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24 January 2008

Cooperatives Unit
Department of Trade and Industry
South Africa

To Whom It May Concern

RE: Submission To Consultative Meeting on Amending the Cooperatives Act 2005

The Cooperative and Policy Alternative Center (COPAC) welcomes this opportunity to review the national Cooperatives Act 14 of 2005 and to participate in a national consultative process with other stakeholders. Our starting point for engaging this process recognises:

- (1) the Cooperatives Act 2005 is generally progressive and takes on board most international principles and values that uphold the distinctive identity of cooperatives;
- (2) research we have been doing and the learning acquired from cooperatives on the ground points to the need to improve on certain important aspects of our regulatory framework for cooperatives;
- (3) improving government regulatory support for cooperatives also necessitates enhancing the overall policy-framework in which Cooperative legislation has to operate;

1. Policy Issues

Given that cooperative development support in South Africa requires a complimentary role for cooperatives policy and legislation, important gaps are beginning to undermine the effectiveness of what is in place. To put it differently effective legislative support cannot exist without effective policy mechanisms and instruments and vice-versa. In its totality policy and the policy support framework for cooperatives are important in framing the support system for cooperatives. This

review must bring into discussion the following important missing elements of a South African cooperative support system. These include:

- The lack of a proper national reporting system on cooperatives in South Africa. Besides the legal obligation on the registrar to maintain a national register (section 80) this is not sufficient to understand the dynamics and features of the emerging cooperative sector in South Africa. To improve policy and regulatory effectiveness, the DTI needs to provide good, accessible and accurate statistics on cooperatives. We need to understand the impact of cooperatives on the economy, their contribution to wider social responsibility and how we can enhance movement building. COPAC has raised this issue with the DTI at our cooperative forum at the end of 2007. In this meeting it was agreed to work towards a national workshop on developing a national reporting system with the International Cooperative Alliance (ICA). COPAC has contacted the ICA which is willing to support and participate in this process. The DTI needs to make a decision on this issue so that a national workshop can be hosted involving the ICA. More precisely the DTI needs to consider taking this process seriously and providing the necessary resources for this to happen.
- South Africa needs a national Cooperatives College. The SETA system is not working for cooperatives. Cooperative development in South Africa requires a more specialised support environment. Cooperatives need a training program for cooperative managers, governance training for boards, targeted training for members and intensive training for government officials. A cooperatives college needs to be established which can serve as the hub for a national training network and support system. COPAC has hosted a roundtable discussion at its offices which involved senior officials from the DTI. At this meeting a Dr Linda Shaw from the UK Cooperatives College gave a detailed input on the UK coop college model. COPAC has also conducted a study on the Kenya Coop College model and the Tanzania Coop College model. This research will be submitted to a workshop to be hosted by the Ekurhuleni Metro involving the DTI and other stakeholders. It is important in this review process that the imperative of establishing a national cooperatives college is taken on board and that we deepen the consensus on this issue.
- A final gap that COPAC will like to bring to the attention of government relates to the failure to operationalise key aspects of the national Act like Chapter 12 on the Cooperatives Advisory Board and the failure to implement key ministerial regulation. Linked to this is limited progress around the national incentives program and the uneven vertical/horizontal operation of the national cooperatives policy framework. For this review process to have a proper grounding this meeting should be grounded in a proper progress report on these issues so that accountability on these omissions and failures can be tackled. For this review process to be successful it has to confront in an open, honest and constructive manner the current state of policy and legislative implementation.

2. The Preamble and Purpose of the Act

COPAC would like to register three problem areas regarding the Preamble of the Act and which feature in the purpose of the Act (section 2) as well.

First, with regard to broad based black economic empowerment in the preamble. We believe that this approach to cooperatives politicises cooperative development in South Africa in a destructive manner. From our research done on cooperative development BBBEE has contributed to the abuse of cooperatives in some of the following ways: it has fostered a populist approach to the establishment of cooperatives such that cooperative registration is encouraged at the expense of proper planning. In addition, BBBEE cooperatives are chasing finance in the development process

as opposed to working with proper cooperative principles. Moreover, fronting has been happening with coops in the context of BBBEE and other forms of corruption. In short the BBBEE approach to cooperative development also reproduces a racial duality in the cooperative sector and undermines the constitution of the Republic of South Africa. South Africa requires a racially unified cooperative movement and sector. Actually cooperatives can play an important role in enhancing social cohesion. We should not throw the baby out with the bathwater through ill-conceived thinking on the role of cooperatives in post-apartheid South Africa. **Hence COPAC is recommending to the DTI and all stakeholders that a BBBEE approach be abandoned and instead a cooperative empowerment approach, grounded in the universal principles and values of cooperatives be affirmed in the preamble and the purpose of the Act (section 2d).**

