, unlike some other post-apartheid statutes, it is arguably not over-

ambitious. Its primary purpose is comparatively modest: to promote 'sustainable co-operatives…. thereby increasing the number and variety of enterprises operating in the formal economy'. Other purposes include 'encouraging persons who subscribe to values of self-reliance and self-help, and who choose to work together in democratically controlled enterprises, to register co-operatives' and 'establishing a legislative framework that preserves [the] co-operative as a distinct legal entity.'[39]

This is not to suggest the 2005 Act is without problems, or altogether free of post-apartheid baggage. The definition of a primary co-operative provides an example. For the primary co-operative is the foundation of any co-operative movement, and issues such as whether a primary co-operative is composed of natural persons – or whether a juristic person may be a member – have far-reaching implications. In the case of the 2005 Act – as distinct from its predecessor – a minimum of five natural persons could form a primary co-operative. Juristic persons could not be members, an issue we will return to in discussing the 2013 amendments.

Importantly, this definition also specifies what the object of a primary co-operative should be: 'to provide employment or services to its members **and to facilitate community development**'.[40] The phrase in bold was evidently added in the legislative process, as an aspirational embellishment. It represents post-apartheid baggage, because while one may hope the establishment of co-operatives does indeed facilitate community development, and this may be an appropriate object for an NGO, it is not an appropriate object for a primary co-operative. Aspirations have no place in a legal definition, and in this instance serve to obfuscate the distinction between a worker co-operative and a co-operative providing services.

Perhaps the most important respect in which the 2005 Act represents a break with predecessor legislation is in its affirmation of co-operatives as having a distinct legal identity, clearly distinguishable from the company and other forms of enterprise. Central to this is an

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[39] ss 2(a), (b) and (e) of the Co-operatives Act.The sections are retained in the amended Act.
[40] s 1 of the Co-operatives Act. It is perhaps necessary to disclose in this context that one of the authors, Jan Theron, prepared the first draft of what is now the 2005 Act.

explicit reference to co-operative principles, which predecessor legislation did not refer to at all. These are defined with reference to the seven principles adopted by the International Co-operative Alliance (ICA), the internationally recognised apex body of the international co-operative movement.

However, it is problematic to incorporate these principles into legislation because they have evolved over the decades, and been through various iterations, and are still evolving. As generally happens with such documents, they are also subject to qualification, and wordy. Some principles are also more important than others. The principles of 'open membership' and 'one member one vote' in a primary co-operative are critical, if a government functionary is to determine whether a co-operative or its constitution is compliant with co-operative principles, as the Act requires in various circumstances. Principles such as 'community involvement' and relating to the provision of education and training should not be critical in such a determination.

How to give concrete effect to the internationally accepted principles therefore poses a conundrum. The legislative solution that the 2005 Act adopted is in section 3, headed 'compliance with co-operative principles'. This sets out objectively ascertainable circumstances in which a co-operative is regarded as compliant. The principles of 'open membership' and 'one member one vote' are self-evident, provided only natural persons can form a primary co-operative. Other principles are given an objectively ascertainable meaning, such as by specifying the percentage of any surplus that a co-operative must set aside in the reserve fund (5 percent). This is probably the Act's most important legislative innovation.[41]

The Act applies nationally to any association purporting to be a co-operative, and it is an offence to purport to be a co-operative if not registered as such. However, this does not preclude government at a provincial or local level from adopting its own policies toward co-operatives, as some have done. Government agencies of national departments are also encouraged to adopt 'co-operative development support programmes', and 'co-operative

[41] ss 1 and 2(a) of the Co-operatives Act. The term 'co-operative' is hyphenated in South African legislation and policy.

support measures across all spheres of government' are advocated.[42] In section 5 we will consider instances when government departments have done so, and failed to do so.

The 2005 Act applies to all kinds of co-operative, unlike predecessor legislation. Importantly, there is no limit to the kind of co-operatives that can be established. This calls into question the usefulness, and coherence, of the nine kinds of co-operative listed in the Act- housing, worker, social, agricultural, co-operative burial society, financial services, consumer, marketing and supply, and service.[43] Nothing would therefore preclude the formation of a platform co-operative, although it would be necessary to differentiate between a platform co-operative providing services, and one employing its members. It is also possible, as already noted, that a co-operative may fit within the definition of more than one sector.

There is also a schedule to the Act that contains special provisions for four kinds of co-operative, because of their particular needs: these are worker co-operatives, housing co-operatives, financial service co-operatives and agricultural co-operatives.[44] The provisions regarding worker co-operatives are particularly important, given how many co-operatives have been established with the object of providing employment to their members, and to counter potential abuse of this form of co-operative, as for example where a small number of members employ a larger workforce. These provisions are discussed in more detail in section 4.

Different forms – or levels – of co-operative are also envisaged. In accordance with the principle of co-operation amongst co-operatives, a minimum of two primary co-operatives may form a secondary co-operative. Two or more secondary co-operatives may form a tertiary co-operative, although few if any existed at the time the Act was adopted. What did exist was an NPO purporting to be an apex body that represented the co-operative movement. For some time and prior to its dissolution this organisation was bank-rolled by the DTI. This was obviously highly problematic. The 2005 Act makes no mention of a co-operative apex body.

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[42] ss 2(g) and (h) of the Co-operatives Act.
[43] s 4(2) of the Co-operatives Act.
[44] Parts 1-4 of Schedule 1 to the Co-operatives Act.

The Act provides considerable latitude as to how a co-operative constitutes itself, within the parameters of provisions which are compulsory as well as those which are optional.[45] It is compulsory, for example, that the requirements for membership must be specified in its constitution.[46] The procedure for admission must also comply with co-operative principles. A co-operative is deemed to comply if its membership is open to persons who can use its services and who are able to accept the responsibilities of membership.[47] A person who is refused membership despite being able to accept the responsibilities of membership would therefore have a claim against the co-operative concerned. The conditions and processes for the termination of membership must also be specified.[48]

It is therefore not necessary for co-operatives to rely on model constitutions provided by the DTI. It is also not desirable, where a co-operative has the resources to enlist professional help in drafting a constitution. There is certainly a role for NGOs to assist co-operatives in this regard. One of the reasons why reliance on model constitutions is problematic is because of the variety of co-operatives that are possible. Different kinds of co-operatives will have different objectives, and to determine its objectives cannot be reduced to a 'cut and paste' exercise from a generic list. Secondly, there is a variety of circumstances in which co-operatives operate, which need to be considered when determining what provisions are appropriate. The difficulty a co-operative in a remote rural area will face in convening a quorate AGM (a useful benchmark for evaluating provisions for co-operative governance) will not be the same as a co-operative located in a city. Similarly, the make-up of a co-operative's membership will also matter.

Ultimately, in the scheme the 2005 Act establishes, it is the Registrar who approves a co-operative's constitution and registers it. It is also the Registrar's responsibility to maintain a register of co-operatives.[49] Where the membership of a registered co-operative is reduced to less than the minimum required number it has, in effect, six months to rectify the situation.[50]

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[45] ss 13, 14(1), 14(2), 15 and 16 of the Co-operatives Act.
[46] ss 14(1)(k) and (p) of the Co-operatives Act.
[47] s 3(1)(a) of the Co-operatives Act.
[48] s 14(1)(s) of the Co-operatives Act.
[49] s 12 of the Co-operatives Act.
[50] s 26 of the Co-operatives Act. A co-operative in this situation could also convert to another legal entity.

It is the Registrar who deregisters a co-operative and the Registrar to whom the co-operative is supposed to submit an audited report as to whether its assets and facilities are being properly managed, and whether it is complying with co-operative principles. This was the primary reporting requirement in the 2005 Act, and the Registrar could also exempt a co-operative from being audited.[51]

The Registrar is also empowered to conduct an investigation where he or she has reason to believe a co-operative is not conducting its affairs in accordance with co-operative principles, or contravening any provision of the Act, and to make recommendations in this regard to the relevant Minister (amongst others).[52] The decision-making structure provided for in the 2005 Act is of particular importance in this regard. The affairs of a co-operative must be managed by a Board of Directors, elected at an Annual General Meeting. But only members may be directors, and the highest decision-making structure is a General Meeting.[53] The Board is therefore at all times accountable to a General Meeting.[54]

Having regard again to the purposes of the Act and the proliferation of registered primary co-operatives, one could certainly say that the number and variety of enterprises operating in the economy has increased. What is far less clear is how many of these co-operatives are sustainable, and how many are properly regarded as part of the formal economy.

Co-operative financial structure and taxation

Members are expected to contribute the capital a co-operative requires, in accordance with co-operative principles. This capital contribution, in terms of the Act, may comprise any of the following: entrance fees; membership subscriptions; the consideration for membership shares; member loans (i.e. a loan by a member to the co-operative); and funds of members (about which we will say more below).

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[51] s 47 of the Co-operatives Act.
[52] s 84 of the Co-operatives Act.
[53] ss 14(1)(dd) and 27(2) of the Co-operatives Act.
[54] The only exception to this is where there is a Supervisory Committee, in which case the Board is accountable to the Supervisory Committee in between General Meetings. However, it is not required that a co-operative has a Supervisory Committee. s 27(3)(b) of the Co-operatives Act.

Where a co-operative decides that a member is required to hold shares, its constitution must comply with the applicable provisions of the Act. These include provisions regarding the minimum number of shares to be issued to each member, and the maximum percentage of the shareholding a member may hold.[55] Different contributions are thus possible.[56]

The constitution of a co-operative must specify the period following which a member, after withdrawing his or her membership, becomes entitled to repayment of his or her membership shares.[57] It must also specify any other circumstances in terms of which membership shares may be redeemed.[58] Despite what the constitution says in this regard, however, a co-operative may defer the repayment of shares if it determines that this would adversely affect its financial well-being.[59]

As already noted, the 2005 Act formerly required that 'at least five percent of any surplus' must be set aside as a reserve in a reserve fund that is not divisible amongst its members.[60] The 2013 amendments do away with this approach. Instead, a co-operative is required to 'retain indivisible returns' of not less than one percent and not more than five percent of its 'nett asset value'.[61] This is to be determined from its annual financial statements, drawn up in accordance with the new reporting requirements the amendments introduce. These are discussed more fully below.

A co-operative may allocate and credit or pay to its members a portion of the surplus that is not transferred to a reserve fund. This portion must be allocated in proportion to the value of transactions conducted by a member with the co-operative during a specified period, in accordance with what is referred to as the 'patronage proportion'.[62] The Act also provides

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[55] s 15(e) of the Co-operatives Act.
[56] The Act also permits a co-operative to provide for the whole or part of the patronage proportion of a member to be applied to purchase membership shares for the member. The patronage proportion is allocated in proportion to the value of transactions conducted by a member with a co-operative during a specified period.
[57] s 14(1)(l) of the Co-operatives Act.
[58] s 15(f) of the Co-operatives Act.
[59] The maximum period for which repayment may be deferred is two years after the effective date of the notice of withdrawal of the member concerned. s 24 of the Co-operatives Act
[60] s 3(1)(e) of the Co-operatives Act.The term 'surplus' is defined as the 'financial surplus arising from the operations of a co-operative in a financial year.' The Act does not use the term 'profit'.
[61] s 46 of the Co-operatives Act.
[62] s 44(1) of the Co-operatives Act.

that a co-operative may provide in its constitution for the establishment of one or more funds of members in which amounts set aside for future payment to the member can be deposited.[63]

The Act provides that a co-operative may issue certificates in respect of membership shares issued to the member, and member loans made by the member.[64] However, these cannot be regarded as financial instruments, since they are not tradeable. Membership shares may be transferred, but only subject to the provisions of the constitution of the co-operative concerned.[65] The Act does not entitle a co-operative to issue tradeable shares, that may be purchased by investors.

In the case of the dissolution of a co-operative, the Act provides that any residue after valid claims have been paid, must first be applied to paying back the paid-up share capital of the members. If the residue is less than the paid-up share capital, members must be paid a proportion thereof. If the residue is more than the paid-up share capital, the balance must be distributed in accordance with the patronage proportion or the constitution of the co-operative concerned.[66] In the case of a co-operative converting to another entity, its capital and assets vest in the corporate body or unincorporated association into which it has converted. [67]

Since 1977 co-operatives in South Africa have been subject to the same tax regime as companies, with minor exceptions (the most significant exception relates to bonuses to members in what used to be termed closed co-operatives).[68] The legislation relating to taxation of co-operatives has not been amended since, even though it uses outdated terms (such as 'co-operative society'). Arguably, however, the current tax regime does not adequately acknowledge what is legally distinct about co-operatives. For example, it does not state how amounts transferred to a reserve fund should be treated, or what the consequences of this fund being indivisible should be. The definition of dividend was also amended in 1977

[63] s 43 of the Co-operatives Act.
[64] s 42 of the Co-operatives Act
[65] s 41(6) of the Co-operatives Act.
[66] ss 75(1)- (4) of the Co-operatives Act.
[67] s 62(7) of the Co-operatives Act.
[68] The principal law regulating taxation is the Income Tax Act 58 of 1962. A specific section headed 'determination of taxable income of co-operative societies and companies' was introduced in 1977. The term co-operative society derives from the Co-operative Societies Act 29 of 1939.

to include bonuses distributed in accordance with the patronage proportion, whereas it should arguably be distinguished from dividends.

Legislation providing special tax treatment for 'small business corporations' was introduced in 2001 and extended to co-operatives that comply with certain criteria in 2006.[69] This 'special tax treatment' includes preferential treatment with regard to tax allowances which are deductible. A progressive tax scale also applies.

