A Typology of Social Entrepreneuring Models in South Africa

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ABSTRACT

Purpose: The aim of the paper is to present a tentative typology of social enterprises in South Africa. It also tries to establish a base line on the current state of social entrepreneurship in South Africa. While the term seems to have been appearing more and more frequently in both the public and political domain in the last decade or so, our current knowledge of social enterprise in South Africa (as in Africa more broadly) remains very limited.
Design/methodology/approach: This paper tries to address this dearth of academic literature on social entrepreneurship in South Africa by reviewing the extant academic and grey literature as well as various policy documents with the aim of discerning the various legal forms under which social enterprises can incorporate.
Findings: The paper distinguishes three avenues for incorporation: as a non-profit entity, a for-profit entity or a hybrid structure.
Research limitations/implications: It calls for both rigorous and systematic empirical and theoretical work that is grounded in the realities of the country in order to strengthen sound policy decision-making as well as effective organization and management of these organizations, which can play a crucial role in both economic and social development of South Africa.
Originality/value: As part of the International Comparative Social Enterprise Models (ICSEM) project, this paper contributes to our understanding of the geographically distinct manifestations of social enterprise in South Africa. At the same time, it aims to present a research agenda to move social entrepreneurship in South Africa forward.

Keywords: social entrepreneurship, South Africa, legal forms, typology, policy context, social enterprise models, ICSEM

INTRODUCTION

The concepts of "social entrepreneurship" (SE) and "social enterprise" have attracted increasing worldwide interest in the last three decades. Especially in the Western context, increased scholarly attention has been given to this phenomenon (Borzaga and Defourny, 2001; Nyssens, 2006; Young, 1983). Much less is known, however, about SE in other geographical, social, economic, and political contexts, such as those in developing countries. And it seems that the African continent again remains largely *terra incognita* as to who sets up and runs social enterprises, the entrepreneurs' motivations, the constraints and barriers they encounter as well as the factors leading to success (or failure) and the impact they make. Considering the fact that social enterprises may have a strong developmental contribution to make (Moreno Navarrete and Agapitova, 2017; Seelos *et al.*, 2006; Seelos and Mair, 2009) to the lives of millions in developing countries, this neglect is all too sad. The present paper tries to contribute to filling this gap, by looking at the case of SE in South Africa. In particular, it aims to sketch an overview of the models of social enterprise in South Africa.

As Teasdale (2012) argued, the concept of "social enterprise" is a fluid and contested one as the label has been attributed to and claimed by a wide variety of organizational forms. As in other places across the globe, this is also true for South Africa. In the narrow sense of the term, Littlewood and Holt (2015) contend, social enterprise in South Africa is used to describe a type of organization that exists in the social and solidarity economy, but which is distinct from other types of social economy actors. In this way, it becomes an umbrella term encompassing such organisational entities as NGOs, CBOs, non-profit companies and cooperatives. In a broader sense, the term is also used to denote an activity or practice that also encompasses phenomena like social intrapreneurship, hybrid partnerships, and shared value or bottom-of-the-pyramid initiatives. The confusion about what constitutes a social enterprise is also exacerbated by the inclusion of small, micro- and medium-sized enterprises (SMME) under the same banner. The issue becomes even more complex if we also include organizations in the informal economy as falling within a broader conception of social enterprise.

Analysing dominant conceptions of SE in South Africa, Claeyé (2016) suggests that these definitions tend to cluster around the earned-income and social-innovation schools of thought (Defourny and Nyssens, 2010). The absence of emphasis on modes of governance might be explained by the wide variety of organizations that the different definitions try to encompass. This could be explained, on the one hand, by the lack of a clear and coherent legal framework governing SE in South Africa. On the other hand, this orientation of definitions towards a more US perspective might also be accounted for by the early presence in South Africa of organisations such as Ashoka. The fact that the concept is still in its infancy in South Africa might be a further contributing factor.

