



NUMSA-SACTWU

**Submission to the Portfolio Committee on Trade
and Industry on the Co-operatives Amendment Bill
[B17-2012]**

**24 July 2012
Parliament RSA**



“The South African government, and in particular the Economic Development Department, as well as the Department of Trade and Industry, values cooperatives and would like to see them succeed. However, despite the deep commitment from government, there are not many functional cooperatives in South Africa. In general cooperatives are seen to be failing at an unprecedented level”

**Dr Susan Steinman,
International Forum on the Social and Solidarity Economy,
Oct 2011**



Motivation:

- Both unions operate in sectors affected by job losses/ retrenchments etc
- Both have history of setting up co-operatives, and believe in potential co-ops hold
- Both have experience in the challenges faced by co-ops and co-op sector in SA:
 - Capacity & skills;
 - democratic participation;
 - abuse (bogus co-ops)





Submission Overview



- **Acknowledges inputs on the Bill at NEDLAC**
- **Some commitments made and matters addressed**
 - Consensus on need to improve regulatory framework of Co-operatives Act No 14 2005
 - ILO Recommendation 193 (Principles) to be bedrock of local co-ops
 - Insertion of a Minimum Floor of Labour Standards for Co-operatives
 - Promoting a Co-operative Empowerment Approach
 - Establishment of Co-operative Academy (DHET) → process
 - Legislation for Worker Co-operatives (DoL /DTI) → process
- **Yet some gaps remain in Bill:**
 - Section 73 (3) too loosely defined
 - Mitigating the impact of Juristic Persons on Co-operatives
 - Criminalise the unlawful use of the word co-operative
 - Worker Buyouts



Minimum Floor of Labour Standards: Dealing with Bogus Co-Ops:

- Exploitation of loopholes in law
 - Co-ops previously exempt from labour standards
 - Used to evade wages & legislation
 - Disguised employment relationship – employer has *de facto* control
 - Exploitation: wages and working conditions decrease
 - Not adhere to ILO Recommendation 193
 - Undermine potential which co-ops hold
 - Oral evidence



Closing The Loophole: Section 73



- (1) An employee of a worker co-operative is defined as a member—**
 - (a) or non-member who receives a wage; or***
 - (b) who receives any form of income from the co-operative.***

- (2) An employee of a worker co-operative is deemed to be an employee as defined in the Labour Relations Act, 1995 (Act No. 66 of 1995), and the Basic Conditions of Employment Act, 1997 (Act No.75 of 1997).**

- (3) All worker co-operatives must comply with applicable labour legislation.**

- (4) Despite subsections (1) and (2), a co-operative may apply for an exemption from the bargaining council concerned, or, if the co-operative falls outside the scope of the bargaining council, for a variation from the Minister of Labour in respect of members who are employees—**
 - (a) in cases where compliance would create legal anomalies; or***
 - (b) in cases where the only employees involved are members who do not receive a wage and where the co-operative does not supply more than half its product to a company registered for value-added tax.”.***



Closing The Loophole: Section 73



“(3) All worker co-operatives must comply with applicable labour legislation”

→ Too loosely defined and open to abuse

→ Amend: (3) All worker co-operatives must comply with labour legislation



Mitigating the impact of Juristic Persons on Co-operatives



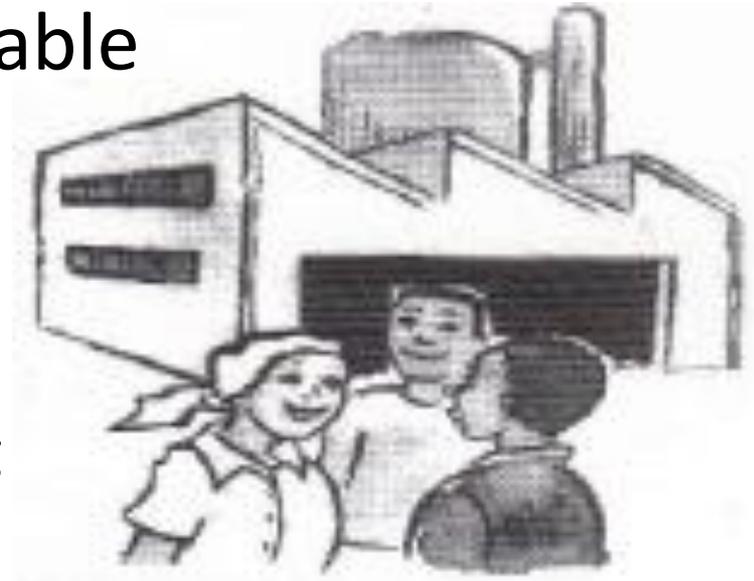
- Juristic persons not limited from participation in co-ops in Bill
- Different levels and categories of co-ops
 - Range of fragility & vulnerability
 - Unequal power exploited
 - Opportunity for fronting
- Inclusion of juristic persons undermines ILO Recommendation 193
 - Particularly undermines: democracy, participation, autonomy
 - Juristic persons may not embody these principles internally
- Propose exclusion of juristic persons from most basic Primary Co-Operatives (A & B)
- Partial inclusion within Category C



Worker Buyouts



- High rates of retrenchment = high potential for new co-ops
- Hamstrung by lack of resources
- Mechanisms needed to enable
 - Buyouts (e.g. Argentina)
 - Sustainability
 - Training/ Business Skills
 - Inter co-op support & trading
 - Orders & procurement





***“Worker co-ops can work.
When they do, they provide an inspirational
example of an alternative form of
work organization.*”**



But they are complex forms of enterprise; and as such, they do not provide an easy entry point into self-employment for unemployed people, particularly if they fall beyond the reach of a strong support environment. They require high levels of managerial skill internally, or sustained technical support externally to succeed. As a result, they have real limitations as an effective vehicle for mass job creation ...

But while worker co-ops have limitations as a vehicle for mass job creation, there are a different set of good reasons to support their growth and development in society. Worker co-ops have an important role to play in developing alternative forms of work organization, and in building forms of workers control and worker ownership; and they should be supported in playing that role”.

Kate Philip, 2003