The 2013 amendments

The 2013 amendments are wide-ranging. This may be justifiable after the elapse of nearly ten years, during which there has been a proliferation of co-operatives. However, the 2013 amendments do little to address some of the flaws in the 2005 Act. They do not address the coherence of the list of different kinds of co-operatives in the Act, for example, or how co-operatives are categorised. At the same time, social co-operatives are added to Schedule 1 as a co-operative for which special provisions are warranted.[70] It is not apparent why.

It is also not apparent why, to take another example, it retains a provision for associate membership, to cater for someone who wants to support a co-operative without becoming a member, but places a time limit on such membership.[71] The introduction of the concept of an 'operational co-operative' could be useful - it refers to a co-operative that has held its AGM and reported to the Registrar , in compliance with the Act - but it is only used in the very limited context of affiliation to a tertiary or secondary body. [72]

What is more concerning, however, are the number of instances in which the amendments introduce a level of complexity that seems wholly unwarranted, or which undermines key provisions of the 2005 Act. The claim that these amendments are somehow 'developmental' (see above) has to be evaluated in the light of these instances, some of which are detailed below.

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[69] Revenue Laws Amendment Act 20 of 2006.
[70] Part 5 of Schedule 1 to the Co-operatives Act.
[71] s 14A of the Co-operatives Act.
[72] s 6A of the Co-operatives Act.

Dealing first with provisions that undermine the 2005 Act, we have already made reference above to the definition and status of a primary co-operative. The problematic part of the definition that refers to the 'facilitation of community development' is retained. And instead of providing for one form of primary co-operative the amendments provide for three. A co-operative comprising a minimum of five natural persons, a co-operative comprising minimum of two juristic persons - with a juristic person defined to include a company or trust - and a co-operative comprising a minimum of 5 juristic or natural persons.[73]

These three forms seem to correspond with what are referred to as Category A, B and C primary co-operatives. However, the provision which introduces these three categories makes no reference to how they are composed. Instead, it stipulates that the Minister prescribe a 'monetary threshold for the annual revenue or projected annual revenue' for each of the three categories. These are described respectively as being 'small' (in the case of a Category A primary co-operative), 'small to medium' (in the case of Category B) and 'medium to large' (in the case of Category C).[74] This suggests there are various permutations possible, amongst primary co-operatives: in theory, at least, a Category A co-operative could take any one of three forms, and the same is true of the other two categories. This would compound the already considerable problem of categorising co-operatives alluded to previously.

An even more serious issue is allowing juristic persons to belong to a primary co-operative. This is not unprecedented in co-operative law - as previously mentioned, it was permitted in predecessor legislation. But this was justified due to its focus on agriculture, and the fact that the land which an individual farmer cultivated was often owned by a juristic person, typically a private company of which the farmer was a member. It was also enabled by the fact that this predecessor legislation ignored the internationally recognised co-operative principles. Indeed, it is not possible to make sense of these principles unless a primary co-operative is conceived of as comprising natural persons.

It is therefore difficult to see a justification for juristic persons being members of a primary co-operative in the current context. Two or more juristic persons may form a primary co-

[73] s 1 of the Co-operatives Act.
[74] s 15A of the Co-operatives Act.

operative without any limitation whatever. This gives rise to a potentially absurd situation whereby for-profit companies may form a co-operative to secure some benefit or preferential treatment to which they would otherwise not be entitled. Whether or not this occurs, the fact the legislation permits such a situation profoundly undermines what the International Cooperative Alliance (ICA) refers to as co-operative identity, and will complicate any enquiry into whether there is compliance with co-operative principles.[75]

This is most obviously the case in respect of the principle of 'democratic member control', which states that co-operatives are 'controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary co-operatives members have equal voting rights (one member, one vote)….'[76] Section 3 of the Act is concerned with compliance with co-operative principles, as already noted, and in terms of the 2005 Act a primary co-operative is deemed compliant if its constitution provides for equal voting rights. However, equal voting rights in a co-operative whose members are natural persons is by no means the same thing as equal voting rights in an organisation comprising juristic persons.

Moreover, the 2013 amendments defeat the very object of section 3, by introducing a lengthy definition of co-operative principles in section 1 of the Act. These are not the internationally accepted co-operative principles, but a contorted attempt to reconcile these principles with the amended Act, thereby further muddying the waters in any determination as to whether a co-operative is compliant. Thus, in the Act's own version 'democratic member control' means one member, one vote only in Category A and B primary co-operatives. In the case of a Category C primary co-operative, the principle means 'democratic organization for voting.' [77] This is the same meaning it has for secondary and tertiary co-operatives – as well as the national apex co-operative the amendments provide for, about which we will say more later. However, it is obvious why 'one member, one vote' cannot apply in secondary and tertiary

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[75] International Co-operative Alliance *Statement on the Co-operative Identity and Principles* (Manchester, September 1995), reproduced in Co-operative College *Promoting Co-operatives – A Guide to ILO Recommendation 193* (2004) Manchester: Co-operative College.
[76] 2nd Principle, note 75 above.
[77] s1, Act 14 of 2005 as amended.

co-operatives: the members will be co-operatives, and voting will be in accordance with the number of members each member has.

No such considerations apply in the case of a Category C primary co-operative. In fact what the amended section 3 envisages is one member having up to 25 percent of the votes in a co-operative with five members, while in a co-operative with more than five members one member may have up to 17 percent of the votes of all the members.[78] Accordingly, a primary co-operative is now required to have a provision in its constitution stipulating 'the voting rights of each member, as contemplated in section 3'.[79] In short, a section about compliance with co-operative principles has become the vehicle for undermining them.

The definition of 'co-operative principles' is not the only problematic definition the amendments introduce. Take for example the definition of 'social report'. This means 'an assessment report drafted by the Board that assesses the social impact and ethical performance of the co-operative in relation to its stated vision, mission and the code of social responsibility of the co-operative as set out in its constitution.' Leaving aside the fact that this definition is framed in the jargon of organisational development, consider how an ordinary member elected to the Board -with English as a second language - would understand what is required of his or her co-operative

What is extraordinary about this provision is that there is no requirement that a co-operative have a 'vision' or 'mission' or 'code of social responsibility' (whatever that means). There is also only a cryptic reference to a 'social report' in the amended Act itself. This is in the context of a stipulation that the Minister publish a 'co-operative reporting system framework'.[80] The details of this framework are revealed in the Regulations to the Act, which stipulate that a co-operative must submit such a social report, as well as a report on 'management decisions'.[81]

Ironically, this reporting framework serves to defeat what is perhaps the only provision in the amendments that could be described as 'developmental', which is the removal of the

[78] ss 3(3) and (4) of the Co-operatives Act.
[79] s 14(1) of the Co-operatives Act.
[80] s 54 of the Co-operatives Act (under the heading "notice of error").
[81] Regulations 20 and 31 of the Co-operatives Regulations, 2012, published under Government Notice R.193 in Government Gazette 35182 (26 March 2012).

obligation on a Category A primary co-operative to submit an audited financial report. Instead, such co-operatives are now required to submit an annual report (another overly complex definition) together with a social report and a report on management decisions, while a Category B primary co-operative is required to submit an 'independent reviewed report', following an independent review (again, the subject of an overly complex definition).[82]

It is not possible to go into all the complexities regarding the reporting requirements that the amendments have introduced. Suffice it to say that these reporting requirements are markedly more complex than the Companies Act. They certainly appeared onerous to the domestic workers when considering registering as a co-operative. It was cited by one key informant as the primary reason they have not pursued the option of establishing themselves as a co-operative. This is entirely understandable.

A new section toward the end of the Act is headed 'reporting, monitoring, evaluation and assessment' is particularly ironical given the dearth of data about co-operatives complained in earlier sections in this report. The amendments go about addressing this situation in a quite extraordinary way. The Minister is required, by notice in the Government Gazette, and taking into account 'national and relevant provincial norms and standards', to publish a framework providing for 'norms and standards in respect of procedures for the frequency of monitoring, evaluation and assessment of', *inter alia* 'the status of the co-operative movement' and 'categories of primary co-operatives'. [83] There is surely no need to legislate to enable the Minister to determine guidelines for such a purpose.

Perhaps the clearest proof that the 2013 amendments are more appropriately characterised as 'top down' rather than 'developmental' concerns its provisions regarding the formation of the apex co-operative. 'Three operational sectoral tertiary co-operatives' and 'five operational multi-sectoral tertiary co-operatives that operate on a provincial, district and local level', may now apply to register a 'national apex co-operative'.[84] Section 16A entitles the Minister to

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[82] ss 47(2) and (3) of the Co-operatives Act.Category C primary co-operatives, secondary co-operatives, tertiary co-operatives and a national apex co-operative must submit audited reports.
[83] s 94A of the Co-operatives Amendment Act 6 of 2013 (2013 Amendment Act).
[84] s 6 of the Co-operatives 2013 Amendment Act.

'publish guidelines for the functions of a national apex co-operative.'[85] This implies a very different approach to regulation of co-operatives at the highest level, and is arguably in conflict with the requirement that co-operatives should be autonomous.

[85] Co-operatives Act as amended by the Co-operatives 2013 Amendment Act.

4. GOVERNMENT'S FAILURE TO IMPLEMENT ITS OWN LEGISLATION AND PRESERVE CO-OPERATIVE IDENTITY: TWO CASE STUDIES

The issue of bogus co-operatives

Arguably, the most egregious failure of the DTI to enforce the provisions of the 2005 Act was in response to the formation of bogus co-operatives in the Kwazulu-Natal clothing sector. Perhaps this matter would also not have had as many negative consequences for co-operative development, and relations between co-operatives and trade unions, if a co-operative tribunal had been able to intervene.

The underlying issue that gave rise to the formation of bogus co-operatives was a provision in the 2005 Act that a member of a worker co-operative was not an employee as defined in the LRA and Basic Conditions of Employment Act (BCEA).[86] In other words, a member of a worker co-operative was excluded from the rights and protections provided by those statutes.[87] This meant that worker co-operatives were not required to comply with the minimum standards established by the BCEA nor those set by bargaining councils under the LRA with respect to their members.

Perhaps more importantly – since the coverage of bargaining councils is limited – it meant that a decision by the members of a worker co-operative to expel one or more of their number was a not a dismissal in terms of the LRA. The Commission for Conciliation, Mediation and

[86] s 6 of Part 2 of Schedule 1 to the Co-operatives Act.
[87] A worker co-operative, however, was deemed to be the employer of the members who work for the co-operative for the purposes of the Skills Development Act 97 of 1998; Skills Development Levies Act 9 of 199; Occupational Health and Safety Act 85 of 1993; Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA); Unemployment Insurance Act 63 of 2001 (UIA); and the Unemployment Insurance Contributions Act 4 of 2002. Members were therefore able to access social security legislation, skills development programmes, and had the protection of health and safety legislation.

Arbitration (CCMA) would therefore not have jurisdiction to determine a dispute between an expelled member and the co-operative, although the High Court would have jurisdiction. A co-operative tribunal would also have had jurisdiction, but this was before the 2013 amendments proposed its establishment.

In many respects this exclusion made sense for a worker co-operative. Particularly so, since a voluntary association is by definition able to determine its own membership, and the Act also requires for (an) expelled member(s) to have a right of appeal to a general meeting. But unscrupulous clothing manufacturers in Kwazulu-Natal, a province where there is a long history of non-compliance in the clothing industry, aided and abetted by unscrupulous attorneys and consultants, soon realised that the Act provided them with a loophole through which they could evade the bargaining council agreement, i.e. by establishing themselves as worker co-operatives.

It is not known how many co-operatives have been established with the specific purpose of evading statutory labour standards and protections for workers, but it became public knowledge that many of the non-compliant clothing factories in Newcastle and in the KwaZulu-Natal midlands registered as co-operatives for this purpose. They were 'sham' or 'bogus' co-operatives that did not function according to co-operative principles and complied with few of the other requirements in the Act.

The phenomenon of bogus clothing co-operatives in and around Newcastle is well known, but we also have direct evidence. In a prior research project one of the authors conducted interviews at clothing factories in Newcastle. At one factory it emerged only midway through an interview with the 'owner' of one of the factories that it was a registered co-operative. However, she did not know the name of the co-operative (and could only tell us after digging through a number of files on her desk) or what a co-operative was – or why the entity had registered as such. Interviews with a sample of workers at the same factory revealed that none were aware that they were members of a co-operative as opposed to employees of a company.[88]

[88] According to workers, a general meeting had never been held and there had not been a vote for the members of the board (the 'owner' had shown us the documentation with respect to the board). All the workers

At another Newcastle clothing firm the factory building comprised two entities: an office in the corner of the building was a company and the rest of it, comprising the factory floor, was a co-operative; all that physically separated the two entities was a partition wall and a large window that gave the company owner a view of the factory floor. The owner of the company liaised with clients and obtained the orders, which the co-operative was contracted to make up into garments and dispatch to customers. The owner emphasised that these were separate entities in a business relationship with one another, but workers contended that this was a single operation, and the division into separate legal entities was a thinly veiled scam.

The Natal Chamber of the National Bargaining Council for the Clothing Industry (NBCCI) sought a declaratory order from the Labour Court that the exclusion set out in section 6, Schedule 1, Part 2 of the Co-operatives Act did not prevail over the LRA, in particular section 210 and the definition of 'employee' in section 213.[89] The court was not convinced by the NBCCI's arguments. Tellingly, it noted that the Co-operatives Act 'creates criminal offences related to the malfunctioning of co-operatives to which it attaches sanctions, including imprisonment', referring in particular to section 92(2) of the Act. One implication of the judgment is therefore that this is the approach that should be taken to root out bogus co-operatives.