While organizations might have been engaged in what we would describe as SE for some time, Littlewood and Holt (2015) pinpoint the 1990s as the decade where SE started to sprout in South Africa. They point, for example, at the arrival of Ashoka in 1991. However, it was only in the last decade or so that organizations such as the South African Social Enterprise Network (SASEN), the Social Enterprise Academy (SEA), and the Gordon Institute of Business Science's Network for Social Entrepreneurs (NSE) emerged. At the same time, academic interest in the phenomenon was

institutionalised in such research centres as the Centre for Social Entrepreneurship and the Social Economy (CSESE) at the University of Johannesburg or the Bertha Centre for Social Innovation and Entrepreneurship at the University of Cape Town's Graduate School of Business, and through the establishment of the first university-accredited programme in SE in Southern Africa (Social Entrepreneurship Certificate Programme) at The Gordon Institute of Business Science of the University of Pretoria. It should be remembered, however, that while the concept of social enterprise might indeed have taken root in the more urbanised/metropolitan centres, SE remains a relatively new concept in remote areas—the further away we go from these metropolitan centres, the less known the concept. A quick glance at the Ashoka Fellows for South Africa reveals that a large part of the fellows is situated in the largest metropolitan areas (https://www.ashoka.org/fellows).

The academic, practitioner and policy interest in SE reflects developments that probably started earlier and were picked up and institutionalised in the first decade of the new millennium, due to the convergence of a few mutually reinforcing developments. These include a revival of the cooperative movement in South Africa and the professionalization of non-profits in the face of the changing funding landscape (Claeyé, 2016). Together with Kenya, South Africa has today one of the leading SE sectors on the continent. A distinguishing feature of South Africa's SE landscape is that, in comparison to other African countries, it is mainly homegrown (Moreno Navarrete and Agapitova, 2017).

The remainder of this paper proposes a (crude) typology through a discussion of the various ways of incorporation of social enterprises in South Africa. The paper ends with a discussion of possible avenues of research that can push the boundaries of our current knowledge of SE in South Africa. I call for both rigorous and systematic empirical and theoretical work that is grounded in the realities of the country to strengthen sound policy decision-making as well as effective organization and management of SEs, which can play a crucial role in both economic and social development of South Africa.

IDENTIFICATION OF SOCIAL ENTERPRISE MODELS

This section will discuss various organizational forms of social enterprise in South Africa. Due to the scarcity of available documentation, this section draws mainly on the work done by the International Labour Organisation (ILO) within the framework of their Social Entrepreneurship Targeting Youth in South Africa (SETYSA) research project (Legal Resources Centre, 2011; Steinman, 2010). In contrast to the stakeholder framework proposed by Littlewood and Holt (2015), I am taking a more legal approach in presenting a typology of social enterprises in South Africa. While South Africa features a strong ecosystem of supporting institutions and SE has enjoyed heightened attention by the government, to date no single regulatory framework exists that governs SE in South Africa (Claeyé, 2016; Lambooy *et al.*, 2013; Moreno Navarrete and Agapitova, 2017; Urban, 2013). This means that SE in South Africa is governed by a plurality of existing policies, regulations and initiatives (Claeyé [2016] discusses a number of these that support social entrepreneurial initiatives), which shape and affect the environment and potential for social enterprise development in South Africa. These include laws relating to the registration and obligations of companies and non-profit organizations; tax law; Broad-Based Black Economic Empowerment (B-BBEE); corporate social investment (CSI), etc.

As Steinman (2010) points out, the size and complexity of the organization, as well as the requirements of potential funders, are determining factors when choosing a legal form. In addition to tax considerations, financial reporting requirements and the types of finance that are available (GreaterCapital, 2011), the choice for incorporating the organization as a for-profit or not-for-profit entity sends out a message about how it operates. Social entrepreneurs may choose to be incorporated as a for-profit entity in order to stress their business-like characteristics, like efficiency and accountability, whereas others may opt for a non-profit form to clearly emphasize their dedication to the social purpose of the organisation (Legal Resources Centre, 2011; see also Moreno Navarrete and Agapitova, 2017). A variety of personal, contextual and socio-economic factors will thus have an influence on the choice of one form or the other.

With regard to the legal forms under which social enterprises may be incorporated in South Africa, the Legal Resources Centre (2011) makes a distinction between not-for-profit models, for-profit models and hybrid models. We will discuss each of these models together with the regulatory frameworks that govern their operation.