Second, we believe and flowing from the aforementioned point, that a BBBEE approach has allowed historically white cooperatives to operate in a racialised way. Again, it is important that the national Act abandon a BBBEE approach and affirms a cooperative empowerment approach based on the principles and values of cooperatives. This provides a basis to also challenge historically white cooperatives to rise to the challenge of deracialising. **Actually COPAC would like to recommend that the Preamble and Purpose of the Act reflect this issue directly. That is the Act must call upon historically white cooperatives to deracialise in accordance with cooperative principles and values and the Constitution of South Africa.**

Third we believe the cooperative Act in its Preamble and purpose falls short of fully expressing the potential cooperatives and cooperative development has for South Africa. In particular we believe the cooperatives Act stops short of being public law for cooperatives but instead supports a private law approach to cooperatives. **To remedy this we are recommending that the preamble and purpose of the Act mention the aim of supporting and developing a cooperative sector in the South African economy.**

2. Chapter 1 - Definitions

With regard to definitions COPAC will like to propose the following for consideration

Primary coop –Because a primary cooperative may not be providing sectoral services like a secondary cooperative. **We propose the definition be amended to include a juristic person.**

Minister – should change because policy is operating horizontally and various Ministers and there departments are playing a role in supporting cooperatives. **We propose the definition refer to the Minister of Trade and Industry as the Minister responsible for the law and other Ministers with regard to specific kinds of cooperatives that their departments might be providing support to.**

3. Chapter 8 – Worker Initiated Conversion of Business Enterprises

Motivation

If an enterprise is being restructured, is ‘sick’ or in decline workers must be empowered to trigger the cooperative law. Such a provision must enable workers voices to come through in the society and for a proper debate to happen between the employers, workers and state in these situations. A worker initiated process of conversion should be about placing a feasibility study, with various options, before the minister/s to enable a process of dialogue.

Recommendation

Chapter 8 must provide for a dedicated section for worker initiated conversion of business enterprises. It must provide for the following:

- (1) two conditions under which workers can trigger this provision:**
 - (1.1) an enterprise is experiencing an operational crisis, is being restructured or is in decline;**
 - (1.2) 2/3 of workers in the enterprise (union and non union) must take such a resolution;**
- (2) procedure**
 - (2.1) the resolution must be democratically taken, must include all signatures and must be submitted to the national advisory board**
 - (2.2) the national advisory board together with the DTI must conduct a feasibility study, involving the workers and must make recommendations to the national minister;**
 - (2.3) the national minister to receive the feasibility study and recommendations and convene a meeting with all relevant stakeholders, including workers, employers and relevant Ministers;**

4. Chapter 11 – Add section on Dispute Resolution and Whistle Blowing

Motivation For Dispute Resolution

Many cooperatives on the ground do not have developed institutional capacities. As a result many cooperatives are prone to conflicts that undermine the operations of the cooperative. To facilitate effective functioning of cooperatives the law must provide for impartial and fair dispute resolution as a voluntary option for cooperative. Such a dispute resolution option to include mediation, conciliation and arbitration procedures.

Dispute Resolution Recommendation

The section to provide as follows:

- (1) Conditions for dispute resolution to be triggered:**
 - (1.1) if there is a serious problem in the cooperative or with third parties the board has to convene a special general members meeting to decide on utilising the dispute resolution machinery in the Act;**
 - (1.2) the meeting must decide by a 2/3 majority to utilise the dispute resolution procedure in the Act;**
 - (1.3) a resolution must be passed to this effect and all present to sign it;**

(2) Dispute Resolution Machinery

- (2.1) The registrar of cooperatives to be empowered by Ministerial regulation to play the function of conciliator and mediator;**
- (2.2) The Minister to provide in the regulations for the national advisory board to be empowered to play a role to hear appeals on conciliation and mediation and to be empowered to provide for arbitration.**
- (2.3) If the cooperative is not satisfied with the conciliation or mediation efforts then a written appeal, together with the general members meeting resolution, has to be made to the national advisory board for intervention and for it to make recommendations;**
- (2.4) If the cooperative would like arbitration by the national advisory board then a written motivation together with the resolution from the special general members meeting, has to be**

sent to the national advisory board. The decisions of arbitration shall be binding on all parties to the dispute.

Motivation for Whistle Blowing

From research and from media reports corruption scandals are beginning to undermine the integrity and solidarity in cooperatives. Members in cooperatives need to be empowered to report this kind of corruption without risking life or limb.