The NBCCI did not adopt this approach in Newcastle, possibly because it believed that there was little or no likelihood that the DTI would launch an investigation, if indeed it even had the capacity to do so. Instead, the union took the Labour Court judgment on appeal. In the Labour Appeal Court,[90] it is notable that the appellants argued *inter alia* that since: '… a sham co-operative, set up illegally, may be deregistered by the Registrar of Co-operatives, it was not necessary for the KZN-NBCCMI to seek the declaratory relief it did given that an alternative remedy existed.'

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knew was that they had been told some months before to bring in their identity books and signed a document. This would have been part of the documentation needed for applying for registration of a co-operative. Needless to say, the factory was commonly known by another name, rather than by the registered name of the co-operative.

[89] *National Bargaining Council for the Clothing Manufacturing Industry v Glamour Fashions Worker Primary Co-operative Limited and Others* D 20/16 (15 February 2017).

[90] *National Bargaining Council for the Clothing Manufacturing Industry (KZN Chamber) v Glamour Fashions Worker Primary Co-operative Limited and Others* DA 04/2017 (15 May 2018).

It was contended further, with respect to the claim that there was a conflict between the provisions of the LRA and the Co-operatives Act, that if such was the case, the Minister of Trade and Industry and Registrar of Co-operatives should have been joined to the proceedings. Ultimately, the Labour Appeal Court upheld the decision of the Labour Court and, to our knowledge, no action has ever been taken since by the DTI or the DSBD to enforce the provisions of the Act despite the evidence of widespread abuse. As a result, bogus co-operatives have continued to ignore the Act with impunity.

However, it is likely that the publicity that was occasionally given to the circumstances of workers in the non-compliant clothing factories in Newcastle as well as lobbying by the Congress of South African Trade Unions on behalf of the South African Clothing and Textile Workers Union (SACTWU) was an important factor in the 2013 amendments to the Co-operatives Act,[91] which included a section that aimed to close the loophole that had enabled bogus co-operatives in Newcastle.

The 2013 amendments provide that an employee of a worker co-operative is any member or non-member of a co-operative who satisfies the definition of 'employee' as defined in the LRA. In terms of the amended provision, worker co-operatives must now comply with all labour legislation, including the LRA and BCEA. However, a co-operative may apply to a bargaining council with jurisdiction over it or to the Minister of Labour for full or partial exemption from the applicable provisions. An exemption may only be granted if there are good grounds for doing so.

However, the amendment does not appear to have solved the problem because of limited enforcement capacity on the part of the NBCCI and the Department of Employment and Labour, and seemingly a lack of both capacity and political will on the part of the DSBD. Shortly after the amendments were introduced the NBCCI obtained a legal opinion on the revised provision for worker co-operatives. On the basis of this opinion the bargaining council issued a notice to the industry informing co-operatives that they must register with the council and apply for an exemption if they could not comply with its agreement. It appears that the

[91]Co-operatives 2013 Amendment Act.

thinking at the time was that this would solve the problem, but it begs the question whether these entities are co-operatives at all.

Information supplied by the NBCCI reveals that as at May 2025 there were 168 entities that styled themselves as co-operatives, all of which were non-compliant with its agreement. The greatest concentration of these is in Newcastle (46%), but this method of attempting to evade the council's collective agreement has spread to other areas in the province.[92] The NBCCI is in various stages of the enforcement process at all the 'co-operatives', and some have reportedly begun engaging with the council to become compliant.

Case study of a dysfunctional co-op on the West coast

The second case study of the failure of government to enforce the provisions of its own legislation concerns a co-operative near the town of Vredendal, on the West coast. This co-operative allegedly expelled 43 of its members between January 2023 and November 2024. One of the expelled members had been appointed as an 'internal auditor' and soon afterwards, contacted one of the authors of this report to ask a question, arising from a paper on co-operatives he had read: 'Was it true that in a co-operative the members had the final say?' he asked. Because in the co-operative he had belonged to, decisions were taken by its 'President' in disregard of what the members said.

According to our informant, whom we shall for convenience refer to as IA, the co-operative registered as an agricultural co-operative in 2016 with 6 founding members. It has recruited a substantial number of members since, and acquired a farm – it is not clear how this acquisition was funded. It has also amended its constitution: without the members being consulted, IA alleges, and fraudulently, in that photocopies of signatures of the founding members were appended to the application to register the new constitution.

It is of course problematic to rely on the say-so of one party in what is clearly a quite complex dispute. However, by the time we became aware of this matter the parties had already filed affidavits and appeared before the High Court in Cape Town, where the co-operative had

[92] There are many 'co-operatives' in Isithebe and Chatsworth, and increasingly to Durban (17%).

unsuccessfully attempted to interdict IA from requisitioning a Special General Meeting (SGM).[93] There is also voluminous correspondence regarding this matter, between IA and both the DTI and DSBD, including at ministerial level. Yet, despite the fact that a SGM has now been held, the dispute remains unresolved, with the co-operative effectively ignoring its outcome. Officials of the DTI's CIPC appear to have taken contradictory positions in this regard.

In summary, it is a case study of the failure or incapacity of the Registrar to do what was required, dating back to when the co-operative was first registered. The contradictory nature of its objectives as set out in the constitution – which refer both to buying and selling property and to farming - ought to have sounded alarm bells at the outset.[94] Even more so, two years later, when CIPC was asked to register an entirely new constitution that provided for a number of novel structures. These included a 'kongres', a 'heemraad', and a 'gemeenskapraad' – the latter presided over by a 'President', who is also the 'President' of the co-operative. The relationship between these structures and the 'board' and 'general meeting' provided for in the Act is opaque – the 'President', for example, is elected 'prior to an annual general meeting'.[95] The question any competent official skimming through this document would have to ask is whether it complies with the Act.

There is another curious provision in this new constitution. It contains a definition of 'self-determination'. This affirms the 'right of self-determination of any community sharing a common cultural and language heritage, within a territorial entity in the Republic…'. A territorial entity is presumably intended to include the farm the co-operative now owns, because what IA alleges is that the co-operative is in fact engaged in building a whites-only settlement. This would be in breach of a host of laws, including the Constitution and the Co-operatives Act, in that membership is not open to all. Compounding the gravity of the matter, IA and others have invested substantial amounts of money in the co-operative. The value of shares bought and a paid for by the expelled members alone amounts to hundreds of thousands of Rand.

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[93] Case 24954/24 (Western Cape Division, High Court of South Africa).
[94] Clause 6 (a)-(c), Constitution of Anwes Eindom en Beherende Koop Bpk, 2018.
[95] Clause 35, Constitution of Anwes Eindom en Beherende Koop Bpk, 2018.

As indicated in the previous section of this report, where the Registrar has reason to believe a co-operative is not conducting its affairs in accordance with co-operative principles, or contravening any provision of the Act, he or she has the power to conduct an investigation. An investigation was needed in the case of 'bogus' co-operatives, and this is no less obvious in the case of the co-operative in Vredendal. Section 84 of the Act sets out the grounds on which the Registrar may order an investigation into or an inspection of the business of a co-operative.[96] The word 'may' means the Registrar has a discretion, but clearly he or she does not have an absolute discretion. Indeed, the Registrar would arguably be in dereliction of his or her duties if he or she failed to order an investigation or inspection in the above circumstances.

Although the section has now been amended *inter alia* by enabling the Registrar to refer matters to the yet-to-be-established Co-operatives Tribunal, this is no bar to his or her ordering an investigation. The question of a referral to the Tribunal only arises if '...the results of an investigation or inspection.... warrant further action'[97] and in any event, section 84(2)(b) gives the Registrar an alternative course of action. This is to '…make any recommendation he or she considers appropriate', which may include a recommendation to the Minister. This seems to be the obvious step the Registrar should take in the circumstances.

The question that remains to be answered is why, notwithstanding the provisions of the Act and the failure to establish bodies created by the 2013 amendments, the Registrar continues to not do what is expected of him or her. The likely answer is that under the CIPC, the Registrar's office has little standing, which has meant having no power to utilize the enforcement mechanisms and capacity of the CIPC. A model constitution for a primary agricultural co-operative put out by CIPC suggests as much. It defines 'the Registrar' as 'the Registrar of Co-operatives and the CIPC.' [98]

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[96] ss 84(1)(a) and (b) of the Co-operatives Act.
[97] s 84(2)(a) of the Co-operatives Act.
[98] Department of Trade and Industry *Model Constitution for an Agricultural Primary Co-operative*.

5. SECTORS IN WHICH CO-OPERATIVES HAVE POTENTIAL AND CASE STUDIES OF FUNCTIONAL CO-OPERATIVES

In the final analysis the decision as to what kind of organisation our domestic workers want should not be determined by the legal framework. There is no ideal legal framework, and the trade union movement that emerged in the 1980s is an example of how membership-based organisations were able to develop a mass-base despite a legal framework that was hostile to just such an endeavour. The problems there may be with the legal framework for co-operatives are not remotely of the same order.

There are in any event options when confronted with a legal framework with onerous and unreasonable provisions. One option is to disregard them, while utilising the legal space the legislation has created – thereby giving the people who have no prospect of formal employment a foothold in the economy (leaving aside the question as to whether it is the formal or informal economy they are part of). This is perhaps what many if not most registered primary co-operatives have been doing - and will continue to do.

Another consideration the domestic workers may want to consider, or anyone else contemplating forming a co-operative, is whether they will have the support of others sharing the same values, and be part of a broader movement that will help address some of the problems South Africa is facing. Related to this is the question as to whether the *zeitgeist* of the last three decades has changed, and there is a growing realisation of the importance of organisations based on values of co-operation and solidarity, and of the need for the state to play a more active and direct role in promoting and protecting co-operatives.

Having regard to the current context, it is surely unarguable that we are entering a new era globally. It is also clearer than at any point over the last thirty years that South Africa's 'jobs crisis' is structural in nature and is part of a global crisis. There is no prospect that the jobs lost in manufacturing and mining in the 1980s and 1990s will return, any more than they will in the United States, notwithstanding President Trump's bid to re-order the global economy. As economist Michael Powers has put it: 'It is way too late to restore US manufacturing,

especially if it is envisaged it will bring back high-paying jobs… the caravan has moved on… so far on, it is back to where the world's centre of gravity was before 1840: Asia.'[99]

Similar considerations apply in the case of South Africa. It is not possible for South African manufacturing to compete with Asian countries, not only because of the comparatively higher cost of labour – likely due to unionisation - but because of the advanced manufacturing technologies being utilised and economies of scale being achieved. This is particularly so in China, and since the advent of artificial intelligence (AI). Arguably, the political class in South Africa has been in denial about the gravity of its job crisis for the last thirty years.

The formulaic response has been to advocate increased economic growth - but even in periods during which the economy was supposedly doing well there is reason to believe the number of jobs created has been exaggerated. Many of these 'new' jobs are in the finance sector, but they are not the highly skilled and high-paying jobs one would expect in such a sector. This is because the broadly-defined finance sector includes rapidly growing sub-sectors such as contract cleaning and private security, not to mention labour broking. Also, there is anecdotal evidence that many of the workers employed in these sub-sectors are former retrenchees of the shrinking manufacturing sector.

As a result of this process, which we characterise as the externalisation of employment, the formal workplace has been transformed, and there has been a growth in so-called triangular - or indirect - employment. Trade unions have not responded effectively to these changes, and amendments to labour legislation adopted in 2014 and targeted primarily at labour brokers, do not appear to have assisted trade unions or workers much. Because of this as well as various schemes to convert 'employees' into so-called 'independent contractors', including through the so-called platform economy (discussed in section 6), labour legislation has become increasingly irrelevant to a growing portion of the workforce - excepting the public sector.

It appears the drafters of the National Development Plan (NDP) were largely oblivious to this context. The NDP acknowledges that manufacturing is 'becoming' a proportionally smaller

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[99] M Power, 'Union Sundown- Where to from here, and will China edge the US aside', *Daily Maverick* 31 May 2025 at https://www.dailymaverick.co.za/ (accessed 31 May 2025).

employer, with 'most jobs in domestically oriented services', and moots that of the 11 million jobs it hopes to be created by 2030 a large percentage will be in 'domestic-oriented activities and in the services sector.' The only concession it makes to present day reality is to acknowledge that 'public employment programmes' are an essential element of any employment strategy, and that, under less favourable economic scenarios, the number of public works 'job opportunities' will have to increase substantially.[100] 'Job opportunity' is government-speak for employment which is not ongoing or full time.

What role can co-operatives play in this context? Certainly, co-operatives cannot be a panacea for the 'jobs crisis', but they can help alleviate it, we have argued, in sectors in which co-operatives have a potential advantage over for-profit enterprises. The intention of this section was to identify such sectors, and within them, case studies of functional co-operatives i.e., co-operatives operating with a measure of success. We have already mentioned agriculture in this regard, focussing on small-growers. Small-scale fishing was added in the course of this investigation. In the tertiary or services sector, we have selected recycling, or waste collection, in which there are known to be a number of co-operatives operating. This sector is closely related, at a local government level, with the 'public works' services provided at a national level.

However, we have been constrained from the outset by our geographical location (in the Western Cape) and time. Mention must also be made of another constraint which we have thus far not discussed. Although the primary co-operative is the basis of any co-operative movement, it is a time intensive exercise to solicit information at this level. It is far easier to do so at a secondary and tertiary level. According to CIPC, there are 1 458 registered secondary co-operatives and 100 tertiary co-operatives.[101] We encountered two secondary co-operatives in this study but no tertiary co-operatives. There was, however, mention of tertiary co-operative in a recent press report about the killing of the Eastern Cape chairperson of the South African National Taxi Council (SANTACO), in a shoot-out with the police.