Not-for-profit models

The primary aim of not-for-profit entities is to provide services with a social orientation to communities or society at large, as stated in their social objective. Traditionally, these organizations depend on donor funding to support their operations; they may engage in income-generating activities, but private ownership or the distribution of profits is not permitted. On dissolution, these entities are required to donate any surplus assets or money, after payment of debts, to another not-for-profit entity with similar objectives (Legal Resources Centre, 2011).

While, when talking to practitioners, the term "non-profit organisation" (NPO) is often used, this terminology does not refer to a legal form, but to a specific legal status for which separate registration is required (Legal Resources Centre, 2011). Similarly, the label "public benefit organisation" (PBO) has a specific meaning: it refers to an organisation that qualifies for tax exemption on the basis on its "public benefit activities" (Legal Resources Centre, 2011). Not-for-profit entities can apply separately for tax advantages under the provisions of the Income Tax Act and related legislation. This means, for example, that a trust or a voluntary association could register both as a NPO and a PBO as long as it meets the prescribed regulatory requirements (Legal Resources Centre, 2011). Organizations having a PBO status can trade, but their commercial activities can only occur within a strict set of parameters and must be in direct relation with the public benefit activity of the organisation. The time and resources devoted to commercial activities should not exceed 15% of the organisation's activities. Most trading should occur based on the notion of cost recovery and it may not pose unfair competition to taxable entities undertaking the same kind of activities (ILO, 2013).

Among the not-for-profit models, we can distinguish between voluntary associations, trusts, and non-profit companies (NPCs; previously known as "Section 21 companies"), each of which are governed by different legal and regulatory frameworks. We will discuss each of these in more detail below.

Voluntary associations

Voluntary associations (VAs) make up over 93% of all registered not-for-profit entities in South Africa (Republic of South Africa, 2016). While not exclusively, VAs are typically micro-organizations with very limited financial resources and human capital, and with low survival rates. VAs are established under common law and are also governed by the NPO Act 71 of 1997. VAs can be created when three or more people enter into an agreement —which can be solely verbal— to work together with a view to achieving a not-for-profit objective. As VAs can be created under common law, it is not required that they register with a government registry to come into existence. Under the common law, a VA must meet three requirements to have legal personality: 1) have perpetual succession (see below); 2) be able to hold property that is distinct from its members'; 3) stipulate that no member has any rights, by reason of his/her membership, to the property of the VA (Wyngaard, 2009). No public authority regulates the way in which a VA conducts its affairs. For this reason, VAs are encouraged to register with the NPO Directorate, so they become accountable to the regulatory requirements of the NPO Act 71 of 1997. This registration with the NPO Directorate ensures that a VA has/is regarded as having a distinct legal identity, separate from that of its members: as per Section 16 of the NPO Act, the certificate of registration of a NPO, or duly certified copy of the certificate, is sufficient proof that the organisation is a body corporate. It is important here to note that there are plans underway to change the NPO Act (Hendricks and Wyngaard, 2013) and a draft NPO bill was presented in May 2016. Changes include the proposed establishment of the South African Non-profit Organisations Regulatory Authority (SANPORA) as a centre piece of the Department of Social Development's Policy Framework on the NPO Law Reform. At the moment of writing, though, the implications of these changes are unclear, and any speculations regarding their impact would be premature.

Turning to the organizational side of setting up and running a VA, depending on the needs and objectives of the VA, the members wishing to establish a VA can draw up a constitution. This constitution governs the agreed rules and aims so as to clearly define how the VA functions, how it is to be managed and how decisions are to be made (Legal Resources Centre, 2011). VAs form an independent legal entity and the constitution must specify how the VA will continue to exist when its membership changes ("perpetual succession"). It must also state that the assets and liabilities of the association will be held separately from those of its members.

In terms of income, VAs, like trusts and NPCs, can draw on grants and donations that are only available for not-for-profit entities. These include *inter alia* funding through CSI and B-BBEE, and funding from government departments that will only provide funds to registered NPOs (Legal Resources Centre, 2011). As stated above, a VA can conduct activities to make some profits, if its main objective is not the acquisition of gain. In addition to grant funding, donations (both in kind and money) or earned income, Everatt and colleagues (2005) highlight the importance of volunteerism as a form of resources on which VAs and other non-profits can draw.