Recommendations for Whistle Blowing

A member of a cooperative if suspecting corruption or serious malfeasance can report such a matter anonymously to the Cooperative Advisory Board.

The Cooperative Advisory Board to be empowered to instruct the registrar to conduct an investigation into such allegations and to provide such findings to the board by its next sitting.

The Cooperative Advisory board to make recommendations to the Minister on how the cooperative and involved parties to be dealt with.

The Minister to make a determination.

5. Chapter 12 – Advisory Board

COPAC will like to reiterate its disappointment with the failure of DTI to establish this structure over the past three years since the Act was passed. We believe the national advisory board has an important role to play to support cooperative development and DTI should provide stakeholders with a reason/s for not establishing this board.

Functions – section 86

To define a role for dispute resolution and whistle blowing, as provided above. This should not take away from 86(f) which provides for any matter to come to the advisory board from a cooperative but should further strengthen this provision.

Recommendation

Section 86 to add to the functions of the advisory board for dispute resolution and whistle blowing.

Members of Advisory Board – section 87

Due to the horizontal and vertical operation of cooperatives policy the composition of the board has to be increased and clearly defined.

Recommendation

Section 87 (1) be amended to provide for a maximum of 15 people.

Section 87(2) to add a section for representation from relevant government departments and from SALGA and at least three municipal councils.

6. Regulations – section 95

As per the earlier motivations in this section on dispute resolution.

Also given that cooperatives are merely mushrooming for the wrong reasons, it is important for cooperatives to meet certain new but not onerous standards for registration. It is important for prospective cooperators to have an education workshop, do a basic feasibility study and formulate a business plan for registration in order to be considered for registration.

Recommendation

Section 95 be amended to include provision for regulations regarding dispute resolution

Section 95 be amended to make provision for regulations regarding registration. It must specify the need for certain preconditions for registration and for proof of workshops etc to be provided to the registrar on application for registration. Consequentially the role of the registrar in registration as defined in registration (section 7) must be amended to include compliance with registration regulations.

7. Part 2 Worker Coops

While the provisions in this part of the Act provide for the minimum requirements of worker cooperatives this is not sufficient.

It is our belief that South Africa requires a cooperative regulatory approach and system that can take on board the following issues related to worker cooperatives:

First, the circumstances under which worker cooperatives can be triggered and established. These circumstances include: start ups, restructuring, declining enterprises and social provisioning. The specific procedures for these various situations is not provided for in the Act. More sharply, in most of these circumstances the adoption of the worker cooperative option requires more than just filling in registration forms.

Second, the characteristics of worker cooperatives are not clearly expressed in this part of the Act. This is important because genuine cooperatives need to work with certain minimum standards like Decent Work such that they do not self exploit. As important, is the fact that in some parts of the world worker cooperatives are fronts for labour brokers and are used to undermine trade unions. South Africa needs a clear legal distinction on worker cooperatives to avoid these kinds of abuses of worker cooperatives.

Third, CICOPA the international body for worker cooperatives adopted an international declaration on Worker Cooperatives in 2005. This declaration affirms ICA principles but also makes the case for a more serious legislative and policy focus on worker cooperatives as a distinct form of work, separate from self employment and wage employment. What we have in South Africa falls short of the call made in the international declaration.

Fourth, worker cooperatives seem to be proliferating in South Africa. Many of these cooperatives need to be organised into a worker cooperative sector. A more serious legal framework on worker cooperatives would provide an important push in this direction.

Fifth, and following on the previous point, is the need to mature the legislative support framework for different kinds of cooperatives in South Africa. The Coop Banks Bill assists in providing a dedicated legal framework for financial services cooperatives. Social housing legislation will also go some way in maturing the legislative environment for housing cooperatives. For distinct cooperative identities to emerge South Africa must expand its regulatory basis for different kinds of cooperative. This should also apply to worker cooperatives.

Hence COPAC is recommending that:

- **this review commit to the formulation of dedicated worker cooperative legislation for South Africa;**
- **a national process for developing dedicated worker cooperative legislation be set in motion as part of this process;**
- **the international body for worker cooperatives, CICOPA, be brought in by DTI to provide technical advice on this process in the course of 2008. In particular CICOPA should be contracted to provide research on comparative international worker cooperative legislation and to provide recommendations for South African legislation on worker cooperatives to a DTI convened workshop.**
- **DTI to draft a worker cooperatives Act based on this process and to submit this legislation to public participation before parliamentary enactment by 2009.**

COPAC volunteers to assist DTI in this process and for the realisation of other recommendations made in this submission.

Yours sincerely

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