[100] Chapter 3, NDP, note 16 above.
[101] Data provided by CIPC, as at 12 June 2025.

What is noteworthy about this, is that transport is a sector in which co-operatives could have had a competitive advantage, and specifically in the taxi industry. Furthermore, the principle of co-operation amongst co-operatives would seem to be a suitable antidote to the pervasive violence with which the industry is associated. However, it seemed that this ship had already sailed when the Department of Transport, post 1994, encouraged taxi drivers wishing to qualify for government subsidies to form voluntary associations instead. In the light of the press-report, it now appears the matter is more complex. The deceased chairperson reportedly played a key role in 'founding and chairing the Eastern Cape Transport Tertiary Co-operative (ETTC) in 2010, advancing the formalisation and transformation of the taxi industry.'[102]

Housing

We did not initially envisage including housing co-operatives in this investigation. There is a 2009 case study that details how a hostel in Nyanga was converted into a housing co-operative, with members contributing from their savings or through 'sweat equity' (by providing their own labour) as well as a contribution from the Department of Housing in the form of an Institutional subsidy, supplemented by provincial grants.[103] Co-operatives like this certainly have a role to play in addressing the 'housing crisis' – due to the fact that the country has not nearly sufficient and suitable housing for its people. But it does not have as much of a role in relation to the 'jobs crisis'.

Our investigation led us to a housing co-operative, nevertheless. It is located in Kayamandi, the Stellenbosch township where Dora Tamana once resided (a struggle icon associated with the co-operative movement), and is included in this report as an exemplar of an important characteristic which distinguishes co-operatives from other enterprises: resilience. It also demonstrates the determination sometimes displayed by people 'who subscribe to values of self-reliance and self-help' and 'who choose to work together in democratically controlled enterprises', in trying to realise their goals.

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[102] SANTACO praises slain 'extortion kingpin' *Cape Times* (25 June 2025).
[103] Theron J & Visser M, 'Remember me when your ship comes in: Co-operatives and the need to shift from a wage culture' *Development and Labour Monograph* (2009) Faculty of Law, University of Cape Town at 26-28.

The co-operative was established in 2013 with the objective of providing housing for its members. How it planned to do this was to acquire land belonging to the Department of Public Works and identified as suitable for housing, which formed part of a major development linking Kayamandi and Cloetesville, an adjacent and historically coloured area. This was not a plan based on wishful thinking, but as in the case of the conversion of the Nyanga hostel, it did require collaboration between government at local, provincial and national level, and between the Housing and Public Works departments. And while the previous Minister was keen on the plan the current one may not be.

When the co-operative started out it had 600 members, but over the years has lost a majority of them due to deaths and resignations. Obviously, the fact that no tangible progress has been made to achieve the co-operative's objective is one reason for this. Nevertheless, 250 remain. What is truly impressive is the amount of money the members have raised over the years: a sum of R1,5 million. By leveraging these funds, the co-operative has persuaded the National Development Agency to provide a substantial grant enabling it to equip a bakery, to be operated by a bakery co-operative registered at the end of 2024. It also has plans to start what it calls a 'clothing, textile and craft co-operative' that will link women who are currently working from home with their own sewing machines.

Small growers of rooibos tea

A co-operative of small growers cultivating rooibos tea has been the subject of several studies in the period since it was established, in 2000. The reason is obvious: its members are small growers, in the main from disadvantaged backgrounds, and it has not only survived, but grown. This is despite there having been no involvement or support for the co-operative from the Department of Agriculture and Rural Development.

On the contrary, a 2009 case-study concerns an unsolicited intervention by the Department that, wittingly or unwittingly, could have jeopardised the co-operative's business model.

In terms of this model, the members of the co-operative are obliged to cultivate the rooibos using organic methods and deliver their tea to the co-operative to market. The tea is then processed, which includes sterilisation by a processing company – because the co-operative

does not have the facilities to do so itself. The tea is then marketed overseas under a 'fair trade' label – for which the co-operative receives an above-market price. [104]

However, compliance with the evolving requirements needed to be certified as organic, and the standards required to use the 'fair trade label', introduces a level of complexity which a co-operative of small growers would have difficulty meeting on its own. Undoubtedly the co-operative benefits from a supportive relationship with an NGO with a branch in the town where it is located. It is also not the only organisation of small growers in the mountainous region where rooibos occurs, and there is one other co-operative.

Co-operation amongst co-operatives is all the more important given the announcement by the Minister of the Environment in November 2019 of an Agreement for Benefit Sharing (ABS), on the grounds that rooibos is an 'indigenous biological resource'. This was in terms of Chapter 6 of the National Environmental Management: Biodiversity Act (NEMBA), which seeks to 'provide for a fair and equitable sharing by stakeholders in bioprospecting involving indigenous biological resources.'[105] An ABS is entered into by a person seeking a permit to utilise an 'indigenous biological resource' – which is regarded as 'bio-prospecting' – from 'affected stakeholders'. [106]

In this instance, the persons seeking the permit were companies processing rooibos tea. They included a former co-operative (now a limited liability company) whose members were commercial farmers, which has long been the dominant player in the rooibos industry, and the company that sterilises the co-operative's tea. Commercial farmers, it should be noted, produce 98 percent of the total volume of rooibos tea, whereas small growers produce only about 2 percent on 7 percent of the land.[107] The 'affected stakeholders' turned out to be the San Council and the Khoisan Council.

Information about the composition of these councils is sketchy, but it does not appear that either have links to the areas where rooibos tea is grown. It also seems more than

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[104] See note 101 above: 31-33.
[105] s 80(1)(e) of the National Environmental Management: Biodiversity Act 10 of 2004 (NEMBA).
[106] s 83 of the NEMBA.
[107] Wynberg R, 'How justice can be brought to South Africa's rooibos industry' in *The Conversation* 22 November 2016, https:// theconversation.com (accessed at 14 February 2020).

coincidental that the announcement by the Minister of the Environment should coincide with the adoption of the Traditional and Khoi-San Leadership Act, giving these councils increased prominence.[108] Be that as it may, the co-operative as well as other small-growers must surely be seen as 'affected stake-holders, but were not signatories to the ABS.

In terms of the ABS, there is to be a levy of 1,5 percent of the 'farm gate' price of rooibos tea, estimated at R12m per year, paid to Trusts established by each of the two councils. But the immediate consequence for the co-operative is that it will have to pay a levy on the same basis as commercial growers: except in the co-operative's case it will be proportionally higher, because of the higher price its 'fair trade' label commands. That the co-operative pays a levy at all cannot be seen as 'fair and equitable'. It is also not likely to lead to the upliftment of small growers, as the Minister claimed. [109]

Small- growers in the sugar industry

Sugar cane farming and sugar refining is an important sector in KwaZulu-Natal and, to a lesser extent, Mpumalanga. It is a highly regulated and well-organised industry, with a dedicated statute, the Sugar Act,[110] which enables the Sugar Industry Agreement and incorporates an industry body, the South African Sugar Association (SASA). The Act, the Agreement and the SASA Constitution provide the regulatory framework for the industry. There are three industry associations beneath SASA: the SA Sugar Millers Association, the SA Canegrowers Association, and the SA Farmers Development Association.[111] In addition, three unions organise in the sector: FAWU, AMCU and UASA. There is also the SA Sugar Value Chain Masterplan 2030 which is an emergency action plan in the form of a social compact as well as a longer-term industrial policy. It aims to avoid the collapse of the industry

[108] Traditional and Khoi-San Leadership Act 3 of 2019 (assented to November 2019). The Act makes provision for the statutory recognition of Khoi-San leaders and communities, as well as the establishment of Khoi-San leadership structures.
[109] Department of Environment, Forestry and Fisheries, '"Rooibos benefit sharing agreement rights a wrong for the Khoi and San communities of South Africa", says Creecy' (1 November 2019) at https://www.environment.gov.za/creecy_rooibosindustry.
[110] Sugar Act 9 of 1978.
[111] South African Sugar Milling Research Institute 'Sugar industry facts' at https://www.smri.org/sugarfacts/Pages/sasugarindustry.aspx (accessed 2 July 2025).

and to restructure it to ensure its future sustainability.[112] All of the above organisations are signatories to the Masterplan.

Historically, the cultivation of sugar cane has been dominated by large white-owned commercial farms. This is still the case: the Masterplan records that there are 850 white canegrowers who produce 69% of the 19 million tons of sugar cane harvested annually. Most (680) are large-scale commercial farmers. On the other hand, there are 19 300 black growers who produce 24% of the harvest. The vast majority of the latter (18 770) are small-scale growers[113] who produce 11% of total annual production.[114] Furthermore, the industry directly employs 65 000 people, most of whom work on commercial farms and at mills, and creates indirect jobs for another 270 000 people. All in all, about a million people are dependent on the industry, most of them residing in deep rural areas.[115]

Support for small-scale cane growers

For some years there have been efforts by government and the industry to support black small-scale cane growers, which were given a boost in 2018 when the sugar industry committed to spend R1 billion over five years on its transformation, with a major focus support for black small-scale cane growers, and a segment of the funding targeted at supporting black women and youth through empowerment opportunities.[116] SA Canegrowers, which organises large- and small-scale sugar cane farmers, was at the forefront of unlocking these empowerment opportunities. This involved training for women cane growers in business and strategic leadership as well as the launch of a programme to diversify crops, which is aimed at boosting sustainability and resilience as well as growth and employment creation.

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[112] Department of Trade, Industry and Competition *SA Sugar Value Chain Masterplan 2030* at 2.
[113] A small-scale grower is someone who farms less than two hectares of sugar cane or produces less than 1 800 tonnes of cane per harvest. More recent data supplied by SA Canegrowers is that as at the end of June 2025 there were 23 954 small-scale cane growers and 1 079 large-scale growers.
[114] Ibid 3. The remaining 7%of sugar cane 7% is produced by about 50 farmers on miller-owned estates.
[115] Ibid.
[116] SA Canegrowers, 'Development' at https://sacanegrowers.co.za/development-2/ (accessed 2 July 2025).

The Sugar Value Chain Masterplan, which aims at the creation of a diversified sugarcane-based value chain by 2030,[117] adds to this concern with the development of small-scale cane growers. The Masterplan recognises the 'foundational role of small-scale growers in the sugarcane value chain'. In an 'Action Commitment' it proposes that the sugar industry will, within six months of the signing off of the Masterplan, develop and implement a stabilisation and restructuring plan to provide support to small-scale growers through, if necessary, amendments to regulatory frameworks. [118]

It is out of these various transformation initiatives that black women cane growers who were members of SA Canegrowers were motivated to organise themselves, so as to better pursue their advancement within the industry and the transformation of their communities.[119] With SA Canegrowers facilitating, a group of women small-scale growers came together and established a non-profit company (NPC), SA Women in Sugar (SAWIS). As part of SAWIS they received training over a full week in business management. This appears to have had a significant impact on the women's vision for the future.

However, the emergence of the SA Farmers Development Association (SAFDA) as a dedicated organisation for small-scale growers saw representation split between SA Canegrowers and SAFDA. This in turn caused a split within SAWIS that led to problems as to how the two factions would be represented within the NPC. The result was that some women decided to rather form a secondary co-operative, with its constituent primary co-operatives representing members on the ground. The outcome of this process would be co-operatives aligned exclusively with SA Canegrowers.

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[117] The intention of such diversification is for the sugar industry to develop a range of downstream value chain segments, including bioethanol for fuel, jet fuel, biogas, and biomass/co-generated electricity.
[118] Principles of the plan include that the costs of small-scale grower support will be borne by the sugar industry and that the 'benefit of support and/or preferential pricing must support the financial sustainability of small-scale growers and avoid potential value-capture by intermediaries and/or contractors and service providers'. It also proposes 'targeted supplier and enterprise development support funding and programmes to small-scale cane growers from downstream retail, wholesale and industrial users'. Department of Trade, Industry and Competition *SA Sugar Value Chain Masterplan 2030* at 17.
[119] A key person in this process was a senior official at SA Canegrowers who wanted to focus attention specifically on women cane growers.

So, with support from SA Canegrowers, they embarked on the process to convert SAWIS into a secondary co-operative, the Vukani Women Secondary Co-operative. In parallel with the process to establish Vukani the women formed themselves into eight primary co-operatives, through which they could affiliate to the secondary co-operative. Cane growers are registered as suppliers to a particular mill,[120] so the areas in which they farm become designated as mill supply areas. The intention of the women was to have one primary co-operative in each of the 11 mill supply areas in KZN and Mpumalanga. They largely achieved this objective, establishing primary co-operatives in the Gledhow, Pongola, Felixton, Amatikulu, Umfolozi, Sezela, Noodsberg, and Eston mill supply areas (leaving only the Maidstone mill supply area without a primary co-operative). The establishment of a primary co-operative in each of the two mill supply areas in Mpumalanga is still in process. Besides the expansion into Mpumalanga, the women believe the best way for them to grow is to increase membership of the existing co-operatives rather than establish new co-operatives. Currently the primary co-operatives have from five to eight members.

The strong association of the co-operatives with SA Canegrowers is continuing. In each mill area there is a Canegrowers 'business associate' who is the first line of support for each primary co-operative. Then, at the SA Canegrowers head office in Mount Edgecombe, to the north of Durban, an official of SA Canegrowers works closely with the secondary co-operative.