At present, the prevalence of social enterprises among this type of organisations is unknown. Based on my experience and research on social enterprises and non-profits in South Africa, my informed guess would be that this is not the typical organizational form social entrepreneurs would adopt. However, this is pure speculation and needs

to be corroborated by more systematic research into the organizational forms social enterprises might adopt.

Trusts

Trusts make up about 1% of the non-profit landscape in South Africa (Republic of South Africa, 2016). Trusts can be established under common law and under the Trust and Property Control Act 57 of 1988. In essence, a trust is a written deed or agreement, written and attested by a notary public, between an owner and trustees. The aim of this transfer of property and/or funds is for the trustees to administer the assets for the benefit of a third party—the beneficiaries—or a stated objective. Trusts are to be registered with the Master of the High Court, who oversees and controls the appointment of trustees. In practice, however, this supervision is limited and in most cases the Master will only comply with its oversight mission when a complaint is lodged (Legal Resources Centre, 2011).

While trusts may vary enormously in terms of size, objectives, organization and procedures, all trust deeds are expected to contain clauses with regard to the trust's main purpose and objectives, its governance structure, meetings and procedures, the rights and duties of the trustees, the appointment and removal of the board of trustees as office bearers, dissolution procedures, financial guidelines, powers and authority of the board of trustees and dispute procedures (Legal Resources Centre, 2011).

Unlike VAs, trusts do not have an independent legal personality. However, when a trust registers as an NPO under the NPO Act (in addition to registering with the Master of the Court), it becomes a body corporate with independent legal personality (Steinman, 2010). One implication of this lack of independent legal personality is that, in case of legal dispute, the trustees can sue or be sued in their own capacity and not in the trust's name (Legal Resources Centre, 2011). Trust property, however, enjoys protection under the Trust Property Control Act, and as such is ring-fenced from trustees' personal property.

The trust is run by a trustee or board of trustees, who act in accordance with the powers and duties set out in the trust deed (Steinman, 2010) so as to enable them to achieve the objectives of the trust. The powers and duties are quite similar to the powers bestowed on directors in a traditional for-profit company (Legal Resources Centre, 2011). Similarly, like in the agent/principal relationship in for-profit companies, trustees are expected to act conscientiously with a view to achieving the (social) objectives of the organization. Depending on what has been specified in the trust deed, they may receive payment for their work for the trust.

Like other not-for-profit entities, trusts may engage in subsidiary trading activities in order to increase revenues for the smooth operation of the organisation. Like in the case of NPCs, trading beyond the social purpose or public benefit will be taxed normally.

Much in the same vein as what was said above about possible social entrepreneurial activities in VAs, there are no data available as to the prevalence of social enterprises amongst this type of organisations; again, more research would be needed to assess this.

Non-profit companies

Non-profit companies (NPCs) represent about 3% of the third sector in South Africa (Republic of South Africa, 2016). The new Companies Act 71 of 2008, which was signed into law in April 2009 and entered into force on May 1, 2011, has changed the way in which NPCs are incorporated and regulated. The new Companies Act distinguishes two broad categories of companies: NPCs, and profit companies. The latter encompasses state-owned companies, private companies, personal liability companies and public companies (Lambooy *et al.*, 2013; Legal Resources Centre, 2011), which will be discussed in more detail below. As to the newly created category of NPCs, it replaces the old "Section 21 companies". NPCs must comply with two key criteria: (a) they must be formed for a public benefit object or an object relating to cultural or social activities or communal or group interests; and (b) the income and property of the company is not distributable to its incorporators, members, directors, officers or persons related to any of them (Cassim, 2012; Legal Resources Centre, 2011). In line with this explicit limitation of its purpose, a NPC is subject to a modified application of the new Act; these rules are set out in a separate schedule. A NPC is also exempt from many of the parts and sections of the new Act applicable to their for-profit counterparts (Cassim, 2012).