By mirroring the tiered structure of the industry - from individual growers within mill supply areas, which are clustered into districts, and with SA Canegrowers head office at the peak – the co-operatives have partly addressed one of the major problems they have faced, i.e., how spread out its members are. While the members of each primary co-operative are located fairly close to one another, the different primary co-operatives are far apart, and also some distance from where the Secondary Co-operative is based (in Mount Edgecombe). They have addressed this by creating an intermediate structure of 10 representatives from the primary co-operatives, so as to expand representation of the primary co-operatives. The next level of

[120] Every cane grower has a code issue to them by SASA, but in most cases the code will be in the name of the husband in a small-scale grower family. In many cases it is the wife who is the actual grower. This was one reason why the women wanted their organisation to be for women rather than all small-scale growers.

representation is a general meeting of the secondary co-operatives, with the board of Vukani comprising five office bearers elected by all members (not more than one from any mill supply area).

Assistance to diversify and become operational

The members of the primary co-operatives either own the land on which they grow cane or they have 'permission to occupy' (PTO) the land.[121] They directly receive the payments for the cane they supply to the mill, rather than the co-operative. They pay a fee to join the primary co-operative and a small monthly subscription (and the primary co-operative pays an annual subscription of R700 to Vukani). A key to the sustainability of the co-operatives is generating alternative income streams that will go to the co-operatives. This ties into the Masterplan's push for a diversified value chain. For small-scale canegrowers this means diversification of crops, to generate alternative income streams and provide more regular income. Sugar cane takes from nine to 18 months to mature, which means that payments – the so-called 'cane cheque' – might be only once a year or after even longer. The aim is therefore to cultivate additional crops that are harvested more regularly.

This is an instance where the SA Canegrowers business associate in the mill area provides assistance. He or she would support a primary co-operative's members to put together a proposal for funding a 'project' such as diversification of crops. Primary co-operatives that have already gone this route bought and planted seeds for sugar beans and butternuts which have been harvested and sold, generating funds for these co-operatives. Other co-operatives were not as far down the road.

Conclusion

The position of these small grower co-operatives in sugar can be contrasted with small-growers in the rooibos industry. In our case study in the rooibos industry government 'support' measures were seen as having had a detrimental impact, including the adoption of an

[121] Permission to occupy is granted by a traditional authority. It does not constitute ownership but is reportedly often of such a permanent nature that it approximates ownership.

Agreement for Benefit Sharing at the behest of commercial growers. The co-operative was, however, proud of having sustained itself on its own resources, albeit with support from an NGO. The sugar sector, on the other hand, is highly regulated and extremely well organized in industry associations. More recently, the Masterplan, a social partnership but under the aegis of government, has plotted a way forward for the sector, including providing support for small-growers But such support seems not to have filtered down to the small-grower co-operatives we interviewed, which had many complaints about a lack of government support, which they said was not for lack of trying. It was not possible to interview SAFDA or its affiliates within the scope of this research, which would have provided a more complete picture of small growers in the industry.

The dependence of the co-operatives interviewed on SA Canegrowers also raises a question as to how autonomous these co-operatives are, particularly since the primary co-operatives are so small. Several comprise the minimum number of five that may form a co-operative, with no progress yet in growing membership. It is, further, unlikely all of the co-operatives would have survived without the support from SA Canegrowers and there is a question as to whether they will ever be viable in the absence of its support. Another issue is the fact they comprise women only. On the one hand, this is understandable in a highly patriarchal context in which the grower codes issued by mills are usually to the male head of household rather to the women who do the work of cane growing. On the other hand, it is in conflict with the principle of 'open membership', and it is likely to be a constraint on the co-operatives' capacity to grow.

Waste-picking/reclaiming

Waste management refers to a variety of activities, ranging from the collection, transport, processing, recycling or disposal of waste materials produced by human activity. There is also a spectrum of different forms of employment associated with these activities. At the one end of the spectrum there is the municipal worker who collects your refuse, wearing the protective clothing and insignia of local government. At the other end of the spectrum is the self-employed waste picker, who pushes a trolley from the place where he or she stays to salvage what he or she can from your garbage bin in the suburbs. Or, from the municipal landfill, with or without the blessing of local government.

In between these two categories are workers in externalised employment. The precise form this takes depends on the policy of the municipality concerned. In the case of one of the authors of this report, it takes the form of workers with no protective clothing travelling in an unmarked truck, to collect recyclables. Arguably, these are municipal workers, if one has regard to substance rather than form. The municipality after all issues them with the plastic bags in which the residents are to put their recyclables. But they are employed through a contractor engaged by the municipality. In other words, they are indirectly employed.

The reason the municipality does this is to reduce its costs: the cost of wages, the cost of the protective clothing with the municipal insignia, and everything that goes with it. But every week they are there, on garbage day, although never at the same time as the 'proper' municipal workers. The trade unions that the 'proper' municipal workers belong to obviously know this is happening but look the other way. Consequently, there is an underlying tension on garbage day, in the middle-class suburbs: notably between residents and waste pickers (who loot their bins), and between waste pickers and the truck collecting recyclables (they are both competing for the same raw material). While in the working-class areas waste goes uncollected - or so it seems.

There have been various organisational initiatives to address problems of this sort. In Johannesburg there is the African Reclaimers Organisation (ARO), which was established as a membership-based organisation in 2018, to counter a plan by the City to engage private companies to collect recyclables in high-income areas, thereby depriving reclaimers (their preferred term for 'waste-pickers). It claims to have the support of 5 500 reclaimers, and seeks to collaborate with residents to achieve an 'efficient separation at source' recycling service.[122]

Another NGO with an even longer track-record on promoting the rights of waste-pickers is the Pietermaritzburg-based groundWork, which began collating data concerning landfills across the country in 2007. In the course of the exercise groundWork came across reports of the harassment and ill-treatment of waste-pickers. This led to the convening of a national

[122] African Reclaimers Organisation, 'African Reclaimers: Who we are' at https://www.africanreclaimers.org (accessed 6 June 2025).

meeting, and ultimately the formation of a national association to represent the interests of waste-pickers. This is the SA Waste-Pickers Association (SAWPA). groundWork is also associated with the formation of a number of co-operatives in different parts of the country, mostly in and around landfills.[123]

Landfills can be seen as the ground-zero of waste-picking. The obvious advantage co-operatives have in this context is to enable workers to address the most serious problems they face, in order to eke out a living. These include the price the middle-men (they are usually men) pay for their recyclables, high-handed and sometimes corrupt municipal officials, issues to do with access and recognition, and issues of health and safety. But, as stressed throughout this report, organisation is never easy, and in this instance, it involves overcoming differences of race, language, nationality, etc. Unsurprisingly, co-operatives will sometimes fail. The question is: is there an alternative?

The best answer to that question is by considering who owns the truck that collects the recyclables on rubbish day, and who has the contract with the municipality to fulfil this function, and related issues. It is possible the municipality owns the truck but let us assume this is not the case. The hypothetical owner would then in all likelihood be what DSBD regards as a small enterprise, owned by a sole-proprietor or partnership or private company. Probably it does not need much more than a truck in order to provide the service. Here too, there is a co-operative alternative.

In theory, at least, nothing precludes a co-operative of waste pickers from acquiring its own truck. One study based on a sample of 64 co-operatives representing waste-pickers identified the lack of transport as one of the major challenges they have to overcome.[124] There are also instances where municipalities have provided transport. If this were to happen, it would be possible for a co-operative to provide a more integrated service than is presently the case. Other things being equal, a co-operative would also be able to do so more cheaply. From a

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[123] Labour and Enterprise Project, 'Status of Waste Pickers Organising in South Africa' (unpublished research report, 2013).
[124] Godfrey L, Muswena A, Strydom W, Mamata T & Mapako M *Evaluation of co-operatives as a developmental vehicle to support job creation and SME development in the waste sector* (2015) Development Bank of Southern Africa, Midrand.

policy perspective, the implications would be significant. It would represent a small step toward eliminating indirect employment, which is not of course confined to the waste sector, as explained.

But the reason there is little likelihood of a co-operative displacing a small enterprise contracted to collect recyclables in a comparatively affluent area is that other things are rarely equal. In other words, there is no such thing as a level playing field, as argued earlier in this report. For a co-operative, even as simple a thing as opening a bank account is difficult. The only circumstance in which a co-operative might displace such a small enterprise is if the state were to oblige the municipality to do so. Given that there is national legislation that obliges local authorities to minimise the amount of waste sent to landfill sites, national government has every right to push for it to prioritise strategies that are not only cost effective, but have the maximum potential to create jobs. [125]

However, it is important in this regard to note two cautionary observations in respect of the aforementioned study of waste picking co-operatives. First, there is a misuse of the co-operative form, to generate an income for the minimum number of members possible while employing others to do the work.[126] Regrettably, the 2013 amendments are likely to encourage such tendencies. But this is notwithstanding the special provisions in the Act for worker co-operatives that are intended to preclude precisely such practices, and which are evidently not being enforced. Secondly, the study cautions against a 'top-down approach to fast-track job creation.' What is needed, rather, is 'ongoing business development support'.

Small-scale Fishing

It came as a surprise to the authors of this report to find that there was a government line department doing exactly what we have suggested it should be doing in the waste sector, by playing a more active and direct role in promoting and protecting co-operatives. This is in small-scale fishing, where the representatives of two primary and a secondary co-operative

[125] s 5 of the National Environmental Management: Waste Act 59 of 2008.
[126] Item 3(1)(c) of Schedule 1 to the Co-operatives Act places a limitation on the number of persons that are non-members that may be employed in a worker co-operative. Expressed as a percentage of the number of members, it should not exceed 25 percent.

were interviewed – admittedly a small sample, since 62 co-operatives for small-scale fishers have now been established in the Western Cape.

To understand how this came about it is necessary to go back to the adoption of a new policy for 'small scale fisheries' in 2012.[127] This in turn led to the amendment of the Marine Living Resources Act, which has objectives that include the 'utilisation and ecologically sustainable development of marine living resources'.[128] Previously, the Act had differentiated between three forms of fishing: commercial, subsistence and recreational. A 'subsistence fisher' was defined as someone who 'catches fish for the consumption of his or her dependents, including one who engages from time to time in the local sale or barter of excess catch….' [129]

The amendments depart decisively from this conception, by introducing the concept of a 'small-scale fisher' and a 'small-scale fishing community.' It envisages 'small-scale fishing' taking place in areas or zones in which small scale fishers have traditionally fished and to which they will be given exclusive access.[130]

In 2016 Regulations were published stipulating a procedure for being registered as a small-scale fisher, and the criteria that will apply.[131] Also, that a small-scale fishing community must be composed of a minimum of 20 small-scale fishers.[132] Most importantly, in terms of this analysis, fishing rights are allocated to primary co-operatives representing small-scale fishers (and not to individuals), on the basis that there is one primary co-operative per small-scale fishing community, and that the co-operative 'has as its membership all the verified small-scale fishers of the community'.[133] This would have to be interpreted to mean that membership is open to all members of the community in question, since membership in a co-operative is voluntary. However, the issue would presumably not arise because what

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[127] Policy for the Small Scale Fisheries Sector in South Africa, Department of Agriculture Forestry and Fisheries, Government Gazette 474 of 20 June 2012.
[128] s 2(a) of the Marine Living Resources Act 18 of 1998 (MLRA).
[129] s 1 of the MLRA
[130] Merchant Shipping Amendment Act 12 of 2015.
[131] There are four criteria: 18 years or older; a South African citizen; ten years of traditional fishing experience; and the traditional fisher and his/her household is solely dependent on traditional fishing.
[132] reg 4 of the Regulations relating to Small-Scale Fishing, GN R 39790 in Government Gazette 39790 of 8 March 2018.
[133] reg 4(3) ibid.

membership would mean, and which government is providing, is something of value: access to a prized resource.

It should be noted that the Regulations have been sharply criticised as 'failing to honour the spirit of the policy' by an NGO, the Masifundise Development Trust, which claims amongst other things that they 'impose a "one size fits all" business-oriented co-operative model.'[134] The rationale underlying this criticism appears to be that fishers should be free to choose whatever form of organisation they wish. However, this is arguably inappropriate in the context of granting what is necessarily a limited number of individuals access to a public resource. There can also be no objection to government determining what form of organisation is appropriate in the circumstances, in much the same way it has determined that trade unions are the appropriate form of organisation in the workplace.

It seems to have taken almost ten years to fully implement these new regulations in the Western Cape, in part because of delays resulting from dissatisfaction with the 2016-2019 rights allocation process, when only 29% of applicants were granted rights. The Department of Forestry, Fisheries and the Environment (DFFE) approached the Western Cape High Court to review the process. The court set the rights allocation process aside in August 2022, and a new process was started. This culminated in 93% of applicants being awarded rights in November 2023, with the result that 3 850 small-scale fishers were organised into 62 co-operatives in the province..[135] The rights are for 15 years and can be reapplied for at the end of that period. In other words, it is envisaged that the existing co-operatives will reapply for the rights, rather than there being an entirely new application process. This means that the rights will to all intents and purposes become permanent

Following the award of the rights, the DFFE held a two-day workshop with each of the 62 small-scale fishing communities throughout the Western Cape. At each workshop the aim was to establish a primary co-operative and elect an interim board, with a mandate to apply

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[134] S Lugogo, Gwebani S, Mngomezulu B, et al *The Broken Promises of the Small Scale Fisheries Policy in South Africa* (2024) Masifundise Development Trust.
[135] Fishing rights were granted to co-operatives in the Northern Cape in 2018, KwaZulu-Natal in 2019, and the Eastern Cape in 2020 'Western Cape small-scale fishers finally get their rights' *GroundUp* (15 November 2023) at https://groundup.org.za/article/western-cape-small-scale-fishers-finally-get-their-rights/ (accessed 2 July 2025).

for fishing rights and to see the co-operative through to an AGM where a new board would be elected. One of the co-operatives at which we conducted an interview applied for rights to fish all the species for which rights were available, on the basis that every species for which they have rights is a potential income stream, while they simultaneously spread their risks.[136]

Because of the enduring legacy of the Group Areas Act, not all small-scale fishing communities are located next to a harbour or at the seashore.[137] Also, not all 'small-scale fishers' are necessarily directly involved in catching fish: in practice a division of labour can take place within a co-operative. For example, one primary co-operative without access to a harbour has a number of members who are 'fleckers' and others who are hawkers of fish. Even amongst those who go out to sea there is a division between boat owners and fishers.