NPCs have an independent legal personality and can, thus, be sued or sue in their own name, and they can own assets (Legal Resources Centre, 2011). In addition to the non-distribution constraint, a certain degree of asset-lock is provided for in the Act. As Schedule 1 ("Provisions concerning non-profit companies") states:

> *A non-profit company may not—*
> *(a) amalgamate or merge with, or convert to, a profit company; or*
> *(b) dispose of any part of its assets, undertaking or business to a profit company, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the non-profit company.*
>
> (Republic of South Africa, 2008)

NPCs come into being through a Memorandum of Incorporation completed and signed by at least three persons, the incorporators. These incorporators need not be members of the NPC. The Memorandum sets out the rights, duties and responsibilities of the NPC's members and directors and makes provisions for financial control and reporting.

A NPC is not required to have members ("members" being understood here as the equivalent of shareholders in for-profit companies). If it chooses to have members, it may distinguish between voting and non-voting members. Members do not necessarily have to be individuals. For-profit organisations, other charities or any other legal persona can be a member of the NPC. The voting members of the NPC elect the directors, as specified in the founding Memorandum of Incorporation. If the organisation does not have members, the Memorandum must specify how directors should be elected by the board (i.e. the incorporators of the NPC) or other persons. NPCs are required to have at least three directors. Like in other not-for-profit entities, directors are accountable to their board and are bestowed with the executive responsibilities and powers necessary to conduct the day-to-day business of the organisation, which they are expected to carry out "in good faith and for a proper

purpose in the best interests of the company with the degree of care, skill and diligence that may reasonably be expected of a person" (Republic of South Africa, 2008: 148).

NPCs are allowed to make a profit insofar as they comply with the basic prohibition on distribution to their members and controllers, and provided that all their assets and income are used to advance the objectives stated in their Memorandum of Incorporation (Cassim, 2012; Legal Resources Centre, 2011). In addition to the generation of earned income through commercial activities, NPCs can also seek grant funding and receive donations (Cassim, 2012). For social enterprises, a typical advantage of the NPC form is that it has easier access to grants and donations than for-profit entities, as these are often only available to not-for-profit entities (Steinman, 2010).

This type of organizations would fit closely with the profile of a "typical" social enterprise, as it combines the primacy of the social purpose with the possibility to generate trading income. Unfortunately, as was also the case for the VAs and trusts, we do not have any data regarding the prevalence rate of social enterprises among this type of organizations. While one could suggest that, *in theory*, this could be an ideal form for social enterprises in South Africa, the absence of a legal framework as well as reasons linked to access to funding (both in addition to grants or philanthropy as well as seed capital), ideological concerns, etc. might dictate the adoption of other legal forms to incorporate a social enterprise.

For-profit models

For-profit entities are characterized by the fact that they exist primarily to make a profit. Social enterprises adopting a for-profit form would be free to reinvest these profits in the social enterprise, or to use them in line with the enterprise's aims and objectives in some other way (Legal Resources Centre, 2011). This means that social entrepreneurs may well choose to incorporate as a for-profit entity with the aim of allocating the gains generated to the achievement of social objectives. As discussed above, such choice can also be made with the purpose of addressing a (rhetorical) statement to the outside world, emphasising the business-like running of the organisation. Once again, no reliable data are available to ascertain the prevalence of social enterprises among these types of organisation.

As per the Companies Act 71 of 2008, profit companies include state-owned companies, private companies, personal liability companies and public companies (Lambooy *et al.*, 2013; Legal Resources Centre, 2011). In this section, we will focus our attention on the latter three. In addition to these, we will briefly discuss close corporations, cooperatives and sole proprietorship. While under the Companies Act of 2008 it is no longer possible to register as a close corporation, pre-existing ones can continue to operate (Steinman, 2010).

Private companies ([Pty] Ltd), personal liability companies (Inc.) and public companies (Ltd)

Both private companies (personal liability companies[1] will be discussed here as a subset of private companies as the main difference lies in the personal liability of present and past directors) and public companies are established under the Companies Act 71 of 2008 and allow for a group of people to work together towards a common objective. Without wanting to go too much into detail, the main difference between private and public companies relates to the restrictions placed on the offering and transferability of shares. Private companies are prohibited to offer securities to the public; the transferability of these securities is restricted to other members (shareholders) of the same private company. Public companies are not limited by these restrictions and allow for a more widely distributed ownership, and the trading of shares on a public exchange, such as the Johannesburg Stock Exchange (Legal Resources Centre, 2011).