The DFFE, however, requires that members must be 'active' fishers, which means they must be involved in catching or selling fish as well as being an 'active' member of a primary co-operative: they must participate in the business of the co-operative via attendance of meetings (and if they miss three consecutive meetings of their co-operative, stand to be expelled). Of course, they must have also paid their joining fee and annual membership fees. This emphasis on being 'active' is reportedly starting to pay off, with members becoming more interested and involved in the operation of the co-operative as they better understand it and begin to see the benefits of working together. The primary co-operatives have an AGM, three general meetings per year, and special general meetings as required.

The Regulations also require that all primary co-operatives must have formed or be members of a secondary co-operative by the third year of the rights being granted, i.e., by November 2025. The secondary co-operative is envisaged to be the vehicle for processing, distribution and marketing, thereby creating a supply chain which supports a value-adding business model: the primary co-operatives, which hold the fishing rights, will harvest the resource; the

[136] There is a wide range of fishing rights that could be applied for, which include all types of line fish, trek-net fish, wild oyster, squid, abalone ranching and ranching for sea grass and kelp, as well as what are termed 'experimental species'.
[137] A small-scale fishing community is declared in respect of an area where 20 or more small-scale fishers reside, which might be some distance from the sea or a harbour.

secondary co-operatives will be able to apply for a Fish Processing Establishment permit[138] so that they can process, distribute and market the resource, i.e. beneficiate the resource.[139]

Regarding how the primary co-operatives go about catching fish, fishing vessels may either be owned by the primary co-operative itself or a member.[140] In the case of vessels owned by members, the member pays a 'utilisation fee' to use one of the fishing vessel's licences the primary co-operative has been given, and the co-operative has an option to purchase the daily catch at a market-related price. If the co-operative does not have the financial resources to do so, the vessel-owner is allowed to sell the catch on the open market.

However, while the primary co-operative has the option to purchase, in practice only the secondary co-operative is likely to have sufficient cash on hand to purchase the full daily catch. The secondary co-operative will advance the money to the primary co-operative in accordance with a condition on which fishing rights are granted, stipulating that all wild harvested fish must flow through to the secondary co-operative for beneficiation.[141]

For a secondary co-operative to be viable it will need volume to process and distribute. This should create pressure for each secondary co-operative to recruit as many primary co-operatives as possible. For example, if a secondary co-operative were to process rock lobster it would need at least 50 tons a season for it to be a viable business proposition. It would therefore need sufficient primary co-operative members to ensure a sufficient supply. While this potentially means that co-operatives will become big enough to compete in the commercial fishing and processing space, commercial entities cannot become part of the model. However, the policy does allow a primary co-operative to contract with a fishing company to catch certain species if it does not have the capacity to do so itself, or to process its catch.

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[138] Applications are invited via a notice in the Government Gazetteissued in terms of the MLRA.
[139] An interviewee at a secondary co-operative noted that currently they outsource the processing of lobster to a commercial fishing company for which they are charged R120 per kilo. If the secondary co-operative, however, had its own processing factory it would retain the R120 per kilo value-added and at the same time would create jobs in communities.
[140] The primary co-operatives do not have the financial resources to own all the vessels to utilise the 17 licences that they have been issued, so they encourage individual members to own vessels.
[141] The secondary co-operatives is addressing this challenge by drawing on a reserve built up from the rock lobster sales.

Currently, there are only two small-scale fishing secondary co-operatives in the Western Cape, but only one is operational (the other was only recently registered and at the time of the interview was reportedly not functioning). The secondary co-operative that is operational comprises seven primary co-operatives, with a further 10 wanting to join. The co-operatives wanting to join are accepted as full members for a one-year trial period.

The secondary co-operative is seemingly well in advance of the rest of the small-scale fishing sector in the province, and has applied for the right for a Fish Processing Establishment and were in the process of renting a large factory and getting HACCP and NRCS certification (which is required for exporting). It is also seeking to establish a regional network of distribution centres with some processing capacity. This will allow for job creation in other communities, and at the same time reduce the need to truck fish to Cape Town . At the same time the secondary co-operative is seeking to extend the value chain at the community level via a franchise model, which will provide three retail options: the most basic is a 'fish nyama cart', or a fish shop aiming at the middle market segment, or fish shop aiming at the upper end of the market.[142]

From the point of view of the secondary co-operative, the co-operative model is seen as the ideal vehicle for realizing the policy because it 'forces communities together in a way that makes economic sense'. Access to the resource, however, does not solve one critical problem: '[I]t is not the policy but the community's ability to create business from it, that is the issue we currently have… there are not enough business-minded people [in communities]. You can't take a normal fisher and say now you are a businessperson and must make decisions in a democratic co-operative system… '. If, however, there are business-minded members, the policy provides access to the resource and to expand into beneficiation along the entire supply chain 'the funding is there, the support is there, and the market is there'.

Besides the above deep-rooted challenge, the most immediate threat to the objectives of the policy is the fact that most of the 62 primary co-operatives in the Western Cape have reportedly not made any progress towards establishing secondary co-operatives, with the deadline of November 2025 just a few months away. All will be hard-pressed to meet the

[142] Interviewee.

deadline, but the primary co-operatives in the West Coast small-scale fishing communities, which are reportedly in disarray, will find it particularly difficult.

In summary, while government in the form of the DSBD provides the legislative framework for co-operatives, it is the DFFE that has leveraged access to a resource with a market to drive the establishment of both primary and secondary co-operatives in which a value-adding business model is embedded. Its role has thus been interventionist, but arguably on the basis of a sound policy that will enable co-operatives to be competitive in a sector in which they have traditionally had a marginal role. Evidently, however, not all small-scale fishing communities have been as enterprising as the co-operatives interviewed. The reasons for this require further investigation.

6. PLATFORM CO-OPERATIVES

The gig economy and the rise of platform co-operatives globally

In the last three decades, rapidly advancing digital technologies have become the vanguard of growth in developed economies across the world, to the extent that the term 'the digital economy' is commonplace.

The digital economy is a contested space. On the one hand, digital technologies present the possibility of a worker-owned, democratically governed and more egalitarian economic future in the form of a 'sharing' or 'solidarity' economy. On the other hand, the reality has been the predominance of privately-owned digital intermediaries which have accelerated the fragmentation and precariousness of work, with platform firms such as Uber, Deliveroo, Taskrabbit and GrubHub in the ascendancy.[143] This trend has been captured by the term 'the gig economy', which Woodcock and Graham define as follows:

'What the term "gig economy" captures is an economic transformation in which work in many sectors is becoming temporary, unstable, and patchworked. It entails workers spending less time at one job, facing the risk of time spent without income, workers undertaking more jobs (possibly at the same time), and unpaid time spent searching for tasks or gigs.'[144]

Further outcomes that characterise the gig economy which are prejudicial to consumers and communities are the monetisation of customers' personal data, active lobbying for 'more appropriate' (i.e. less) regulation, the undermining of public services, the instability of the start-up and venture capitalist nexus, and the immense political power that tech giants wield.[145]

Of course, there is nothing to stop unions organising in opposition to the negative consequences of the gig economy for workers, and there are some unions doing so; but it is

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[143] Scholtz T, Mannan M, Pentzien J & Plotkin H *Policies for cooperative ownership in the digital economy* Platform Cooperativism Consortium & Berggruen Institute (undated) at 8-12.
[144] Woodcock J & Graham M *The gig economy: A critical introduction* (2020) quoted in Scholz et al (undated) at 13.
[145] Scholtz et al (undated) at 12-14.

a very difficult environment. Hence, there is growing interest, especially in the global North, in harnessing a tried and tested model of collective enterprise, the co-operative, in order to shift opposition from outright 'resistance [to] … a positive alternative'.[146] Platform cooperativism is a model that changes ownership, promotes democratic governance, and has the potential to reinvigorate solidarity in a way that steers digital technologies in a direction that will benefit workers, consumers and communities.[147]

Platform co-operatives are a relatively recent phenomenon but have made impressive progress. Research by Scholtz et al identified over 500 projects in 34 countries that have co-operative ownership of digital platforms. In all 500 the digital business of the co-operative is central to its operations, but the co-operatives themselves take a variety of forms: worker co-operatives, data co-operatives, producer co-operatives and multi-stakeholder co-operatives. They also range in size from small and medium-sized co-operatives to some that are very big.[148]

It is also important to note that some platform co-operatives have developed in partnership with organised labour. In the United States the Service Employees International Union-United Healthcare Workers West (SEIU-UHW), with 150 000 members, put its weight behind the NursesCan Cooperative. NursesCan is a platform of licensed vocational nurses who provide on-demand care which aims to create more secure and better-paying jobs for nurses. The union has assisted by providing connections to potential employers and has also offered legal support.[149]

In another initiative, a group affiliated with organized labour developed a draft California Cooperative Economy Act. This state-level legislation 'would recognise and empower cooperatives as a new labour market intermediary in partnership with organised labour'. The

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[146] Ehmsen S & Scharenberg A "Foreword" in Scholz T *Platform cooperativism: Challenging the corporate sharing economy* Rosa Luxemburg Stiftung (2016) New York Office at 1.
[147] Scholtz et al (undated) at 13-15.
[148] For example, the Smart.coop is a platform co-operative that is headquartered in Belgium and operates in nine European countries with a total of 85 000 users and an annual turnover of Euro 200 million. It turns creative workers from independent contractors into its employees, enabling them to receive the legal protections available only to employees. (Scholtz et al, 15-16)
[149] Scholtz et al, 24.

Platform Cooperative Consortium,[150] which styles itself as a 'hub that helps you start, grow or convert to platform cooperatives',[151] together with representatives of organized labour, have conducted a 'consensus-building dialogue' that aims to reach an agreement that would 'embed union-friendly organsing procedures as a definitional component of worker-owned enterprises and platform co-operatives, which would enable both groups to develop and advocate a common legislative agenda going forward'.[152]

Scholtz et al also studied platform co-operative developments in seven countries and states/provinces or cities, noting challenges and opportunities.[153] The initiative to shape legislation and policy to better support co-operatives is not unique to California. In fact, compared to some countries, California does not provide a very supportive environment for co-operatives. In the case of Kerala, for example, the state government has helped develop an app with a digital start-up, 'Vehicle ST', to compete with Uber. The app will charge drivers 5% of the fare rather than the 25%-60% which Uber takes, and it is estimated that up to 100 000 drivers will make use of it. Unfortunately, strong government support for platform co-operatives in India has also translated into a top-down intervention in the running of co-operatives, which has undermined their autonomy.[154] Amongst the supports that can be given to co-operatives is the updating of the Kerala Co-operative (Amendment) Act of 1999 to specifically include platform co-operatives, with a definition of platform co-operatives that emphasises community ownership and governance.[155]

A similar level of support can be found in Barcelona, which has the largest concentration of co-operatives in Spain. Barcelona's support for platform co-operatives is part of a broader

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[150] Scholtz et al state that the rationale informing the Platform Cooperative Consortium is that 'the same technologies currently used to disempower worker rights - smartphones, databases, location and mapping services, online payment systems, and so on - can also provide potential solutions for many of the operational hurdles that previously plagued pre-digital era cooperative ventures is critical to ensuring the success of cooperativism in the twenty-first century. In essence, a new suite of digital tools now makes collaboration and cooperative organization far simpler.'(24-25)
[151] Platform Cooperativism Consortium, 'The Platform Cooperativism Consortium' at https://platform.coop/ (8 July 2025).
[152] Scholtz et al, 25.
[153] United States (and California); India (and Kerala); Spain (and Barcelona); Italy (and Bologna); France (and Paris); and the United Kingdom (and Preston).
[154] Ibid 28-29.
[155] Ibid 30.

vision for 'technological sovereignty' for residents. This includes the City Council developing an innovation and development strategy, and providing funding for incubators that assisted platform co-operatives. Scholtz et al regards Barcelona as a model 'for cities that would like to introduce tech-based, citizen-centric innovation in the apps-based economy to counter those very well-developed and aggressive visions of corporate tech giants.'[156]

Germany is another country with a long history of cooperativism. Although the co-operative movement was in decline, it is now experiencing something of a renaissance. One of the reasons is the 2006 revision of the country's co-operative legislation which made the establishment of co-operative enterprises easier and made the organisational form more attractive. This resulted in the establishment of 2 000 new co-operatives between 2007 and 2015. Politically, the co-operative renaissance has been less about providing worker-owned enterprises through which vulnerable workers can improve their lot and more about creating organisations that contribute to the common good. Hence many are in sectors such as renewable energy. Platform co-operatives have followed this trend, with most German platform co-operatives viewing themselves as 'commons-oriented digital infrastructures.' Only one platform co-operative is explicitly concerned with countering the threats the gig economy poses for workers.[157]

The country studies reveal different national contexts and political motivations for supporting platform co-operatives and different ways of supporting them. The recommendations that Scholtz et al make with respect to legislative reform, policy and other forms of support therefore differ from country to country. What is common is that a battery of reforms, policy measures and support programmes are advocated in each case. In other words, legislative reform is not seen as a silver bullet.

[156] Ibid 33-34.
[157] Ibid 39-42.

The potential for platform co-operatives in South Africa

Platform companies have a strong presence in South Africa. There is even a successful platform company, SweepSouth, that provides domestic work services across the country.[158] And, unlike in the global North where the platform co-operative movement is actively seeking to reform legislation, in South Africa there has been an entrepreneur-oriented initiative to develop legislation that would create a more conducive legislative environment for digital entrepreneurs and start-ups.[159] Not surprisingly, however, platform companies in South Africa have produced many of the negative outcomes associated with the gig economy that have arisen in the global North.

The South African labour market, however, is very different to those in developed countries of the global North. This shapes the role the co-operatives are envisaged to play in the country. As noted above, unemployment is at crisis levels. Informalisation is being driven by the failure of the formal economy to create sufficient jobs (informalisation from below) and by the externalisation of jobs from the formal economy (informalisation from above).[160] Poverty is high. Notwithstanding the role of co-operatives in creating greater diversity of enterprises, the impression one gains is that they are last resort efforts at income generation – in other words, it is about creating survivalist jobs.

In this context, platform co-operativism in South Africa is unlikely to be driven by a goal to challenge the dominance of privately-owned platforms. And, while there is concern about the fragmentation of jobs and rising insecurity associated with the gig economy, this tends to be trumped by the need to create jobs with an income attached to them. At the same time, the platform co-operative offers a vehicle that can benefit workers compared to privately-owned platforms, which they can own and democratically control.

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[158] SweepSouth was launched in 2014 and now offers domestic cleaning services as well as office cleaning in many suburbs across Gauteng, KwaZulu-Nataland the Western Cape. It is also reportedly starting to expend beyond the borders of South Africa. Every worker they place is 'experienced, vetted, rated and already trusted by our customers'. SweepSouth 'Locations' at https://sweepsouth.com/locations/ (accessed 18 July 2025).
[159] See the South Africa Start-up Act at https://www.startupact.co.za/about (accessed 03.07.2025).
[160] See note 6 above.

To date, however, there do not appear to be any platform co-operatives in the country. Certainly, we were unable to locate any functioning platform co-operatives during our research and none of the key informants that we interviewed were aware of any.[161] Furthermore, the Co-operatives Act does not make specific provision for platform co-operatives. It is therefore necessary to deal with the basics of what a digital platform is, how such a platform could be operated by a co-operative enterprise, and whether there are any provisions in the current Act that might specifically obstruct such a co-operative.

What is a digital platform?

A digital platform is an intermediary that effectively creates a marketplace between customers who require a service - or the performance of a task - and workers who will provide the service or perform the task. The function of the digital intermediary is therefore to connect customers and workers, often at very short notice ('on demand'), to complete the transaction.

The intermediary – the digital platform - usually takes the form of a website or mobile app. The website or app therefore generally has a customer-facing set of functions (the front end) and a set of worker-facing functions (the back-office, or back-end). A very simple platform could therefore be set up by the average website developer using an open-source website building framework. A more complex platform would require additional functions that would require greater skills and dedicated coding on the part of the software developer.

The development of appropriate software will therefore likely be one of the main challenges for a platform co-operative in South Africa. It would therefore either require one or more members with the requisite skills, or associate members, or external contractors to create and maintain the platform software. Alternatively, workers could be concentrated in primary co-operatives – perhaps area-based as with the small-scale fishing co-operatives (see above) – with a secondary co-operative administering the platform. If external contractors were involved it, would ordinarily mean a substantial upfront cost for a co-operative, although this is also a service that a supportive NGO could provide on preferential terms. Open-source

[161] This is in line with the findings of Farouk who located only two initiatives to develop platform co-operatives, neither of which has yet resulted in a platform co-operative being established. Farouk F, *In search of platform cooperatives in South Africa* (2022) Research ICT Africa, Cape Town.

software can reduce the cost, but it does not necessarily provide the full range of functionality that a platform needs.[162] The alternative is that the co-operative applies for funding to get the software developed that will create the required platform (see further below).

Once the platform has been created and tested the costs should decline steeply, but will not disappear altogether because the software needs maintenance. There might also be occasional cost spikes if the software needs to be developed further, for example to scale-up the platform. Scaling-up will, of course, usually result in rising utilisation of the platform by customers and will increase revenue.

Besides these costs, there is the issue of what kind of the co-operative it will be. Leaving aside the type of services a co-operative will provide, the fundamental question that needs to be decided is whether the platform co-operative would be a worker co-operative or a user co-operative. Arguably, it would be easier if it were a user co-operative, with the platform providing a service to members by connecting them to work opportunities.

In this scenario, the employer would be the person with whom the worker is connected. The bulk of the income from the service would then go to the member, and a slice would be retained by the co-operative to cover its administration and other costs, and as a provision for the reserve fund. Labour law would not apply, as the members would not be 'employees' of the co-operative. This would not preclude the co-operative from making provision for their social protection, equivalent to the protections to which they would be entitled to as employees.

It would in theory be possible for a platform to be established as a worker co-operative. In this instance, labour legislation (including bargaining council agreements) would apply.[163] However, such an arrangement would only be feasible if the service was structured along the lines of a temporary employment agency, with the important difference that it was owned by

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[162] In the case of the domestic workers, the software developers started with WordPress, a well-known website- building framework. This initially worked but further down the line the developers found that WordPress did not give them all they needed for the platform and they were forced to start writing dedicated code to provide additional functionalities.

[163] In terms of Item 6(3) of Part 2 of Schedule 1 of the Co-operatives Act, a worker co-operative may apply for a full or partial exemption from applicable labour legislation, including a bargaining council agreement.

the members, and not for profit. It is not clear in this scenario whether there would be an appreciable gain in utilising a platform, as opposed to conventional means of communication.[164]

It is also important in this regard not to expect a platform to resolve what are at root and base organisational problems. How co-operatives are managed is an organisational problem. This is more of a challenge in a worker co-operative, because management will have to deal with issues such as discipline and leave. This would likely require more management infrastructure. How a service is structured, and whether it is able to scale up, is also an organisational problem. To address the latter problem, it may require area-based branches, or having primary co-operatives that are affiliated to a secondary co-operative.

It is difficult to answer in the abstract what front- and back-office staff may be needed to manage relations with clients and coordinate the matching of members/workers with tasks. It will depend on the nature of the service and the kind of co-operative. But a digital platform cannot do everything. If relatively skilled staff are needed, this will have implications for the income the platform co-operative would need to generate to be viable.

Other considerations to be taken into account are where its membership is located, and the size and location of the market to be served. The less skilled the service or task, the less the income will be, which means there would need to be a relatively large market and regular work assignments for members if the co-operative was to be viable. Besides the skill-level of tasks, the duration of tasks is also important. On demand services such as those that e-hailing (or taxi) platforms provide generally mean a high frequency of tasks of short duration throughout the working day (which could go into the night). These sorts of services would usually generate a lot more income than a single service per day such as domestic workers would generally provide.

[164] At a minimum the functions of a digital platform could be performed with a cell phone, a spreadsheet and an agreement on how workers would be chosen for jobs (a point made in T Scholtz (2016)).

Of course, a platform co-operative could aim to secure permanent placements (e.g. domestic workers).[165] But this would not make for a viable co-operative unless it could offer services or benefits (e.g. social security and/or training) members would still want. Otherwise, members would have little incentive to remain in the co-operative once placed. For that matter, even if the platform was designed for temporary placements, there would still be the challenge of members being offered permanent jobs and withdrawing from the co-operative.

There is another organisational problem which we should not expect a digital platform to resolve. That is democratic decision making within the co-operative. Whereas scaling up a platform to serve a larger market will generally be beneficial, it also makes it more difficult for members to attend general meetings. Given the digitised format of the co-operative, such meetings could be online, but there is no substitute for in-person meetings. Again, this issue could be addressed by having branch offices for members in areas in which they reside, or area-based primary co-operatives affiliated to a secondary co-operative. This would allow for some decentralisation of the operations of the platform to take account of where members live and where the jobs they are assigned to are located.

So, there are a lot of issues that need to be addressed to establish a platform co-operative. These are, however, the types of issues many co-operatives face and the Act provides some latitude as to how co-operatives constitute themselves, which can address some of the unique features of platform co-operatives. In addition, there is the option of providing a set of special provisions for platform co-operatives in Schedule 1 of the Act. In short, there is nothing in the current Co-operatives Act and in co-operatives policy that is an obstacle specifically to platform co-operatives. This does not of course mean they would be immune to the more general problems elucidated above with the Act and policy.

Possible sources of support

It should be noted that there is potentially considerable funding available for co-operatives, both from the DSBD (and SEDFA) and from sector government departments. The DSBD has

[165] The SweepSouth platform appears to provide for 'full-time' appointments, but it is not clear whether this means the worker becomes the employee of the client to the exclusion of the platform.

a Co-operative Development Support Programme (CDSP) that aims to support co-operatives financially and non-financially in partnership with other key strategic stakeholders. The CDSP programme offers blended financing to eligible co-operatives via a combination of grants and loans. The grant support is available for machinery, equipment, infrastructure, commercial vehicles and *business development support, product or service development, and information and communication technology linked to co-operative development activities.* There is even funding for 'feasibility studies' which *includes specialist technical and scientific consultation and/or contracting personnel. This includes provision for the cost of registration of patents, which would conceivably include the platform software.* While the application process appears to be quite demanding, our reading of the scope of funding is that the development of a platform co-operative would be included under the CDSP.[166]

As an example of sectoral funding, the Department of Communications and Digital Technologies has an ambitious programme to digitise the South African economy and society, which focuses on achieving four goals: (1) ensuring everyone has access to the internet; (2) empowering people with digital skills for a digital economy and society; (3) enabling productive use of digital technologies; and, (4) creating a supportive environment for digital investment and innovation.

One component of this overarching objective is Digitech: The Digital Innovators Platform, which includes an SMME programme. Co-operatives are classified as SMMEs and would qualify for the programme, which is committed to inclusivity and empowerment, prioritizing the support of historically disadvantaged entrepreneurs, women-owned enterprises, and youth-led startups. By removing barriers to entry, it aims to 'to catalyse the growth and success of ICT-focused SMMEs' in order to 'create a more equitable and prosperous digital economy that benefits all South Africans'.[167]

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[166] DSBD, Igniting the Spirit of Entrepreneurship: Co-operatives Development Support Programmes, 20-25. It should be noted that a new MSMEs and Co-operatives Funding Policy was approved by Cabinet and gazetted in February 2025 (Government Notice 5869 dated 13 February 2025 in Government Gazette No. 52109). It is not known if this policy has been implemented.
[167] Department of Communications and Digital Technologies, DigiTech, Digital Innovators Platform.

7. CONCLUSION

There is no doubt that co-operatives are desperately needed in South Africa, both to create jobs and to empower people and communities. However, the kind of jobs co-operatives can create will in many cases not be comparable to employment in the formal economy, the so-called 'standard job', but represent a livelihood that is more sustainable than the informal economy can provide. At the same time, it is necessary to acknowledge that the direction in which co-operative legislation and policy is going is facilitating the registration of huge numbers of co-operatives, the vast majority of which either do not get off the ground or soon fail.

Existing programmatic assistance appears to reach only a small proportion of co-operatives. On-the-ground organisational assistance and business development support are not sufficient and has become compromised by being merged into a small enterprise support model. This legislative and policy environment is problematic for all co-operatives, and this would also be the case for platform co-operatives.

But there are co-operatives that survive and grow, as our tiny sample of case studies shows. There are different reasons for success, often quite localised reasons. Viewed via a more general legislative and policy lens, however, the state could arguably be pursuing a different strategy, best exemplified in the small-scale fishing sector. In broad terms it is about the state providing access to a resource that would make co-operatives economically viable and then leveraging this access to push the co-operative model, along with providing ongoing support. This would, of course, take different forms in different sectors, according to the nature of the resource or incentive that is available and the lever the state could use. What this strategy also suggests is a much stronger sectoral orientation to policy. Simply providing different templates for constitutions for various types of co-operatives is too generic. The strategy needs to devolve to the sector, where more detailed knowledge of the peculiarities and opportunities within sectors exists and on-the-ground support takes account of these characteristics. In other words, sector or line departments need to have a bigger role in co-operative development.

What does this mean for the potential of platform co-operatives?

As we note in section 6, to our knowledge there are no platform co-operatives in South Africa. Furthermore, the labour market and economy are very different to the countries in the global North where impressive growth of platform cooperativism has been recorded. In broad terms there is nothing in the existing co-operative legislation and policy that can be identified as an obstacle that is specific to platform co-operatives, but the more general points we have made about the current legislative and policy environment will apply to platform co-operatives as it does to all co-operatives. And potential platform co-operatives will need to meet the challenge of marrying the organisational and technological aspects of creating a digital intermediary within a co-operative structure.

ANNEXURE A. METHODOLOGY

At the core of the project was analysis of co-operative legislation and policy, including amendments and changes, in the post-apartheid period. This involved legal analysis supported by secondary literature that could point to positive or negative features of legislation and policy. There is surprisingly little literature, especially over the last decade. The dearth of statistics being produced by government on co-operatives is surely one reason. The statistics that are produced, for example by SEDFA, are problematic because they do not distinguish between co-operatives and small enterprises. In other words, co-operatives are just a type of small business and statistics on the delivery of financial and non-financial support to co-operatives is submerged into the catch-all category of 'small business'. The difficulty we experienced in getting interviews with the DSBD and the CIPC points to another reason why so little research is being done on co-operatives.