Both private and public companies have an independent legal personality. The founding document for both types of organisation is the Memorandum of Incorporation, which, similarly to that of not-for-profit entities, sets out the rights, duties and responsibilities of the shareholders, directors and others within and in relation to a company. While it is not restrictive about the activities that can be carried out, the company must set out its main objective in its Memorandum. It is possible for a public or a private company to have a social purpose (Steinman, 2010). As Steinman (2010) points out, while it is not customary to do so, a company may voluntarily impose a restriction on dividends or on profit distribution to shareholders, and allocate its profits to the pursuit of a social purpose.

Private and public companies are funded through equity capital. As per the provisions contained in the Memorandum of Incorporation, the company may issue shares to its shareholders. These shares entitle their holders to dividends and other forms of profit distribution (subject to the solvency and liquidity of the company); to the return of capital; to surplus assets in the event of a liquidation, and to participation through voting rights (Steinman, 2010).

In terms of governance, private companies must have at least one director, while public companies must have at least three directors. For both types of companies, a board of directors acts as an agent in governing the company in the name of the shareholders, as per the specifications laid down in the Memorandum of Incorporation.

Close corporations (CC)

As pointed out above, the legal form of close corporation no longer exists under the Companies Act 71 of 2008. Nevertheless, we still wish to discuss briefly this type of organisation, as pre-existing close corporations—i.e., those established before the new Companies Act entered into force on May 1st, 2011—can continue to exist. Close corporations will, therefore, remain part of the South African landscape until they are deregistered or dissolved in terms of the Companies Act or converted into other legal entities.

[1] This type of company is commonly registered by professionals such as doctors, lawyers, engineers, accountants, etc.

A close corporation is a separate legal entity, incorporated under the Close Corporations Act 69 of 1964. As Henning (2009) points out, this form offers a flexible freestanding limited liability vehicle for a single entrepreneur or a small number of participants. As such, it was a favoured way of incorporating SMMEs (Chiloane-Tsoka and Rankhumise, 2012). A close corporation can have between one and ten members. Companies and other legal persons cannot become members. The members are not in principle liable for the debts of the organization, but there are certain instances where personal liability is used as a sanction for non-compliant behaviour. In principle, there is no separation between ownership and control. Every member is entitled to participate in the management of the business and to act as an agent for the corporation, and he/she owes a fiduciary duty and a duty of care to the corporation (Henning, 2009).

Regarding the admission of new members, the consent of all the members is required. The new members obtain members' interests in exchange for their contributions to the close corporation. It is determined by agreement between the would-be member and the existing members, and the percentages of the interests of the existing members in the corporation are reduced proportionally by the percentage acquired by the new member. The contribution may consist of an amount of money, or of any property (whether corporeal or incorporeal) of a value agreed upon by the person concerned and the existing members (Republic of South Africa, 1984). They can receive a return, similar to dividends, provided that the close corporation complies with the solvency and liquidity requirements (Steinman, 2010).

Steinman (2010) indicates that as social enterprises, close corporations are in a situation similar to that of public and private companies, in that they can restrict dividends or payments to their members and so devote most of their income and assets to achieving a social purpose. Close corporations can be formed for social purposes and need not even pursue gain.

Cooperatives

The cooperative movement has enjoyed increased interest over the last couple of years as cooperatives are seen as a driver of economic growth and social development (the dti, 2012). Policy initiatives have led to a flourishing cooperative movement in South Africa, with almost 45,000 registered cooperatives in 2010/2011 (the dti, 2012).