In order to provide an explanation of co-operative legislation and policy as implemented, we sought to do key informant interviews with the DSBD, the CIPC, SEDFA and support organisations such as the NDA. We were unsuccessful with the two most important of the key informants, i.e. the DSBD and the CIPC (although we did obtain some new statistics from the CIPC). It is difficult to understand why there appears to be such reluctance on the part of the DSBD and CIPC to participate in research of this kind. Surely, even if some questions might be uncomfortable, there would be a benefit for administrators from engaging with independent research which might raise criticisms. The poor state of statistics, the remoteness of the DSBD, and the absence of independent research certainly does not bode well for further policy development. In any event, our inability to secure interviews with key informants at the DSBD and the CIPC undoubtedly undermined our research.

A third component of the research aimed at getting empirical perspectives on the legislation and policy from co-operatives. It was difficult to locate co-operatives, especially given the tight timeframe for the project. We did some key informant interviews with co-operative support organisations, and despite encountering some dead-ends we did eventually get names and contact details for a handful of co-operatives. However, it was not easy to track down and make contact with all the co-operatives, and when we did reach them, some did not agree to

participate. In the end we managed to do some interviews with members of co-operatives, and added some perspectives from prior research on clothing sector co-operatives, from secondary research, and from personal contacts. We have called these ‘case studies’, but that is probably too strong a description. The interviews were certainly very informative and useful, but we would have liked to have done more interviews and some follow-ups to fully do justice to these examples.

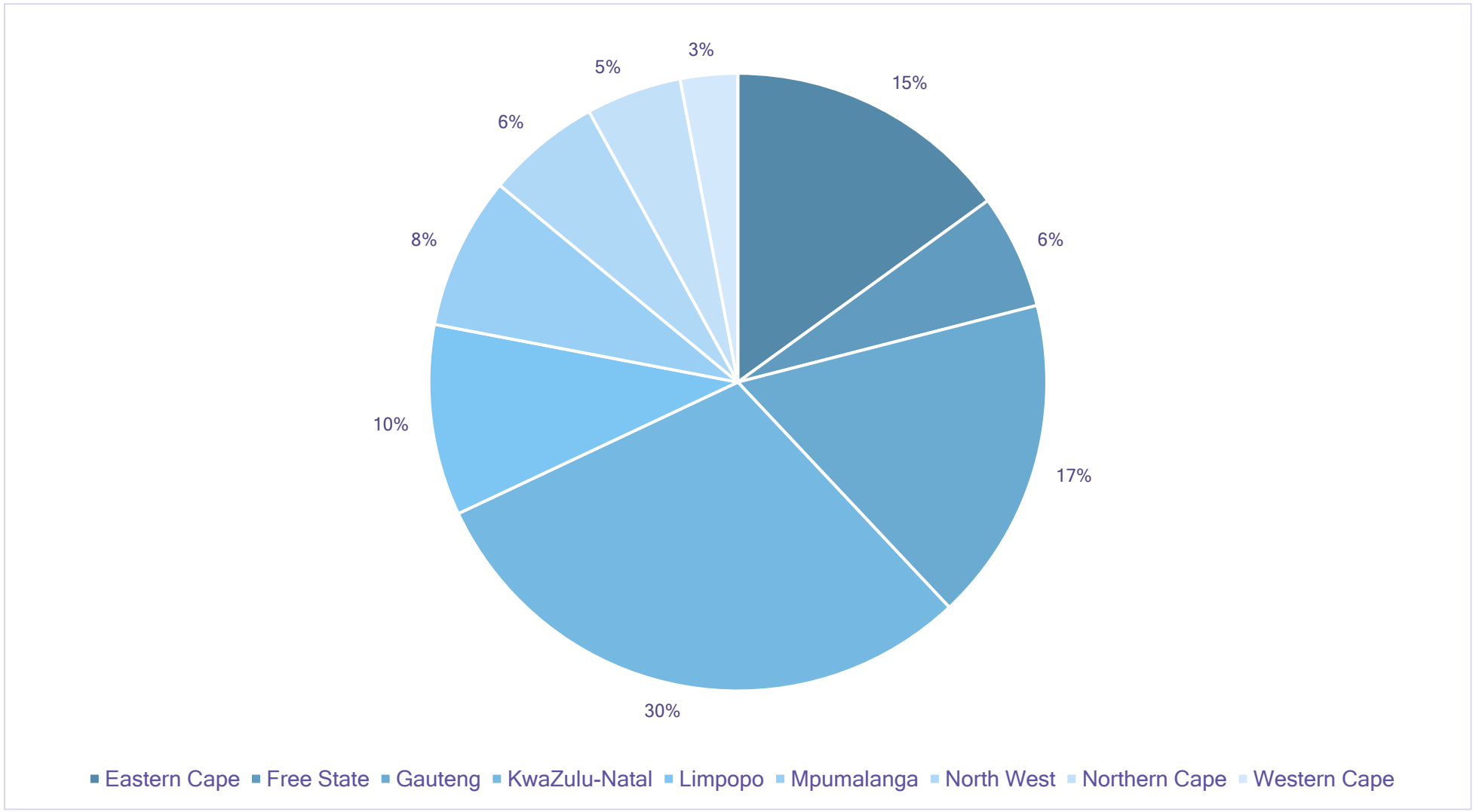
ANNEXURE B. STATISTICS ON REGISTERED CO-OPERATIVES

Table 1. Registrations of new co-operatives and registration turnaround time: 2014 to June 2025

	Year											
	March 2014*	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	June 2025*
New co-operative registrations	N/A	20 396	13 856	12 424	12 748	12 270	12 478	6 142	4 483	6 253	6 315	N/A
Total	86 343	106 739	120 595	133 019	145 767	158 037	170 515	176 657	181 140	187 393	193 708	197 796
Registration turnaround time	N/A	N/A	2 days	2 days	2 days	N/A	2 days	2 days	1 day	1 day	1 day	N/A

Totals provided by officials at respectively the DTI and the CIPC; all other figures are from CIPC annual reports.

Chart 1. Provincial share of registered cooperatives: 2005-2025



Graph 1. Co-operative registrations and deregistrations: 1922-2014

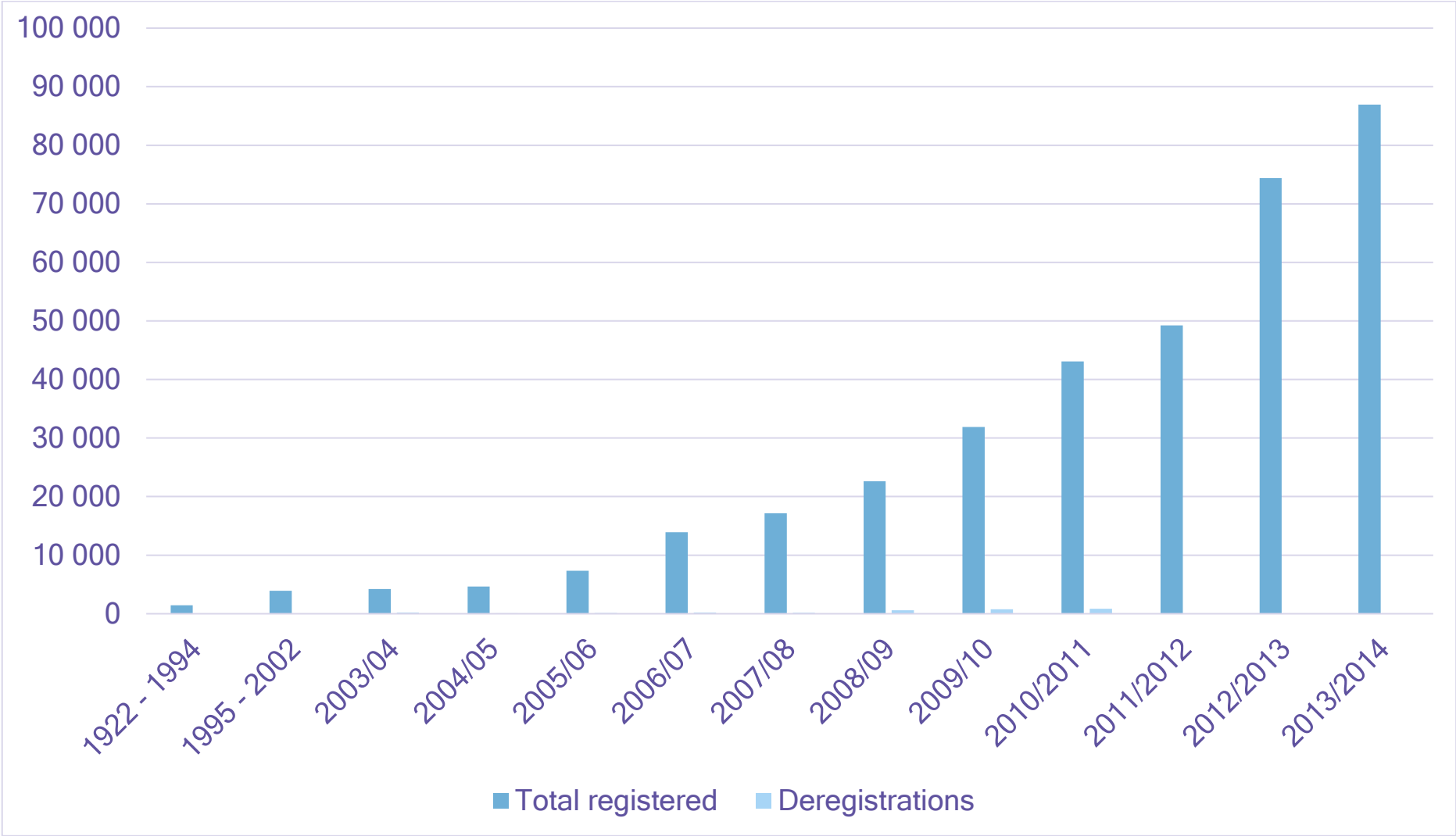


Chart 2. Registration of co-operatives by province: 2014

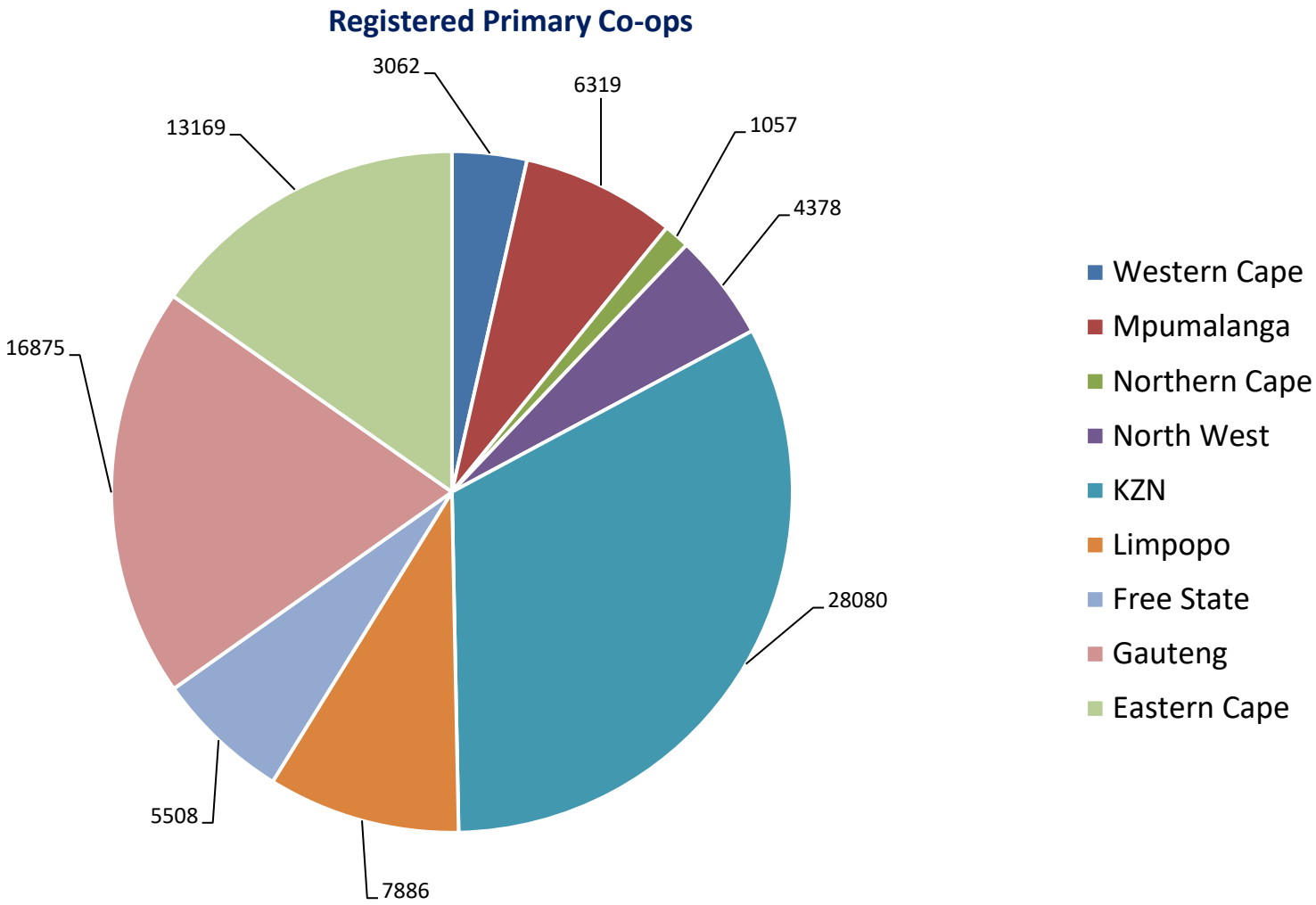


Chart 3. Registration of co-operatives by sector/type: 2014