Cooperatives are established under the Cooperative Act 14 of 2005 and its Amendment in the form of the Cooperatives Management Act 6 of 2013. These Acts allow for a group of people to join forces to meet a common economic, social and cultural need (ILO, 2013) through the pooling of their individual interests and expertise. The Acts provide for various forms and kinds of cooperative. They distinguish between primary, secondary and tertiary forms of cooperatives. According to the Cooperative Amendment Act, a primary cooperative means a cooperative whose object is to provide employment or services to its members and to facilitate community development. A primary cooperative is formed by a minimum of five persons, of two juristic persons, or of a combination of five persons, be they natural or juristic. A secondary cooperative is a cooperative formed by two or more primary cooperatives to provide sectoral services to its members. Finally, a tertiary cooperative is a sectoral or multi-sectoral cooperative whose members are secondary cooperatives and

whose objectives are to advocate and engage with organs of state, the private sector and stakeholders on behalf of its members, in line with its sectoral or geographical mandate (Republic of South Africa, 2005, 2013). The Acts also distinguish different kinds of cooperatives, such as housing cooperatives, worker cooperatives, financial cooperatives, agricultural cooperatives and social cooperatives (Republic of South Africa, 2005, 2013).

Cooperatives have independent legal personality and come into being by registering a constitution with the Registrar of Cooperatives. This constitution must specify, among other things, whether the cooperative is a primary cooperative, a secondary cooperative, or a tertiary cooperative; it must define the main objectives of the cooperative; provide a description of the business of the cooperative (including any restrictions imposed on the business of the cooperative); specify the number of directors and the term of their office (which may not be more than four years), the conditions of appointment and whether a director may be re-appointed for a second or further term of office. The constitution must also define the powers—and restrictions imposed upon these—of the directors of the cooperative to manage the business of the cooperative; the requirements for membership and termination of membership of the cooperative; the rights and obligations of members, etc.

As indicated above, a cooperative must have at least five members (be they natural or legal persons); there is no upper limit to the number of members it may have. Cooperatives must comply with seven cooperative principles. These are:

1) *Voluntary and open membership*: this means that cooperatives are voluntary organizations, open to all persons able to use their services and willing to accept the responsibilities of membership, without discrimination on the basis of race (*sic*), gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth;
2) *Democratic member control*: cooperatives are democratic organisations, controlled by their members;
3) *Member economic participation*: members must contribute equally, in amounts proportionate to their membership shares, and democratically control the capital of their cooperative;
4) *Autonomy and independence*: cooperatives are autonomous, self-help organizations controlled by their members. If cooperatives enter into agreements with other organisations, including governments, or raise capital from external sources, they should do so on terms that ensure that democratic control by their members is preserved and their cooperative autonomy maintained;
5) *Education, training and information*: cooperatives must provide appropriate education and practical training for their members, elected representatives and employees so that they can contribute effectively to the development of their cooperatives and are able to inform the general public, particularly young people and opinion leaders, about the nature and benefits of cooperation;
6) *Cooperation among cooperatives*: cooperatives must serve their members as effectively as possible and strengthen the cooperative movement by working together through local, national, regional and international structures where possible;

7) *Concern for community*: cooperatives must work for the sustainable development of their communities through policies approved by their members (Republic of South Africa, 2005, 2013).

Cooperatives are managed by a board of directors, who are appointed for a period specified in the constitution. This board of directors is accountable to the general meeting and a supervisory committee, if such has been specified in the constitution. Members have equal voting rights. A cooperative must appoint an auditor to verify its financial statements.

The capital contributed by members may comprise entrance fees, membership fees or subscriptions, membership shares, member loans and funds of members. The law does not reserve a specific set or area of economic activities in which cooperatives should engage. This means that income may be generated from any legal commercial activity a cooperative wants to engage in. Members can declare dividends and are therefore able to obtain financial gain from a cooperative.

Sole proprietorship

In addition to the above, owners of SMMEs might choose sole proprietorship. A sole proprietorship is the simplest kind of independent business, as it does not require registration as a legal entity. As such, it is not governed by the Companies Act. This organizational form is often adopted by a single owner, whether or not she or he employs or contracts other people during the course of her or his activities. Sole proprietorship is more common among service-based SMMEs as these usually require less investments and the debts are thus not so high. The owner is liable for, and can be sued for, the business's debts. There is no distinction between the business' assets and the owner's assets.

Again, it is unclear to what extent this form is prevalent among social entrepreneurs in South Africa and more systematic research is needed to identify which legal forms are adopted by social entrepreneurs and why.

The above entities represent the range of not-for profit and for-profit business models that may be used by social enterprises to fulfil their social purpose. More systematic research is needed to ascertain what type of incorporation social entrepreneurs might choose and for what reasons they might choose one form over another. In the next section, we turn our attention to hybrid forms of organisation.

Table 1 summarises some of the key elements discussed above.

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Hybrid structures

Hybrid models refer to the combination of various models—typically for-profit and not-for-profit entities—to achieve the social purpose of an organisation. In many cases, the for-profit leg of the company is intended to generate income, which can subsequently be reinvested in the not-for-profit branch to fulfil its social objective. As the Legal Resources Centre (2011) suggests, a social entrepreneur might also set up a number of not-for-profit entities, each focusing on an aspect of what the "combined"

enterprise as a whole aims to achieve. In this way, a social entrepreneur may diversify and spread the risks the organisation is running by generating income separately in distinct legal entities. The downside of the "hybrid approach" is the multiple registration of companies that it requires, which might increase administrative workload and the costs to be borne by the incorporators. In addition to this, a hybrid construction will also increase the managerial and administrative complexity, and the director(s) of such an enterprise will have to ensure compliance with various legal, auditing and reporting frameworks. It should also be noted that the transfer of assets and funds from one entity to another may be subject to legal restrictions inherent in the form under which each organisation has been incorporated. Hence, while such a hybrid construction might seem luring to potential social entrepreneurs, there are a number of important legal and managerial considerations to be taken into account.

CONCLUSION

Taking a legal approach, this paper aimed to present a (crude) typology of social entrepreneurial activity in South Africa. From a close analysis of the available academic and grey literature as well as policy documents, it is clear that the concept of SE is taking root in the country. The South African government recognises the importance of the social economy and the significant contribution that it could make in dealing with some of the persistent problems that the country is facing, such as poverty and high unemployment.

More systematic research (both qualitative and quantitative) would be needed to tease out a more fine-grained typology. While there is no specific legal framework governing social entrepreneurial activities in South Africa at the moment, a number of policy tools and initiatives seem to be creating a space where social entrepreneurs could establish themselves. The lack of a legal framework for social enterprises in South Africa may both hinder and stimulate the development of the field. Indeed, it may hinder the development of social entrepreneurial activities as the ambiguity surrounding it may discourage potential entrepreneurs. Of great concern here would be the ambiguity regarding access to funding, which may scare away potential social impact investors. On the other hand, this lack of legal framework could also be seen as a blessing in disguise, as it may stimulate social entrepreneurs to experiment with innovative organisational forms.

While there seems to be a growing interest in the topic, too little of the research is being published outside of South Africa. And beside some noticeable exceptions (Hanley *et al.*, 2015; Urban, 2008, 2015; Urban and Kujinga, 2017; Urban and Teise, 2015), most of the studies are still case study-based. It is clear that more systematic research on SE in South Africa is needed. For instance, which organisational forms would social entrepreneurs prefer and why? In a recent study, Hanley *et al.* (2015) found[2] that South Africa's social enterprise environment is primarily constituted by for-profit organisations, which represented 49% of the sample, while non-profit organisations accounted for 35% of organisations and hybrid organisations represented 14% (this amounts in total to 98%; the remaining 2% were not identified in the study). Another important area for research relates to the survival rate of this type of organisations. Both SMMEs and cooperatives have astonishingly high failure rates

[2] Neither the sample size nor the way in which the organizations were selected was clearly documented in their research report.

(Wessels and Nel [2016] report an 88% failure rate for cooperatives). Is this due to a lack of managerial capacity or human capital or should we look at institutional factors (or at a combination of both) when trying to understand what is going wrong and what lessons could be learned from these failures? A third avenue for research might be related to the social impact of these organisations. With the current attention given to the social economy at policy level, the potential of social enterprises to contribute to job creation, poverty alleviation or some of the other developmental issues South Africa is facing might lead to overhyping the phenomenon and creating too much expectations, which might nip it in the bud if clear results would stay out. If we wish to further our understanding of SE in South Africa, both rigorous and systematic empirical and theoretical work is needed. Such work should be grounded in the realities of the country in order to strengthen sound policy decision-making as well as effective organization and management of social enterprises, which can play a crucial role in both economic and social development of South Africa. In sum, SE in South Africa is an exciting field, where much is still to be done.

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